

COLONIAL CARCERality AND INTERNATIONAL RELATIONS:  
IMPRISONMENT, CARCERAL SPACE, AND SETTLER COLONIAL  
GOVERNANCE IN CANADA

By

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## Abstract

This dissertation explores the importance of colonial carcerality to International Relations and Canadian politics. I argue that within Canada, practices of imprisonment and the production of carceral space are a foundational method of settler colonial governance because of the ways they are utilized to reorganize and reconstitute the relationships between bodies and land through coercion, non-consensual inclusion and the use of force. In this project I examine the Treaties and early agreements between Indigenous and European nations, pre-Confederation law and policy, legislative and institutional arrangements and practices during early stages of state formation and capitalist expansion, and contemporary claims of “reconciliation,” alongside the ongoing resistance by Indigenous peoples across Turtle Island. I argue that Canada employs carcerality as a strategy of assimilation, dispossession and genocide through practices of criminalization, punishment and containment of bodies and lands. Through this analysis I demonstrate the foundational role of carcerality to historical and contemporary expressions of Canadian governance within empire, by arguing land as indispensable to understanding the utility of imprisonment and carceral space to extending the settler colonial project.

In particular, in this dissertation I focus on demonstrating the relationships between historical and contemporary logics, institutions, and everyday practices of imprisonment and carcerality, and the role they play in the reproduction and maintenance of settler colonial governance within the Canadian context. The central contribution I make in this project is the concept of *colonial carcerality*, which I argue is a governance strategy that relies on inflicting ongoing harm to land, and to Indigenous, gender non-conforming and poor people of colour through criminalization. Drawing on the concept of colonial carcerality provides a framework to understand land as integral to the production of carceral space through the racialized, gendered, sexualized and classed hierarchies that make Canada possible as a settler state within empire. I show how that the criminalization of Indigenous persons through relationships to land occurs alongside the production of settler innocence, and that a carceral apparatus is produced through the preservation white heteropatriarchy alongside the subjugation of land. Drawing from the contributions of Indigenous resurgence and Indigenous feminist literature, this concept provides a theorization of carceral space beyond governance that highlights ongoing harm to land, waters and other living beings as a condition of possibility for carcerality within settler colonialism. It further draws from these insights to begin to imagine possibilities for restorative justice that value the life of all living beings as an entry point into understanding decolonial abolition within the settler colony.

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strive to undo colonial power dynamics in our relationships and collective political work. This project has been informed by our conversations and the time we've spent together reflecting on how white supremacy and heteropatriarchy are being reproduced in our Rows. I especially thank you for prompting me to reflect on how I, as a white settler, can better listen, respect and uphold the voices and knowledge of Indigenous women and Two-Spirit peoples. This project is indebted to this learning.

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Any errors in this project are my own.

This project is dedicated to my mother, Jurate Foran (Nov. 24, 1954 – May 2, 2015). For your love and care, even when you couldn't protect me. To our continued journeys.

"She'd always been there  
occupying the same room.  
It was only when I looked  
at the edges of things  
my eyes going wide watering,  
objects blurring.  
Where before there'd only been empty space  
I sensed layers and layers,  
felt the air in the room thicken.  
Behind my eyelids a white flash  
a thin noise.  
That's when I could see her."  
Gloria Anzaldúa, *Interface*, 1987, p. 148

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## **Introduction: Locating Imprisonment and Settler Colonialism in International Relations**

“To read mnemonically is to connect the violence and genocides of colonization to cultural productions and political movements in order to disrupt the elisions of multicultural liberal democracy that seek to rationalize the originary historical traumas that birthed settler colonialism through inclusion. Such a reading practice understands indigeneity as radical alterity and uses remembrance as a means through which to read counter to the stories that empire tells itself.” Byrd, 2011, *The Transit of Empire*, p. xii-xiii

### Situating the Research Problem

The prison and prisoner have been marked with a conspicuous level of presence and absence in the discipline of International Relations (IR). This curious level of visibility and invisibility also marks discussions of the prison system generally speaking. In her book, *Are Prisons Obsolete?* Angela Davis (2003) argues the prison is both hyper visible and glaringly absent in popular consciousness. According to Ruth Wilson Gilmore (2008), prison is a remembered and forgotten place. As such, it should come as no surprise that IR shares what I would call a similar pattern of anxious and selective intrigue and blatant bracketing—a move that has the effect of turning the prison system as either an idea or site of analysis into an ideological and material dumping ground for so many of our worst fears and insecurities. Besides, the margin is where prisons and their inhabitants reside, do they not? That may be true if you are among the privileged who have never experienced prison or the criminal justice system as everyday institutions. Systems of imprisonment and confinement no matter the circumstances tell us that our freedom is limited and conditional at best, and arbitrary, discriminatory and murderous at worst. Systems of imprisonment have done a great deal to limit our political and philosophical imaginations of what a more just society might look like.



My own relationship to prison and punishment more broadly is something I would describe as infuriating, hurtful, exhausting, tedious and frustrating. I have never been detained or charged, however I have relationships with people who have been impacted in a variety of ways by the criminal justice system as perpetrators and survivors, and as family members and loved ones who have needed to navigate prison from the outside. I live down the street from the Hamilton Wentworth Detention Centre,<sup>1</sup> an institution notorious for harm to inmates and deaths in custody. I have also spent time in local correctional facilities in various capacities—sometimes as a friend and colleague, sometimes as a visitor, and sometimes as a researcher—but always as an ‘outsider.’<sup>2</sup> I have experienced how people can perpetuate harm because they have experienced harm, sometimes as a result of the intergenerational legacy of residential schools, colonization and criminalization. I have also watched people around me be arrested and detained for protecting their land. Collectively these experiences shape how I come to this project.<sup>3</sup>

Interestingly, not unlike practices of imprisonment, settler colonialism has remained under-examined in IR. Even in light of a substantial and growing body of Postcolonial scholarship that has sought to re-center imperial and colonial relations in the creation of the international (Agathangelou & Ling, 1997; 2004; Chowdhry & Nair, 2002; Rai, 2002; Razack, 2004; Agathangelou, 2004; Inayatullah & Blaney, 2004; Beier, 2005; Ong, 2006; Shilliam, 2011; Sajed, 2013; Seth, 2013). As a settler in solidarity with land

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<sup>1</sup> The Hamilton Wentworth Detention Centre, commonly referred to as ‘The Barton Jail,’ is a maximum-security remand center under provincial jurisdiction. It is often overcrowded, holding approximately 500 people. The majority of those incarcerated there have not been convicted of any crime.

