

Identifying the Settler Denizen within Settler Colonialism

By

Deanne Aline Marie LeBlanc

B.A., University of Toronto, 2011

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**Supervisory Committee**

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(Department of Political Science)

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Dr. Michael Asch, Outside Member  
(Department of Anthropology)

## Abstract

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## Abstract

There is a tendency within both literature and practice to conceive of colonialism and decolonization as state-centric structures or events. Such an approach to colonialism and decolonization, however, ignores or overshadows the integral roles played by non-indigenous, non-state actors within both colonial and de-colonial processes. This thesis identifies and explores specifically how non-indigenous Canadian citizens, as settler denizens, contribute to colonialism within the country. Through the exploration of settlement stories (both those provided and those silenced), it is argued that, non-indigenous Canadians can come to understand the roles they play within ongoing process of colonialism within Canada today. It is only after these settler actors have identified and explored these roles and recognized their responsibilities to act in de-colonial ways that decolonization can begin. This thesis is, therefore, concerned with identifying and exploring the first step in the process towards decolonization – identifying the settler denizen within settler colonialism.

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I'm grateful for financial support received through the Social Sciences and Humanities Council and the Department of Political Science at the University of Victoria which helped me to complete my project.

The ability to complete this research at the University of Victoria has been a gift. There is such an amazing wealth of thought amongst the professors and students throughout the university but specifically, at least for my own engagement, within the Department of Political Science; the Faculty of Law; the Indigenous Governance Program; and the Cultural, Social, and Political Thought Program.

Within my own department, I've been extremely fortunate to have been surrounded by such talented peers who have both supported and challenged me in ways they may not even recognize. I look forward to continuing our discussions in the years to come.

I've been blessed with two amazing supervisors who have both been a source of inspiration, support, and challenge. I'm indebted to Jim Tully for his engagement early on in my studies both within his theory seminar and on earlier workings of my theory of the settler denizen. He helped me to realize the strength within my settler denizen and for that I'm forever grateful. Likewise I'm beyond thankful for Heidi Stark's consistent support and challenges – always willing me to push my perceptions, meanings and precision further. This is a much fuller paper because I've had such supportive and engaged supervisors. Thank you.

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Last, but certainly not least, I'd also like to thank my family for their continued support throughout my studies and their participation within this project. They were gracious enough to let me interview them, at times answering questions that made them feel uneasy about their settler identity. I'm happy to say that they've joined me on my journey of coming to know our identities as settlers within this land. And I thank my parents specifically for instilling within me a great love for my country at a young age. I'd not be here fighting to regain my faith in Canada otherwise.

## INTRODUCTION: SETTLERS, STORIES, AND FIRST STEPS

As an academic who studies indigenous-settler relations I believe it is important to situate myself within my work. The process of self-situating not only identifies the position from which I am approaching this research, but also shows my reader how I came to my research question.

Simultaneously, this same process works to uncover the stakes I have within my own work. The following paragraph and section (*Stories that Define Us*), therefore, serve as an exercise of self-situating within my research.

My name is Deanne Aline Marie LeBlanc. I am a Canadian citizen. I was born and raised in East York a former borough of Metropolitan Toronto now within the boundaries of the City of Toronto, Ontario on the traditional lands of the Anishinaabe Mississaugas,<sup>1</sup> although I did not know these were traditional lands during my youth. I am currently living in Victoria, British Columbia on the traditional lands of the Coast and Straight Salish peoples. I am a settler. My ancestors are not native to these lands, though my family has been here for decades. I have not always identified as a settler, an identity largely ignored within Canada and not readily made available for non-indigenous peoples within the country to explore.

Both indigenous<sup>2</sup> and non-indigenous peoples are here to stay,<sup>3</sup> ensuring our mutual future is a positive one will require decolonization. If non-indigenous Canadians<sup>4</sup> want to move

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<sup>1</sup> The name “Mississauga” is derived from unconfirmed origin and was applied by settlers to the Anishinabek inhabiting the area north of Lake Ontario as early as the late 1600s. For this reason at no point within my thesis will I refer to the indigenous inhabitants of this area as simply “Mississauga”. Instead due to the uncertain origin of the term, and the fact that the term has since been adopted by the descendants of the original Anishinabek peoples from this territory, I will instead utilize the term “Mississauga Anishinabek” throughout my work.

For further information surrounding possible derivations of the term “Mississauga” please see:

Donald Smith. *Sacred Feathers: The Reverend Peter Jones (Kahkewaquonaby) and the Mississauga Indians*. Toronto: University of Toronto Press, 1987. pp.19-20.

<sup>2</sup> The term “indigenous peoples” is used throughout this paper to refer to the multiplicity of nations whose habitation of and governance over the land pre-dates the Canadian state. I have chosen not to capitalize the term because it is not a proper name that serves to define a single peoples. Before settlers came to this area of the world there were no “indigenous peoples”. To capitalize such a term would give legitimacy to the idea of a false collective. For this very reason I try and use this terminology as little as possible, referring to nations and peoples by their proper, self-given names where possible (such as Anishinabe, Haudenosaunee, etc.).



toward decolonization, however, it is crucial that we begin to explore our identities as settlers because these identities illuminate how deeply implicated we are within colonial processes. Only once settlers recognize how we contribute to colonialism can we begin to understand how to redress our colonial roles and actions in order to actively and positively contribute to decolonization efforts. This thesis offers one method by which non-indigenous Canadians can begin to acknowledge and explore our identities as settlers.

In many ways the acknowledgement and exploration of settler identity can be a painful process. It is also a process of great hope and renewal. Both of these aspects of decolonization must be supported. Where do non-indigenous Canadians begin to understand their roles within colonialism? One possible beginning is to recognize and investigate our stories, both those that have been provided to and those that have been largely kept from us. Through investigating these stories, their interconnections, and the roles we play within them we can begin to understand our contemporary roles within colonial processes.

### ***Stories that Define Us: A Personal Narrative of Coming to Know***

Over the span of a few summers in my childhood I camped throughout most of Canada with my family. These were magical and formative summers for me. I saw the diverse range of beauty throughout this country that many do not have the privilege to experience. During these summers spent in the woodlands, the plains, the mountains, and the coasts I developed a deep love and reverence for my country. This love and reverence grew throughout my youth as I

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<sup>3</sup> As Michael Asch has argued both indigenous and non-indigenous peoples are “here to stay” within Canada because it was through the original treaties (Georgian and Victorian) that we all as treaty members agreed to share the land in perpetuity. For greater depth of argument surrounding this claim please see: Michael Asch. *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*. Toronto: University of Toronto Press, 2014.

<sup>4</sup> Here the term “non-indigenous Canadians” is used generally to refer to various facets of the Canadian citizenry, from those who recognize themselves as multiple-generational citizens to newly arrived immigrants. While I recognize that much can be gained from intersectional positioning of settler actors, such a project is beyond the bounds of this thesis.

learnt stories about how Canada was a peaceful and tolerant country. When I began my undergraduate degree, however, my notions of Canada were shaken. It was still a beautiful country but I began to become aware of its darker sides – most notably the historic and contemporary dispossession and subordination of indigenous peoples within the country's borders. Becoming more aware of these realities, these alternative narratives, I began to lose my respect for Canada's political and legal institutions. I began to feel that I had been lied to about Canada's peace and tolerance. It was not until my last year of studies that I began to find hope in restoring my reverence for Canada.

I completed my undergraduate degree at the University of Toronto in Political Science and Aboriginal Studies. In my last year of studies, I took a Native Language and Culture class with an Elder from Treaty 9 territory, Alex McKay. The focus of our class was on the *aatisohkannan* and *aatisohkannak*, the traditional legends and major characters, within Oji-Cree oral traditions. As a class of indigenous and non-indigenous peoples we learnt the importance of stories in connecting us to a place, a territory, and a culture. During one of our classes a non-indigenous girl spoke up voicing her worry and disappointment over her belief that she did not have stories. She felt that she did not have traditional or ancestral stories that connected her to anywhere. Instead, she was just a white girl floating around Canada - not really belonging, and not really connected, to any place.

Her contribution to the class on this day was weighted, and resulted in a tense silence. I was personally stunned. I wondered if I just a white girl floating around Canada. As a 12<sup>th</sup> generation French-Canadian on my father's side I had never questioned, or to be honest given much thought to, my familial history, our stories, and my sense of belonging in Canada. I had taken my presence within the country as a given. I derived from a group of original settlers, part

of the two founding nations of Canada.<sup>5</sup> I belonged and had stories, even if I did not know them. I began to think of the family on my mother's side. On my mother's side I am only a third generation Irish-Canadian. I also knew that the Irish had a history of famine and immigration. Although I did not know my mother's familial stories, I knew we still must have them. In the minutes that followed my peer's contribution I began to realize that as a non-indigenous Canadian who had grown up with a family who discussed their ancestral roots, I was privileged. It dawned on me that many non-indigenous Canadians (specifically those of Western European descent whose families had been here for a number of generations) such as my peer, likely did not have such a clear sense of where they came from, and had perhaps not given it much consideration. They were just Canadian, their history and sense of self grew from the point of settlement. The before was silence, ignored, or shrouded in a hazy mystery that no one was interested enough in scoping out.

After riding the silence for a while, Alex was always good at that, he finally spoke up and calmly replied to the girl: "we all have stories; you just don't know yours yet." I do not know what happened to the girl, or if she ever looked into her stories. This exchange and my reaction to it, however, is what led me down the research path I am currently on: figuring out how non-indigenous Canadians contribute to colonialism. I began to think that if settlers could identify and explore their stories they might begin to decolonize, and this could lead them to actively seeking to re-dress yesterday and today's wrongs. Maybe if this happened I could re-attain my reverence for Canada because then it would be a de-colonized space. Then maybe we could live

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<sup>5</sup> The two founding nations myth suggests that Canada was founded by the French and English peoples, resulting in a governmental system whose shape and content reflects this alliance. While this myth has been upheld throughout the Canadian state's existence, recently individuals like John Ralston Saul in *A Fair Country* have suggested that the Canadian state owes its existence to three founding peoples: the English, French, and the original indigenous peoples. This presents a compelling exercise for re-envisioning state narratives and Canadian history and should be given greater consideration. I, however, grew up within an education system that told me there were only two founding nations and that my ancestors on my father's side were part of one of those nations.

up to our beauty and our narratives as a peaceful and tolerant nation. Stories, I knew, would be an important step along the way.

### *Who is the Settler Denizen? Stories as First Steps*

My thesis is concerned with identifying how non-indigenous Canadians contribute to colonialism within the country. It is only through understanding how settler actors contribute to colonialism, that we can begin to understand how these same settler actors can contribute to decolonization. I have chosen to identify non-indigenous Canadians who contribute to colonialism as “settler denizens”. While I will consider this term in greater detail below, I have chosen to modify the term “settler” with the term “denizen” because this latter term can help to signify a settler actor who has not come to realize the fuller citizenship available to him or her (through alternative stories of settlement previously unexplored) within this country. This modified term “settler denizen” also provides greater room for the settler actor, as “settler citizen”, who has come to know their settlement stories, their roles within colonialism, and who recognizes and acts upon their responsibility towards decolonization. The settler denizen is then a settler actor who contributes to colonialism, while a settler citizen is a settler actor who has begun to contribute to decolonization. My use of these terms will become clearer in lengthier exploration of these terms below.

Formulating a greater understanding of the compound term “settler denizen” requires a separate analysis of the two terms. First of all, the term “settler” is used here, and throughout this paper, to broadly refer to all non-indigenous peoples living within Canada. For the purposes of this research I am not primarily interested in exploring differentiation in settler identities through racial or intersectional means. For instance how being a 1<sup>st</sup> generation Canadian from

Pakistan, Sweden, or China might situate someone differently within a settler identity than being a 7<sup>th</sup> generation Canadian from Britain or France. I do, however, recognize there are still important differences in settler situations. Such an exploration can be taken on by individual settlers as they explore their own settlement stories. This differentiation in position is not the focus of my paper. Additionally, and in connection with racial, sexual, and gender positioning, it is important to explore how settler difference is a function of integration within colonial processes. When settler identity is measured in respect to colonial integration, settlers are differently situated due to their entrenchment within the colonial project. For instance does a settler have full Canadian citizenship? Is he or she a property owner? How much does he or she have invested within colonial state mechanisms? How much settler privilege does he or she enjoy? These differentiations, while important to keep in mind, are also largely beyond the bounds of this specific thesis. Nevertheless, this is the understanding of the term “settler” used to animate the employment of the term “settler denizen” throughout this thesis.

As for the term “denizen”, in the Oxford English Dictionary a denizen is referred to as “one who lives habitually in a country but is not a native-born citizen.”<sup>6</sup> Set in contrast to a citizen then, a denizen is one who inhabits a space but who does not necessarily hold a full membership (or citizenship) to the same place. Within my employment of the term I am interested in extending the concept of denizen into an ethical space of membership engagement, where the “settler denizen” is one who inhabits someone else’s lands and who does not recognize nor actively engage with what justifies his or her presence on the lands he or she has settled.<sup>7</sup> In other words, a settler denizen is a settler who does not know and does not engage with his or her

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<sup>6</sup> “Denizen.” *The Oxford English Dictionary Online*. Web. 15 Jan. 2014.

<sup>7</sup> When I use the term “settler denizen”, I am specifically identifying those who have settled on lands that are not their own. I would like to thank Michael Asch for helping me tease out this distinction from the standard definition of denizen found within the *Oxford English Dictionary* as cited above.

pre-settlement stories nor actively engages with his or her settlement story. This engagement necessarily includes considering the state's settlement story, treaty settlement stories and their connections with personal settlement stories. These are stories and connections which represent crucial aspects of justification for a settler's presence on the land. While knowing these stories is not a sufficient step toward this justification, it is a necessary step. It is because the settler denizen does not acknowledge the settlement stories which justify his or her presence on the land, that the settler denizen remains only in partial membership to the land and its original peoples and, therefore, actually prohibits his or her own attainment of full treaty citizenship,<sup>8</sup> an original citizenship established through treaty relations that contributes to justification of settler presence within Canada today.

Originally treaties between early settlers and indigenous peoples were made with the mutual view to share the land.<sup>9</sup> It is through peace and friendship treaties and agreements, and perhaps this can even extend to the numbered treaties, that indigenous and settler peoples agreed to share the land as autonomous and yet interdependent peoples. These agreements established responsibilities between treaty members, where membership extends beyond indigenous and state negotiators and to all those affected by (living in the area of) the treaty. Membership, therefore, includes the original colonial subjects, their decedents, and those who currently inhabit the area. Even those settler actors who do not live within a specific treaty area can act as treaty

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<sup>8</sup> Treaty citizenship is a concept that has been informed by an extensive literature on the role treaties can have in transforming indigenous-settler relations. Academics (both indigenous and non-indigenous) that have contributed to this literature include: Michael Asch, Sakej Henderson, Harold Johnson, Kiera Ladner, Heidi Stark, James Tully, and Graham White. As will be explored in greater depth within chapter two, the concept of "treaty citizenship" that I want to put forward builds on this literature and argues that the original treaties made between indigenous and settler peoples to share the land not only justifies settler presence, but established communities through which relationships were established between indigenous and non-indigenous peoples. These relationships established sites of mutual responsibilities between indigenous and non-indigenous treaty citizens.

<sup>9</sup> Asch. pp.116-7.; Robert Williams Jr. *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*. Oxford: Oxford University Press, 1997. p.126.

members<sup>10</sup> in order to identify an informal treaty citizenship. Acknowledging and engaging with one's treaty citizenship, regardless of its foundation, is a responsibility that non-indigenous peoples hold by virtue of the ongoing nature of treaties and treaties' roles in helping to justify settlement. The current Canadian population, en masse, does not currently recognize this fact.

Settlers, not only those who either knowingly and intentionally contribute to indigenous subordination and dispossession without redress, but also those who do not recognize or actively engage with their histories and with their roles within colonialism and decolonization, contribute to their status as denizen because they do not recognize or activate their treaty citizenship and the responsibilities that flow from it. What this treaty citizenship means varies across time and locality but exists nonetheless and must be recognized through meaningful dialogue between indigenous and settler peoples. In areas where a formal treaty exists this could mean re-visiting this treaty and renewing its terms and the relations and responsibilities that it contains. In areas where no formal treaty exists, for instance in large parts of British Columbia, this means establishing treaty relations in the first place which could be done through acting as treaty partners.<sup>11</sup>

A settler denizen may become a settler citizen through his or her recognition of agency and responsibility within colonialism (as an ongoing process), his or her subsequent recognition of responsibility for action within de-colonial processes, his or her actions within de-colonial processes, and his or her recognition and engagement with treaty citizenship (which is specific to time and place). While important to explaining the foundations of and goals for my research,

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<sup>10</sup> James Tully. "Deanne Comments." Message to Deanne LeBlanc. 31 Mar. 2014. E-mail.

How one might act as a treaty member in the absence of a formal treaty is given further consideration within chapter 2.

<sup>11</sup> The ability to act as treaty members in the absence of a formal treaty will be given greater consideration in chapter two.

understanding how a settler denizen might become a settler citizen is ultimately beyond the bounds of this thesis and will be left to future graduate work. For the purposes of this thesis, then, focus will remain on conceptualizing the role of settler denizen within Canadian colonialism. Identifying the denizen role within colonialism constitutes the first step of the settler actor transforming from denizen to citizen, therefore, marking a first step for non-indigenous Canadians toward their ability to positively contribute to de-colonial processes.

### *Situating this Work within Settler Colonialism*

My work has been shaped by and seeks to contribute to the growing field of settler colonialism.<sup>12</sup> The identification of settler colonialism is premised on the distinction made between external and internal modes of colonialism.<sup>13</sup> Within this distinction, external colonialism refers to a system of permanent subordination imposed on an indigenous other by an external imperial power. Within the Canadian context, this external entity is Britain. Under the external system the colonizing power is concerned with exploiting the indigenous other for labour and economic gain. Alternatively, internal or settler colonialism refers to what is commonly cited as a structure (detailed below) imposed on an indigenous other by a settled colony co-habiting indigenous lands. Within this later mode of colonialism, the internal colonizing power seeks to eliminate the indigenous other.<sup>14</sup> The distinction drawn between external and internal colonialism is important, as both forms are animated by divergent goals and therefore practice alternative

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<sup>12</sup> While I seek to contribute broadly to the settler colonial field, my research here specifically focuses on the work of Patrick Wolfe and Lorenzo Veracini.

<sup>13</sup> While my analysis of settler colonialism focuses on the works of Wolfe and Veracini (see footnote 11), there are others such as James Tully who have identified and explored this distinction. Tully's work, specifically in *Public Philosophy in a New Key*, has offered important insights into how the internal mode functions. Unlike Wolfe and Veracini, Tully does not claim that internal colonialism is a structure, nor does he seek to specifically place his research within settler colonialism. Needless to say there is still much to be taken from his work that can help contribute to a greater understanding of settler colonialism.

<sup>14</sup> Lorenzo Veracini. "Introducing Settler Colonial Studies." *Settler Colonial Studies*. 1.1. 1-12.; and Patrick Wolfe. "Settler Colonialism and the Elimination of the Native." *Journal of Genocide Research*. 8.4. 387-409.



colonial means. While one could make the argument that Canada, as a settler state, was birthed out of external colonialism, its perpetuation rests on colonialisms' internal forms. Today, Canada predominantly practices internal colonialism.

Beyond the identification of two different modalities of colonialism, current settler colonial literature has also made an important contribution to the field by arguing that colonialism is a structure rather than an event. This is an important step toward decolonization. When colonialism is perceived to be an event it is easy for contemporary actors to dismiss their colonial agency because “they were not there when colonialism occurred”. When Wolfe argued that settler colonialism is an ongoing structure he illuminated that colonialism is a contemporary condition. However this conceptualization does not go far enough, as it conceptualizes colonialism as something rigid, inflexible, and state-centric. Current literature that builds on Wolfe’s work tends to conflate a multiplicity of settler actors into a single state-centric settler actor. I am proposing a further re-conceptualization of settler colonialism as a dynamic process or set of processes, which are susceptible to change and improvement, requiring a consideration of the web of inter-related and yet differently situated actors.

While current conceptualizations of settler colonialism are limited, the characterization given for the settler actor is nonetheless useful. The settler colonizer is concerned with the elimination of the indigenous other for the purposes of its own justifiable settlement and territorial expansion over indigenous lands. In the words of Patrick Wolfe “settler colonialism destroys to replace.”<sup>15</sup> Destruction, or elimination, in this context does not necessarily mean that the settler colonizer seeks to directly and violently exterminate another. Elimination can and, increasingly in contemporary settler societies, does include policies that seek to erase the

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<sup>15</sup> Wolfe. p.388.

other through terms of direct assimilation, recognition, and reconciliation. Elimination by these means serves to neutralize indigenous difference<sup>16</sup> through internalizing (or managing and assimilating) it within the settler state order.<sup>17</sup> These means of neutralization can appear to provide an open space for indigenous difference, when they actually serve to manage and contain it so that it does not threaten the settler order. This internalization of indigenous difference is seen as necessary not only for settlement and expansion of the settler society; it also symbolically marks the settler society's independence from an original, external colonial power as the settler is able to indigenize itself.<sup>18</sup> Studying colonialism as a process rather than a structure will require mapping this characterization onto differently situated actors. While this characterization is still relevant to all settler actors its application will shift based on the differing situational roles taken on by different settler actors. It is important to note here that, in addition to be a process or set of processes, colonialism is far more than a process of territorial appropriation and includes social, cultural, economic, and even psychological appropriations and re-writings as well.

### ***A Roadmap for Identifying the Settler Denizen***

This thesis has been separated into three chapters. Chapter One identifies issues surrounding contemporary understandings of the role settler denizens play within colonialism. Within this

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<sup>16</sup> Throughout my thesis I refer to "indigenous difference" as the difference produced from the facts of indigenous peoples' cultural distinctiveness, prior occupancy, prior sovereignty, and role within the treaty process throughout Canada. As I will explain and show throughout my thesis, this difference presents a threat to the state's fragile sovereignty claims, claims which are fragile because they ignore these facts. It is because this difference presents such a threat, that the settler state is interested in internalizing or managing this difference so that the threat such difference poses can be neutralized.

This definition of indigenous difference has been taken from Patrick Macklem's working definition of the same term within *Indigenous Difference and the Constitution of Canada*.

Patrick Macklem. *Indigenous Difference and the Constitution of Canada*. Toronto: University of Toronto Press, 2001. p.4.

<sup>17</sup> Veracini. p.8.

<sup>18</sup> Wolfe. p.389.

chapter, focus will be given to the ways through which Canadian state law and policy enables settlers to ignore their roles and influences within both colonial and de-colonial processes. As such, this chapter seeks to identify the limitations inherent within contemporary state-centric reconciliation models and processes. Chapter Two builds upon Chapter One by offering a method through which to redress the silenced roles settler denizens play within colonialism. Here I identify various roles settler denizens assume; these roles are used as a heuristic method that enables non-indigenous Canadians to begin considering how they are involved within colonial processes. This chapter remains largely theoretical in nature. The third and final chapter, therefore, serves to ground my research within a practical case study. This chapter primarily serves as an initial example of coming to know one's own settlement stories. As such, I will begin to explore my own settlement stories. As this is a terribly large endeavour, I have chosen to focus on a single narrative: the settlement of the Toronto area. This chapter will, therefore, explore the history of British and Anishinabek relations in 18<sup>th</sup> century and 19<sup>th</sup> century Upper Canada, the British settlement of the Toronto area, and the influence that settler denizens had within this settlement process. The narrative I will weave for the Toronto area's settlement, however, only constitutes one of my many settlement narratives. There are still a number of more personal and familial narratives I have to identify and investigate. The end of this third chapter therefore gives a very brief prelude to these other narratives that I will have to investigate at a later time.

## CHAPTER 1: RETHINKING STATE-CENTRIC RECONCILIATION OR WHY WE NEED TO IDENTIFY THE SETTLER DENIZEN WITHIN PROCESSES OF COLONIALISM

Since the constitutional negotiations of the late 1980s and early 1990s, non-indigenous Canadians have gained a greater awareness of the structures of subordination and dispossession<sup>19</sup> that face indigenous peoples within the country's borders. This acknowledgement is an important step made by non-indigenous Canadians in the move toward decolonization. When these colonial issues are discussed, however, the state tends to be framed as the sole active agent of indigenous subordination and dispossession. This is because focus remains on state-driven laws and policies (as both the instigation and solution to colonialism) to achieve reconciliation. State initiatives that could be seen as "de-colonial" are labelled by the state as reconciliatory. While there are inherent problems with the term reconciliation, and whether the state's contemporary conception of the word enables or hinders processes of decolonization, this term will be used throughout this thesis when referring to state law and policy. Alternatively, the term decolonization will be used to refer to broader processes of decolonization both within and beyond the state. Specifically, as will become clear throughout this chapter, the distinction I am trying to make between these terms rests on the different conceptions of colonialism that ground these words. The term reconciliation, as the state uses it, is based on a false conception of colonialism as an historic event, while the term decolonization, as I seek to employ it, is based on a much more complex and accurate understanding of colonialism as a set of ongoing processes.

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<sup>19</sup> Subordination and dispossession are two different and yet related colonial practices. Subordination is a biopolitical process wherein the state attempts to control a population through an extension of control over physical bodies. The use of the *Indian Act* in Canada and its ability to administer nearly every aspect of indigenous lives within the country is an example of such a subordinating process. On the other hand, dispossession is a geopolitical process wherein the state removes indigenous peoples from the lands it wants to claim for itself. Within Canada processes of subordination have been used to achieve processes of dispossession, as an example of this one might consider how the use of the biopolitically-animated *Indian Act*, and various other governmental policies that seek to control indigenous lives, have enabled indigenous dispossession from traditional lands and vice versa.

The state's reconciliatory laws and policies, therefore, seek to redress *historic* moments of colonization as quickly and painlessly as possible. Due to this, the accountability of the state's citizenry is ignored because including such accountability would make for a much messier and lengthier reconciliation process, which would demand the acknowledgement that colonialism is not an historic event but a contemporary set of processes. Consequently, the agency exercised by non-indigenous Canadians, as settler denizens, and their impacts on processes of colonialism are left out of the mainstream discourse. While many settler denizens might recognize the existence of colonialism, the state enables them to ignore any recognition of their own agency and responsibility pertaining to indigenous subordination and dispossession. The state becomes the sole active and responsible party that settler denizens can point to as the colonial perpetrator.

It is not just the state that is responsible for the current conditions of colonialism within Canada. The actions and inactions of settler denizens, historically and today, have impacted processes of indigenous subordination and dispossession both directly and indirectly. Whether a Canadian is considered a twelfth or first generation citizen, he or she has inherited this colonial reality as his or her current presence on Canadian soil is predicated on the dispossession and subordination of an indigenous other. The Canadian state and its structures exist as they do today because of the state's refusal to substantively acknowledge this dispossession and subordination, and a failure to engage in treaty citizenships. The greater the inclusion of an individual within Canadian society, through social, economic, and state structures that deal with things like citizenship and land ownership, the greater the investment he or she has within these

colonial processes.<sup>20</sup> Ignoring these connections not only presents an inaccurate depiction of historical and contemporary relationships, it also leaves settler denizens unaware of their specific roles within, influences over, and accountability to decolonization. Decolonization cannot occur without all actors, including settler denizens, first recognizing their roles and accountability in colonial processes.

Within this chapter I am interested in analyzing inherent limitations within current state-centric approaches to “decolonization” in an effort to highlight the need to de-center contemporary understandings of colonial and de-colonial processes. While both agency<sup>21</sup> and accountability<sup>22</sup> are important considerations within this discourse, due to the confines of this paper, focus will remain on agency. I will use settler reconciliation literature and the state’s reconciliatory law and policy to demonstrate the limitations of state-centric approaches to decolonization. There is a vast literature on decolonization by indigenous<sup>23</sup> and non-indigenous<sup>24</sup> scholars alike that is local, national, and international in scope. While it is prudent

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<sup>20</sup> Sunera Thobani. *Exalted Subjects: Studies in the Making of Race and Nation in Canada*. Toronto: University of Toronto Press, 2007. p.16

<sup>21</sup> The “ability or capacity to act or exert power; active working or operation; action, activity.” “Agency.” *The Oxford English Dictionary Online*. Web. 12 Apr. 2014.

<sup>22</sup> “The quality of being accountable; liability to account for and answer for one’s conduct, performance of duties, etc.”

“Accountability.” *The English Oxford Dictionary Online*. Web. 12 Apr. 2014.

<sup>23</sup> For instance please see: Taiaiake Alfred. *Peace, Power, Righteousness: An Indigenous Manifesto*. Oxford: Oxford University Press, 2009; John Borrows. *Canada’s Indigenous Constitution*. Toronto: University of Toronto Press, 2014; Jeff Corntassel. “Re-envisioning Resurgence: Indigenous Pathways to Decolonization and Sustainable Self-Determination.” *Decolonization: Indigeneity, Education and Society*. 1.1. 86-101.; Glen Coulthard. “Subjects of Empire: Indigenous Peoples and the ‘Politics of Recognition’ in Canada.” *Contemporary Political Theory*.6. 437-460; Poka Laenui. “Processes of Decolonization.” *Reclaiming Indigenous Voice and Vision*. Ed. Marie Barriste. Vancouver, University of British Columbia Press, 2000; Leanne Simpson. *Dancing on Our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence, and a New Emergence*. Winnipeg: Arbeiter Ring Publishing, 2011; Heidi Stark. “Marked by Fire: Anishinaabe Articulations of Nationhood in Treaty Making with the United States and Canada.” *The American Indian Quarterly*. 36.2. 119-149.

<sup>24</sup> For instance please see: Michael Asch. *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*. Toronto: University of Toronto Press, 2014; Cole Harris. *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*. Vancouver: University of British Columbia Press, 2002; Stephanie Irlbacher-Fox. *Finding Dahshaa: Self-Government, Social Suffering, and Aboriginal Policy in Canada*. Vancouver: University of British Columbia Press, 2009; Eve Tuck and K. Wayne Yang. “Decolonization is not a Metaphor.” *Decolonization*,

to study all available literature within this field, the confines of this thesis do not provide the adequate space for such a study. As such, and as this is a thesis focused specifically on the settler denizen and settler thought, I have chosen to focus on the decolonization literature produced by non-indigenous scholars. Within this literature, still, I have chosen to focus on the work of Paulette Regan, whose work is indicative of the dominant approach taken within the field by many non-indigenous scholars who continue to find themselves within state-centric narratives of both colonial and de-colonial processes.

Within this chapter, therefore, I will first focus on Paulette Regan's *Unsettling the Settler Within*<sup>25</sup> and how this work forces readers to confront the limitations inherent within state-centric reconciliation approaches. Core tensions brought up within Regan's narrative will then be used to explore the inherent limitations within the state's reconciliatory narrative as seen through section 35(1) of the *Constitution Act, 1982*, the Royal Commission on Aboriginal Peoples (RCAP), and the government's response to RCAP. This exploration will be followed by a synthesis on the importance of fostering a more inclusive vision of colonial and de-colonial processes, which recognizes the roles and responsibilities of settler denizens.

### ***A Brief Deconstruction of Regan's Settler Within***

Paulette Regan's *Unsettling the Settler Within* provides some important insights into how settler Canadians might begin re-visioning histories of colonization and imagining processes of decolonization. While these are important contributions that have led to many denizens becoming "unsettled" (i.e. recognizing and engaging with colonial realities), these are not the

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*Indigeneity, Education and Society*. 1.1.1-40; James Tully. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press, 1995.

<sup>25</sup> Paulette Regan. *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada*. Vancouver: UBC Press, 2010.

things I want to focus on within this chapter. Instead, I want to focus on how her work, as a reflection on the beginning of her own personal decolonization, helps readers to identify contemporary limitations of state-led reconciliation initiatives. Specifically these limitations include: problems associated with the characterization of colonialism as an historic event, the characterization of the settler denizen as an inactive beneficiary of colonial state-action; and the risk of dependency on the state for de-colonial action.

*Unsettling the Settler Within* was written as a reflection on the author's experience as an Indian Residential Schools Claim Manager (2002-04) for the Canadian government.<sup>26</sup> Within this role Regan was representing the government in the Indian Residential Schools Resolution Canada Department. The department's mandate was to reconcile abuses suffered under the government's historic Indian Residential Schools (IRS) policy.<sup>27</sup> Regan's auto-ethnographic work is a call to settlers to decolonize by rejecting falsely established national myths in order to embrace previously silenced colonial histories of the nation. In this way both Regan and I are calling for a similar initial decolonizing process for settler actors. Regan believes this can begin to occur within or at least alongside, state-led reconciliation initiatives.

What have not been given significant discussion within Regan's work are the difficulties that arise from the state conceptions of colonialism embedded within state-led reconciliation initiatives. Through the state's current reconciliation initiatives settlers are encouraged to identify colonialism as an historic event, a moment in time for which they cannot be held directly accountable. While settlers might be initially unsettled, while they might begin to recognize some colonial realities, this historic characterization of colonialism risks persuading settlers to

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<sup>26</sup> Regan, p. 13.

<sup>27</sup> Further information on the Indian Residential School Settlement Policy will be provided in the following section.



dismiss conceptualizing colonialism as an ongoing and contemporary process within which they are not held directly accountable. While Regan is not advocating that settlers rely solely on the state for guidance within decolonization, the ways through which state initiatives perpetuate false conceptions of colonialism and the impacts this has on the potential for settler decolonization through the state should be given greater consideration when advocating for the state's role within decolonization processes. It must be given greater acknowledgement and exploration, as I will begin to do in the following sections of this chapter, why denizens cannot solely rely on state-led initiatives for decolonization.

Regan believes that the recognition of colonial histories (specifically, as in her experience with, the IRS) by settler Canadians will enable settlers to begin personally decolonizing and eventually lead to settlers' ability to contribute to a broader project of decolonization with the country.<sup>28</sup> While state-led initiatives do not provide settlers the only place through which to engage with decolonization, she argues that these initiatives can still be important sites for this engagement. Regan calls for the state to improve these sites of engagement through making more meaningful space for settler engagement - as such space is necessary for both personal and societal decolonization.<sup>29</sup> Since Regan's own initial steps toward decolonization began through her interactions with these state-led initiatives, the majority of her book is concerned with analyzing how and why there is a need to broaden these current initiatives to encourage inclusive public truth telling, wherein settler Canadians can critically reflect upon colonial histories and consequentially act toward decolonization. While I acknowledge how engagement with these initiatives can be an important catalyst for recognizing a need to decolonize, my own work

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<sup>28</sup> Regan, pp.11-16.

<sup>29</sup> Ibid. pp.15-16.

focuses on settler decolonization outside of these state processes. This is due largely to the limitations, as explored here, found within these initiatives today.

While Regan offers important insights into how non-indigenous Canadians might approach truth-telling, a vital aspect of any decolonization process, her work does not explicitly move beyond state-centric notions of colonialism and decolonization. For Regan the settler is a “beneficiary of colonial injustice,”<sup>30</sup> who must learn to confront with humility “how the broken treaties, unresolved land claims and conflict over traditional lands and resource rights have a detrimental impact today.”<sup>31</sup> In this way it appears that Regan’s work accepts a conception of colonialism as a state-centric exercise. For Regan, settlers benefit from the actions of a colonial government (including the actions of those employed by such a government) and from their own in-action and role as beneficiaries of state action.<sup>32</sup> Settler denizens, however, are complicit within colonialism through more than *inaction* and as more than beneficiaries of state action. Non-indigenous Canadians are also active agents within colonialism and are therefore beneficiaries of their own *action*. Not identifying and exploring this reality within colonial processes skews the discourse around decolonization. While this was likely not Regan’s intention, in order to present a more accurate understanding of colonialism, and thus be able to better explore the roles settler citizens can take within processes of decolonization, the role of settler denizen has to be explored from a multiplicity of active and inactive standpoints. This alternative approach will provide room for greater complexity of analysis, leading to a more accurate understanding of how colonialism functions and how all actors are necessarily part of moving toward substantive change and decolonization.

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<sup>30</sup> Regan, p.236.

<sup>31</sup> Ibid. 230.

<sup>32</sup> Ibid. p.177.

While Regan is not suggesting that denizens rely solely on the state's willingness to provide greater room for settler Canadians engagement within state-centric processes of decolonization, the risk of dependency is also worthy of identification and further discussion. Denizens must be careful not to place too large a degree of authority in the hands of a state whose actions have shown that its aim, at least thus far, is not to marshal significant citizen engagement within its truth and reconciliation policies. In fact, one could argue that, the state has developed these processes as half-hearted measures designed to placate indigenous peoples within its borders, and that due to this the state has not been and will likely not be interested in greater denizen engagement.<sup>33</sup> This is not to say that these policies are incapable of encouraging denizen engagement within decolonization processes, only that denizens cannot and should not expect to rely on these initiatives for personal and societal decolonization. There are too many problematic limitations contained therein which risk discouraging denizens from recognizing their direct agency within colonialism and their responsibility to act within (rather than to passively acknowledge) de-colonial processes. If denizens are not encouraged to recognize and act upon their roles than decolonization efforts will never be fully realized within Canada.

The following three sections of this chapter will analyze contemporary state-driven reconciliation initiatives through law and policy within Canada. As such, these sections will specifically consider the limitations of state-centered decolonization initiatives that have been identified above. Specifically this will include problems associated with the state's tendency to identify colonialism as an historic event; its tendency to (and denizen acceptance of its tendency to) characterize the denizen as an inactive beneficiary of state-action; and the risk of the denizen depending on the state for de-colonial action. The exploration of these limitations is taken in

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<sup>33</sup> Jeff Cornthassel and Cindy Holder. "Who's Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, and Peru." *Human Rights Review*. 9.4.465-89. p. 465.

order to emphasize the need to analyze the active roles of settler denizens and the need to look beyond the state for settler citizen engagement with decolonization processes.

### ***State-led Reconciliation: No Meaningful Place for Settler Canadians***

#### **Section 35, Reconciliation, and Third Party Interests**

After a hard fought battle by indigenous advocates,<sup>34</sup> aboriginal and treaty rights were guaranteed protection under the re-patriated Canadian constitution. As such, s.35 (1) of the *Constitution Act, 1982*<sup>35</sup> “recognizes and affirms the existing aboriginal and treaty rights of aboriginal peoples of Canada.”<sup>36</sup> During pre-patriation constitutional negotiations the Prime Minister, Pierre Trudeau, and the provincial premiers did not want to include this protection. The premiers were worried that such strongly protected indigenous rights would infringe the province’s land and resources rights. Trudeau wanted to appease the premiers so that they would agree to his other pre-constitutional inclusions.<sup>37</sup> When the country’s leaders were finally forced to include the protection of aboriginal rights (the efforts of indigenous advocates and Britain are to thank) the Canadian leaders wanted the protection clause to be vague. To the chagrin of indigenous leaders, Trudeau and the premiers did not want to discuss the specifics of aboriginal rights protection until after re-patriation.<sup>38</sup> Waiting until after re-patriation would afford the Prime Minister and premiers a greater say in and ability to curtail such rights.

While post-constitutional negotiations were held amongst the Prime Minister, premiers, and indigenous representatives in order to provide greater definition to the clause, negotiators

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<sup>34</sup> For further information on indigenous advocacy regarding the inclusion of aboriginal rights within the constitution, please see:  
Peter McFarlane. *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement*. Toronto: Between the Lines, 1993.

<sup>35</sup> *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11

<sup>36</sup> As elaborated under s. 35(2), the term “aboriginal” includes the Indian, Métis, and Inuit people of Canada.

<sup>37</sup> McFarlane. p.267.

<sup>38</sup> *Ibid.* p.278.

reached an impasse. The judiciary was then tasked with giving greater meaning to the section; this has meant that most of the section's meaning has not been derived through negotiation and dialogue between indigenous peoples and the state but instead from litigation with non-indigenous judges determining the section's parameters. At the end of the day, while indigenous peoples fought for the protection of their rights under the constitution they have had little to no say regarding how those rights have been interpreted and protected by the state. This has given the state the ability to create measures to justifiably infringe aboriginal and treaty rights<sup>39</sup> and to conceptualize these rights as historic rights not to be given contemporary interpretations.<sup>40</sup> While court decisions have provided a problematic narrative on aboriginal and treaty rights, perhaps an even more troubling narrative is the one they have given on reconciliation. The judiciary has decided upon the purpose of s.35 itself:

[w]hat s.35(1) does is provide the constitutional framework through which the fact that aboriginals lived on the land in distinctive societies, with their own practices, traditions, and cultures, is acknowledged and reconciled with the sovereignty of the Crown. The substantive rights which fall within the provision must be defined in light of this purpose; the aboriginal rights recognized and affirmed by s. 35(1) must be directed towards the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.<sup>41</sup>

In the Supreme Court's *Van der Peet* decision it recognized that s.35(1) is to be used as a tool to reconcile prior indigenous occupation of the land with contemporary Crown sovereignty. This framing of reconciliation is inherently problematic. Reconciliation is interpreted by the courts as a means to balance an historic occupation<sup>42</sup> with a contemporary state sovereignty. Under this

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<sup>39</sup> [1990] 1 S.C.R. 1075 [*R. v. Sparrow*].

<sup>40</sup> [1996] 2 S.C.R. 507 [*R. v. Van der Peet*].

<sup>41</sup> *Van der Peet* at para. 31.

<sup>42</sup> It is important to note here that the court purposefully chose the term "occupation" and not "sovereignty" to describe indigenous peoples' relationship to the land. While further discussion of this goes beyond the confines of this paper, it is an important point to raise, that the judiciary is not willing to recognize (either historically or today) indigenous sovereignty over the land. The recognition of such would provide an even greater threat to the state from which the judiciary derives its powers.

narrative not only are indigenous rights to the land diminished, but also the judiciary has forwarded colonialism as an historic event. It occurred at a distant time when the Crown exerted its sovereignty over indigenous occupants of the past. If indigenous rights are derived from a distant past then the threat they pose to the contemporary manifestations of Crown sovereignty is neutralized.

Furthermore, in *Van der Peet* the court frames reconciliation as a state-driven process between the Crown and indigenous peoples. There is no discussion of the room that might be left for non-indigenous Canadians to participate within such reconciling initiatives under the constitution. The court does not explicitly deny this participation, although denial could be implied. Such a narrative would fall into line with critiques regarding democracy and the Canadian state, which argue that Canada's constitution has been established without and provides little room for significant citizen engagement.<sup>43</sup> Given such a narrative of disengagement, s. 35's reconciliatory purpose (as part of the constitution) would not be expected to require significant citizen engagement.

The facts of the *Van der Peet* case, however, did not specifically deal with third party (non-indigenous Canadian) interests. The court, therefore, did not have to address the role of non-indigenous Canadians within s.35's reconciliatory purpose. Subsequent cases wherein the courts have decided on third party interests, however, do provide greater information regarding how the court has conceptualized the role of non-indigenous Canadians within its reconciliatory initiative. To date the Supreme Court has never handed down a decision whose facts explicitly deal with third party interests. For the moment, therefore, the leading case law on third party

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<sup>43</sup> For instance see: Reg Whitaker. "Democracy and the Canadian Constitution." *A Sovereign Idea: Essays on Canada as a Democratic Community*. Montreal: McGill-Queen's University Press, 1992.

interests rest with provincial court decisions in *Chippewas of Sarnia Band v. Canada*<sup>44</sup> and *Tsilhqot'in Nation v. British Columbia*.<sup>45</sup> Due to the fact that *Tsilhqot'in* largely upheld *Sarnia*'s characterization of third parties, and because the facts of the case did not require the judge to rule on third party interests, focus will remain on the *Sarnia* case.

In *Sarnia*, the Chippewas of Sarnia Band issued a claim against Canada, Ontario, and Third Party Landowners for reserve land wrongfully surrendered for settlement in the early 1800s. At the time this claim was made, this land (4 square miles around Sarnia) was occupied by over 2000 businesses, corporations, and individuals. The claimants argued that the surrender of these lands in 1839 had not abided by the requirements for public purchasing of indigenous lands as defined under the *Royal Proclamation, 1763*.<sup>46</sup> Through this claim the Chippewas of Sarnia sought “declaratory relief recognizing their right to the disputed lands and damages of trespass and breach of fiduciary duty.”<sup>47</sup> The court found, at both the provincial trial and appeal levels, that even though the land was wrongfully surrendered the fact that the Sarnia Band took over a hundred and fifty years to raise their concerns meant that the band had effectively accepted the surrender. While this final decision itself presents a number of problems, it is the treatment of third party interests within this case that is of particular interest.

The court found that the third party landowners were innocent of any wrongdoing. It was found that those who originally purchased the land under the unlawful surrender had no way of knowing, and should not have been expected to investigate, the illegality of the patent to surrendered lands.<sup>48</sup> There are a number of inherent issues within such a characterization of

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<sup>44</sup> [2000] 1 C.N.L.R. 56, [*Chippewas of Sarnia*].

<sup>45</sup> 2007 BCSC 1700, [2008] 1 C.N.L.R. 112, [*Tsilhqot'in Nation*].

<sup>46</sup> Canada. 1985. *The Royal Proclamation*. 7 October 1763. R.S.C., App.II, No.1.

<sup>47</sup> *Chippewas* supra note 44, at para. 3.

<sup>48</sup> *Ibid.* at para. 275.

third parties. First and foremost, this portrayal of non-indigenous property holders assumes an unrealistic uniformity. The court decided that all third parties are unvaryingly innocent. Beyond the issues of whether any settler can be deemed innocent, such uniformly applied innocence is simply inaccurate. While the case did not deal with squatters, a large amount of Ontario, the province in which the lands under dispute in the *Sarnia* case are located, was settled by Europeans through squatting. Squatting is an illegal practice of property holding, where an individual unlawfully resides on another's property. During the 1800s there were a large number of squatters on indigenous lands in what is now present day Ontario. These squatters were not innocently dispossessing indigenous peoples off their lands. The ancestors of many of these individuals benefit from these historic squatting processes today. Clearly, the court in *Sarnia* failed to consider these broader histories of settlement. Beyond even these considerations, it is important to identify and explore the fact that intention does not preclude accountability. Individuals who did not have the "intention to squat" or the "intention to dispossess" indigenous peoples can still be found liable and held accountable for their actions. Ultimately, the courts must provide greater nuance to the assessment of third party culpability regarding the dispossession of indigenous nations.

This projected innocence serves to characterize settler denizens as in-active beneficiaries of the colonial government's actions. Under this representation, third parties are not even colonially complicit through their in-action, as Regan suggests, but instead exist ingenuously outside of colonialism. Under s.35 litigation, therefore, there is no active space for settler denizen engagement within state-led reconciliation because they are deemed not to be actors within colonialism. Instead it appears that within the aboriginal title case law third party innocence is used by the court as a method of sustaining Crown sovereignty over the land. The



innocence of non-indigenous property holders is used to justify limiting indigenous claims in what has been referred to as a zero-sum game. There is a winner and a loser, and the presence of an in-active and innocent third party on disputed lands enables the Crown to achieve its legislative win. An innocent party cannot be forced into remedial action. The innocent settler cannot be forced to surrender the lands he or she has improved. At the end of the day, under this limited characterization of colonialism, reconciliation and third party interests, the Crown retains its underlying sovereignty over the land.