<sup>2</sup> The term ‘outsider’ in this context refers to someone who is not or has not been detained, incarcerated, or worked as an employee of a correctional institution.

<sup>3</sup> I discuss my positionality in more detail in Chapter 2.

defense struggles occurring at *Kanonhstaton*, ‘The Protected Place’ (formerly known as Douglas Creek Estates), I joined longstanding efforts by members of Six Nations of the Grand River and their allies to physically stop housing development on Six Nations territory granted through the Haldimand Proclamation of 1784.<sup>4</sup> My experience of being left on the land that was being defended while Indigenous people around me were arrested was a moment of convergence where the question of imprisonment and settler colonialism could never be separated again. This embodied experience told me that it was desirable for my white settler body to remain on the land, which brought into stark relief the crux of the struggle that has been being faced by Indigenous communities across Turtle Island, and the very tangible relationship between practices of imprisonment and criminalization, settler colonialism and land dispossession.<sup>5</sup>

This experience and absence in the literature in critical carceral studies and settler colonial studies in addition to IR, combined with my personal experiences have come together to inform the central problematic of this dissertation: If there is so clearly a connection between practices of imprisonment and settler colonialism, what can an analysis of this relationship look like in the Canadian context as situated in practices of imperialism and empire? How can these distinct conversations be bridged to inform a

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<sup>4</sup> In 1784, Lieutenant Governor Frederick Haldimand “issued a proclamation—expressed in terms that reflected the new arrivals’ ways of noting ownership—that recognized a stretch of land along the Grand River, from source to mouth, totaling about one million acres, as Haudenosaunee territory” (DeVries, 2011, p. 2). Douglas Creek Estates was a housing development located in Caledonia, Ontario that was occupied by the Haudenosaunee in February 2006 in order to stop construction on contested Six Nations lands. Since then *Kanonhstaton* has been the site of periodic protest and various levels of presence by members of Six Nations, sometimes with support of allies. For additional information and context on the struggle see DeVries (2011).

<sup>5</sup> These intersecting experiences were further shaped by the problematic expressions of white-heteropatriarchy in the organizing spaces I was participating in. These surfaced when concerns expressed by women at Six Nations were repeatedly silenced by settler “allies.”

transnational analysis of carceral power that can take account for the distinct histories, relationships and solidarities between some of the leading struggles for decolonization, ecological justice and an end to carceral violence across Turtle Island in the contemporary moment?<sup>6</sup>

### Research Question and Central Argument

In the Canadian context, little work has been done to situate practices and logics of imprisonment and confinement within everyday practices of empire. In this sense, I ask: How do practices of imprisonment and the production of carceral space uphold and reproduce empire and settler colonialism in the Canadian context? Whose bodies, land and resources must be mobilized to do this and what practices, logics, and subjectivities do they rely on?<sup>7</sup>

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<sup>6</sup> Here I am thinking specifically about Idle No More, Standing Rock and Black Lives Matter.

<sup>7</sup> In this project my conceptualization of empire is informed by those scholars that have drawn from and build on Hardt and Negri's notion of empire to theorize colonialism and capitalism together. See for example, Stewart-Harawira (2005), Ong (2006), Persram (2007), and Stoler (2006; 2016). More specifically, I follow on Hardt and Negri's distinction between imperial forms of power (as an extension of European sovereignty based in the nation-state, outward) and the "postmodern form of power" (Persram, 2007, p. xxv). Throughout this project, although I broadly attend to the analytical utility of Hardt & Negri's notion of empire as both a political subject and decentered and deterritorialized yet all-encompassing, I provide an analysis that pushes back against a notion of empire that is also not geographically situated or that which does not understand land and its ongoing primitive accumulation as part of the process of empire's expansion. Ong, for example, pushes back on the notion that "economic globalization has produced a globalized labour regime" (Hardt & Negri, 2000, as quoted in Ong, 2006, p. 8). Though Hardt and Negri attend to the racial logics enabling the genocide of Indigenous peoples in the Americas as central to understanding empire's endless expansionist agenda (Stewart-Harawira, 2005), land is not part of how empire is theorized. In this sense, though I recognize the utility of conceptualizations of empire as both totalizing and as a non-place, in this project I specifically provide an analysis that centers the specificity of place and land as central to its formulation through methods of colonial carcerality. Lastly, following Stoler (2006, p. 9), in doing so I conduct this analysis with the commitment to explore the complexities of empire and that seeks to lend insight into the role of "imperial polities in active realignment and reformation" within the Canadian and North American contexts. In future work I hope to develop the notion of colonial carcerality further to more fully demonstrate its role in shaping colonial histories and contemporary "coercions of imperial formations" (Stoler, 2016, p. 4).

*Imprisonment on Turtle Island*

In the last forty years the rate of imprisonment in the United States expanded at an unprecedented rate—500-fold, not due to an increase in crime, but because of changes in sentencing policy and law (The Sentencing Project, 2015; Davis, 2003). However, the prison as a racist, classed, gendered and colonial institution and set of logics pre-dates this time (Davis, 2003). Currently approximately 2.2 million people reside in U.S. prisons, jails, youth facilities and immigration detention centers (The Sentencing Project, 2015; Davis, 2003) and closer to 9 million are bound up in the criminal justice system all together through systems of pre-trial, probation and parole (Davis, 2003). Though the prison system is becoming a daily reality to contend with for more and more of those who reside in the U.S., the subject has breached popular consciousness because of the extensive work Black and anti-racist feminists have done to demonstrate the social, political, and economic conditions that made this possible, while also always imagining and working towards alternatives and abolitionist futures.<sup>8</sup>

For these reasons, it may come as no surprise that the U.S. has received the bulk of attention within what some have referred to as the newly emerging disciplinary field of “critical carceral studies.” Based on foundational groundwork led by Black intellectuals and activists that traces the connections between mass incarceration and slavery, much of this work has attempted to divest imprisonment from state-centric and national models, as

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<sup>8</sup> See for example, Davis, (2003, 2005, 2012), Gilmore (2007), Sudbury (2005, 2008). Davis (2003) describes prison abolition as a set of political ideas and work that seeks to challenge and undo the perceived naturalness of the prison and its attendant institutions in society. By connecting carcerality and settler colonialism in this project I hope to provide an entry point into thinking about abolition through an understanding of its relationship to forms of colonialism that are ongoing.

is often reproduced in the field of Criminology, to highlight its role in capitalism and white supremacy (Brown & Schept, 2016). With regard to acknowledging this labour and intellectual legacy, Brown & Schept point out,

[T]heir work emanates from experiences, practices, and movement-generated theories grounded in survivability: the urgent pursuit of liberation from the threat of captivity, torture, and social death, from generational histories in the continuous shadow of conquest, settler colonialism, slavery, Jim Crow, and the carceral state. The history, scale, and scope of the neoliberal carceral state makes evident the long omissions and marginalization from the criminological canon of work against White supremacy, colonialism, heteropatriarchy, and racial capitalism as well as the epistemologies of vulnerability. (2016, p. 443-444)

I see the aims of this project as working in solidarity with this commitment, while also offering a contribution that responds directly to this call to foreground the knowledge generated out of the lived experience of encounters with carceral entrapments. I also hope this project serves a similar call to action in IR—a discipline that I argue also replicates investments in national and transnational models and logics of punishment.