Section 35 (1) is interpreted by the state as providing an instrument through which to reconcile the rights of indigenous peoples and contemporary Crown sovereignty over the land. Whether one agrees that the court should have a role in reconciliation or not is beyond the bounds of this thesis. What is important here is that the state has placed the courts in such a role, and subsequently taken non-indigenous Canadians as active agents out of the equation. Under such a narrative decolonization can never be achieved because important actors have been ignored and colonialism has been historicized. What has been left is for the state, through the court system, to recognize small moments of “reconciliation” that do not significantly threaten state sovereignty or third party interests. In order to achieve a fuller decolonization we will have to step away from these state-centric narratives and approaches, and re-construct more accurate pictures of how colonial processes function and our roles therein. It will only be once we have identified these alternative narratives and denizen roles therein, that we can begin to engage with de-colonial processes.

## **Royal Commission on Aboriginal Peoples (RCAP): A Chimera of Change**

Following failed constitutional negotiations in the late 1980s and the Oka Crisis of 1990, the Canadian government established a Royal Commission<sup>49</sup> to investigate and propose solutions for relational issues between indigenous peoples, the Canadian state, and the broader Canadian society. To date, RCAP is the largest Royal Commission Canada has conducted. The commission's findings were published in a 1996 report, which included recommendations and a twenty year implementation agenda. While the implementation of RCAP's proposals could have led to a significant shift in indigenous-settler relations, the twenty year deadline has already passed and the government has done little to execute RCAP's recommendations. RCAP was an important moment wherein those selected to contribute to and complete the Commission's report acknowledged that colonialism is a process that needs meaningful and substantive redress today. The state's dismissal of this moment represents its unwillingness to engage with colonialism as a contemporary process. This is particularly shocking as the report came from the state's own citizenry, those whom hold it accountable. Such a silencing of citizens' voices suggests that the state may not actually be held quite as accountable as liberal democratic theory suggests.<sup>50</sup>

RCAP was progressive; even so, it too did not provide significant space for settler denizen action. While primary focus was provided to specific issues affecting indigenous peoples within the country, the terms of reference still provided for RCAP included broader directives. The broadest, and most settler denizen specific mandate established, stated that the Commission should investigate:

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<sup>49</sup> The Oxford English Dictionary defines Royal Commission *n.* as: "a commission of inquiry or committee appointed by the Crown on the recommendation of the government."

<sup>50</sup> While important to mention, an exploration of state accountability to settler Canadians is best left for future work.

[t]he history of relations between aboriginal peoples, the Canadian government and *Canadian society as a whole*...[b]uilding upon this historical analysis, the Commission may make recommendations promoting *reconciliation between aboriginal peoples and Canadian society as a whole*, and may suggest means by which aboriginal spirituality, history and ceremony can be better integrated into the public and ceremonial life of the country.<sup>51</sup>

This mandate created space for the Commissioners to investigate and propose recommendations that included an active non-indigenous citizenry within processes of colonization and decolonization. As evidenced in the Commission's final recommendations, however, it appears that such a space was not wholly taken up by the Commissioners. This is not to say that there was not some form of outreach and involvement of non-indigenous Canadians, but that their colonial agency was not fully considered by RCAP. The commission's structure is partially to blame here, as a commission set up to report back to the state there were no mechanism of direct accountability of the commission toward non-indigenous Canadian citizens. While some mandates were broad enough to include room for settler engage, such a structure meant that the commission could limit its exploration of such avenues within their mandates. Regardless, similarly to what Regan did, RCAP conceived of the non-indigenous population as being mostly inactively complicit within colonial processes.

Conceptualizing the settler denizen population as inactively complicit had a huge impact on RCAP's recommendations. Those recommendations that deal with "Canadian society as a whole," treat non-indigenous Canadians as beneficiaries of state action and a prospective reconstructed Canadian history.<sup>52</sup> While there is no recommendation that specifically or solely

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<sup>51</sup> Canada. Royal Commissions on Aboriginal Peoples. *Part 1 – Looking Forward Looking Back. Part Three: Building the Foundation of a Renewed Relationship. Appendix A: The Commission's Terms of Reference*. [Ottawa]: Royal Commission on Aboriginal Peoples, 1996. Emphasis added.

<sup>52</sup> Canada. Royal Commission on Aboriginal Peoples. *Volume 5: Renewal: A Twenty-Year Commitment. Appendix A: Summary of Recommendations Volumes 1-5*. [Ottawa]: Royal Commission on Aboriginal Peoples, 1996. Specifically see Recommendations 1.7.1, 1.10.3, 1.16.1.

focuses on non-indigenous Canadians' active roles moving forward with RCAP, there are a few that do still speak to a more passive role for the broader population. Recommendation 1.7.1 serves as the most obvious and substantive example of RCAP's inclusion of settler roles within its recommendations. This recommendation suggests that the federal government:

[c]ommit to publication of a general history of Aboriginal peoples of Canada in a series of volumes reflecting the diversity of nations, to be completed within 20 years;...allocate funding to the Social Sciences and Humanities Research Council to convene a board, with a majority of Aboriginal people, interests and expertise, to plan and guide the Aboriginal History Project; and...pursue partnerships with provincial and territorial governments, educational authorities, Aboriginal nations and communities, oral historians and elders, Aboriginal and non-Aboriginal scholars and educational and research institutions, private donors and publishers to ensure broad support for the wide dissemination of the series.<sup>53</sup>

Beyond the discussion of establishing a new Royal Proclamation (which was proposed to be undertaken by the government on *behalf* of the broader society) this is one of the few

recommendations where the roles of non-indigenous Canadians are mentioned or implied.

Through these more inclusive recommendations, as evidenced above, settlers are merely the recipients of a re-constructed Canadian history. This is problematic. Not only does it represent non-indigenous peoples as being passive bystanders to reconciliation, it risks promoting an image of the settler denizen as the beneficiary of a narrowly and historically confined colonial state agency.

Throughout the consultation process of RCAP there were attempts made to engage the non-indigenous Canadian population. During its public consultation period the Commission invited a broad cross-section of society to participate. As such the Commission,

[r]eached out to people in a variety of ways: through advertisements in the media; with video; Forging a New Relationship; encouraging people to participate in [the Commission's] public hearings; through invitations to submit opinions and ideas in

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<sup>53</sup> Canada supra note 51.

writing; and with toll-free telephone lines where Canadians could make their view known in one of five languages (Inuktitut, Cree, Ojibwa, French and English).<sup>54</sup>

These forums established an informal and voluntary method of enabling non-indigenous Canadians to participate within framing the research process. Through these forums individuals and organizations were encouraged to comment on RCAP's mandate and to say anything about the overall project, as the Commission "made a deliberate choice not to set limits on the issues that could be raised."<sup>55</sup> In addition, the federal government established an Intervener Participation Program to help fund research briefs for intervening groups and organizations. A number of indigenous and non-indigenous groups and organizations received this funding.<sup>56</sup> This is an admirable commitment to inclusive and open consultation. As evidenced above, however, it appears this participation did not have a considerable impact on the inclusion of non-indigenous Canadians (as active participants in decolonization) within the Commission's final recommendations.

The majority of the Commission's funding toward participation of non-indigenous Canadians went toward facilitating public education around the work that RCAP was completing during the consultation and research phases. This included the development of "discussion documents based on what [the Commission] was hear[ing] at the public hearings."<sup>57</sup> These documents were "designed to identify the kinds of contributions the Commission was looking for"<sup>58</sup> during later phases of its mandate. The Commission also released two constitutional

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<sup>54</sup> Canada. Royal Commission on Aboriginal Peoples. *Volume 5 Renewal: A Twenty-Year Commitment. Appendix C: How We Fulfilled Our Mandate*. [Ottawa]: Royal Commission on Aboriginal Peoples, 1996.

<sup>55</sup> Canada supra note 54.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

These documents include: *Framing the Issues, Focusing the Dialogue, Exploring the Options, and Toward Reconciliation*.

<sup>58</sup> Ibid.

commentaries, with the goal of encouraging public debate.<sup>59</sup> In an effort to reach youth, the Commission created three videos one of which was a music video co-sponsored by the Bank of Montreal.<sup>60</sup> Finally, a CD-ROM was created that contained a large selection of research that RCAP collected. This CD-ROM included “a guide for use by teachers in secondary schools and adult learning programs”<sup>61</sup> to disseminate the knowledge acquired by RCAP. While the Commission was able to establish these public-education initiatives, it had intended to pursue many more. Due to the fact that the Commission had focused primarily on reaching its indigenous audience, there was little room left near the end of its mandate for broader public outreach.<sup>62</sup> Regardless, there was significantly more non-indigenous engagement during the consultation and research period of RCAP than can be found within its final recommendations.

### **A Government Response: Poor Communication and Surface Accommodation**

The federal government responded to RCAP’s final report through its 1998 *Gathering Strength: Canada’s Aboriginal Action Plan*.<sup>63</sup> This document, however, does not fully implement the recommendations outlined in RCAP’s report. Instead a surface accommodation is given to some of the Commission’s findings and proposals while others are outright ignored. This failure to implement many of RCAP’s recommendations, or to only partially implement some, has been cited as a result of poor communication between the Commission and the government during

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<sup>59</sup> Canada supra note 54.

These two constitutional commentaries were: *Aboriginal Self-Government and the Constitution*, and *Partners in Confederation*.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Julia Hughes. “Instructive Past: Lessons from the Royal Commission on Aboriginal Peoples for the Canadian Truth and Reconciliation Commission on Indian Residential Schools.” *Canadian Journal of Law and Society*. 27.1. 101-127. p.108.

<sup>63</sup> Canada. Ministry of Indian Affairs and Northern Development. *Gathering Strength: Canada’s Aboriginal Action Plan*. Minister of Public Works and Government Services Canada, 1997.

RCAP's investigations.<sup>64</sup> The Commission was established at arm's length from the federal government, this in combination with a broad mandate gave Commissioners a large degree of independence. It has been argued too much independence was given, so much so that the recommendations finally offered were unrealistic for government action.

The arm's length status of the Commission, the chronic lack of communication between the Commission and the government, and the government's failure to fully implement RCAP's report, however, suggests that the government was never serious about RCAP's broad mandate. The government was only willing to implement suggestions that would not result in significant discomfort and change for the state or the broader Canadian society. An example of this is the state's ignorance of RCAP's recommendation 1.16.1 that calls for a new Royal Proclamation to be established in order to build a renewed relationship between indigenous and non-indigenous communities. Such a suggestion, if fully implemented, could have led to substantive and meaningful change in indigenous-settler relations and could have led to significant discomfort for both state and society. Given the confines through which the state has set reconciliation initiatives, it is not surprising that the state ignored such a recommendation as taking it on would have led shining light on the state's instability in the face of indigenous difference.

One recommendation that the government was willing to implement was the facilitation of greater public education "in order to build more balanced, realistic and informed perspectives with respect to Aboriginal people, their culture and their present and future needs."<sup>65</sup> Due to the vagueness of such a statement it is unclear if it was meant to create space for non-indigenous Canadians as active participants within, or as in-active beneficiaries of, de-colonial state-driven

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<sup>64</sup> Hughes. p.106.

<sup>65</sup> Canada supra note 63, at p.7.

processes. Based on other recommendations included within the 1998 report, however, it does appear that the state was conceived to be the primary perpetrator of a colonial past. Given this understanding, and RCAP's characterization of non-indigenous Canadians' agency, it could be argued that settler denizens were represented through *Gathering Strength* as bystanders of colonialism.

In 1999 the government issued a progress report for *Gathering Strength*. This report outlined different avenues the government had taken to implement those recommendations, in one form or another, from RCAP's final report. The progress report's update on public education is relatively short, and the effectiveness of its initiatives remains questionable. For example, the progress report cited that "[a]pproximately 6,000 Toronto grade six students experienced First Nations culture during the *Canadian Aboriginal Festival* at the SkyDome [now Roger's Centre] in Toronto."<sup>66</sup> First of all, this initiative only reached a very small section of Canadian society – grade six children living in the Toronto area. Yet, this very small initiative was important enough to be included as an accomplishment within a very short list of actions taken by the federal government. Three of the four actions were just as localized. This suggests there was a very small pool of accomplishments from which to choose, further suggesting that very little public-education initiatives were implemented and none of too great a scope. Secondly, as a grade six student in a Toronto school I participated in this field trip.<sup>67</sup> It was the strangest school trip in which I ever participated. There was no context given for the trip. If we had been learning about indigenous peoples that year it was as historic relics of a distant past;

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<sup>66</sup> Canada. Ministry of Indian Affairs and Northern Development. *Gathering Strength: Canada's Aboriginal Action Plan A Progress Report*. Minister of Public Works and Government Services Canada, 2000. p.5

<sup>67</sup> I participated in this field trip in 2001, three years after its initial implementation. This field trip initiative has since been discontinued as the *Canadian Aboriginal Fair* is no longer held at the SkyDome (now the Roger's Centre).



those communal people who lived in teepees and helped the British with the Fur Trade. Anything I had learnt to that date suggested to me that indigenous peoples were not contemporary peoples, but a distinct race that had somehow fallen off the face of the earth. This trip was not represented as a cultural experience, but as a chance to spend some of my allowance money on Indian tacos and dream-catchers.

I suppose, if anything, my experience at the SkyDome enabled me to realize (rather subconsciously I might add, as I was much more interested in passively shopping than watching and engaging with the Pow Wow I did not understand) that indigenous peoples were not just relics of the past but contemporary peoples living in Canada. This, however, was not fully realized until I looked back on this experience years later. Granted this is only one experience, and it is possible that other students were given greater context, discussion, and meaning for their field trip to the *Canadian Aboriginal Festival*. It appears that the possibility for this would have rested largely on individual educators who likely did not have the knowledge to provide greater context, having come from the Ontario education system (or other provincial education systems) themselves. Furthermore, this suggests that both settler state and denizen were and perhaps still are unaware of how to address education surrounding indigenous peoples. This may be due to the fact that through these state-led reconciliation initiatives no substantive change has occurred. Regardless, my experience at the time taught me and my peers very little about indigenous peoples or their culture. If this was the success rate of the four other public-education initiatives (three of which were just as localized), then the federal government's commitment to and success in educating the broader public remains dubious.

RCAP initially promoted a sense of greater possibility and hope for renewed relations between indigenous peoples, the state, and the broader Canadian society. Through RCAP's final

report one can see that its contributors and framers were beginning to present a new narrative of colonialism, where colonialism was conceptualized as a process rather than an event. Even though this new narrative did not provide significant room for the active settler denizen, it was certainly a step in the direction toward meaningful change. The government's response to RCAP, however, suggested that it was not interested in broadening its colonial narrative from historic event to ongoing process. What has then been re-enforced since RCAP is that, similarly to s.35 litigation, non-indigenous Canadians are passive beneficiaries of an historic state-driven colonial event. The role of these beneficiaries within de-colonial processes is to learn about the state's historic colonial actions. There is no room left for the discussion of settler denizen actions within Canada's colonial past or present, and no room left for active de-colonial engagement of the broader Canadian society.

### **Truth and Reconciliation: A Half Measure**

Perhaps the most well-known government initiatives to have been influenced by RCAP concern the government's commitments to the truth and reconciliation of the Indian Residential Schools (IRS) policy, the most recent of these initiatives being the Indian and Residential Schools Settlement (IRSS) Agreement. These federally-led initiatives have been concerned with providing monetary compensation to individuals who attended the IRS system, and have presented a narrative of reconciliation that differs slightly from the one provided by the courts under s.35 of the constitution. Under these policy-driven initiatives, reconciliation is primarily framed as a method through which an indigenous individual can *personally* reconcile his or her historic grievances around a single event. There may be a space beyond this immediate framing for some societal-based recognition of historic grievances, for instance through government public-education initiatives. Ultimately, however, this narrative serves to place colonialism once

again (as with the courts) as an historic event removed from settler denizen agency. While there has been an effort to produce reports for public awareness of the IRS system, overall, government initiatives have not implemented the full IRS-specific RCAP recommendation. RCAP proposed (through recommendation 1.10.1) a public inquiry be held into the IRS system, its origins, and impacts in order to recommend remedial actions of perpetrators involved.<sup>68</sup> No such inquiry has occurred. Instead, without holding open public hearings across the country, in 1998 the government originally decided on what it considered to be the best course of action.

The IRSS is a slightly different creature from the state's previous reconciliatory initiatives like the Aboriginal Healing Foundation (AHF), and the Alternative Dispute Resolution Program. These previous initiatives were formulated and initiated by the state. The IRSS is a

comprehensive settlement package negotiated between the Government of Canada, the churches, lawyers representing Survivors, and the Assembly of First Nations. This package includes a cash payment for all former students and Indian residential schools, healing funds, a truth a reconciliation commission, and commemoration funding.<sup>69</sup>

This agreement, as a product of settlement from a class action lawsuit, is the result of consultation between the federal government, the Churches, the Assembly of First Nations, and other indigenous organizations. While this means the resulting initiatives are perhaps slightly more inclusive of indigenous voices than original initiatives, the IRSS does not live up to the level of inclusivity that would have been achievable through a public inquiry. This agreement, however, led to the establishment of a Truth and Reconciliation Commission (TRC). Established in 2008, this Commission has a mandate to:

learn the truth about what happened in the residential schools and to inform all Canadians about what happened in the schools. The Commission will document the truth of what happened by relying on records held by those who operated the funded the schools,

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<sup>68</sup> Canada supra note 52.

<sup>69</sup> Aboriginal Healing Foundation. *FAQs*. Web. 6 Dec. 2013.

testimony from officials of the institutions that operated the schools, and experiences reported by survivors, their families, communities and anyone personally affected by the residential schools experience and its subsequent impacts.<sup>70</sup>

The TRC, whose funding expires in 2014, is to accomplish this mandate through the preparation of a complete historical record on IRS policies and operations which will be included in a final public report, and the establishment of a national research center that will serve as a permanent resource of the IRS legacy. Specifically this work is to be achieved through: statement gathering, national events, community events, research, public education, and commemoration.<sup>71</sup>

Despite characterization as a federal department,<sup>72</sup> on its surface, the TRC appears to offer the same potential seen through RCAP's inquiry recommendation for meaningful settler engagement and change. The fact that under the TRC, however, specific perpetrators beyond the state and churches involved are not allowed to be named (which differs from all other TRCs throughout the world) undermines the TRC's potential for transformative change. Perpetrator anonymity not only serves to divorce victims from perpetrators, it also provides greater silencing of settler denizens' roles within and accountability toward the IRS system. This massively hinders the TRC's ability to provide both personal and societal change, when perpetrators remain anonymous full histories and processes are not uncovered. True justice is not achieved. Reconciliation, under such a model, remains a half measure.

As of 2012, when the TRC released its interim report, the Commission's non-indigenous outreach consisted of the development of:

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<sup>70</sup> Truth and Reconciliation Commission. *About Us: The Truth and Reconciliation Commission of Canada*. Web. 6 Dec. 2013.

<sup>71</sup> Ibid.

<sup>72</sup> Canada. Truth and Reconciliation Commission Canada. *Truth and Reconciliation Commission of Canada: Interim Report*. Ottawa: Library and Archives Canada, 2012. p.2.

[a] brochure on the history of residential schools, a short history of the system and its legacy, slide show focusing on schools in regions where National Events have taken place, posters that highlight the history of individual schools and key themes in the history of the system, and nations and regional maps identifying the location of residential schools.<sup>73</sup>

Within the interim report there is no discussion as to how these materials are made accessible to the broader Canadian society. It is good that they are being made, but unless these documents are actually reaching large numbers of the public then their effectiveness is questionable. More research is required here. Regardless, the content of these documents are problematic as through them colonialism is once again framed as an historic event, which revolves around the IRS system. While this outreach is still serving to unsettle denizens, and in a number of cases encouraging denizens to decolonize beyond this initiative, the state's working characterization of colonialism risks enabling non-indigenous Canadians to passively engage with material they find does not serve to actively implicate them within colonial processes. This risks denizen disengagement within broader processes of decolonization.

A fuller discussion of the state's contemporary truth and reconciliation initiatives, however, requires discussing the broader project initiated under the IRSS. The TRC is an important component of the IRSS, but there are additional bodies and processes the IRSS covers. Most importantly, the agreement includes monetary compensation for survivors under the Common Experience Payment (CEP) and the Individualized Assessment Process (AIP). The CEP is provided to applicants of federally-recognized residential schools, they receive \$10,000 for their first year of attendance and \$3,000 for every following year. The AIP is provided to applicants who experienced severe forms of abuse through the IRS system.<sup>74</sup> Monetary payment constitutes the government's main form of reconciliation, with additional support for this

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<sup>73</sup> Canada. Truth and Reconciliation Commission Canada. p.70.

<sup>74</sup> Canada. *Indian Residential Schools Settlement Agreement*. 8 May 2006. Web. 7 Dec. 2013. pp. 22, 24.

reconciliation being provided through the AHF and the TRC. The main focus of the government has been on individual reconciliation, and not the achievement of a broader justice that would necessarily include an active society. In fact this financial compensation enables the government to say that it is doing something to reconcile relationships without looking toward implementing more meaningful legislative, societal, or constitutional change.<sup>75</sup> In this way the IRSS, along with s.35 and *Gathering Strength*, is a forum through which the state seeks to symbolically end a history of colonialism, when in fact nothing truly substantive has been changed and colonialism is still alive and well.

The IRSS is a relatively safe format of reconciliation that the government can pursue. It does not threaten to question or dismantle established orders. The focus provided to the IRS serves to obscure other traumatic experiences while framing colonial violence as an historical event.<sup>76</sup> This enables the state to distance itself from what has become the mainstream focus of colonialism in Canada, historic residential schools. Other forms of colonialism are overshadowed. This focus also enables the broader society to disengage from processes of decolonization, as colonialism is framed as an historic state-driven exercise. Non-indigenous Canadians, again, become the innocent beneficiaries of state action. This framing of reconciliation alongside the narrow scope provided for societal engagement, i.e. the dissemination of materials for public education, enables non-indigenous Canadians to passively engage these processes. Non-indigenous Canadians can read about the IRS system and then they have served their role. It happened, now let us move on. I, as a non-indigenous Canadian, was not a part of this process I have no responsibility beyond informing myself that it happened.

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<sup>75</sup> Robyn Green. "Unsettling Cures: Exploring the Limits of the Indian Residential School Settlement Agreement." *Canadian Journal of Law and Society*. 27.1. 129-148. p. 136.

<sup>76</sup> *Ibid.* p. 141.

The IRSS might be able to provide individualized reconciliation for those attendees of the IRS system, but it will not lead to meaningful de-colonial change throughout Canada. Perhaps the biggest reason for this is that the non-indigenous population has been enabled to ignore their roles and responsibilities within broader processes of colonialism and decolonization. All actors must be present, engaged, and active if Canada is to achieve decolonization. Anything else is just a step toward sweeping the issues under the rug, and the rug is becoming lumpy.

*A Call for Change: Why We Need to Identify and Explore Settler Denizen Agency*

State policies and legal interpretations of the constitution have not empowered non-indigenous Canadians to recognize their roles or responsibilities within colonial and de-colonial processes. The framing of colonialism throughout mainstream practice and literature has prevented this recognition, as colonialism is constructed as an historical event. Only those who were present and active at the time such an event occurred, during the IRS for example, are the truly guilty parties. In Canada they cannot even be named! All other parties, while still complicit through their inactivity or their status as beneficiaries of such actions, can distance themselves from the colonial act. Colonialism is not an historic event or set of such events. Instead, colonialism is a dynamic and on-going process that implicates all actors past and present.