The work of primarily Black feminists has made it possible to highlight and challenge a set of gross injustices that are increasingly enabled by the reality of mass incarceration, as well as the ways U.S. empire-building extends various manifestations of these practices outward in a global context. For example, the “war on drugs” and “tough on crime” agendas that it ushered in resulted in the expansion and privatization of the prison system within America, which was made possible by the extension of U.S. militarism abroad (Davis, 2005, Evans, 2005; Sudbury, 2005). These critiques have been crucial but have none the less led to U.S.-centrism in the literature. We do not, in global politics for example, have a good understanding of the context and histories of practices of imprisonment elsewhere and the ways these practices are mutually constituted within

and across the transnational boundaries.

Thus, in this project I aim to show how carcerality and carceral space are an ongoing organizing feature of empire. In the Canadian context this requires taking seriously how Canada's own history of employing systems of confinement as an everyday tool and technology of governance, as well as the centrality of settler colonialism to this project both historically and today. Beginning from this starting point my aim is to show how the global political economic and state-making implications of these practices of confinement and discipline are gendered, radicalized, sexualized, and classed.<sup>9</sup> That is, these hierarchies are instilled, reproduced and even transformed through the ways they are taken up by and/or challenge the needs of state-making and accumulation efforts on a transnational scale. Finally, this project begins from the starting point that reproductive work is a terrain of struggle that must be taken seriously as the necessary underpinning of a transnational political economy of carcerality and carceral space.

In the current moment, where increasingly privatized and underfunded systems in the U.S. and Canada systematically download neoliberal capitalist and colonial state violence onto individuals and communities, and increasingly expose prisoners and their families to violent and unsafe environments, we can gain insight into the ways the intensification of neoliberal colonial capitalism requires re-constituting land, and re-

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<sup>9</sup> When I refer to these relations of power I understand them as overlapping, co-constituted and existing on a transnational scale. When I claim that global relations of power are racialized and gendered I am not only referring to the relations between people, but the ways structures and institutions are shaped through mappings of racial and gendered forms of privilege and the implications these have for people's everyday lives. When I say that global relations of power are sexualized and classed I understand these similarly as intersectional and following Agathangelou, where "rac[ialized] sexualities and gender are historical practices whose development and change are in accordance to the development of forces of production" (2004, p. 9).

categorizing bodies in ways that make particular political-economic projects possible. This occurs alongside racialized, gendered, sexualized and classed lines and these re-articulations, re-configurations and re-concentrations of power also necessarily require utilizing institutions and logics of imprisonment and the various levels of invisibility, inclusion, exclusion, and utility that they offer. Thus, in this dissertation I argue that the production of carceral space in the settler colonial Canadian context becomes required as a governance strategy to re-define and manage the relationships between bodies and lands. I argue that *colonial carcerality*, the central analytical contribution of this project, relies on inflicting ongoing harm to land, and to Indigenous, gender non-conforming and poor people of colour through criminalization. In this way, the prison and prisoner as situated in colonial carceral relations can be understood as indispensable to a settler colonial and imperial project.

#### Theoretical Framework and Methodology: Reading Imprisonment and Settler Colonialism in the Canadian Context

This project intervenes in critical debates in IR through a Transnational Feminist lens. Drawing primarily from Postcolonial, Black, and Indigenous Feminisms to read imprisonment as a foundational feature of settler colonialism, I bring distinct feminist interventions on criminalization, coercion, and non-consent together to read practices of imprisonment and carcerality in the Canadian context. This is particularly important in the discipline of IR, which continues to be invested in practices that silence the knowledge of Indigenous women and women of colour, and continues to make invisible relations of extreme harm, violence and insecurity on a global scale. Methodologically,

Postcolonial, Black and Indigenous Feminisms allow me to bring together questions of governance and criminalization within the global political economy, together with institutional analyses and everyday practices of empire.

In particular, Postcolonial feminism allows for a historicized reading of Canada's emergence as a settler state in the context of the British and then American empires, alongside interrelated institutional frameworks and colonial law and policy. Black feminist interventions provide a way to read the utility of carceral institutions and practices of imprisonment within frameworks of capitalist expansion and relations of unfreedom. Indigenous feminisms identify the importance of an analysis of settler colonialism that is place-specific, and which foregrounds the experience and knowledge of Indigenous women and Two-Spirit persons in any framing and reading of the colonial archive and critiques of settler colonialism. Indigenous feminism also offers a way to bridge carcerality as a framework that does not only apply to Indigenous bodies, but to Indigenous lands. Collectively, these frameworks offer radical contributions to notions of carcerality, political community and justice in IR and carceral studies, and provide visions of restorative justice and decolonial abolition.

Bringing these epistemological and methodological frameworks together allows for a reading of the complexities of emerging frameworks and practices of settler colonial governance in transnational context. They specifically allow for an analysis of the relationships between distinct sites, without collapsing or conflating the individual and overlapping roles they play in the formation of Canada as a settler state. For example, in Chapter 3 I read the particular expressions of *Manifest Destiny* and *terra nullius* in the



Americas, and their distinct versions in the emergence of Canada as a British settler colony as a way of historicizing settler colonialism and relationships to land. In Chapter 4, I read the Treaties and early agreements between Indigenous and European nations alongside pre-Confederation law and policy, (English common law, the Land Acts, the Gradual Enfranchisement and Civilization Acts<sup>10</sup>), to understand the precise ways that settler and Indigenous relationships to land were being reconstituted during the late 18<sup>th</sup> and 19<sup>th</sup> centuries. In Chapter 5, I explore the unique institutional arrangements that were made possible by this earlier period, and the ways the formation of a carceral apparatus accompanied state formation through westward expansion and settler state desires to target the ways Indigenous peoples were moving on the land and resisting the increasingly assimilative and genocidal policies being deployed. In Chapter 6, I bring this historicized account of *colonial carcerality*, to bear on national discourses of reconciliation through Indigenous resurgence and Indigenous feminist literature. Doing so I highlight the ways carceral relations in the context of transnational expressions of settler colonialism continue to require that bodies and lands be harmed through practices of containment and the carceral net.