The state is focused on “neutraliz[ing] a history of wrongs”<sup>77</sup> through identifying, internalizing, and historicizing colonialism. State-led reconciliatory initiatives are primarily concerned with limiting state liability and culpability, which prohibits the facilitation of meaningful societal dialogue.<sup>78</sup> Under such a narrative, the state has everything to lose by encouraging the broader society to see how non-indigenous Canadians are actively implicated

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<sup>77</sup> Corntassel and Holder. p.466.

<sup>78</sup> Ibid. p.486.

within on-going processes of colonialism. The state is not willingly going to engage settler Canadians. Canada, however, is a representative democracy. In order to form government the country's federal political parties are dependent on receiving citizen's votes. The government in power is aware that it must retain the support of the citizens it represents in order to be re-elected. If the broader Canadian public becomes aware of their own active roles and responsibilities within on-going colonial and de-colonial processes, the public will be interested in actively holding the state accountable for its actions. The state will have to fully embrace its liability and culpability. This would force the state to actually confront the fragile basis through which it has conceived its sovereignty, to re-consider property regimes and resource development, and to make substantive changes to state-systems and societal relations. This is, in part, why the state has crafted colonialism as a historic event for which settler denizens are passive beneficiaries. The state recognizes it can (at least for now) get away with such a narrative, and believes it risks losing too much (i.e. its fragile stability) to present colonialism as anything more.

The reality is that the settler denizens and citizens are important actors within processes of both colonialism and decolonization. Without their recognition of their agency and responsibility, and without their support and active participation, decolonization will not be achieved. For these reasons the roles that settler denizens play in colonialism must be identified and engaged. While all actors (state and non-state) must be included within the discussions and processes of decolonization, it appears that settler denizens must be mobilized to recognize their roles and accountability outside of state structures. Once this has occurred, settler denizens can begin to individually and collectively decolonize outside of state-led initiatives. Ultimately, these decolonizing settler denizens, or settler citizens, can join forces with indigenous peoples to



force the state to identify colonialism as process and to seek meaningful change and decolonization throughout society, law, and politics.

## **CHAPTER 2: THEORIZING THE ROLES OF SETTLER DENIZENS WITHIN COLONIALISM**

The previous chapter identified problems within current mainstream understandings of colonial and de-colonial processes. The two biggest problems identified were that colonialism is falsely understood to be an historic event, and that colonialism is considered to be an event for which only the state is actively and directly implicated. This understanding of colonialism ignores the fact that colonialism is an ongoing process that necessarily implicates actors beyond the state, such as the settler denizen. Without a full understanding of how colonialism works, decolonization remains unachievable. This is why the Canadian state's reconciliation initiatives, the state's version of decolonization, have ultimately failed. These initiatives have confronted decolonization from a skewed understanding of colonialism that serves to displace important realities and actors.

If Canadian society wants to move toward decolonization it is crucial that mainstream understandings of colonialism are questioned, discussed, and re-formulated, which will require analyzing colonialism from a multiplicity of standpoints. This chapter specifically explores ways through which to begin understanding the roles that settler denizens, non-indigenous Canadians, play within colonialism as an ongoing process. In order to accomplish this I will first begin with an overview of the settler denizen position. This will require greater discussion of the concept of treaty citizenship, the ethical form of citizenship taken on by settler citizens.

Following this, a brief discussion on settler colonialism and the sovereign decision thesis will show that a large part of the problem with how colonialism is currently understood, specifically how it ignores the roles of non-state actors, has to do with how sovereignty within colonialism is understood today. Through this later discussion two problematic theses on sovereignty will be identified. These theses will guide the heuristic exercise of identifying three roles that the settler

denizen plays within colonialism: the influential actor, the state instrument, and the petty sovereign. Through the identification of these roles not only are the theses that support the sovereign decision literature shown to be false, but settler denizens can begin to conceptualize and understand how they are implicated within colonial processes.

### ***Settler Denizen and Treaty Citizenship: A Broader Picture***

Canada is a settler state, established from colonies that were created by an original and external colonizer. Canada is, however, not a fully independent settler state as it has retained close ties with Britain. When conceptualizing colonial realities within Canada, this fact must be taken into account. Even if these ties remain largely symbolic they do serve to colour Canadian colonialism in a way not seen, for instance, within the republic of the United States of America. For most intents and purposes, however, Canada is a settler colonial (not an imperial colonial) state. This means that dominant colonial processes within Canada serve to destroy or neutralize indigenous difference in order that settler norms can replace this difference.<sup>79</sup> This means that the settler denizen, whether consciously or not, is contributing to these processes that serve to erase indigenous peoples from Canadian reality. Settler colonial processes are interested in “destroying to replace” because they are driven by the colonists’ need to justify their settlement on new lands and to distinguish themselves from their home nation. In this way the settler denizen is functioning as an actor that seeks to indigenize him or herself to a place for which he or she is not indigenous. This is why settler denizens are prone to forgetting prior stories, and to

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<sup>79</sup> While Canadian settler actors may no longer practice and contribute to obvious practices of indigenous erasure and neutralization (for instance the IRS and squatting), there are a number of inconspicuous process that both settler state and denizen participate within that contribute to this erasure and neutralization (for instance the modern treaty process and s.35). These subtle processes which initially appear as reconciliatory initiatives, processes which on the surface appear to provide an open space for indigenous difference, predominantly serve to manage and neutralize this indigenous difference thereby serving effectively to erase its threat to the settler order.

not question stories of settlement because exploring these stories risks severing one's indigenization to Canada.

When a settler denizen does not engage their stories of settlement and passively accepts state histories of settlement, he or she is contributing to his or her active and in-active roles within colonialism. The settler denizen is helping to sustain processes that subordinate and dispossess indigenous peoples. The subordination and dispossession of indigenous peoples prohibits achievement of democracy for all within the country because indigenous peoples and difference are silenced. In order to counter these processes, that weaken democracy within the country, settler denizens must begin to recognize and explore their treaty citizenships.

I have taken the concept of treaty citizenship from Sakej Henderson's work on treaty federalism.<sup>80</sup> For Henderson, treaty federalism is the institutionalization of the spirit and intent of the peace and friendship and numbered treaties<sup>81</sup> within the Canadian constitution. These treaties represent solemn agreements between the Crown and indigenous peoples, which established nation to nation relationships between parties.<sup>82</sup> These relationships, Henderson argues, are built on principles of trust, promises, and protection<sup>83</sup> and have "long been the vision

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<sup>80</sup> I have found one major limitation within Henderson's work, the idea that the federal structure (representing the relationship between the provinces and Ottawa) represents a neutral foundation for recognizing indigenous sovereignty within Canada. In fact, the federal structure Henderson puts forth (which I explore in the pages below) is a western construct. Under such a model of renewed relations, therefore, Henderson's approach risks that which I have cautioned against throughout this thesis the assimilation or neutralization of indigenous difference. While there are many other academics (please see footnote 84 for reference) who have since taken up the concept of treaty federalism in ways that do not risk (or at least lessen the risk) of this assimilation of indigenous difference into western structures, for the purposes of this thesis I have chosen to use Henderson's work. This is because Henderson's work not only represents one of the very first articulations of treaty federalism (and therefore represents an important foundation for the works that followed) but also because his characterization of the treaty relationship is both approachable for the denizen and a useful way to begin conceptualizing treaty citizenship.

<sup>81</sup> For an explanation on the differences and similarities between these two treaty periods please see: Sakej Henderson. "Empowering Treaty Federalism." *Saskatchewan Law Review*. 58. 241-329. pp.246-50.

<sup>82</sup> *Ibid.* p.250.

<sup>83</sup> *Ibid.* p.248.

of the Canadian order, and actualizing it is long overdue.”<sup>84</sup> This concept, that treaties established a relationship between indigenous peoples and the Crown that provides the constitutional foundation for Canadian society, has been taken up by a number of other authors.<sup>85</sup>

Henderson argues that treaty federalism (the institutionalization of treaty relations) needs to be consolidated with provincial federalism within Canada. This consolidation is presented as a method of acknowledging and formally incorporating indigenous and treaty rights “as part of a shared political rule.”<sup>86</sup> This is a method of constitutional incorporation that should be amongst the most palatable to settler actors, because it would be realized through an already identifiable federative structure.<sup>87</sup> Incorporating the treaty relationship into the constitution through such a structure would mean that the Crown would live up to its treaty promises, and that indigenous peoples would be afforded a proper venue through which to participate within democratic processes.<sup>88</sup> Under a Lockean conception of liberty such incorporation is a necessary move to ensure indigenous civic freedom. In order for people to be free, legislative power must be

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<sup>84</sup> Henderson. p.245.

<sup>85</sup> Please see:

Michael Asch. *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*. Toronto: University of Toronto Press, 2014; Heidi Stark. “Marked by Fire: Anishinaabe Articulations of Nationhood in Treaty Making with the United States and Canada.” *American Indian Quarterly*. 36.2. 119-149; “Kiera Ladner. “Indigenous Governance: Questioning the Status and the Possibilities for Reconciliation with Canada’s Commitment to Aboriginal and Treaty Rights.” Research Paper for the National Centre for First Nations Governance. 2006; John Ralston Saul. *A Fair Country: Telling Truths About Canada*. Toronto: Viking Canada, 2008; James Tully. *Strange Multiplicities: Constitutionalism in an age of diversity*. Cambridge: Cambridge University Press, 1995; Graham White. “Treaty Federalism in Northern Canada: Aboriginal-Government Land Claims Boards.” *Publius*. 32.3. pp.89-114.

<sup>86</sup> Henderson. p.244.

As indigenous and treaty rights are currently incorporated within the Canadian constitution (s.35), however, this shared jurisdiction is not recognized.

<sup>87</sup> Federative is defined by the Oxford English Dictionary as an adjective “of or pertaining to the formation of a covenant, league, or alliance.”

“Federative.” *The Oxford English Dictionary Online*. Web. 8 Apr. 2014.

As Canada already recognizes that it is a federation of provincial governments (the *Constitution Act, 1867* recognizes a federal structure between member provinces and the federal government), incorporating treaty alliances (which as Henderson points out can be seen to establish a federative relationship between Canada and indigenous peoples on its own) is a practical way to substantively recognize and incorporate treaty relationships into the federation’s constitution.

<sup>88</sup> Henderson. p.242.

established by their consent.<sup>89</sup> This sort of institutionalized recognition would also serve to identify that the original treaties justify Crown and settler presence on the land today. Without the indigenous peoples having had agreed to share these lands through treaty, lands through which indigenous peoples already had complex relationships and confederacies amongst themselves,<sup>90</sup> there would be no justification for the presence of settlers today. It is the treaties that legitimize the functioning of the Canadian state,<sup>91</sup> and individual settlers' ability to live on these lands.

Treaty federalism recognizes that treaties were voluntary commitments made between indigenous peoples and the Crown,<sup>92</sup> and that these agreements established shared responsibilities, and not supreme powers, between signatories.<sup>93</sup> Specifically, Henderson's conceptualization of treaty federalism incorporates five main terms of engagement between parties: protection of inherent indigenous rights; distribution of shared jurisdiction; territorial management; human liberties and rights; and treaty delegations.<sup>94</sup> These terms refer to the agreements made between original treaty parties to live together. The Crown was to offer protection to indigenous peoples, while still recognizing indigenous autonomy. While the Crown was supposed to offer protection, the level of protection was not meant to enable the Crown to interfere with indigenous lives. These treaties recognized that both parties were sharing the lands and that both parties were responsible to the lands. These treaties also recognized that both

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<sup>89</sup> Russel Lawrence Barsh, James Youngblood Henderson. *The Road: Indian Tribes and Political Liberty*. Berkeley: University of California Press, 1980. p.15.

<sup>90</sup> James (Sakej) Youngblood Henderson, Marjorie L. Benson, Isobel M. Findlay. *Aboriginal Tenure in the Constitution of Canada*. Scarborough: Thomson Canada Ltd., 2000. p.94.

<sup>91</sup> Henderson. p.312.

<sup>92</sup> Ibid. p.301.

<sup>93</sup> Ibid. p.253.

<sup>94</sup> Ibid. p.251.

parties had obligations toward each other.<sup>95</sup> The institutionalization of treaty federalism, therefore, would also institutionalize these terms of treaty establishing a structure through which both parties could carry out their responsibilities toward each other. According to Henderson it was when the settler government began ignoring treaty orders, and instead began unilaterally asserting power and policy over indigenous peoples, that the context for all contemporary problems within indigenous-settler relations was established.<sup>96</sup> Recognizing treaty federalism, therefore, is a method by which to redress the problematic situation wherein indigenous and settler people currently find themselves.

I am not advocating for constitutional reformation within this thesis. I am also not taking structural change off the table, and perhaps what Canada needs is an even larger structural change that takes even federalism off the table. Considering this sort of substantive change is, however, way beyond where indigenous-settler relations are today. Before we begin such conversations there are a number of other steps that need to be taken. These other steps relate to the direction I currently want to take the concept of treaty citizenship. What I am arguing, very much based on Henderson's work and those works that have followed it, is that these original treaties established relationships. These are relationships of mutual responsibilities to each other and the land. These are relationships through which indigenous and settler peoples agreed to live autonomously and yet interdependently on the land. These agreements to live together established new citizenships between indigenous and settler peoples. This is not a capital "c" *citizenship*. For now, these are *citizenships* that must be recognized locally throughout the country and can be done so regardless of whether a treaty currently exists within a given locality or not.

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<sup>95</sup> For further explanation on the terms of treaty federalism please see Henderson. pp.251-68.

<sup>96</sup> Henderson. p.328.

Before we can begin to conceptualize any sort of capital “c”, nation-wide, treaty citizenship (any sort of treaty federalism or other structural change) indigenous and settler peoples must make sure that locally everyone is part of, acknowledges, and engages with a treaty citizenship. This will require revisiting original treaties, and creating new ones or acting as treaty partners<sup>97</sup> in places that do not have existing treaties (like large areas of British Columbia). Through any of these methods a treaty citizenship can be established between indigenous and settler peoples alike. Everyone who lives in Canada, regardless of if they are descendents of original settlers or newly arrived immigrants, are or at least have the ability and responsibility to be treaty members. All denizens must recognize and explore their treaty citizenship and the responsibilities that flow from such a citizenship. A vital part of recognizing and exploring these citizenships will require recognizing and exploring personal and state narratives of settlement. It is only when settler denizens begin to shift their thinking, begin recognizing the need to engage their treaty citizenships, and begin following through with this engagement that indigenous and settler peoples can begin to decolonize.

***Our Conceptions of Colonial Sovereignty: Negative Impacts of the Sovereign Decision Thesis***

Beginning to embrace one’s treaty citizenship, however, first requires that one acknowledge and explore the roles he or she plays within colonialism. It is through the recognition of roles that a settler denizen can begin to acknowledge and explore his or her stories of settlement, state narratives of settlement, and treaty settlement narratives. This investigation of roles and stories enables the settler to begin formulating a much clearer picture of how colonialism functions and how he or she can act to circumvent colonial processes, how he or she can act to begin

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<sup>97</sup> James Tully. “Deanne Comments.” Message to Deanne LeBlanc. 31 Mar. 2014. E-mail.

Acting as a treaty partner might be accomplished, for instance, through acting in ways that recognize and give life to Henderson’s five terms of treaty engagement as outlined above. By merely acting in this way, sites of treaty citizenship can be recognized.



contributing to de-colonial processes. The recognition and investigation of colonial roles played by the settler denizen is therefore a preliminary step toward decolonizing the settler.

As discussed in the previous chapter, however, state narratives and core texts within settler colonial studies ignore the roles played by settler denizens within colonialism. Instead, these narratives either place the state as the sole active agent of colonialism, or conflate settler actors within a state-dominant narrative. In order to begin conceptualizing the role(s) of the settler denizen, it is first important to investigate this tendency to view colonialism as a state-centric exercise. There are a myriad of ways to approach such an investigation. Within this section I will focus on how a conceptualization of indigenous subordination as the product of a sovereign monopoly over power and decision enables this tendency. This will be completed through the use of sovereign decision literature.

The sovereign decision literature specifically applies to current indigenous-state relations within Canada because indigenous peoples have been brought into the federation without their full, prior, and informed consent.<sup>98</sup> Due to the ways in which indigenous peoples have been brought into the constitution their political status is heavily mediated by the state, much more so than for non-indigenous Canadians who have consented to be members of a democratic federation. The way indigenous peoples were originally recognized as being brought into the federation, through s.91(24) of the *British North American Act* and the *Indian Act*, is an example of how the sovereign decision has been exercised by the federal executive within Canada. The section below, therefore, looks to explore the sovereign decision as it applies to indigenous-

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<sup>98</sup> While s.35 of the *Constitution Act, 1982* appears to mitigate this, it does not do so properly. Beyond the fact that indigenous peoples had already been brought into the federation prior to 1982 without their consent, is the fact that the protection of indigenous and treaty rights under s.35 does not bring indigenous peoples into the constitution of the country as full and equal political members. Instead, indigenous peoples have been brought into the constitution as national minorities that require constitutional protection from the Crown.

settler relations and not more broadly to sovereignty structures and processes throughout Canada. For non-indigenous citizens who have consented to be full members of the federation, rather than being forced under it, the sovereign decision does not define their relationship to the state. The following section will consider and briefly summarize key aspects of the works of Carl Schmitt and Giorgio Agamben, on sovereignty and the sovereign decision. I will use these works to argue that this literature can be helpful for understanding indigenous-settler relations beyond the indigenous-state relationship but in order for it to do so, our conceptions of sovereignty as a state-centric exercise must be broadened. I will, therefore, explore two problematic theses within this literature (the confined sovereign and single decision theses), which will be used to begin conceptualizing the role(s) of the settler denizen within colonialism and the “sovereign decision”.

For Schmitt, state sovereignty is defined by the monopoly (of the sovereign) to decide on when to suspend the regular legal order.<sup>99</sup> This sovereign decision coincides with the occurrence of an exceptional event. According to Schmitt, the sovereign is concerned with eliminating the exceptional event in order to restore order and stability for the sovereign’s own self-preservation.<sup>100</sup> This sovereign decides what the normal order is, when the exception has occurred, and when the exception has been eliminated. For Schmitt, the attempt of the liberal democratic state to eradicate the sovereign decision through a division of powers is a futile effort, as the decision can never be eliminated from the function of sovereignty.<sup>101</sup> Within a liberal democratic state like Canada, therefore, Schmitt would argue that despite a division of powers between executive and legislative branches of the federal and provincial governments the

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<sup>99</sup> Carl Schmitt. *Political Theology: Four Chapters on the Concept of Sovereignty*. Trans. George Schwab. Baskerville: Massachusetts Institute of Technology, 1985.

<sup>100</sup> *Ibid.*, p.xviii.

<sup>101</sup> *Ibid.*, pp.11-12.

sovereign decision is still an integral aspect of the Canadian executive's powers.<sup>102</sup> Schmitt's conception of the exception as an event, however, does not allow for a discussion of a permanent exception. When discussing settler colonialism, predicated on the ongoing attempt to eliminate another, the discussion of the sovereign state's decision concerns a decision on a permanent exception.

Giorgio Agamben's work on sovereign power and states of exception is, therefore, useful in extending Schmitt's work into a space wherein discussion of a permanent, normalized exception can occur. For Agamben, the sovereign-exception relationship is premised on a biopolitical conception of the exception. An exception for Agamben is an excess body and not an event, which the sovereign wants to neutralize in order to maintain its own stability and authority. For Agamben, the sovereign power does not necessarily eliminate an exception (as Schmitt's sovereign seeks to eliminate the exceptional event), but seeks to neutralize the exception's threat to the existing order by bringing it under the sovereign's control through internalizing its difference.<sup>103</sup> Through internalization, the other is reduced to a state of bare life, wherein his or her specific ways of living properly (politically and culturally) have been stripped away by the sovereign. In this state the other is susceptible to further arbitrary and violent

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<sup>102</sup> As an example of a case wherein the sovereign decision has been realized in Canada, is the Trudeau government's employment of the War Measure's Act during the October Crisis of 1970. At this time the rights of citizens were "exceptionally" suspended, for a specific period of time that was delineated by the Prime Minister's Office, in order to protect the state against an "exceptional event" of terrorism. This sort of federal executive power, however, has never been well received within Canada because of the country's identity as a democratic federation. When Trudeau attempted to unilaterally re-patriate the constitution in 1981 the provinces brought the issues to the Supreme Court as a reference question where it was found that such a "sovereign decision" was, within Canada, unconstitutional.

<sup>103</sup> Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 1995. p.18

action.<sup>104</sup> The exception has therefore become *homo sacer*, an ancient Roman concept which refers to the sacred man that can be killed with impunity but not sacrificed.<sup>105</sup>

As Mark Rifkin and Scott Morgensen have shown, Agamben's extension of the sovereign decision fits well within current streams of settler colonial theory that privilege the settler mode of colonialism as a uniform structure whose power emanates from a sovereign entity.<sup>106</sup> Prominent theoretical strands within settler colonial literature place the settler as a state-centric actor<sup>107</sup> that seeks to eliminate or neutralize what it perceives to be an (indigenous) excess. This settler actor seeks to eliminate the indigenous other in order to diminish (and hopefully eliminate altogether) the obstacle this other poses to settlement, and the threat this other poses to the legitimacy of settlement. Making the indigenous other *homo sacer* through the process of internalization enables the elimination of this obstacle. This internalized other can then be killed with impunity, eliminated or neutralized by settler colonialism; but cannot be sacrificed, that is, the idea of the indigenous other as a romantic relic of the past is always remembered within the settler colonial mind.<sup>108</sup> In the settler colonial context, however, this sovereign decision to neutralize an excess (whether conscious or not) is not based strictly within the biopolitical. As Rifkin argues, this colonial-exception relationship is driven by the desire to control or to gain access to territory - the geopolitical.<sup>109</sup> The biopolitical, the attempt of a state to control a

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<sup>104</sup> Agamben. p.32.

<sup>105</sup> Ibid. p.72.

<sup>106</sup> Mark Rifkin. "Indigenizing Agamben: Rethinking Sovereignty in Light of the 'Peculiar' Status of Native Peoples." *Cultural Critique*. 73. 88-124.

Scott Morgensen. "The Biopolitics of Settler Colonialism: Right Here, Right Now." *Settler Colonial Studies*. 1. 52-76.

<sup>107</sup> Leading works within settler colonial studies (such as Wolfe, Veracini, Rifkin) do not distinguish between state and non-state settler actors. This leads to a vague conceptualization of "the settler" who ends up being discussed predominantly as a state actor.

<sup>108</sup> Thobani. pp.39-40.

<sup>109</sup> Rifkin. pp.90-1.

population through an extension of control over physical bodies, is then used as a way of getting to the geopolitical.

These theories exemplify the mentality driving state-centric colonial narratives today.<sup>110</sup> While Canada is a democratic, federative state, it is only truly so for those who are currently recognized as full political actors within today's federal compact. Since treaty relations have not yet been recognized as foundation to and substantively incorporated within this compact, indigenous peoples are not being recognized as full participants, in their own right, within the federation. Since indigenous people have not been brought into the constitution as federative members, but have still been internalized by this federation, they have been brought under and rendered most susceptible to the sovereign decision. While sovereign decision theory may appear inapplicable to settler Canadians who benefit from a democratic federative compact, the theory is applicable to indigenous peoples who never consented to be brought under this compact without the recognition of their shared political rule. In this way sovereign decision theory represents a useful tool in exploring the colonial relationship between the Canadian executive, the Crown in right of Canada, and indigenous peoples.