When I say that carcerality and carceral space are an ongoing organizing feature of empire in the Canadian context, this refers to how spaces of imprisonment and

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<sup>10</sup> The Lands Acts include, ‘An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada’ (Statutes of the Province of Canada, 1850a) and ‘An Act where the Protection of Indians in Upper Canada from imposition and the property occupied or enjoyed by them from trespass and injury’ (S.P.C., 1850b). ‘An Act to encourage the gradual civilization for the Indians in this Province, and to amend the laws respecting Indians’ (S.P.C., 1857) (Gradual Civilization Act, thereafter) and ‘An Act for the gradual enfranchisement of Indians’ (S.C., 1969). The Lands Acts (1850), Gradual Civilization Act (1857) and Gradual Enfranchisement Act (1869) are elaborated and discussed on pages 170-180.

practices and logics of confinement as feature of everyday life are part of how Canada's own investments in empire are realized. These practices and logics are extended through both foreign and domestic policies. Their extension into everyday life means their effects are felt day-to-day and in ways that are embodied. The growing numbers of Aboriginal peoples, especially women, who are represented within the prison system highlights the explicit ways practices of imprisonment are used to manage populations as a governance strategy. It further demonstrates the ways that categories of deviance and criminality are constructed historically and have direct implications for present day practices of criminalization and representation in the penal system. Historically these practices have taken the form of a variety of settler colonial policies that punished, segregated, confined, coerced, and controlled the movement of Indigenous peoples as part of an assimilative and genocidal project.<sup>11</sup> Collectively these practices demonstrate that carceral spaces were produced through colonial policy, which shaped all aspects of Indigenous people's lives here on Turtle Island. This dissertation aims to show that these practices were always produced through and often in response to Indigenous people's own resistance to colonization, assimilation and genocide.

Aboriginal women have become the fastest growing population in Canadian federal corrections (Sapers, 2015). Almost doubling in the last ten years, women now account for 35.5% of all women in federal custody" (Sapers, 2015).

As of March 2015, Aboriginal inmates represented 24.4% of the total federal custody population while comprising just 4.3% of the Canadian population. In the ten-year period between March 2005 and March 2015, the Aboriginal inmate

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<sup>11</sup> Here I am referring to the reserve, residential school, and pass systems as well as the (formal and informal) policies, laws, and governance practices that contributed to the formation of Canada as a settler state.

population increased by more than 50% compared to a 10% overall population growth during the same period. As a group, Aboriginal people accounted for half of the total growth in the federal inmate population over this time period. The situation is even more distressing for federally sentenced Aboriginal women (Sapers, 2015).

Though the Office of the Correctional Investigator has named a number of institutional relationships with Aboriginal peoples that can be correlated with larger representation within the justice system (i.e. experiences with residential schools, the child welfare system, adoption and protection systems, dislocation and dispossession, poverty and poor living conditions on reserves, family or community history of suicide, substance abuse and/or victimization), the level of engagement with the extent of historical and ongoing trauma alongside the absence of an analysis of ongoing settler colonialism through these very institutions stands in the way of coming to a deep and more meaningful engagement with the issue.

To say that the global political economy and state-making implications of these practices of confinement are gendered, racialized, sexualized and classed means that these hierarchies are privileged in/on multiple spaces and levels, and that they have material and immaterial effects on bodies in everyday life. Besides examining regimes of carcerality and carceral space, here I want to acknowledge the particular ways that reproductive labour is targeted by and often made to extend and uphold these practices. On a global scale reproductive work is often invisibilized, under-valued, informal, un/underpaid, and precarious forms of work necessary to uphold formal structures, institutions and practices. This project does not accept a clear separation between productive and reproductive work, but does seek to foreground the racialized, gendered, sexualized and classed dimensions of it in order to acknowledge both the ways it has

historically and continues to be devalued, while also remaining a site of resistance, self-determination and transformation. In Chapters 2 and 6 I discuss how Transnational Feminist scholarship provides a framework to read these relationships. In Chapter 5 and 6 I highlight that ongoing work of Indigenous women and Two-Spirit persons engage with a notion of restorative and reproductive justice that includes restoring the life of all living beings as a means of decolonizing the settler state.

In the Canadian context, there has been important feminist interventions to understand Canada as a settler state within empire (Stasiulis & Yuval-Davis, 1995; Bannerji, 2000; Thobani, 2007; Razack, 2002). However, gaps remain in how we can situate practices of imprisonment in these discussions, since work has emphasized the colonial, racialized and gendered expressions of criminalization, but not always the foundational role and purpose of imprisonment in Canadian society. For example, Sherene Razack (2002; 2008; 2015) features prominent discussion of Canada as a settler state and the role of law, but has not explored these institutional arrangements in depth historically, nor settler colonialism as carceral governance. Thus, though this literature has situated practices of criminalization within everyday expressions of Canadian settler colonialism and empire, the sites of focus remain narrow both in terms of an engagement with carceral studies, as well as socio-legal history. In this project I wish to build on this foundational work of interrogating settler colonialism in Canada to explore these relationships within their conditions of historical emergence, and to consider how these relationships continue to inform contemporary claims that Canadians and Indigenous peoples are in a process of reconciliation.

Scholarly Intervention:

The central analytical contribution of this project is the notion of *colonial carcerality*, which allows us to bridge contemporary theorizations and practices of carcerality through a historically informed analysis of the role of imprisonment and the production of carceral space in reconstituting relationships between bodies and lands which are transnational. In particular, I provide an account of colonial carcerality that is historically and geographically situated in the British imperial and Canadian settler colonial context, which examines how practices of criminalization and the reconstitution of relationships between bodies and lands relies on the reproduction of hierarchies of power based on race, class, gender and sexuality. As a governance strategy, I argue that *colonial carcerality* relies on inflicting ongoing harm to land, and to Indigenous, gender non-conforming and poor people of colour through criminalization. This project therefore provides a framework to understand land alongside labour as integral to these hierarchies that make Canada possible within empire. Drawing from the contributions of Indigenous resurgence and Indigenous feminist literature *colonial carcerality* provides a theorization of carceral space which highlights ongoing harm to land, waters and other living beings as a condition of possibility for carcerality within settler colonialism and empire, and follows from these insights to begin to imagine possibilities for restorative justice that value the life of all living beings as an entry point into an understanding of decolonial abolition within the settler colony.

In addition to the contribution of a nuanced reading of carcerality in IR, this project suggests that IR's frameworks for thinking about political exclusion do not fully

take account for the precise forms of inclusion that are required in the context of Canada as a settler state. This is both in terms of Indigenous bodies and their labour, since both have been targeted as part of an assimilationist and genocidal project. In addition, the ways Indigenous resurgence and Indigenous feminist literatures disrupt categories of subjectivity through non-consent and non-consensual inclusion, highlight the ongoing erasure of the theft of land as constitutive of the international. In other words, they challenge that we can understand bodies, and especially Indigenous bodies, as the only forms of life that must be coercively included within the settler state. This point brings to the fore that the central conflict that IR must continually erase and cover over through practices of criminalization, imprisonment, carceral logics and the production of carceral space, is that the modern system of states is based upon widespread theft of bodies, labour and land, which is reliant on suppressing other ways of living and *life* that remain threatening to the Westphalian and international order.

Thirdly, by engaging with a reading of carcerality that foregrounds the theft of bodies, labour, and land as central to an imperial project, I contribute to ongoing feminist debates about power and violence in IR. I suggest that non-consent provides an entry point into processes of criminalization and rationales that uphold coercive forms of power in IR and stifle the transformational political aims of decolonial and restorative justice. A focus on non-consent informs my questions of power, violence and criminalization in IR, both in terms of its subjects and sites, and seeks to inflect them with additional nuance in order to suggest connections between different forms of violence, as well as the ways less extreme or visible kinds of violence make possible their more extreme iterations.

Finally, this project provides a framework to understand land as integral to the production of carceral space through the racialized, gendered, sexualized and classed hierarchies that make Canada possible as a settler state within past and current practices of empire. As such the contribution of this project goes beyond an analysis of the role of carcerality in IR and changes the way we can theorize carcerality within settler colonialism and empire whether the point of analysis is logics, institutions or broader governance practices.

### Chapter Outline

Each chapter in the project builds on these central contributions in IR, as well as makes contributions at the intersections of settler colonial and carceral studies. In Chapter 1, I argue that the inability for IR to ‘see’ the prison and prisoner is connected to its inability to ‘see’ settler colonialism. Through an analysis of orthodox IR and Political theory I suggest that the prison and prisoner are foundational, though abstracted, institutions and subject positions for IR, since the discipline does not allow us to access them as sites of analysis to understand carcerality as a global phenomenon. Through a deeper analysis of the Prisoner’s Dilemma and social contract theory, we can interrogate the role of punishment alongside property as a method of “resolving” social conflict. Examining the assumptions of coercion and non-consent suggests that criminalization and punishment serve as methods to legitimate the founding thefts of bodies and lands that made possible the contemporary international order. As I establish in the first chapter, when we begin from a place that exposes IR as a venue for imperial politics we must necessarily interrogate the ways the production of the international system relies on

carcerality, not only to uphold racialized, gendered, sexualized and classed hierarchies, but as a method that aligns innocence with the theft of land and labour. And further, when we follow the contributions of Indigenous resurgence and Indigenous feminist scholarship it becomes clear that the conditions of non-consent are ones which shape the continual forceful inclusion of Indigenous bodies and lands with a project of assimilation and genocide.

In Chapter 2, I bring feminist interventions in IR into conversation in order to read the contemporary gaps in the literature on imprisonment in critical IR. In this chapter I demonstrate that Postcolonial and Black feminist approaches provide a constructive way into understanding the role of coercion and criminalization in the production of the international and the reproduction of global relations of power, however there are still selective limitations around the question of land and settler colonial governance in their readings of the social contract and the production and governance of criminality. I argue that it therefore becomes important to build on and contribute to these analyses through an in-depth reading of the role that carceral logics, institutional frameworks, and governance practices play in Canada's state-building project. In this chapter, I also position myself as a white settler in this project through unpacking and unsettling my own formative relationships to land. Here I draw on Indigenous theorizations of land, carcerality, settler colonialism, and decolonization as a means to begin to conceptually build on the gaps within feminist IR literature.

In Chapter 3, I historicize land and settler colonialism in the Canadian context. I argue that Canada's unique and strategic position in relation to imperial centres is one



that can be understood as both shaped by benevolent liberal non-violence and the necessity to access land to develop. I do this by ideologically and physically grounding a reading of Canada's position through early settler colonial relations and the colonizing logics and doctrines that shaped them, namely *Manifest Destiny* and *terra nullius*. Through this reading, I centralize the role that land and liberalism played in shaping Canada as a British colony and show how these histories continue to shape Canada's role as a resource-driven economy alongside its celebrated identity as a self-consciously non-violent state, and benevolent middle power.

In Chapter 4, I examine the ways that Indigenous and settler relationships to land were reconstituted in early settler colonial Canada through pre-Confederation law and policy. Through an analysis of the Treaties and early agreements alongside the imposition of English common law and pre-Indian Act policy (The Land Acts, the Gradual Enfranchisement Act, and Gradual Civilization Act), I show that Indigenous and settler relationships to land were being redefined through frameworks of criminality and innocence. Further, punitive and coercive policies that increased criminalization in the form of jail time coincided with an increasingly assimilationist agenda which sought to redefine relationships to land through a private property framework. By primarily exploring these redefinitions and reconstitutions through the framework of carceral logics, I begin to theorize the concept of colonial carcerality. Here I illustrate the role of carceral logics as central to the early stages of colonial expansion and state formation through examining the role of coercion and non-consent in dispossession.

In Chapter 5, I explore how a carceral apparatus subsequently develops through increasingly aggressive colonial legislation, as well as new institutional systems, arrangements and practices during the early stages of state formation. Examining the period prior to and immediately after Confederation, I highlight how westward expansion and the development of a national policy coincides with a more aggressive period of assimilation and genocide through the creation of a carceral apparatus as a central mode of Canadian governance. The creation of the reserve, residential school and pass systems, alongside the formal and informal practices of the Department of Indian Affairs, Indian Act, police, Church and local officials were part of more aggressive strategies of child removal, confinement, limiting mobility and punishment which explicitly targeted and criminalized Indigenous relationships to land and the precise ways in which Indigenous peoples were moving on and interacting with the land. During this period, the development of a carceral apparatus operates to uphold and reconstitute racialized, gendered, sexualized and classed power relationships to land and public space becomes more pronounced. Here I highlight that Canadian settler colonial governance relies on a carceral apparatus during the earliest stages of state formation which sought more aggressive assimilation policies alongside the clearing of the land for more invasive agricultural practices and to consolidate territory.