While sovereign decision theory provides useful language for investigating these roles within structures of colonialism, this theory ignores or overshadows the roles of denizens within the process of the sovereign decision. This is because these theories suggest that sovereignty is claimed or established in a vacuum, and that it exists as a uniform and omnipresent structure. Instead, it can be argued that sovereignty is in fact a process that is established from the ground

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<sup>110</sup> Where some might argue that current initiatives such as the modern treaty process suggest otherwise, suggest that the state is actively seeking to include indigenous peoples within the federation, it can be argued that it is done in such a way that assimilates, neutralizes, and does not allow indigenous peoples the full expression of their difference or their proper status as political equals within the federation.

up.<sup>111</sup> This latter line of reasoning requires the analysis of how actions and influences occurring on the civic stage impact politics at the local, national, and even international levels.<sup>112</sup>

Although problematic assumptions are made within the sovereign decision literature, these assumptions can be used to explore how to broaden the discourse on the sovereign decision in order to begin conceptualizing the ways through which settler colonialism utilizes the sovereign decision without being a uniform, state-centric structure.

The first assumption made within the literature is the confined sovereignty thesis, the supposition that the colonial sovereign decision to exceptionalize (or neutralize) is not influenced by non-state actors beyond the influence of the specific other that the colonial sovereign seeks to interiorize. This assumption is unrealistic. To Schmitt's chagrin Canada is a liberal democratic state – at least for its non-indigenous citizens. Both federal and provincial governments are dependent upon their identified citizens' votes to keep them in power. These sovereigns, therefore, hold vested interest in and is influenced by the actions, in-actions, and desires of its settler denizens.<sup>113</sup> As the case study in the final chapter will explore, before Canada was a state the local colonial governments were also influenced by its settler denizens. To conceptualize indigenous subordination and colonialism as a state exercise occurring independently of settler denizen action, is to ignore important relations of colonial power that serve concomitantly to dispossess and neutralize an indigenous other. Furthermore, the dissemination of such a false

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<sup>111</sup> I would like to thank Robert Nichols for his comments on an earlier draft of this chapter, which helped guide me in the re-conceptualization of sovereignty as a bottom-up (rather than top down) process.

Robert Nichols. "Comments Identifying the Role of Settler Citizen within Settler Colonialism." Message to Deanne LeBlanc. 16 July 2013. E-mail.

<sup>112</sup> Please see: James Tully. *Public Philosophy in a New Key: Volume 1 Democracy and Civic Freedom and Volume 2 Imperialism and Civic Freedom*. Cambridge: Cambridge University Press, 2011. for greater discussion surrounding civic governance.

<sup>113</sup> The settler sovereign holds a vested interest in ignoring the desires of the indigenous peoples within its borders. If these desires are ignored the settler state can continue to settle and develop the land with an artificial impunity. Listening properly to indigenous people would force the sovereign state to recognize limitations placed on its settlement of and jurisdiction over the lands. This, however, would threaten the status quo that currently provides stability and legitimacy (however fragile) to the settler state.

assumption contributes to settler denizens' ability to dismiss their active roles in both colonial and de-colonial processes.

The second point of critique, the single-decision thesis, is the assumption that the colonial sovereign state is the only entity that decides on the exception. Settler denizens, however, can act from sites of privilege in ways that serve to more directly implicate them within colonialism than actions taken through an influence over state action. In this way settler denizens can be seen to act with a "petty sovereignty", a concept I will flesh out in the section below, wherein they make their own decisions that serve to directly and negatively impact indigenous peoples. Actions that flow from these decisions receive a high level of impunity. Settler denizens, therefore, can also be seen to make sovereign decisions, *petty* sovereign decisions.

The confined sovereignty and single-decision theses must be debunked, in order to open up the state-centric understandings of settler colonialism so that these understandings can recognize and explore the roles that settler denizens play within colonial processes. The following and final section of this chapter uses these theses to begin identifying and exploring the roles that settler denizens play within colonialism.

### ***Three Roles of the Settler Denizen: A Heuristic Exercise***

There are three main roles that the settler denizen can be seen to embody. These three roles will be used as heuristic devices to both negate the confined sovereignty and single decision theses, and to help settler denizens begin to conceptualize the ways through which they are implicated within colonial processes. These three main roles include: the influential actor, the state instrument, and the petty sovereign. The first two roles relate specifically to settler denizens' relationship to the state and how they influence and are influenced by state action. These two

roles, therefore, serve to dispel the confined sovereignty thesis through exploring how the sovereign state does not decide alone. The roles of influential actor and state instrument serve to show how settler denizens influence state action, and are used as tools to explore settler denizens' indirect influences over and responsibilities within colonialism.

The last role, the petty sovereign, relates to settler denizens' more direct, lesser state mediated actions within and influences over colonialism. This role, therefore, serves to dispel the single-decision thesis by showing that the state is not the only actor to make sovereign or quasi-sovereign decisions within colonialism. Acting as petty sovereign, the denizen enjoys greater independence from state influence and control. The petty sovereign role serves to show how settler denizens act in more directly accountable ways toward indigenous dispossession and subordination.

### **Influential Actor**

A settler denizen's role as an influential actor refers to his or her ability to exert power or pressure over the state's actions. This ability to influence is derived from already existing relationships between the Canadian state and its citizenry. Canada is a representative democracy; in order to form government the country's federal (and provincial) political parties are dependent on receiving citizen's votes. The government in power is aware that it must retain the support of the citizens it represents in order to be re-elected. This dependency establishes a relationship wherein the citizenry, at least in theory, holds the government accountable for its actions. This ultimately means that the government cannot act, cannot formulate a sovereign decision, without a level of influence being exerted by its citizens on that decision. Whether this influence occurs before or after the act in question, government action is always mediated by the citizenry's influence.



I have identified two specific ways through which we can see citizen influence over state action.<sup>114</sup> First, is citizen influence through governmental elections. Elections represent organized moments through which a country's citizens can demand change from their government. The Canadian citizenry, however, continues to elect governments that ignore colonial issues. There is no significant demand from the citizenry, by way of elections, that the government confront the fragile basis through which it has conceived its sovereignty, to reconsider property regimes and resource development or national identity projects, and to make substantive changes to state-systems and societal relations.

A lack of citizen demand during election time suggests that the colonial problem (the drive toward colonialism) may reside with settler denizens. The idea here is that settler denizens are the reason the state does not deal with colonial issues because as the voting majority, they are not demanding that the state deal with these issues. This in-action on behalf of the citizenry, however, has been influenced by years of government-implemented socialization (through public education) that has encouraged non-indigenous Canadians to ignore these colonial realities. Both actors capitalize on this muddled line of accountability, to shirk responsibility off to the other. Ultimately, however it is the citizenry that does hold the power to change things within this relationship. The citizenry can demand, through elections, that the government it elects begins to address these issues. The citizenry can also demand and create a political party that will deal with these issues.

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<sup>114</sup> Here I refer specifically to the actions of the legislative and executive branches of Canada's federal and provincial governments.

Secondly, and related to the previous method, citizens can influence state action through their ability to protest and rebel against current government and state actions.<sup>115</sup> This is a form of influence not confined to a specific time and place as seen with electoral methods. The citizenry can rebel through a variety of different means at a variety of different times. An example of this form of influence and its impact on colonial relations, albeit an historical one, is the Upper Canada Rebellion of 1837.<sup>116</sup> Throughout the 1830s, as the colony's population grew, there was growing unrest amongst the colonists for greater and cheaper lands, and for greater independence from Britain.

The settler denizens' vocalization of unrest during the 1837 rebellion shows that these settlers began to take an active role in vying for the independence of their settler colony and in demanding greater land for their own settlement. These settler denizens, therefore, indirectly contributed to the subordination of indigenous peoples in Canada, thereby establishing a line of responsibility within colonialism that led from them and through the government. These settler denizens represented voices in which the colonial sovereign held a vested interest. Even though colonial British forces quickly put an end to the rebellion and persecuted those who participated; policies of colonial expansion and settlement, including a limited form of responsible government, were eventually brought to the colonies. The rebels influenced the production of greater colonial independence, indirectly contributing to a growth in settler colonial policies of indigenous dispossession and subordination.

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<sup>115</sup> The Idle No More movement is an example of such action. While initiated by indigenous peoples within Canada, a number of settler actors were quick to join them in protest against government (in)action.

<sup>116</sup> While this example is taken from a time period after the one focused upon in the historical case study in Chapter Three, it still served an important role in formulating the settler state as it is known today.

This is but one example of how protest can influence the colonial acts of the settler state.<sup>117</sup> Understanding how settler denizens have influenced colonial state actions through both elections and protest will help to begin mapping how non-indigenous Canadians have indirectly contributed to and how they continue to indirectly contribute to colonialism. Understanding how this influence works can aid future settler *citizens* in understanding how to use this power (the power of the influential actor) over the state for de-colonial ends.

### **State Instrument**

As the role of influential actor demonstrates settler denizens have an impact on state action, but the state also uses and influences its citizenry in a multitude of ways. In fact, as I began to mention above, an interesting link begins to develop with accountability regarding colonial action between the two actors: state and its citizen. Since there is such a close connection of mutual influence between the actors, the settler can point to the state when his own colonial acts are questioned and say that the state (so long as these acts are legal under the state) justified these actions. In this way the settler denizen attempts to shirk his responsibility onto the state. Of course, then, and as we will see with the settler denizen role as “state instrument”, the state can turn around when its colonial acts are in question and say that it has pursued such actions to serve the settler denizen voter majority, the body whose interests the state strives to serve. Then it is not really anyone’s responsibility to redress such actions, because the catalyst behind them (delivering the good life to the identifiable majority of Canadians) becomes a fact.<sup>118</sup> Why

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<sup>117</sup> There are many more examples of protest throughout Canadian history, such as the Idle No More movement mentioned in footnote 115 and current pipeline protests throughout Canada. There are a variety of less clearly identifiable protests as well, such as a growing online community of settler and indigenous actors speaking out against colonial processes.

<sup>118</sup> Such a response has been seen above with the judiciary’s characterization of third party innocence under s.35’s mandate.

would the liberal democratic state act in any other way if not for the good of the majority of its citizens? Settler denizens have to break this cycle of shirking responsibility.

Beginning to do so requires understanding how the settler state uses settler denizens in instrumental ways to achieve its colonial goals. As with exploring how the citizenry influences the state, investigating how the state uses its citizenry to carry out and validate its sovereign decisions also serves to debunk the confined sovereignty thesis. There are two primary ways I have identified through which the state influences or uses settler actions to justify its own colonial acts. The first method is through the state's ability to refer to the presence of a settler majority to justify its actions. The second is through the state's monopoly on public education systems and its approach to reconciliation initiatives as venues for public education,<sup>119</sup> which serve to socialize its citizenry so that it does not question (or in many cases does not recognize) colonial state actions.

Case law surrounding s.35 of the constitution, which protects aboriginal and treaty rights, represents an important way through which the state uses a settler majority to justify its colonial actions. As seen in Chapter One, s.35 case law that deals with "third party interests", i.e. the property interests of the non-indigenous majority within Canada, defines non-indigenous property holders as innocent beneficiaries of the historic state's colonial actions. In the leading case, *Chippewas of Sarnia Band v. Canada*, it was found that those who originally purchased the land around Sarnia, Ontario under an unlawful surrender had no way of knowing, and should not have been expected to investigate, the illegality of the patent to surrendered lands that they took up. The third parties were, therefore, innocent of any wrongdoing. The court uses the settler

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<sup>119</sup> The public education approach within reconciliation initiatives would not be a problem, but for the fact that public education initiatives remain the only way settler denizens are meaningfully engaged within contemporary state-led reconciliation initiatives.

majority, and the innocence it projects on this majority, as a method of sustaining Crown sovereignty over contested lands. The majority is the group that needs to be catered to, not the indigenous minority. From a Lockean standpoint, the court argues that it cannot remove a majority from lands that it has improved. This would be unjust. In catering to the non-indigenous majority, indigenous claims are curtailed and dismissed. The state is able to uphold its control over the land. It has achieved, or maintained, its colonial end – territorial control.

The state's use of settler denizens does not stop here. The state, in Canada, specifically the provinces enjoy a monopoly over our public education. They decide the methods, models, and content of our learning from a very young age and the discussion of colonialism as an ongoing process, or even an historical one when I was in school, was not on the agenda.<sup>120</sup> This is no small thing. This silence within public education has made the majority of settler denizens quite ignorant of the colonial issues that face indigenous and settler peoples today. This ignorance has been used to the state's colonial advantage, and by association settler denizens' colonial advantage. If the citizenry, the settler majority, is ignorant of colonial realities than these colonial realities are never brought to the forefront of politics. The state is never forced to redress the processes of colonialism from which it, and its citizenry, benefits. These realities remain silenced and myths of national identity that falsely serve to indigenize settlers to the land take their place. Non-indigenous Canadians, and even indigenous Canadians that take part in public education institutions, tend to leave the education system with warped understandings of

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<sup>120</sup> Since I attended public school public education around colonialism has marginally improved within my home province. Since 2007 the province of Ontario has introduced add-on methods of curricula re-formulation as an attempt to make provincial curricula more "aboriginal-friendly". The methods and models of Ontario's public education, however, remain colonial, with its curricular content only marginally improved. For greater discussion here, please see:

Deanne LeBlanc. "Envisioning a Contemporary Indigenous Curriculum in Ontario: Exploring Ways in which to Achieve Decolonization within the Restraints of Educational Public Policy." *Public Policy and Governance Review*. 3.1. 47-66.

Canadian history, settlement stories, and the justification for settler presence on the land because they are not taught these alternative colonial realities. The state uses this silence to its advantage finding confidence in the fact that because its citizenry is so poorly educated it is likely to get away with acts that serve to perpetuate colonial processes of indigenous subordination and dispossession.

This monopoly over public education extends beyond provincial education systems. This is an extension which is most problematic in regard to state-led reconciliation initiatives. Broadly speaking, settler denizen incorporation within reconciliation initiatives is focused on public education. It is important that there is public education through these initiatives. As seen in Chapter One the public education that is established and disseminated, however, encourages settler denizens to accept a skewed conceptualization of colonialism: that *historic* state-driven event, which was horrible and awful, but that settler denizens never really had anything to do with because ultimately it was the historic state. With this type of understanding, supported through these public education initiatives, settler denizens are encouraged to think that they can now clearly distance themselves from colonialism because it is over; the survivors have been given some compensation for historical wrongs done to them. It is now time to close that chapter of Canadian history, because the state perceives and educates the public to believe that reconciliation is an act to be completed instead of an ongoing process (much like its conceptualization of colonialism). The public outreach achieved by these initiatives does create a more educated settler denizen population, now they know that the IRS system occurred, but this is a *safely* educated population, one socialized to think on the government's terms and fueled by its own ignorance. This is a settler majority enabled to point to the government and say,

“they’re the ones truly responsible...not me, I educated myself and now I can walk away, I hold no further responsibilities.”

The settler state and citizen are in a complex relationship of influence and responsibility. A lot more attention and detail need to be given here, but at least this begins to paint a picture of how these two actors influence each other and share responsibility within their contributions to colonialism in Canada. These two roles show that the sovereign state does not operate within a vacuum, but is constantly influenced by and which seeks to influence others. Understanding the relationship between state and denizen helps to situate the complex position denizens find themselves within colonialism.

### **Petty Sovereign**

The term “petty sovereign” has been taken from Judith Butler’s work within *Precarious Life*, where she defines petty sovereigns as those who are

unknowing to a degree, about what work they do, but performing their acts unilaterally and with enormous consequence. Their acts are clearly *conditioned*, but their acts are judgements that are nevertheless *unconditional* in the sense that they are final, not subject to review, and not subject to appeal.<sup>121</sup>

In other words, the petty sovereign is one who acts, although conditioned by another, with diminished sovereign power over others. And who cannot be held accountable for such acts, as with s.35, due to this diminished sovereignty. Within *Precarious Life*, Butler is specifically applying this term to government officials in Guantanamo Bay whose actions impact the indefinitely detained.<sup>122</sup> I am choosing to extend this term to settler denizens, non-state actors, which would appear to contradict Butler’s application. I argue that the petty sovereign does not

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<sup>121</sup> Judith Butler. “Indefinite Detention.” *Precarious Life: The Powers of Mourning and Violence*. London: Verso, 2004. p.65.

<sup>122</sup> Ibid. p.65.

have to be bound by such categories of state or non-state actor as actors within both categories can exhibit the role's characteristics and perform its actions. It is Butler's characterization of the petty sovereign, how the actor functions, that I find particularly useful within her work.

The settler denizen can be seen as an actor not fully cognizant of the colonial implications of his or her actions, actions through which the denizen capitalizes on an unspoken, unexplored settler privilege. Since this privilege is a silent, passive benefit afforded to settler denizens, actors that capitalize on this privilege are by and large not held accountable for actions that negatively impact indigenous peoples. I am using the term here to explore ways through which settler denizen action enjoys greater independence from (though still conditioned by) state influence, therefore, enabling us to explore a more direct colonial responsibility held by settler denizens.

Settler denizens act as petty sovereigns in one of two ways. First of all, settler denizens' ability to act completely independently of (or against) state mechanisms in ways that serve to subordinate or dispossess indigenous peoples, through acts for which they are not held accountable, places denizens within petty sovereign roles. An example of such an act would be illegally squatting on indigenous territory, which will be explored at greater length below. Secondly, settler denizens' ability to act on settler privilege, through acts that might enjoy a greater state influence but through acts that are still not held accountable, also places the denizen within a petty sovereign role.

In terms of exploring the first method through which the settler denizen acts as petty sovereign the historical act of squatting within the colonies can be used. Through squatting settler denizens were individually motivated, thinking about themselves and not the impact their



actions had, i.e. how they contributed to the dispossession of indigenous peoples throughout the colonies. Squatters in this way acted with a diminished awareness. Since the presence of these squatters on un-surrendered lands helped the colonial government negotiate land surrender treaties with the indigenous peoples for years, their actions were overlooked. And so these squatters, acting through a diminished sovereignty, were not held accountable for their actions.

To explore the second method through which the settler denizen acts as petty sovereign a contemporary investigation can and ought to be taken. This application of the petty sovereign role hinges specifically on the concept of settler privilege as a passive benefit, the idea that by virtue of being a settler one automatically benefits from the same actions which repress indigenous peoples. This is a benefit for which settler denizens are largely unaware. This passive benefit enables a myriad of settler denizen actions, which in turn contribute to colonialism. Since action is informed by an unarticulated benefit, and is not directed at the state, by and large these actions enjoy impunity.

There are many benefits settlers enjoy. They are able to exercise their own political order and legal system, even though indigenous political orders and legal systems were already here. They get to be on the land with no obligations to it, even though indigenous orders on the same land hold very different views of land ownership and responsibility. They benefit from resource development, even though they may extract resources from lands that are not their own, or resources that are not their own. The list could go on. Settler privilege includes all the rights and privileges that settlers enjoy at the expense of indigenous rights, privileges and responsibilities. It is when settler denizens act in ways that capitalize on these privileges that they act as petty sovereigns.

The use of an example can serve to highlight how this privilege establishes the context for petty sovereign action. Here I would like to focus on cultural appropriation and how it is a settler privilege for denizens to appropriate signs, symbols, and meanings from indigenous cultures without major sacrifice and how this appropriation contributes to processes of indigenous subordination. There is a rich history of denizen actors appropriating native cultures. From colonial protesters dressing in Haudenosaunee regalia during the Boston Tea Party, to the use of indigenous characters and symbols throughout our sports team names and Olympic Mascots<sup>123</sup> denizens have taken indigenous imagery as their own. Through this adoption of imagery denizens seek to indigenize themselves to places in which they are not indigenous. As Philip J. Deloria explores in *Playing Indian*, this occurs because the colonist is striving to re-define him or herself as separate from the mother country (Britain) and instead deeply connected to a new homeland (North America). This incites within the denizen a need to control the new homeland, to make it his or her own, which requires the destruction (or assimilation) of its original inhabitants.<sup>124</sup> In this way, the denizen privilege afforded through cultural appropriation animates one of the key processes within settler colonialism – the erasure of indigenous difference through internalization.

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<sup>123</sup> Here I refer specifically to the use of Oookpik during the 1976 Montreal Summer Olympics (a traditional Inuit symbol and Inuit-produced mascot), and the use of Miga, Quatchi, and Sumi as official mascots for the 2010 Vancouver Winter Olympics (symbols derived from Pacific North West indigenous nations). In addition to these three mascots during the 2010 Olympics was the official 2010 logo depicting an Inuksuk (a traditional Inuit sculpture).

The use of indigenous symbols during the Olympics, are particularly problematic when not provided proper context. Olympic symbols are chosen in an effort to represent the host nation's national identity to the world stage. Through the use of these symbols Canada, in both the Montreal and Vancouver Olympics, has presented an image of Canada as an indigenous nation. While this could be seen as an effort to "bring indigenous narratives into the forefront", in reality this implies that the country's settler population has been indigenized as these symbols are meant to represent the nation as a whole. The use of these symbols is, therefore, an act through which the country (state and denizens alike) have sought to indigenize their national identity.

<sup>124</sup> Philip J. Deloria. *Playing Indian*. New Haven: Yale University Press, 1998. p.5.

Particularly striking within the history of cultural appropriation<sup>125</sup> is the recent, or rather recently re-surfaced, trend throughout the “western” world to dress in native looking clothes. Within the last few years there has been a dominant trend within the fashion industry to appropriate important cultural staples and symbols from a variety of indigenous nations. This is a trend that has been readily accepted by consumer denizens.<sup>126</sup> In the last few years there was the release of “Spirit Hoods” by a company called SpiritHoods.<sup>127</sup> This company produces (faux) furry animal hats meant to represent traditional spirit animals. Urban Outfitters released a Navajo inspired line where they have replicated traditional Navajo designs sticking them on everything from panties to flasks while labelling these things Navajo.<sup>128</sup> Paul Frank came out with a line of clothes where his famous monkey sported a headdress and was framed within a dream catcher;<sup>129</sup> TNA has been producing knock off Cowichan sweaters; Victoria Secret sent a model down the runway modelling lingerie and a headdress;<sup>130</sup> Heidi Klum had the models on

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<sup>125</sup> Cultural appropriation occurs not only throughout Canada and the United States but throughout Europe and other settler colonies as well. A great study of how deeply ingrained indigenous cultural appropriation is within North America is given within the documentary film *Reel Injun*. This documentary explores the evolution of the depiction of indigenous peoples throughout picture, film, and society from first European contact to contemporary times.

*Reel Injun: On the Trail of the Hollywood Indian*. Dir. Neil Diamond. National Film Board of Canada, 2009. Film.

<sup>126</sup> For an insightful blog post that connects cultural appropriation to indigenous erasure and colonialism please see: Sarah Hunt. “An Open Letter to My Local Hipsters.” *Media Indigena: interactive indigenous insight*. Web. 13 Apr. 2014.

<sup>127</sup> “Our Story.” *SpiritHoods*. SpiritHoods. n.d. Web. 13 Apr. 2014.

<sup>128</sup> For further information on the backlash that Urban Outfitters has received because of this appropriation please see:

Jenna Sauers. “Urban Outfitter’s ‘Navajo’ Problem Becomes a Legal Issue.” *Jezebel*. Web. 14 Apr. 2014.

Adrienne Keene. “Urban Outfitters is Obsessed with Navajos.” *Native Appropriations: Examining Representations of Indigenous Peoples*. Web. 14 Apr. 2014.

<sup>129</sup> After being publicly shamed Paul Frank agreed to collaborate with a selection of indigenous artists to reformulate the line so as not to appropriate indigenous culture. Frank’s response here demonstrates an avenue of hope within the cultural appropriation mess that has taken the fashion industry by storm. For more on Frank’s response please see:

Jessica Metcalfe. “Paul Frank x Native Designers.” *Beyond Buckskin: About Native American Fashion*. Web. 13 Apr. 2014.

<sup>130</sup> Jessica Misener. “Karlie Kloss Wears Native American Headdress at Victoria’s Secret Fashion Show.” *Huffington Post*. 8 Nov. 2012. Web. 13 Apr. 2014.

Germany's Next Top Model sport various pieces of indigenous regalia (from a range of different nations) for a photo shoot;<sup>131</sup> and the list could easily continue.

Those denizens who buy into these cultural appropriations, whether consciously or not, are acting as petty sovereigns and directly contributing to colonialism. Colonialism, as I have mentioned, is not just about land appropriation it includes cultural and economic appropriation as well. There are masses of settler denizens who have bought into this native fashion trend, who cannot so easily attribute their having bought into this trend to government influence, and who are not being held accountable for their actions. These are settler denizens who are not fully cognizant (perhaps not cognizant at all) of the impacts their actions have when they buy and wear culturally appropriated clothes. Nevertheless these denizens are seeking to indigenize themselves, thereby neutralizing or erasing the indigenous other. These settler, through their petty sovereign decisions to buy into cultural appropriation, are serving to approve and fuel colonialism.

I have only begun to scratch the surface of what it means for a settler denizen to act as a petty sovereign. This initial exploration does, however, show that the single-decision thesis is bunk, that the settler denizen does make petty sovereign decisions that serve to directly influence colonial processes. How the role of petty sovereign plays out today still requires far more consideration in order for denizens to be able to consider how this role might be manipulated, so that instead of contributing to colonialism petty sovereigns might begin contributing to decolonization. This might actually mean elimination of the role, which perhaps begins with an internally held accountability where those petty sovereigns who begin to learn their stories, begin

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<sup>131</sup> Jamie Feldman. "Heidi Klum Facing Backlash Over 'Redface' Photo Shoot." *Huffington Post*. 10 Apr. 2014. Web. 13 Apr. 2014.

interacting with treaty citizenship, can turn to the other petty sovereigns and help them to see their settler privilege and how they are contributing to colonial processes.

### ***Settler Denizen Engagement: Moving to Decolonize the Self***

The settler denizen is someone who does not know and does not engage with their stories of settlement or their treaty citizenship. While this engagement is not a sufficient condition, because settlers must also recognize and take up a responsibility to act toward decolonization, it is a necessary condition. It is crucial that settler denizens begin to identify and engage these stories, their roles within colonialism, their treaty citizenship. Non-indigenous Canadians, as we have seen, contribute to colonialism through a variety of ways - as explored here, through their relationship with the state and through actions that capitalize on settler privilege. Denizens are implicated in ongoing processes of colonialism. Recognizing and understanding the roles they play within colonialism will be the only way that settler denizens can begin to step away from contributing to colonialism and re-focus on contributing to decolonization. Settler denizens are necessary actors within decolonization because of their involvement within colonialism. Broad societal decolonization begins with decolonizing the denizen self. This decolonization of self begins with stories, the identification and investigation of denizen stories and those roles that denizens play within these stories. This will include those stories previously accepted and those previously silenced. It is only through this initial step of exploring these narratives and roles that denizens can eventually demand change from themselves and from their state. It has to begin with stories. The following chapter demonstrates the beginning of my own journey to identify my settlement stories and the roles that I have played within colonialism.

### **CHAPTER 3: FIRST STEPS – BEGINNING TO EXPLORE ONE’S STORIES AND ROLES WITHIN LAND SETTLEMENT**

I was born and raised in East York which, until the time I was nine, was a borough of Metropolitan Toronto. I have fond memories of growing up in this unique community. Legally, the borough no longer exists because in 1998 East York was dissolved and amalgamated into the city of Toronto. Socially, however, East York is still very much alive even if its “sense of self” is not quite so vibrant.<sup>132</sup> Having lived most of her life within the borough, and having a strong sense of how special and unique its community was, my mother was firmly against amalgamation. Prior to East York’s dissolution, I went around with her to houses within the community trying to encourage our fellow citizens to vote against amalgamating. East York had worked hard for nearly a hundred and fifty years for its strong sense of community and for its strong social service provisions, and disbanding the borough to join a much larger city threatened these things. After 1998 social services, like our education system, were certainly never the same and suffered under the new administrative system put in place.

Amalgamation constitutes an important moment in my early identification with self-identity and association to place. As my partner likes to tease me amalgamation is “my family’s boogeyman”. For us, at least for my mom and me, it threatened our sense of home. It threatened, and in some ways succeeded, in re-constituting the home community we had known into something different. It is only since I have begun to research and reflect on settler colonialism that I can begin to see that my actions within and perhaps even attitude toward amalgamation constitute a great settler privilege. This is because the entire conversation and speaking against amalgamation occurred without the recognition of a much deeper history of the

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<sup>132</sup> Citizens who live within the borders of the old borough still largely refer to themselves as East Yorkers and their home as East York. Canada Post still refers to the area as East York for delivery purposes, and the borough’s name still holds its place within the monikers of many companies and service providers within the area. Given these facts, therefore, it appears that at least socially the borough of East York was never fully dissolved.

area's settlement. There was no recognition or discussion of the fact that before the land was claimed for East York it was indigenous land, and that in order for the British to settle East York these indigenous peoples were dispossessed of these same lands. East York settlers are privileged in not having had to recognize and confront these realities in order to re-vision their community. These realities continue to be ignored within East York because settler privilege is a silent benefit that works best when it is not mentioned. I, myself, have only just begun to recognize this privilege.

This is where I have chosen to begin interacting with my own settlement stories, the settler privilege of re-envisioning a community on indigenous territory without recognizing or exploring the indigenous peoples or narratives that accompany the territory. This settler privilege is an apt place to begin because it is part of both a personal and state (or more appropriately in this case municipal) narrative. To understand and explore this settler privilege requires discovering how this privilege was created, which ties into recognizing and exploring stories of state and personal settlement within the Toronto area. As a settler denizen who is interested in becoming a treaty citizen, exploring these stories of settlement within my hometown is a first step toward de-colonizing the self. This chapter will, therefore, begin to explore how my hometown became settled by the British and how my own and my familial settlement stories fit into this broader settler story. In order to accomplish this I will first provide an overview of how the Toronto area (originally York) came to be settled through investigating the roles of the Mississauga, the state, and the denizen within this settlement narrative. Included here will be a discussion of how the borough of East York fits within Toronto's settlement story. This collective narrative will then be set in contrast to more widely known and accepted histories of settlement within the area that strive to indigenize the settler to the Toronto and East York areas.

Included within this discussion will be a brief investigation into the Mississauga of the New Credit's specific claim regarding their dispossession from the Toronto area. Finally I will conclude by highlighting the need to wed these broader narratives to personal and familial settlement narratives. In showing the importance of this next de-colonizing step, mapping one's personal narratives, I will offer a brief overview of my own family narratives and how they might complicate my role as denizen within colonialism.<sup>133</sup>

What is to be presented within this chapter, however, is not a complete exploration into my own settlement stories. The exploration of how my hometown came to be settled, and a brief summary of how my families<sup>134</sup> came interact with this narrative is only a beginning. There is still much work to be done regarding the specific settlement stories of my families; for instance, exploring what brought them to Canada, where they originally settled, and how they have interacted with indigenous peoples, the state, and colonialism over the years that they have been within the country. Part of this broader exploration will also include the exploration of place-based state narratives within the other areas that my families have settled. Identifying and exploring all these narratives constitutes a long and complicated process that itself only formulates a necessary but not sufficient step toward de-colonizing the self. Once these various stories of settlement are explored the settler denizen must still consider their contemporary roles within colonialism (through more than connection to territory but also through connection to economics, culture, and society) and the various ways through which they act on their settler

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<sup>133</sup> To properly accomplish this second step of exploring my familial and personal settlement narratives, however, requires far more research and time than available to me under the confines of my thesis. What will be presented in the last section of this chapter is only the beginning of this next step.

<sup>134</sup> I use the term "families" and not "family" here to highlight the two main branches of my family, the one branch of my mother's side and the other branch on my father's side.



privilege. What is to follow in the chapter below, therefore, is only a baby step toward a long journey. It is an important step none-the-less.

### *The Settlement of the Toronto Area*

#### **An Unplanned Settlement: Context for the Founding of York Township (1763-1812)**

When Britain won the Seven Years War, it enacted the *Royal Proclamation, 1763*, and took over the administration of the colony of New France. The Proclamation can be read as Britain's attempt to alleviate the growing conflict between indigenous and settler peoples over territory within North America. As such, the document denoted boundaries between settler and indigenous lands in an attempt to show that Britain was protecting indigenous territories from settler encroachment. The document specifically protected indigenous lands from European and American subjects settling on, trading, and investing in these lands; prohibited the private sale of these lands; and disallowed the government to survey or grant un-ceded territory. In the case that indigenous peoples were interested in selling land, under this document, they were only to sell to the Crown through a public meeting or assembly of concerned indigenous peoples and Crown representatives. In this way the Proclamation established strict guidelines by which only the Crown could purchase additional territory within the new world. The Crown had to act honourably toward indigenous peoples regarding these purchases. This Proclamation, and the Crown's Honour that has been associated with it, still applies to indigenous-Crown relations today.<sup>135</sup> In fact the *Royal Proclamation* has and continues to play a large role within

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<sup>135</sup> The *Royal Proclamation* is protected under s.25 of the *Canadian Charter of Rights and Freedoms* as entrenched within the *Constitution Act, 1982*. The proclamation has been cited as a source document for the Honour of the Crown, the responsibility that the Crown holds to act honourably within its dealings with indigenous peoples throughout Canada.

indigenous-settler treaty relations and can be used to inform the revisiting or establishment of treaty citizenships throughout the country.

At the time it was enacted, the *Royal Proclamation* attempted to quell indigenous peoples' fears while also leaving room for the expansion of political and economic power of the British Crown.<sup>136</sup> The document, therefore, can also be read as Britain's assertion of control over the colonies of the new world and its indigenous allies. As a method of asserting Britain's dominance over France and of looking to imbue the colonies with a sense of British identity the document attempted to control and weaken the French presence within New France. Through the document's identification of "Indian Territory" and restrictions placed on European settlement and indigenous territorial acquisition, the *Royal Proclamation* sought to weaken alliances between the Canadiens and the indigenous peoples of the territory. Through these same methods the document also tried to control Britain's thirteen colonies by greatly hampering their ability to move westward. It was thought that because individual settlers could not acquire land directly from their indigenous neighbours that instead of moving west they would actually move north into New France, therefore serving to slowly weaken the French majority within the colony.<sup>137</sup> Identification of an "Indian Territory", therefore, served to synonymously control the French and the Americans. Finally, while the document was framed in such a way as to suggest that Britain was protecting its indigenous allies, in many ways the Proclamation can also be seen as a control over indigenous peoples. Through requiring indigenous peoples to make land sales

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<sup>136</sup> John Borrows. *Traditional Use, Treaties and Land Title Settlements: A Legal History of the Anishnabe of Manitoulin Island*. Diss. York University, 1994. p.67-70.

<sup>137</sup> Peter A. Baskerville. *Sites of Power: A Concise History of Ontario*. Don Mills: Oxford University Press, 2005. p.39.

only to the Crown it placed a great limit on indigenous peoples' freedom to participate within local economies.<sup>138</sup>

At the time the *Royal Proclamation* was drafted the lands north of the Great Lakes, which would eventually be claimed for the colony of Upper Canada, were considered part of the "Indian Territory" delineated by the Proclamation.<sup>139</sup> Initially there was very little documented interest in settling this specific indigenous territory. Until the end of the American Revolutionary War<sup>140</sup> the Crown saw the Upper Canada region as an important place for the fur trade<sup>141</sup> and for strategically placed military posts but not for settlement. While a small number of families were permitted to settle by some of the military posts in the upper country by 1780, in order to raise food for the soldiers who were otherwise isolated from settlement, it was not until the end of the American Revolution that it became desirable to settle these land with Loyalist subjects.<sup>142</sup> Settlement of this area became a policy not only due to the influx of Loyalists into the northern colonies; settlement of this area was also desirable in order to increase security of the northern colonies against the Americans. This policy required that the Superintendent General of Indian Affairs, who since 1755 had been given the responsibility to manage all Indian affairs within British North America,<sup>143</sup> had to make treaties with the indigenous peoples of the

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<sup>138</sup> Baskerville. p.39.

If indigenous peoples were not allowed to freely settle where they pleased within and around the lands that had been taken over by the British there were, therefore, spatial limits placed on their ability to participate within local economy.

<sup>139</sup> Lillian Gates. *Land Policies of Upper Canada*. Toronto: University of Toronto Press, 1968. p.11.

<sup>140</sup> During the American Revolution most of the Mississauga Anishinabek remained independent, refusing to fight for either side. The Mississauga Anishinabek who lived in close proximity to Fort Niagara, however, did participate in the war.

Baskerville. p.40.

<sup>141</sup> True Davidson. *The Golden Years of East York*. Toronto: Centennial College Press, 1976. p. 7.

<sup>142</sup> Gates. p.11.

<sup>143</sup> Peggy Blair. "Chapter 2: Imperial Crown Policy." *Lament for a First Nation: The Williams Treaties of Southern Ontario*. Vancouver: University of British Columbia Press, 2008. p.14

area in the hopes that they would surrender<sup>144</sup> land for the Loyalists (European and indigenous alike) to settle.

Since 1700 the Mississauga Anishinabek had been occupying the lands north of the great lakes. Prior to Anishinabek occupation of these lands the original five nations of the Haudenosaunee had lived there, and before them the Huron (or Wyandot) peoples. Both the Haudenosaunee and the Wyandot before them had been forced to leave these lands because their numbers had suffered due to disease and casualties from war.<sup>145</sup> The land north of Lake Ontario has always been highly sought after as it is both good farm land and a strategic location for a community's safety. By the 1730s the Mississauga Anishinabek's population within this territory numbered roughly 1,500.<sup>146</sup> The Mississauga Anishinabek spent their summers by the lakes, rivers, and creeks in the south<sup>147</sup> and their winters in the northern woodlands.<sup>148</sup> The Anishinabek's familiarity with the interior meant they were important allies in the fur trade. With their location along the north shore of the Lake Ontario, their presence at the Carrying Place,<sup>149</sup> their knowledge of the interior, and their knowledge of major portage routes (Humber,

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<sup>144</sup> The concept that treaties were documents through which indigenous peoples surrendered lands is a conception of treaty perpetuated by settler narratives. As will be seen below, with the Mississauga Anishinabek, indigenous peoples who entered into treaty did not hold similar conceptions of treaty. For the Anishinabek, for instance, the Anishinabek were not surrendering their lands through treaty but agreeing to share these lands with settler peoples in peace and friendship. This will be more clearly articulated in the pages below.

<sup>145</sup> Smith. p.19.

<sup>146</sup> Canada. Indian Claims Commission. Aboriginal Affairs and Northern Development Canada. *Mississauga of the New Credit First Nation Inquiry: Toronto Purchase Claim*. Commissioner Daniel Bellegarde. Ottawa: GPO, 2003. p. 9.

<sup>147</sup> This includes, but is not limited to, Bronte Creek, Sixteen Mile Creek, Credit River, Humber River, Trent River, Bay of Quinte (Kente), and Fort Frontenac (Kingston).

<sup>148</sup> Canada, supra note 146, at p.10.

<sup>149</sup> The Carrying Place is an "ancient" indigenous portage that flows from the mouth of the Humber River to the Holland River. After the British lost territory south of the Great Lakes following the American Revolution, this portage assumed a place of high importance within British colonial economic policy. The Carrying Place provided a safe transportation route to the northwest interior of the colonies enabling the British to continue their participation within the fur trade.

Canada, supra note 146, at p.15.

Rogue, and Don Rivers) they were important transmitters of information between their own Anishinabek peoples, other indigenous nations, and the fur trade companies.<sup>150</sup>

Beginning in 1783, with the end of the American Revolution, a series of treaties for land purchases occurred between the Mississauga Anishinabek and the Crown's colonial representatives in the area north of the great lakes. The British pursued these treaties in order to settle their faithful subjects throughout the northern country. The Anishinabek pursued these treaties as a measure of good will. For instance, in 1784 the British made a treaty with the Anishinabek to purchase a tract of land that extended 6 miles on either side of the Grand River, between lakes Ontario, Erie, and Huron for the Six Nation Haudenosaunee to re-locate following the war.<sup>151</sup> In the same year the Mississauga Anishinabek surrendered the Niagara Peninsula (from Burlington Bay to the headwaters of the Grand River and south up to Long Point on Lake Erie) for British Loyalist settlement.<sup>152</sup> For the surrender of their land the Mississauga Anishinabek were given gifts<sup>153</sup> as a one-time payment from the Crown. For the Anishinabek these gifts were seen as a symbolic offering of friendship between parties and as an acknowledgement of the Mississauga Anishinabek's sovereignty.<sup>154</sup> The treaties mentioned above are only two examples of the twelve treaties that occurred between the end of the American Revolution and the beginning of the War of 1812,<sup>155</sup> through which the most accessible land in the southern reaches of what became Upper Canada (1791) was surrendered for Loyalist settlement.

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<sup>150</sup> Smith. p.21.

<sup>151</sup> Gates. p.14.

<sup>152</sup> Smith. p.26.

<sup>153</sup> During this period common treaty gifts included clothing, guns, and ammunition.

<sup>154</sup> Canada, supra note 146, at p.11.

<sup>155</sup> J.R. Miller. *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada*. Toronto: University of Toronto Press, 2009. p 90.

These surrenders are commonly referred to as the Upper Canada treaties. This group of treaties is different in nature from either the peace and friendship or the numbered treaties mentioned within chapter two. Much greater care was taken by the Jesuits and the British through negotiations for peace and friendship and the numbered treaties to document and secure a relationship with indigenous signatories than by the British through the Upper Canada treaties. Throughout the Upper Canada treaties the land surrendered was defined in vague terms; the southerly reaches of the land surrendered included the shore of a lake or the mouth of a river; northern boundaries were usually determined by ‘how far a man could walk in a day’ or ‘how far one could hear a gunshot from the lakeshore’; and Crown negotiators did a poor job of recording agreements resulting in a lack of documentation and in some cases contradictory evidence.<sup>156</sup> The vague terms and poor documentation of these treaties resulted in great confusion, tensions, and misunderstandings between the Mississauga Anishinabek, the Crown, and settler denizens within the area.

Adding to the confusion, tensions, and misunderstandings arising from vagueness and poor documentation of these treaties are the different ways through which these agreements were perceived by the parties during negotiations and implementation. During their negotiations with the Crown the Mississauga Anishinabek were not surrendering their lands, they were agreeing to share the lands with newcomers. The Mississauga understood that they would continue to live on the lands that were being settled by the Loyalists, that they would be able to hunt, trap and fish on their traditional lands without any difficulties.<sup>157</sup> This was the agreement made throughout these treaties between the Anishinabek and the Crown. This agreement did not carry

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<sup>156</sup> Baskerville. p.43.

<sup>157</sup> Canada supra note 146, at p.21.

Baskerville. p.55.

Smith p.24.

through in the Crown's application of their various treaties. Due to large influxes of settlers between 1783 and 1812; negative settler attitudes toward Mississauga Anishinabek who went to hunt and fish on these treaty lands; and the Crown's lack of protection for reserved indigenous sites on these lands<sup>158</sup> the Anishinabek came to understand that there was a great discrepancy in settlement expectations between their peoples, the Crown, and settler peoples.<sup>159</sup>

### **The Coming to Be of York: Treaties, Purchases, and Policies (1787-1805)**

The end of the American Revolution was symbolized through the signing of the *Treaty of Paris 1787*. This peace treaty denoted a boundary dividing American and British territories that was drawn right through the middle of the great lakes.<sup>160</sup> This meant that the lands north of the great lakes grew in military and economic importance for the British who had been forced out of their southern colonies. One of the most important places north of the lakes was the Toronto Carrying Place and its surrounding lands. The Carrying Place was a northern route to the northwest interior that had already proven important within the fur trade. Following the Treaty of Paris, however, the Carrying Place represented Britain's only route to the northwest. There was, therefore, new interest in settling this specific area – the territory along the Carrying Place route and the lands around the site of the abandoned French Fort Toronto (Rouillé).<sup>161</sup> Individuals associated with the fur trade such as Benjamin Frobisher were soon inquiring about taking up land within the area.<sup>162</sup> Convinced of both its economic and military value colonial authorities decided to secure this territory from the Mississauga Anishinabek in 1787.

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<sup>158</sup> Smith. p.27.

<sup>159</sup> Canada supra note 146, at p.21.

<sup>160</sup> Ibid. p.13.

<sup>161</sup> Fort Rouillé is now the site of the Toronto Exhibition Place.

<sup>162</sup> Canada supra note 146, at p.16.

In September of 1787 the Superintendent General of Indian Affairs, Sir John Johnson, along with a handful of other Crown representatives met with the Mississauga Anishinabek at the Carrying Place. According to all the non-indigenous sourced materials I have come across, Johnson and the Mississauga Anishinabek met to negotiate a treaty. According to the Mississauga Anishinabek of the New Credit, however, this meeting was convened for the distribution of presents to the Anishinabek for their loyalty to the British during the American Revolution. During this meeting Johnson mentioned a number of land purchases the Crown wanted the Anishinabek to consider – one of these purchases was for the Carrying Place territory from Toronto to Lake Simcoe. Following this meeting, the £1,700 given in presents to the Anishinabek for their loyalty was characterized by the Crown as a payment for the surrender of the Toronto area. To this day the Anishinabek Mississauga of the New Credit maintain nothing was ever sold in 1787.<sup>163</sup>

If this 1787 meeting was not for treaty negotiation, it would help to make sense of the both parties' lack of documentation regarding this meeting. Most formal treaties, throughout Canada's history, negotiated between the Crown and indigenous peoples have been well documented (if not always accurately documented) by both parties. Neither Johnson nor the Mississauga Anishinabek, however, had a detailed written or oral tradition of the 1787 meeting. In fact all Johnson had was a blank deed.<sup>164</sup> On this blank deed there were no physical boundaries described, the quantity of the land surrendered was not recorded, and the names of the Chiefs of the bands with whom the surrender was discussed were not listed. Attached to this blank document, however, were the names of three signatory Mississauga Anishinabek chiefs:

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<sup>163</sup> Mississauga of the New Credit First Nation. *Darlington New Nuclear Power Plant Project Joint Review Panel*. Written Environmental Assessment Submission. 21 Feb. 2011. p. 25.

<sup>164</sup> Canada supra note 146, at p.17.



Wabakinine, Neace, and Pakquan, with their affixed totems. In addition, this attached document identified three witnesses to the negotiations: John Collins, Louis Protle, and the interpreter Nathaniel Lines.<sup>165</sup> This is very suspicious documentation, which could ultimately support the supposition that no treaty was made (at least not legitimately) during this 1787 meeting. Furthermore, when the treaty was re-negotiated in 1805 the Mississauga Anishinabek who participated claimed that they could not be certain what lands their ancestors had discussed surrendering in 1787.<sup>166</sup> Had the 1787 meeting explicitly been for treaty negotiation this likely would not have been a problem, as the Anishinabek likely would have taken the effort to record and pass down an oral tradition of negotiations. The lack of proper documentation by both parties appears to support the claim of the Anishinabek Mississauga of the New Credit that no treaty was negotiated in 1787.