In Chapter 6, I draw further on Indigenous resurgence and Indigenous feminist literature to argue that contemporary claims of “reconciliation” in the Canadian context are occurring alongside ongoing practices of colonial carcerality. I argue that contemporary critiques of frameworks of recognition build on the notion of colonial

carcerality through the ideas of containment, non-consent and the carceral net. Bringing a historicized account of colonial carcerality to bear on contemporary conversations of reconciliation allows for an analysis of colonial carcerality which connects the ways imprisonment and the production of carceral space continue to be used to reorganize, constrain and harm the relationships between bodies and lands. Indigenous feminist articulations of carcerality foreground the relationship between land and subjectivity and continue to assert the ongoing work of Indigenous women towards reproductive and ecological justice. Through this lens, colonial carcerality provides a framework of carceral space which highlights ongoing harm to land, waters and other living beings as a condition of possibility for carcerality within settler colonialism and empire and draws from these insights to begin to imagine possibilities for restorative justice that value the life of all living beings as an entry point into an understanding of decolonial abolition within the settler colony. Here I contribute in more precise ways to Transnational feminisms in IR by analyzing the role of land in the creation and fostering of decolonial subjectivities in settler colonial contexts.

#### A Note on Terminology:

In this project, I use the term “Indigenous” in several ways. Primarily, and following Shiri Pasternak (2017, p. xiv), I use it to refer to “the original peoples and governments of these lands” and where the names of individual nations are not specified or known. I also use it being mindful of a long history of non-Indigenous peoples sorting and categorizing of Indigenous peoples, their locations, languages, as well as through racial markers, often as forms of subjugation (Pasternak, 2017). Wherever possible I use

the names of specific nations, and the personal identifications of the author or person whose knowledge I am drawing upon. I also use it to refer to Indigenous peoples beyond Canada's colonial borders to include and acknowledge the many Indigenous nations across Turtle Island and beyond, who have a shared history of struggle against colonialism which itself is already international. As Pasternak says,

It is difficult not to conceive of Indigenous peoples in relation to colonial European conquerors or modern attempts at economic, social, and political restructuring and assimilation, but it is not helpful to think of Indigenous peoples as opposite to an industrial modern society, either. "Indigenous" connotes a *dynamic* people who are ancestrally, spiritually, and politically connected to territory in a multiplicity of ways (2017, p. xiv).

I also acknowledge the politics of the term "Indigenous" both as a name that is now more commonly accepted but is a colonial term none the less (Monchalin, 2016a). It is generally more accepted than government terms like 'Aboriginal' at the same time that I recognize the tensions in adopting another term that homogenizes a highly diverse group of nations across Canada and Turtle Island. In cases where I quote Indigenous intellectuals and thinkers, I use author's own nation and/or community and (where possible) their most recent personal identification.

When referring to Canadian government departments, policy, and historically specific sites I use original terminology where necessary for historical accuracy and for the purpose of clarity of argument and analysis. In historical context this entails using the term "Indian" in some cases and in contemporary context includes using the term "Aboriginal" (for example, the Indian Act, or Aboriginal title). For instance, I use the term 'Indian' to point out government relation and with the intention of including it as a site of interrogation (i.e. when I speak about how 'Indianness' was a government

delineated category of subject hood that becomes defined through particular relationships to land).

I use the term “settler” in this project to refer to non-Indigenous peoples who have settled on Turtle Island and to name the distinct position that settlers have in the context of settler colonial states, where colonizers come to stay and are situated within an ongoing political project that seeks to erase Indigenous laws, governance practices and peoples from the land. I use the term to refer primarily to the distinct relationships to land that serve as both a central relation of privilege held by settlers within settler states, and which mark a particular kind of relationship to land; one that may be complicit in systemically upholding white-European governance frameworks of private property, ownership, objectification and exploitation which is privileged through legal, institutional, and political arrangements.

At the same time, I do not wish to homogenize settlers, especially in the context of a project that aims to take account for how categories like race, class, gender, sexuality and ability, inflect hierarchies of power within the international and therefore also the terms “settler” and “Indigenous” themselves. Therefore, my use of the term “settler” throughout this project derives from a political choice to foreground unique forms of privilege that come from the reproduction of dominant institutional and systemic relations of power on this land, while at the same time not collapsing diverse subject positions, political commitments, and ways of being that shape very personal experiences of settler subjectivity, especially in relation to other colonized subjectivities. As Scott Lauria Morgensen (2011, p. ix) points out, it remains important to acknowledge the ways the

conditioning of settler colonialism itself “aims to amalgamate subjects in a settler society as “Non-native” inheritors, and *not* challengers of the colonization of Native peoples on occupied Native lands.” Indeed, this is one way that whiteness and white supremacy operate through Canada’s institutions and discourses.

Though I am certainly not interested in conflating very diverse positionalities, politics and lived experiences into a settler colonial project in a way that erases difference or resistance, I also acknowledge and seek to be held accountable to places in this project where this occurs as a result of the relations of power I privilege. Equally, in light of the contemporary status of Indigenous-settler relations in the Canadian context, and the persistent calls for the distinct political claims of Indigenous peoples to be heard at this moment, I wish to use the term “settler” with distinctions as required to highlight the urgency of claims which are centered on the return of land to those who have been its stewards since time immemorial. I have been taught that solidarity from those of us who are settlers who wish to be allies in Indigenous peoples’ struggles must include working to understand and reflect on our relationship to this land as a first step for working towards the particular forms of decolonization being called for where we are. I have continually been called to do this work by Indigenous peoples on this land as not only a first step, but as an important way of orienting and positioning my whole self in this work.