The following year the British began surveying the land they believed had been surrendered in the Toronto area by the Mississauga Anishinabek. The colonial government believed it had secured a tract of land along Lake Ontario's north shore that reached from the mouth of Etobicoke Creek to Ashbridge's Bay and north to present-day Aurora, Ontario. When Alexander Aitken began his survey of the boundaries in August of 1788 he was met with many objections from the Mississauga Anishinabek chiefs who argued that they had not discussed surrendering all the land that Aitken was attempting to survey.<sup>167</sup> All that had been discussed with Johnson was a possible surrender of "ten miles square at Toronto and two to four miles on each side of the intended road or Carrying Place".<sup>168</sup> The Mississauga argued they had only discussed surrendering lands west to the Humber River (not Etobicoke) and lands east to the Don

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<sup>165</sup> Canada supra note 146, at p.17.

<sup>166</sup> Ibid. p.30.

<sup>167</sup> Ibid. pp.20-1.

<sup>168</sup> Mississauga. p.26.

River (not Ashbridge's Bay). It was only when Crown representatives called on the military that the Mississauga "let" Atkins survey up to the Etobicoke Creek - met with increasing hostility from the Anishinabek, once the military left, Aitken abandoned his survey.<sup>169</sup> Once again, as with the 1787 meeting, no land was actually surrendered according to the Mississauga Anishinabek. In the eyes of the Crown, this confusion surrounding the 1787 purchase threatened the validity of the land surrender. Investigations conducted by the Lieutenant Governor of Upper Canada, John Graves Simcoe, in 1794 confirmed that the surrender was invalid.<sup>170</sup> Despite this finding the British continued their policy of settling this un-surrendered land.

In 1791 the *Constitution Act* was passed dividing Britain's northern colonies into Upper and Lower Canada, and allowing for lands to be granted to settlers in free and common socage.<sup>171</sup> This only served to increase demand for settlement lands. For eighteen years the colonial government tip-toed around their unlawful 1787 purchase, settling the Toronto area from Etobicoke Creek to Ashbridge's Bay, establishing the city of York (that would become Toronto), and temporarily establishing this city as the capital of Upper Canada. In 1805 the colonial government finally re-convened Crown representatives and the Mississauga Anishinabek in order to formally secure the area under question. This re-negotiation was likely influenced by 18 years (1787-1805) of mounting tensions between the Anishinabek and the British subjects who settled the improperly surrendered areas, and the Crown's growing fear that the invalidity of the surrender would be discovered by the Anishinabek.

As mentioned above, throughout all their actual treaty negotiations within the country north of the great lakes, the Mississauga Anishinabek had not surrendered their lands to the

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<sup>169</sup> Mississauga. p.26.

<sup>170</sup> Canada supra note 146, at p.22.

<sup>171</sup> Gates. p.24.

Crown for settlement. In the view of the Mississauga Anishinabek they were making these treaties in order to *share* the land with the Crown's subjects.<sup>172</sup> The settler subjects, as will be explored in the section below, had a different understanding of what these treaties meant. Following the 1787 unlawful surrender and settler attitudes toward them, the Anishinabek soon came to realize that the Crown was not being completely clear or truthful in their dealings with them. This led the Mississauga Anishinabek to turn to Joseph Brant, the Haudenosaunee leader who had proven skilful in negotiating with the British, for help in their dealings with the Crown.<sup>173</sup> With the aid of Brant, the Anishinabek gained a greater awareness of how to deal with the British and of the value of their lands, consequently demanded more for them.<sup>174</sup> This alliance led to many stalemates in treaty negotiations during this eighteen year period between the Crown and the Mississauga Anishinabek. For seven years between 1798 and 1805 no further purchases were made from the Anishinabek.<sup>175</sup>

This Brant-Anishinabek alliance scared the Crown. Not only had it become harder for the Crown to purchase new lands for settlement, but since Pontiac's Rebellion in 1763 the Crown feared that such alliances could lead to an indigenous rebellion. This fear was exacerbated by the number of indigenous peoples still present within the colony and their growing distrust of settler peoples. Adding to the Crown's fear was a guilty conscious. The Crown had been letting its subjects settle on and improve lands to which it knew it did not have proper title, and was planning to make these same lands the capital of the colony.<sup>176</sup> It is because of these fears that

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<sup>172</sup> Smith.p.24.

<sup>173</sup> Baskerville. p.56.

<sup>174</sup> Canada supra note 146, at p.27.

<sup>175</sup> Gates. p.50.

<sup>176</sup> Canada supra note 146, at p.22.

the colonial government implemented a hushed ‘divide and conquer’ policy<sup>177</sup> focused on breaking the alliance held between Brant and the Anishinabek.<sup>178</sup> The Crown’s policy was successful in ending this alliance two years prior to the 1805 negotiations, whereby the Anishinabek would formally surrender the lands under question within the 1787 treaty.

The Crown waited to re-open the Toronto purchase until they were in discussions with the Anishinabek for an additional provisional surrender, Treaty no.13a.<sup>179</sup> Prior to the 1805 meeting with the Mississauga Anishinabek, where both Treaty 13a and the second Toronto purchase were negotiated, two new Toronto deeds were created by the Crown. Each deed depicted a different western boundary for the lands surrendered in 1787. The first of these deeds established the western boundary according to the 1788 survey made by Aitkens, this likely means that the western boundary was depicted as Etobicoke Creek. The second deed established the western boundary according to what the Anishinabek had claimed they surrendered in 1787 during Aitkens’ survey, this likely means that the second deed’s western boundary was depicted as the Humber River.<sup>180</sup> The Deputy Superintendent of Indian Affairs at the time, William Claus, met with the Anishinabek in July of 1805 informing them that:

the exact limits of the 1787 purchase had not been adequately defined at the time of the original negotiations, and that he wished to ascertain their view as to the correct boundary, so that a new deed could be drafted and executed.<sup>181</sup>

Chief Quinepenon, acting as the spokesperson for the Anishinabek during this negotiation, told Claus that the Anishinabek were no longer certain what land their ancestors (who had since

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<sup>177</sup> For greater details regarding this policy, please see: Canada supra note 146, at p.28.

<sup>178</sup> Baskerville. p.57.

Smith. p.29.

<sup>179</sup> Mississauga. p.29.

Treaty 13a surrendered the lands west of the Toronto purchase along Lake Ontario to the Brant Tract at Burlington.

<sup>180</sup> Canada supra note 146, at p.29.

<sup>181</sup> Ibid. p.30.

passed away) had discussed surrendering in 1787. According to the Anishinabek Mississauga of the New Credit, Claus capitalized on their uncertainty regarding the 1787 negotiations. In 1805 the Anishinabek were never told the 1787 surrender was considered invalid by the Crown, and they were only shown the deed that placed the western boundary of lands surrendered at Etobicoke Creek.<sup>182</sup> In other words the Anishinabek were only told there was territorial uncertainty with the terms of the 1787 purchase, and they were only shown the Crown's desired deed - the one that depicted the farthest western boundary possible under the 1787 treaty.

Even though all parties understood the 1805 meeting to be for treaty negotiation there are still probable grounds to question the validity of the Toronto purchase therein. The Mississauga Anishinabek were placed in a position where they were not given a choice between consent and dissent of the newly drafted Toronto deed. Settlers had long since taken over their traditional lands and forced the Mississauga Anishinabek off these same lands – including territories that the Anishinabek had specifically reserved for their own use with the Crown. By 1805, therefore, in effect these lands were already taken from the Mississauga Anishinabek. The Anishinabek were never told that the 1787 surrender had been deemed invalid by the Crown, therefore, they were never given a chance to dissent the surrender on these grounds. The fact that Claus only provided the Anishinabek with a biased deed for the lands surrendered, serves to compound the position within which the Anishinabek were placed. Ultimately, it appears that the Toronto area was not truly settled by the British through treaty but through force and deception. By 1805 the Anishinabek who had been forced off their lands were in need of future security for the sustenance of their people.<sup>183</sup> This meant that the Anishinabek's negotiating position was

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<sup>182</sup> Canada supra note 146, at p.30

<sup>183</sup> By 1798 smallpox had killed one third of the Mississauga Anishinabek's population, a population that as late as 1730 had been roughly 1,500 strong. With their populations reduced from diseases that the settlers had brought to

weakened. They were primarily interested in securing reserves and protection from the Crown, rather than fair payment for the lands that had been *de facto* taken by the Crown in 1788.<sup>184</sup>

Ultimately, the Anishinabek were greeted with very few options but to agree to formally surrender the lands the Crown had previously taken by force.

By August of the same year the Mississauga Anishinabek agreed to confirm this deed for the Toronto Purchase. The finalized deed included a “detailed legal description of the boundaries of the surrendered parcel, which comprised some 250,880 acres of land, and which was made subject to the First Nation’s right to fish in the Etobicoke Creek.”<sup>185</sup> In payment for this confirmed purchase the Anishinabek received 10 shillings,<sup>186</sup> which definitely did not constitute fair payment. With this 1805 agreement the Crown ascertained its title to all shoreline north of Lake Ontario.

### **A Glimpse into the Roles of Settler Denizens within York’s Initial Settlement (1780-1805)**

From the initial settlement of Upper Canada in the 1780s settler denizens can be seen to have taken up roles as influential actors and petty sovereigns. In 1780, the first few Loyalists that Governor Haldimand settled by military outposts in the northern colony convinced him that these northern territories would be the preferred spot of settlement for other Loyalists coming north after the revolution. These original denizens suggested to Haldiamand that the southern reaches of the land that would become Upper Canada were preferable because the Loyalists were

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their lands and the continued aggressive encroachment of these same settlers on their traditional territories the Mississauga Anishinabek were in an increasingly weaker position to negotiate than they had previously been. Donald Smith. “The Dispossession of the Mississauga Indians: A Missing Chapter in the Early History of Upper Canada.” *Ontario History* 73.2. 67-87. p.40.

<sup>184</sup> Mississauga. p.29.

<sup>185</sup> Canada supra note 146, at p.30.

<sup>186</sup> Ibid.

interested in a farming rather than a fishing colony.<sup>187</sup> The mineral rich soils of these lands made this country viable for such agricultural pursuits. This request along, with the massive numbers of Loyalists flooding the northern colony of New France, contributed to the Crown's decision to settle this northern territory rather than leave it for military outposts and the fur trade.

In 1783 loyalist settlers were initially granted land based largely on military rank, and (following 1783) had to prove their loyalty to the British Crown in order to receive any grant.<sup>188</sup> This land granting system was based in seigneurial tenure and, therefore, subject to quit rents. By 1787, settlers (which by this time included non-Loyalist settlers) demanded that grants be given according to English common law and, therefore, be granted in free and common socage for all settlers free of quit rents.<sup>189</sup> With the implementation of the *Constitution Act, 1791*<sup>190</sup> the colony acceded to this demand formally establishing an Upper Canadian land granting system based in British common law. This change in land tenure demonstrates the continued influence settler denizens had upon their colonial government during this time of early settlement. The implementation of this denizen demand and the influx of settler subjects during these years would lead the Crown to acquire more lands from the Mississauga for denizen settlement. Through their demands for land grants in free and common socage, these early denizens indirectly contributed through their government to indigenous dispossession.

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<sup>187</sup> Gates. p.15.

<sup>188</sup> Ibid. pp.15, 18.

<sup>189</sup> Ibid. pp.22-3.

“Free and common socage was a form of traditional English land tenure governing land ownership and use. The expression refers to a type of free ownership of land (for example, lease rental and farm tenancy) based on common law customs. In Canada, it is to be distinguished from seigneurial tenure, which was abolished in 1854.”

“Archived – Canadian Confederation: Provinces and Territories Key Terms, Free and Common Socage.” *Library and Archives Canada*. Ottawa, 2 May 2005. Web. 3 Mar. 2014.

<sup>190</sup> *The Clergy Endowments (Canada) Act 1791*, 31 Geo 3 c. 31.

Following 1791, however, a settler subject had to prove that he was in a position to improve a plot of land before it was granted to him.<sup>191</sup> This requirement combined with the fact that land boards were plagued by delays in the processing of claims meant that a number of settler denizens were not in a position to wait for a grant to lands that might ultimately be refused by the board.<sup>192</sup> This latter policy encouraged squatting on indigenous and Crown lands. Those denizens who participated in squatting can be seen to be petty sovereigns. These denizens contributed to colonialism by infringing on indigenous territories, and taking from these lands things that were not theirs to take. These same denizens experienced a large degree of impunity because their presence was utilized by the Crown's representatives to encourage indigenous land surrenders. Squatters, specifically during the later Saugeen treaty negotiations of the 1830s, were cited as unstoppable encroachers of indigenous territory wherein the only protection the Crown could offer would be provided after land surrender and a re-location of the indigenous negotiators.<sup>193</sup> In this way squatters also served as state instruments – they were simultaneously directly and indirectly contributors to indigenous dispossession.

Even those denizens who abided by colonial settlement laws fulfil the role of petty sovereign. Settlers, who had been given plots of land by the Crown, erected fences around their properties and denied the Mississauga Anishinabek the right to cross their farm lands. This is true of both lawfully surrendered lands and lands within the Toronto area. During negotiations for or discussions about these territories, however, Crown representatives had promised the Anishinabek that settlers who would take up these lands would be much more hospitable toward

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<sup>191</sup> Gates, p.27.

<sup>192</sup> Ibid, p.91.

<sup>193</sup> Ibid, pp.189-91.



their indigenous neighbours.<sup>194</sup> This hospitality was of particular importance to the Mississauga Anishinabek as they had reserved themselves specific sites<sup>195</sup> within these territories, or (as within the Toronto area up until 1805) had not officially surrendered these territories and so expected to be able to freely use them alongside settler denizens. Denizen behaviour during this period represents an inconsistency between Crown promises and settler denizen action. It raises the questions of whether these original denizens were aware of treaty or settlement terms and realities, or if they just willingly ignored such terms and realities; and questions of whether these denizens saw themselves as members within the Upper Canada treaties, or merely innocent beneficiaries of these (legal and illegal) transactions. Either way these original denizens were acting as petty sovereigns. These denizens were acting of their own accord in ways that served to dispossess their indigenous neighbours and augment their own privilege. Denizens forced the Anishinabek off their traditional lands with virtual impunity. The Crown, at least for the better part of the late 18<sup>th</sup> century, re-acted with great indifference doing little to protect sites reserved within these townships for the Anishinabek and doing little to reprimand the actions of its settler subjects.<sup>196</sup> This indifference is particularly striking within the lands settled under the guise of the 1787 purchase, as these lands were not even lawfully being settled by denizens. This was a fact for which the Crown, at least after 1794, was aware.

The tensions between settlers and the Anishinabek became so bad that by the 1790s the Mississauga Anishinabek began to take matters into their own hands. For instance, in 1790 the Anishinabek stated that no one but the indigenous peoples of the territory were permitted to fish in the Credit River. As this was not a British decree the denizens settling within and around the

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<sup>194</sup> Smith, supra note , at p.27.

<sup>195</sup> These specific sites included camping spots along the lakes, burial grounds, and fisheries.

<sup>196</sup> Smith, supra note 1, at p.27.

township of York were quick to ignore this statement, and by 1804 denizens were taking so many salmon from and polluting the water within the Credit that fish were being discouraged from the waterway. This left the Mississauga along the Credit with a declining staple of their diet.<sup>197</sup> Overfishing and polluting of waters was not something reserved to the Credit River. During periods of heavy settlement, and even in terms of pollution today, this misuse of aquatic resources is seen within the Don and Humber Rivers and the great lakes. These rivers were once known for their abundance of landlocked salmon along with a large diversity of other fish.<sup>198</sup> These fish, as early as 1804, were beginning to disappear from the rivers and lakes due to denizen actions. While these acts of overfishing and pollution may have been condoned by colonial authorities it stands that in this context, yet again, denizens were acting as petty sovereigns. These denizens were ignoring Anishinabek orders; this ignorance was facilitated through their settler privilege. The denizens believed they did not have to listen to the Anishinabek at this time because they did not constitute, for the denizens, an authoritative voice. Since the colonial government had come into being and claimed sovereignty over lands within Upper Canada, the settler denizen believed that she or he only had to listen to the colonial government. In the mind of the denizen the Anishinabek did not constitute a sovereign power and could, therefore, be ignored. Since the colonial government did nothing to protect the Anishinabek in this issue of overfishing, the denizens acted through their diminished sovereign with impunity.

Tensions regarding overfishing were mild in comparison to the tensions and hostilities that arose due to homicidal denizen actions. As early as 1773 the Superintendent of Northern Indians, Sir William Johnson, recorded that there had been eighteen cases of settler denizens and

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<sup>197</sup> Baskerville. p.55.

<sup>198</sup> Charles Sauriol. *Remembering the Don*. Scarborough: Consolidated Amethyst Communications Inc., 1981. p.36.

British soldiers killing indigenous peoples within the northern colonies without being held accountable for their actions.<sup>199</sup> These acts continued into the 1790s within Upper Canada and most notably include the killing of Anishinabek chiefs Snake in 1792<sup>200</sup> and Wabikinine in 1796 by British soldiers.<sup>201</sup> In both cases, along with numbers of other cases as cited to by Johnson, the murderer was never punished for his actions. These homicidal acts are perhaps the most extreme case through which to see denizens as petty sovereigns, those who took lives and were never held accountable. This is suggestive of a broader theme within Butler's work – the ability of the petty sovereign to decide which lives are grieve-able, and who has worth.<sup>202</sup> Both denizen and state made grave contributions to colonialism here; the denizen through the act of killing, and the state through its decision not to punish the denizen. When the action of the denizen is combined with the (in)action of the state the two actors sought to diminish the deceaseds' worth. This is perhaps the strongest and most worrying form of indigenous subordination that can be achieved through colonialism.

In 1796 and 1797 the animosity between denizens and the Anishinabek had become so bad that colonial officials were worried about an indigenous uprising. As a result of denizen actions (refusal to share the land, overfishing and pollution, killing of Anishinabek) the Mississauga Anishinabek developed a deep distrust of denizens, and some Anishinabek began to aggressively re-act. While the different communities of Anishinabek rarely acted in concert some began accosting surveyors, threatening denizens, burning mills, and hunting cattle.<sup>203</sup> These reactions only gave the colonial government more need to worry about such an uprising,

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<sup>199</sup> Baskerville. p.55.

<sup>200</sup> Ibid. p.55.

<sup>201</sup> Smith, supra note 18. at p.36.

<sup>202</sup> Butler.

<sup>203</sup> Baskerville. p.55.

which was further exacerbated by the fact that the Anishinabek and Brant had formed an alliance following Wabikinine's death in 1796. Officials were especially worried about an attack on the township of York. Between 1796 and 1797 the township of York only had 240 settlers. While there were 435 more settlers in neighbouring settlements, York was cut off from the largest settlements in Upper Canada like Niagara.<sup>204</sup> This made York, the future site of the colony's capital, particularly weak should such an uprising occur. This was when the colonial government initiated its divide and conquer policy as previously mentioned in the section above.

Settlers continued to act as petty sovereigns throughout this period. In 1797 for instance the looting of indigenous burial sites by denizens had become a huge problem. Perhaps due to the Crown's unease during this period, colonial authorities actually responded to this looting. In this same year the government issued a proclamation protecting these sites.<sup>205</sup> Finally, there was an instance of the colonial government responding to its denizens' petty sovereign actions. In the grander scheme of things, however, this one moment where the government attempted to reign in its subjects to protect indigenous interests appears negligible.

In fact it can be argued that the Crown used settler denizens within the Toronto area to force the surrender of the illegally settled lands. For the period between 1787 and 1805 these denizens were illegally settled by the Crown. These denizens were no squatters by virtue of their own decisions and actions and, therefore, cannot be seen to have acted as petty sovereigns in this instance. These subjects, however, were being heavily relied upon as state instruments for forced settlement. There are a myriad of other (less evident) ways through which these denizens contributed to colonial processes during the early settlement of the Toronto area. As briefly

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<sup>204</sup> Smith, supra note 183, at p.37.

<sup>205</sup> Smith, supra note 1, at p.31.

explored above this included how original denizens acted both as influential actors over the colonial government and as petty sovereigns that experienced impunity at the hands of the same government. While denizen actions ranged from the vocalization of desires for land to the non liable murdering of indigenous peoples, this brief exploration has begun to show that far from being innocent beneficiaries, settler denizens were highly complicit throughout early colonial processes within the settlement of York and Upper Canada.

### **East York's Place within this Narrative (1794 and Beyond)**

Growing up in East York the lower Don River and its tributary, Taylor-Massey Creek, were important fixtures in my childhood. From the time I was very young I would cycle alongside the creek in the summer, cross country ski alongside the river in the winter, and paint yellow fish at sewer grates throughout the community during the spring to raise awareness of individuals' impact on the state of pollution within both the river and its tributary. I did not find out until a few years ago that the Don River is the reason why East York was settled, and that the same river played an integral role in the early planning and development of the city of Toronto.

While the Don River was one of the original portages used for the fur trade, it was not a route well known to the French or British. Instead it was a portage used primarily by indigenous peoples who participated in the trade like the Mississauga Anishinabek.<sup>206</sup> The traditional name given to the river is *wonscotenoch* referring to burnt lands that would have surrounded the river.<sup>207</sup> While its significance is unclear, this name likely refers to traditional practices of forest management within the Don Valley (the valley through which the river flows) wherein old

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<sup>206</sup> Jay Myers. *The Great Canadian Road*. Toronto: Red Rock Publishing Company Ltd., 1977. pp.19-20.

<sup>207</sup> Sauriol. p.141.

growth would be burnt to allow for renewal of the forest.<sup>208</sup> When John Graves Simcoe came along this river during his first canvassing of the area, as a site for the capital of Upper Canada in 1793, he proposed that the major road running through York township should (roughly) pursue the direction of the Don River. This proposal stood in contrast to previous suggestions for a main road to run between the Humber and Holland Rivers. Simcoe's proposal was, however, the one accepted and is the main street running through the city today – Yonge Street.<sup>209</sup> The Don River was, therefore, important for the founding of Toronto and the surrounding area. Not only did the river provide an important route to Georgian Bay during the fur trade thereby encouraging settlement, but also, because of the river's initial importance the main artery of the city was established mirroring the river's direction.

In 1796 the first mill within all of York township (Skinner's grist mill) was established along the lower Don River.<sup>210</sup> It was the creation of this mill that led to the development of the eastern York area. In order to enable greater ease of access to the mill for those who lived in York proper, now considered old town Toronto within the downtown core,<sup>211</sup> the Don Mills Road was established. Following the development of Skinner's mill and Don Mills Road a number of other industries were established along the lower Don, this includes the Helliwell's brewery (rye-whiskey) and the Taylor's farm and pressed brick works<sup>212</sup> the latter of which still stands. Original settlement of the area brought in farming and industry families like the Taylors (who settled the area that became East York) and the Leas (who settled the area that became Leaside), whose names are still prominent within place-names throughout the area today. East

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<sup>208</sup> Ian Davidson-Hunt and Filbert Berkes. "Learning as You Journey: Anishinaabe Perception of Social-Ecological Environments and Adaptive Learning. *Conservation Ecology*. 8.1.5. pp.9-10.

<sup>209</sup> Myers. p.20.

<sup>210</sup> Anne Guthrie. *Don Valley Legacy - A Pioneer History*. Erin: Boston Mills Press, 1986. p.13

<sup>211</sup> *Old Town Toronto*. Saint Lawrence Market Business Improvement Area, 2011. Web. 4 Mar. 2014.

<sup>212</sup> Sauriol. p.79.