## **Chapter 1 – The Prison and Prisoner in International Relations: Imperial Foundations and New Directions**

For Native people, this ruse of consent marks the inherent impossibility of that freedom after dispossession, a freedom I argue is actually theft. This because of the trickery of ‘consent’ in colonial contexts, which papers over the very conditions of force and violence that beget ‘consent.’ Audra Simpson, *The ruse of consent and the anatomy of ‘refusal’*, 2017, p. 20

[A]t the base of the system is a person in a cage. Floris White Bull, *A Dream for Standing Rock*, 2017

### The Prison and Prisoner in Global Politics:

The Prison Industrial Complex (PIC) is a global phenomenon. Women worldwide, and especially poor women of colour are the fastest growing prison population and practices of imprisonment are implicated in upholding racialized, sexualized and classed hierarchies of power (Davis, 2003; 2005; 2012; Sudbury, 2005; 2008; Gilmore, 2007). At the same time this has garnered very little attention in a discipline whose founding narratives claim the Prison and Prisoner as their own. The significance of a growing carceral apparatus for questions of safety, well-being and global justice have seen little meaningful engagement in orthodox IR. On one hand, the reality of the PIC—a central formation within the global system—has yet to be engaged from outside a critical political economy tradition. On the other hand, critical IR’s engagement with imprisonment has largely been confined to an emphasis on various modes of detention, surveillance and new governance practices, while less work has focused on more mundane practices of incarceration as a feature of colonial relations, and especially settler

colonial states within empire.<sup>12</sup>

In this chapter I argue that the prison and prisoner are foundational to, and yet eclipsed by IR, and that the failure for IR to ‘see’ imprisonment has much to do with its inability to see (settler) colonialism. In the Canadian context, this requires taking seriously how Canada’s own history of employing systems of confinement as an everyday tool and strategy of settler colonial governance has largely been taken for granted by IR and the broader discipline of Political Science. Beginning from this starting point my aim is to show how the global political economic and state-making implications of these practices of punishment and carcerality are organized through gendered, racialized, sexualized and classed hierarchies that are reproduced and even transformed through these efforts. This means that I understand the prison and prisoner as categories that are upheld by white supremacy and heteropatriarchy within global capitalism.<sup>13</sup>

This chapter will begin by examining the lineage of one of IR’s founding metaphors, the Prisoner’s Dilemma, to consider the work it does to order and discipline IR’s relationship to practices of imprisonment through claims to universalism and rationality, which serve as methods to “resolve” social conflict through the use of force. I trace its deeper intellectual commitments and lineages to modern liberal thought in order to consider the purpose and role of prison and punishment within the settler state, arguing

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<sup>12</sup> Here I am informed by Tuck and Yang’s (2012) discussion of internal and external colonialism where they argue that neither fully accounts for settler colonial contexts. They state, “Settler colonialism operates through internal/external colonial modes simultaneously because there is no spatial separation between metropole and colony” (p. 5). McCoy, Tuck & McKenzie (2017) point out that these are not mutually exclusive, especially as many settler states colonize other lands.

<sup>13</sup> As stated in the introduction, this project also begins from the starting point that reproductive work is a terrain of struggle that must be taken seriously as the necessary underpinning of a transnational political economy of carcerality and carceral space.



that the utility of imprisonment rests on its embeddedness within the social contract and methods of coercion and non-consent. In addition to providing insight into the extent to which the prison and prisoner are substantively under theorized in the field, by connecting the prison and prisoner to orthodox international and political theory, I argue that the prison and prisoner are indispensable to an imperial and settler colonial project, because they are integral to the theft of people's bodies, land, and labour through practices of criminalization. This lends insight into how practices of imprisonment, as well as settler colonialism are substantively under theorized in the field.

By examining the political philosophical foundations of imprisonment in social contractarian thought I show that the utility of the prison and prisoner and their corresponding logics resides in their attempt to hide and naturalize the violence required to maintain an international order reliant on the theft of bodies and lands. In doing so I establish connections between land, labour, criminalization and punishment, which links the histories of settler colonialism with the production of carceral space in order to understand the prison and prisoner as central to an imperial and colonial project through how it is required to reorganize relationships between bodies and lands. By establishing the foundations of IR's ontological investment in prison and punishment as a method of resolving conflict we can more easily access assumptions about whose security, economic interests, well-being and ways of being are to be secured and whose can be criminalized.

Finally, this chapter will begin to explore how to make sense of the land-labour-punishment and criminalization nexus within global context. There has been a number of important works that provide postcolonial critiques of the imperial foundations of modern

political thought. My aim in this chapter is to build on them in order to help to make sense of the relationship between the production of carceral space and settler colonialism. Equally, in the chapters that follow, I provide a more sustained analysis of how these relationships and struggles took shape in what would become Canada. Thus, though tracing these histories in the global context is important, the historical context of a particular place and the land matter a great deal in how contemporary carceral projects can be realized, as well as how methods of criminalization continue to be used as strategies to suppress and quell these longstanding struggles that seek to disrupt their place within empire, and through that attempt to envision and build worlds otherwise.

#### Unpacking and Interrogating the Prisoner's Dilemma in IR

The prison and prisoner have been marked with a conspicuous level of presence and absence in the discipline of International Relations (IR). Game theory, and the Prisoner's Dilemma in particular, are central tenets of rational choice models in the discipline. The use of game theory became more pronounced in fields outside of economics in the latter decades of the last century and as part of a larger positivist tradition within IR and Political Science. What IR knows as the prisoner's dilemma has come a long way from the initial intentions and questions of RAND Researchers, Merrill Flood and Melvin Dresher (Poundstone 1992, 106). Flood and Dresher hoped to understand why, if cooperation yielded higher payoffs, would rational actors choose self-defeating strategies? The 'pair of prisoners' story was actually added later to provide a

narrative structure to the model (Marks, 2004).<sup>14</sup> Through its widespread deployment in IR it has become more emblematic of a desire to explain and predict the behavior of states as units of analysis and as a method of determining the impact of those outcomes. The way rational choice perspectives have been taken up in IR fails to recognize and grasp the very real presence of the global terrains of imprisonment and a growing carceral apparatus, and demonstratively does not consider them as a worthwhile and serious phenomenon of study. In this sense, there persists a curious level of visibility and invisibility when it comes to understanding the prison and prisoner in IR that intersects theoretical, empirical and methodological terrains. There has not only been a failure in recognition, but a gap in taking seriously its role in informing and reproducing contemporary relations of power in global politics.

Presented as a hypothetical test ground for mathematical models and theory building within rational choice perspectives, the prisoner's dilemma is a formative metaphor in theorizing and producing the international (Marks, 2004).<sup>15</sup> The dilemma can be understood as both a narrative strategy, or metaphor, as well as a model used to organize and predict the actions of rational actors in international politics based on judging and responding to the strategic moves of another in order to achieve maximum payoff. Similar to the other metaphors of game theory, the narrative argues that each rational actor will make decisions that are in their best interest in order to receive the

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<sup>14</sup> As Marks (2004) explains is not actually required for the 'dilemma' to manifest since game theory was never intended to replicate anyone's lived experience.