York remained a rural area well into the 19<sup>th</sup> century. It was not until 1848 when Dawes Road became a public road that East York began to become a more urbanized settlement within York.<sup>213</sup> It was the establishment of industry along the lower Don River that led to both the rural and urban settlement of the area and the eventual creation of the separate township of East York in 1924.<sup>214</sup>

In 1850, before its separation from York, this area had become an important rural community whose industries along the river were closely tied to the city core's development.<sup>215</sup> Sadly this development led to the paving over of many of the Don River's tributaries throughout the city.<sup>216</sup> One such tributary that was buried under the city is Taddle Creek that continues to run under Philosopher's Walk, a pathway between the Royal Ontario Museum, the Royal Conservatory of Music, Trinity College, and the University of Toronto's Music and Law Faculties. As an undergraduate at the university I would walk this path daily, on a rainy day if I listened closely enough I could still hear the creek trickle by on the east side of the path. While the township was initially settled because of and in harmony with the Don River it was not long until settlers were altering its existence through paving over its tributaries and through polluting the areas still open at the surface.<sup>217</sup>

The lands of East York, up until Woodbine Avenue, were included in the Toronto Purchase. The house that I grew up in is mere feet within this boundary. The settlement of the place I call my hometown, therefore, is premised on the dispossession of the Mississauga Anishinabek – specifically those who would have camped by the Don River during the summer

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<sup>213</sup>Davidson . p.30.

<sup>214</sup> Ibid. p.43.

<sup>215</sup> Guthrie. p.107.

<sup>216</sup> Eric Wilfrid.Hounsom. *Toronto in 1810*. Toronto: McCorquodale and Blades Printers Ltd., 1970. p. 7.

<sup>217</sup> By 1900 it was common to see human excrement floating in the Don River.

Peter Gorrie. "Canoeing for a cleaner Don." *Toronto Star* 05 May 2008:Web. 14 Oct 2009.

months. While denizens were slow to settle this specific area they eventually did, providing important resources for the development of York Township, and eventually changing the indigenous lands they had settled.

These are narratives I did not grow up hearing. From school, community, or home I did not hear about the indigenous history of the land, the Toronto Purchase, the dispossession of the Mississauga Anishinabek, or the importance of the Don River in settling both East York and the broader Toronto area. Until I went to university I did not even know that indigenous peoples lived in Toronto. These are narratives every East Yorker, every Torontonians should grow up hearing because they help to set a foundation for a settler's understanding of his or her contemporary identity as a denizen. To begin to understand these historic narratives that led to the settlement of the Toronto area, and to begin to understand the roles that denizens played within these narratives establishes the foundation through which contemporary denizens (like myself) can begin to understand their own roles within ongoing colonial processes in this locality today.

### **A Divergent State Narrative: Indigenizing Township and Denizen**

The settlement narrative I was provided as a child was specific to East York. This narrative characterized the establishment of the area as a pioneer endeavour. When I was seven I even went to pioneer camp at Todmorden Mills, the original site of the Skinner's lumber mill and the Helliwell's brewery, to learn how the original settlers of the area lived. This narrative was further ingrained into my young mind by school trips to the century school house where we were encouraged to believe that East York's history began at the point of European settlement and that there had been no one else in the area prior to the pioneers.



Research completed for this thesis has shown that the dominant settlement narrative given to the broader Toronto area is of a similar nature to the one given within East York. As Victoria Freeman has argued, the semi-centennial (1884) of Toronto's incorporation served as a moment of re-storying Toronto's history. This celebration established the 1834 Act of Incorporation as the "symbolic deed of Toronto's modernity".<sup>218</sup> This meant that the 1787 and 1805 surrenders and all their challenges were virtually erased from the city's collective memory. The semi-centennial celebrated British tradition and imperialism, and it incorporated the centennial celebration of the arrival of the Loyalists.<sup>219</sup> In this way celebrations sought to cement a British civic identity throughout the city. And yet, this event celebrated the city that had re-established its indigenous-given name "Toronto".<sup>220</sup> Not only did this re-storying of the city's settlement narrative serve to erase the area's indigenous history, it sought to indigenize denizen and city to this area.

As seen in the introduction, this erasing to replace is an important mechanism within settler colonialism. The settler seeks justification for his or her presence on indigenous lands. In seeking this justification the settler attempts to erase or neutralize indigenous presence on the same lands that the denizen is looking to settle. If the settler can erase or neutralize the indigenous, he or she then becomes the indigenous - the first on the land he or she has settled. This is exactly what was attempted, whether consciously or not, during Toronto's semi-centennial celebration. The settler city virtually erased the connection to the indigenous (the Mississauga Anishinabek, and the 1787 and 1805 purchases) from the city's founding (and ongoing) narrative. All that was left after this erasure was the city's British history which then

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<sup>218</sup> Victoria Freeman. "'Toronto Has No History!' Indigeneity, Settler Colonialism, and Historical Memory in Canada's Largest City." *Urban History Review*. 38.2. p. 21.

<sup>219</sup> Ibid. p.22.

<sup>220</sup> Ibid.

became its “indigenous” history because there was no longer anything within the city’s collective memory that had occurred before. The re-storying of the city goes beyond even this, however, because the city (re)adopted the area’s indigenous place-name “Toronto”. The incorporation of indigenous names or symbols like this with the erasure of indigenous settlement narratives within the area only served the process of settler indigenization to place. Such isolated incorporations can actually serve to strengthen settler denizens’ sense of indigeneity.

The ability of denizen and state to erase or neutralize indigenous narratives from mainstream settlement narratives without experiencing any significant opposition is a form of settler privilege. The non liable erasure of the indigenous from these narratives has been a settler privilege acted upon throughout Canadian history, and specifically throughout the history of Toronto and East York. In 1998 when Toronto and its boroughs decided to re-imagine their communities, without acknowledging or considering the area’s indigenous narratives, both government and denizens (who participated) acted on this privilege. Had competing narratives of settlement been cultivated throughout these communities the discussion around amalgamation likely would have been a very different one. Perhaps it would have included a discussion of recognizing settler privilege, or of recognizing and re-visiting the 1787 and 18-05 settlement stories. Instead it merely upheld the silences that have been sustained since the city’s semi-centennial in 1884 – it upheld settler privilege.

### ***Finding a Treaty Citizenship within the Toronto Area...***

According the Anishinabek Mississauga of the New Credit, in 1787 there was no treaty or purchase made between the Anishinabek and the Crown for the Toronto area lands. Yet following 1787, the Crown (at least initially) claimed that a treaty had been made and that the

lands along the north shore of Lake Ontario from Etobicoke to Ashbridge's Bay had been surrendered to the Crown. By 1794, however, the Crown knew this surrender was invalid and yet the Crown continued to settle the Toronto area. In 1805 these lands were formally surrendered.

Does the Toronto area constitute a site for treaty citizenship? It can be argued that the formal surrender of the Toronto area in 1805 does not constitute a treaty. Following from this argument, Toronto area cannot be clearly identified as a *current* site but could (and should) be a *possible* site for treaty citizenship. As explored above, evidence suggests that the Toronto area was settled through force and deception indicating that the formalized deed signed during the 1805 treaty negotiations was a formality for an act that had already been completed. There was no original treaty negotiated prior to denizen settlement. Toronto was settled by denizens before its lands were legally surrendered to the Crown. Furthermore, the Crown did not act honourably, as per its duty under the *Royal Proclamation*, toward its indigenous allies in 1787 or 1805. In 1805 the Crown continued to deceive the Anishinabek by only showing them one deed, the deed favouring the Crown's position for surrendered lands. This deception occurred at the time of negotiations not at the time of implementation. Since the Crown deceived the Anishinabek during negotiations it can be argued that there was no meeting of the minds<sup>221</sup> between parties – there was no agreement based on informed consent. I, therefore, question whether or not the formal surrender of the Toronto area in 1805 can be referred to as a treaty. In all honestly it reads much more like a land surrender contract, with the Crown acting as a dishonest party, that

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<sup>221</sup> In using the term “meeting of the minds” here I am not looking to analogize common law contract to treaty. The conception of treaty I seek to employ throughout my work is one of a living agreement, which is constantly revisited by members of that treaty, their descendants, and all those who live within a specific treaty territory. By employing the term “meeting of the minds” here I mean to signify that the initial agreement must be formulated within a context where all parties know the facts and can provide informed consent to the agreement.

was preceded by years of unlawful and forced settlement that gave the Anishinabek few other options than to formally acquiesce to the surrender by 1805.

Does an area require a formal treaty in order to be considered a site of treaty citizenship? No. Having a formal treaty could certainly make realizing a treaty citizenship easier, but it is not a necessary pre-condition. If current settler denizens of the Toronto area identify, explore, and discuss the area's competing narratives of settlement (which includes the 1787 and 1805 surrenders) they can begin to formulate a fuller narrative of how their own settlement within the area implicates them within colonialism. If, through developing this fuller narrative, denizens can begin to recognize a responsibility to acknowledge these competing narratives of settlement and a responsibility (as previously mentioned in chapter 2) to act as treaty partners through principles like the terms of treaty engagement (identified through Henderson's work) then a treaty citizenship can be established through informal means. While it may be formalized through future agreements or ceremonies, and perhaps should be, building up to this can begin slowly and organically. It rests with the settler denizens of the area to begin such a process.

### ***Contemporary Claims and an Unexplored Treaty Citizenship***

When I asked my immediate family if they knew whether or not they were living (in East York) on treaty land they either did not know or only had a vague awareness that there likely was a treaty in the area.<sup>222</sup> These responses did not surprise me, I did not know about Toronto's settlement narrative until I began conducting research for this thesis. While I assumed Toronto was subject to some sort of original agreement between indigenous and settler peoples, prior to this research I did not know anything specific. Nor did I know that it was the Mississauga

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<sup>222</sup> Justin LeBlanc. Personal Interview. 6 Jan. 2014.  
Kathie LeBlanc. Personal Interview. 6 Jan. 2014.  
Roger LeBlanc. Personal Interview. 6. Jan. 2014.

Anishinabek who were dispossessed of their lands in order for Britain to settle the Toronto area. I was, therefore, not surprised that my family did not know these histories. It would not surprise me either if many of the people living within the Toronto area are also unaware of these histories.

These original settlement narratives within the Toronto area have been silenced since at least 1884 – if they were ever really recognized by denizens is uncertain. As a result of this silence, contemporary denizens living within the Toronto area are not provided the venue or encouraged to explore their roles within and connection to these settlement stories. This has meant that the potential for a treaty citizenship to be established within the area has not been identified or explored. I also asked members of my family: if you are living on lands that fall under a treaty are you a member of that treaty? All initial responses to this were no - a treaty is an agreement between indigenous peoples and the state and within that agreement there is no room for others.<sup>223</sup> Again this is not a shocking response. This was how treaties were characterized for me during the brief moments I got to interact with them through my own public schooling. I have recently only come to realize denizens might re-consider the ways through which these agreements are discussed. They are not historic agreements made only for the sake of the Crown and indigenous peoples, these treaties are ongoing agreements that influence and include a multiplicity of actors which necessarily incorporates the settler denizen and citizen alike. In fact, re-visiting these alternative settlement narratives in order to formulate a site of treaty citizenship will rest with denizens who want to recognize their treaty roles.

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<sup>223</sup> Justin LeBlanc. Personal Interview.  
Kathie LeBlanc. Personal Interview.  
Roger LeBlanc. Personal Interview.

In 1986 the Mississauga of the New Credit initiated a specific claim against the Crown for a breach of fiduciary duty owed the Anishinabek during the 1805 Toronto purchase. There were three components of the 1805 negotiations cited by the Mississauga Anishinabek that pertained to this breach of duty. First of all, the Crown never disclosed that the 1787 purchase was invalid; secondly, the Crown did not disclose the discrepancies between the deed presented to the Anishinabek in 1805 and the lands discussed in 1787; and finally, the Anishinabek were not informed that the Toronto islands were part of the surrender.<sup>224</sup> Their claim was not settled until 2010, when the Mississauga of the New Credit and the Crown signed a \$145 million claim settlement.<sup>225</sup> While this settlement was hailed as an historic victory, it contains a number of problematic components. Many of these components arise from the fact that this settlement was attained through the specific claims process.

After Treaty 11 (1921) the Crown stopped negotiating treaties with indigenous peoples within Canada. Following the Supreme Court's *Calder*<sup>226</sup> decision in 1973, however, the Crown had a change of heart regarding its no treaty policy and initiated its specific and comprehensive claims policies. The comprehensive process was established to deal with indigenous claims to land wherein no treaties had been previously made and where claims to aboriginal title had not yet been addressed. This process is perhaps the more well-known of the two and is commonly referred to as the modern treaty process. Alternatively, the specific claims process applies to indigenous claims within areas that are already subject to treaties. Specifically this latter process

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<sup>224</sup> Canada, supra note 146, at p.2.

<sup>225</sup> "Canada and the Mississaugas of the New Credit First Nation Celebrate Historic Claim Settlement." *Aboriginal Affairs and Northern Development Canada*. AANDC, 14 Dec. 2010. Web. 5 Mar. 2014.

<sup>226</sup> *Calder v. B.C. (Attorney General)* [1973] S.C.R. 313, [1973] 4 W.W.R. 1

is for claims that relate to the administration of land and other assets, or to the non-fulfilment of historic treaties.<sup>227</sup>

While the Ontario government has made improvements to its own indigenous-focused policies over the last couple of years,<sup>228</sup> the federally initiated and regulated specific claims process has not followed suit. While contemporary Ontario policies may not fully embrace a conception of treaties as living documents that require constant care and revisiting they are at least beginning down a path that might lead to such a realization. The same cannot be said for specific claims process which has not been substantively reformed since its creation in 1973. Under the specific claims process, treaties are perceived to be finalized agreements. The Crown is willing to look back at these documents in the case that there has been a discrepancy or issue, but the Crown is only serving to help finalize any confusion regarding these historic agreements. Once the process has been “completed”, once parties have “gone back” to address “past issues”, and once a settlement has been reached participants are encouraged to believe that all obligations have been fulfilled.

In this way the specific claims process, the only one of the two process the government recognizes as applying within the province,<sup>229</sup> serves to discourage identifying any (potential) sites of treaty citizenship. Since the specific claims process conceptualizes treaty as a finalized contract between the Crown and indigenous peoples there is no room for treaty citizens to engage in their agreement, to deliberate the treaty’s content and meaning, to re-visit its terms, and to establish meaningful relationship between all treaty members. Instead, under the Crown’s

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<sup>227</sup> “Land Claims.” *Aboriginal Affairs and Northern Development Canada*. AANDC, 15 Sept. 2010. Web. 7 Mar. 2014.

<sup>228</sup> Examples of positive policy change here include: the *Ontario First Nations, Métis, and Inuit Education Policy Framework* (2007), and Ontario’s *New Relationship Fund* (2008).

<sup>229</sup> David T. McNab. “Aboriginal Land Claims in Ontario.” *Aboriginal Land Claims in Canada*. Ed. Ken Coates. Mississauga: Copp Clark Pitman Ltd., 1992. p.77.

interpretation of treaty, members are empowered to be ignorant of their treaty citizenship and the relationships that exist therein. It is because this process conceptualizes treaty as a finalized agreement that it thwarts any recognition of a treaty citizenship that can only flow from a conception of treaty as a living document.

Furthermore, Ontario's exclusive reliance on the specific claims process means that in order to pursue their claim against the Crown the Mississauga Anishinabek *had* to recognize the 1805 treaty as valid.<sup>230</sup> This is because the specific claims process only deals with claims that arise due to past grievances of indigenous peoples under historic treaties or treaty administration. A claim, therefore, must be based within an historic treaty. If the Mississauga Anishinabek wanted to question the validity of both the 1787 and 1805 surrenders they could not have pursued a specific claim. Regardless of whether or not, ideally, the Mississauga Anishinabek would have questioned the validity of both treaties this process places huge limits on the kinds of claims that can be made by indigenous peoples living within Ontario.

The framing of the specific claims process, therefore, is one of the ways through which the Mississauga settlement's victory can be questioned. What was actually gained through this process? The Mississauga Anishinabek were financially compensated for the historic wrongs inflicted upon them during the 1805 negotiations to formally surrender the Toronto area. In order to do this the Anishinabek had to recognize the 1805 treaty as valid. It remains unclear, beyond financial compensation, what has actually been gained through the specific claims process for the Mississauga Anishinabek of the New Credit. It does not appear that this settlement encouraged denizens within the Toronto area to embrace this indigenous settlement narrative within mainstream narratives of Toronto's settlement. Ultimately, if denizens want to

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<sup>230</sup> Canada, *supra* note 146, at p.3.



begin exploring their treaty citizenship this settlement cannot be seen as a final agreement or as a final reconciliation of wrongs.

### ***Looking to Place the Personal and Familial within this Broader Narrative***

In beginning to explore my settlement stories I have started with investigating settlement stories that concern the place I was born and raised. In no way does what I have presented above represent my entire collection of settlement stories. What has been explored above is actually a relatively impersonal and historical account of the settlement of the Toronto area. This is a baby step that I have taken toward decolonizing self, toward recognizing and embracing a treaty citizenship, toward recognizing my denizen-ness so that I may one day achieve a citizen-ness. I have been deeply unsettled by this initial exploration. There are still many narratives I have to wend to the one investigated above before I can fully visualize my role within colonialism. These additional narratives will largely be the personal and familial narratives that are both historic and contemporary, which serve to place me within multiple colonial narratives throughout the country.

My roles within colonialism travel far beyond the place-based narrative offered above. It is important, however, to explore these place-based narratives first for they are the first sites of colonialism, our first narratives. The Toronto narrative represents only one of my own place-based narratives; I still need to explore place-based narratives for the sites my ancestors first settled and the place-based narratives of the places I have lived since Toronto such as Victoria, British Columbia. In addition to exploring these narratives there are also the less tangibly-based narratives that are linked to sites of settler privilege beyond the geo-political.

Neither my mother's nor my father's family originally settled within the Toronto area. My mother's family did not arrive in the area until the early 1900s,<sup>231</sup> and my father did not arrive until the 1970s.<sup>232</sup> My families were not participant denizens within the specific historical narrative I weaved above. This does not mean that they are not responsible in one way or another to such a narrative and the privileges it has provided them, or that they were not participant denizens within other historical narratives. It does not mean that I am any less responsible regarding how I profit from these same narratives and their privileges. While these historic narratives depict events they also depict processes, specifically colonial processes, that are still going on today and for which I play a role. To understand these historical narratives is to understand where and how these contemporary processes originated.

In 1970 my father was the first (and only) of his family to have settled in the Toronto (specifically East York) area.<sup>233</sup> My mother's family is originally from the United Kingdom. Her father's parents emigrated from Ireland to Boston in the early 1900s before coming up to Canada in the 1920s when they settled in the Toronto area. Less is known about my grandmother's side other than there's British, Flemish, and French-Canadian ancestry.<sup>234</sup> Clearly, I have some investigating to do. My father's side is French-Canadian through and through. One of my first known relatives to have come to Canada (then New France) on my father's side was Catherine Marchand (married Archambault) who was born in Normandy before 1644 and was married in Montreal in 1659.<sup>235</sup> Needless to say Catherine was an original French

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<sup>231</sup> Kathie LeBlanc. Personal Interview.

<sup>232</sup> Roger LeBlanc. Personal Interview.

<sup>233</sup> Ibid.

<sup>234</sup> Kathie LeBlanc. Personal Interview.

<sup>235</sup> Roger LeBlanc. Personal Interview.

settler and either a filles du roi or a filles de marier<sup>236</sup> – I have not yet been able to confirm one or the other as I have conflicting information. Obviously I have a considerable amount of research to complete on both my mother's and my father's familial settlement stories - how my families are implicated within colonialism in Canada and what this means for my own roles within colonial processes today.

I chose to begin this journey by exploring the settlement of my hometown. Through this process I came to understand my place of privilege within the dominant narratives surrounding the settlement of Toronto. One such point of privilege occurs through the ignorance of indigenous settlement narratives which enable denizens to re-imagine community (through things like amalgamation) without recognizing or exploring stories of indigenous dispossession and subordination. I am confident that future investigations I complete will lead me to recognize additional places of privilege that both my family and I have benefited from and acted upon within our settlement narratives. While considerably more research needs to be completed regarding how a settler denizen can become a settler citizen, research I hope to complete through future graduate studies, exploring our roles within and the sites of privilege we enjoy within these settlement narratives is a necessary step toward reaching our treaty citizenships.

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<sup>236</sup> Both filles du roi and filles a marier were sent over to New France in the mid-1600s in order to help populate a straggling French population within the settlement of New France. The filles du roi were state sponsored brides and the filles de marier were church sponsored brides.

## **CONCLUSION AND PROSPECTIVE: IDENTIFYING THE SETTLER DENIZEN FOR THE SETTLER CITIZEN OF TOMORROW**

This thesis set out to identify how settler denizens contribute to colonialism within Canada. This is a necessary step in the move toward decolonization. Settler denizens have to first know how they influence colonial processes before they can understand how to influence de-colonial processes. In order to identify the roles that denizens play within colonialism, however, it is important to first be able to identify the settler denizen. The settler denizen is any non-indigenous Canadian who does not recognize their settlement stories and the privileges that flow from them, their treaty citizenship, or what justifies their presence on the lands they inhabit. It does not matter whether one is a first or tenth generation Canadian citizen, one's identity as a settler denizen is a function of his or her integration within colonial processes and his or her ignorance of this integration. Once denizens begin to explore their settlement narratives, the roles they play therein, and the privileges they enjoy by virtue of these roles they can begin to understand the processes they are part of that make them contributors within colonialism. Once denizens recognize how they are contributing to colonialism they can step back and envision how they might re-formulate these roles and privileges in a positive way so that they can stop contributing to colonialism and instead begin contributing to decolonization as settler citizens. As I realized in beginning to explore my own settlement stories this is a long process. Coming to know all one's settlement stories and all of one's connections to and roles within colonial processes is going to take time and dedication. Settlers can help each other with these explorations. I have already helped others who live in the Toronto area by providing one such settlement narrative that can be taken and moulded within another's settlement narratives.

Once denizens, en masse, have begun to personally decolonize by identifying and exploring their settlement stories and roles, alongside indigenous peoples they can begin to

collectively recognize and explore sites of treaty citizenship. By re-visiting treaties, or through acting informally as treaty partners, non-indigenous and settler peoples can begin to collectively decolonize on the civic scale. Once this collective decolonization has begun to occur both indigenous and settler peoples can demand de-colonial change from the state. This broader decolonization, however, begins with individual settler denizens identifying and exploring their stories of settlement.

The current impetus to decolonize rests largely with settler people. By and large indigenous peoples within the country are already there, settlers have yet to meet them. Denizens must first recognize the need for change and the desire for change before they can begin down this path that will ultimately lead them to their treaty citizenships and to proper relations with their indigenous neighbours. This path is not one that will be encouraged by the state. To date, the state has actively discouraged denizens from recognizing their roles within colonial and de-colonial processes; a discouragement that has been readily embraced by the settler population. The power to disrupt this status quo rests with settler denizens today.

One day I would like to be proud of my country again. I would like to be able to travel through this country and see more than its beautiful scenery, to see a beautiful country filled with the peace and tolerance it currently claims to have but fails to uphold. I want to make sure that my children and my grandchildren do not feel like that girl in my fourth year class – white kids floating around the country. I want them to know and understand their histories, the realities that they face as settler peoples within this country, and their relationships to treaties and indigenous peoples and lands. I want them to be able to have a strong sense of self as settler citizens, and a great love and reverence for a country that might finally just get it right. In order for this to be a

reality, current settler denizens have to stand up and demand more from themselves, their society, and their state.

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