<sup>15</sup> For an elaborated discussion of the role of metaphors in IR, see *Metaphors of Globalization: Mirrors, Magicians, Mutinies* (2008).

greatest reward. These approaches have sought to use the prison among other visual imagery as an illustrative scenario to demonstrate the validity and viability of the mathematical models rational choice theories are premised on for the purpose of prediction and explanation. The result is that that assumptions about how prisoners rationally choose their self-interest over collective cooperation for mutual benefit can help to predict the behaviors of states.

The narrative says that two prisoners have committed a crime and have been caught, separated, and offered a deal from police that they cannot consult each other on. If one of the prisoners confesses to committing the crime while the other does not, the partner that has confessed will go free while the other that has not will go to jail for ten years. If both prisoners confess both will go to prison for five years, and if each prisoner denies, then both will go to prison for six months. Drawing on this scenario Realists have endeavored to show that in situations where there is instability, or when there is mistrust and information and communication is limited, the actor will logically choose self-interest and reward at the expense of mutual benefit and cooperation, whereas Liberals have been more apt to demonstrate that cooperation is possible and conflict is not the inevitable outcome (Krasner, 1983; Keohane, 1984; Stein, 1990). According to this model, our understanding of states and global structures are reduced to outcomes of conflict (anarchy) and cooperation (order) where states jockey to acquire gains and minimize losses, and where relative strategic success becomes defined in these terms.<sup>16</sup>

Perhaps the most well-known adoption of this model in IR is Deterrence Theory.

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<sup>16</sup> For a thorough critique of the limits of Game Theory and the Prisoner's Dilemma see Marks (2004).

Situated within a Realist framework deterrence theory states that in order to avoid the worst-case scenario, it may be in an actor's best interest to defect even if it produces some consequences that are undesirable. The rationale for this is that, as outlined, these consequences will be better than an alternative scenario in which the other actor defects and we are left with more severe consequences (whether in the form of nuclear fallout or a longer sentence). This strategy is intended to create the conditions to avoid unwanted wars and, in situations of international crises, acting first is considered a strategic move to avoid the worst consequences (Jervis, 1976).<sup>17</sup> As Snyder states, "[t]he central characteristic of the game is that, although the parties could enjoy mutual benefits by cooperating, the logic of their situation forces them into conflict and mutual losses" (1970, p. 67). Importantly, in this framework each actor will want to be first to confess even if they will still be punished, since this will still mean less punishment over all.<sup>18</sup>

What questions does the Prisoner's Dilemma raise and attempt to resolve for IR? Here it is worth noting that the conditions within which states must act are ones of constraint—a detail that is both crucial for the model to work and exemplified fittingly in the use of the metaphor of the prison. For Liberals, the prisoner's dilemma narrative implies the possibility of negotiation and cooperation through "collective security" achieved through international agreements and institutions (Snyder, 1971), and shared norms. However, in reality power is not shared equally. This means that although both Realist and Liberal interpretations suggest that their frameworks seek to preserve security

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<sup>17</sup> For example, as is the case with the security dilemma, arms races and Mutually Assured Destruction (Snyder, 1971; Jervis, 1976).

<sup>18</sup> Snyder (1971) explains that within Realist thought this instability is generated from the international system itself, whereas within Liberalism it is generated by uncertainty about opponents' intentions.

and diminish violence overall, there are a number of assumptions at play that ensure the prison and prisoner cannot be substantively engaged as sites of study in international politics.

Both Realists and Liberals ignore that the very presence of the prison and police already assume the use of force as necessary to manage societal conflict. Deterrence theory illustrates this and therefore it should come as no surprise that the idea of the prison would be subject to similar disciplinary conditioning. In a framework that already assumes the use of force and constraint, it is notable that the idea of punishment can become conceived of as a necessary evil or the least violent alternative to minimize and reduce overall harm within a conflict driven and constantly shifting international state system. Here it becomes evident that beyond a narrative or metaphor that becomes applied to the international realm, the prisoner's dilemma is about producing and sustaining certain logics and practices of IR, which rest on both the material, discursive and knowledge production practices of carcerality. These are the same logics and narratives that eclipse the prison and prisoner as an analytical site in the field.

These narratives of conflict or cooperation share a positivist epistemology and a “belief in the universal rationality of economic logic” (Waltz, 1979, as quoted in Ling, 2002, p. 115). Realists like Jervis (1970, p. 73) have aspired “to preserve the international system and the signals that lend it greater predictability” since it is this predictability that they claim will enhance the model's function overall. For instance, claiming this will be achieved when “the actors value the system, prefer long-run over short-run gains, and have more in common than conflicting interests” (Jervis, 1970, p. 73). This means that the

system functions better when everyone buys in to or trusts the rules of the game through the punishment and reward system. But as Agathangelou and Ling (2009, p. 15) expose, strong states that set “the rules of the game” that other states must then play by. They go on to say, “[s]hould compliance fail to ensue, or[...] outright violation occur, the Self [i.e. strong states] must discipline the Other” (2009, p. 15).

Of course, the Prisoner’s Dilemma was never intended to model human interaction or experiences though it undeniably has implications for how we act, experience and create our worlds. It has come to reproduce assumptions about human nature in constrained conditions as extended and embodied by states in ways that deny the complexity and vast range of human experience within and beyond prison walls (Marks, 2004). Marks aims to rectify this by compiling a more accurate representation of prisoners and their experiences to build a more useful and exemplary metaphor for IR.<sup>19</sup> As much as I concur that the metaphor of the prison shapes our actions and our worlds, *prison is not simply a metaphor*. An understanding of it as such, though certainly opening a valuable vantage point from which to examine prison from a more nuanced, institutional and empirically rigorous standpoint, does a disservice to those for whom it is daily reality and fails to bring us to a more politicized understanding of the global system of incarceration that helps to stitch the fabric of the contemporary neoliberal capitalist world order. That is, the prisoner’s dilemma is not only problematic because of the artificial limits imposed by the payoff structure and the ways this translates to the international

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<sup>19</sup> His Constructivist commitments lead him to this important argument, but it is also these same commitments that limit the extent of his critique. I am supportive of Marks’ desire to include prisoners’ experiences and to consider what a more sustained analysis of the prison system would yield us in global politics. See for example Der Derian (1998).

(Marks, 2004), but because it takes for granted the full set of power relations that produce the prison itself.<sup>20</sup> So despite the desire to shine a spotlight on the work outside the discipline that seriously complicates otherwise simplistic notions of prisons as institutions and the people within them, it fails to help us recognize the substantively material and ideological work that prison and prisoners do for us in global politics, or bring us closer to a more inclusive or transformative vision of justice. Thus, I approach this in a way that does not take the prison as a political-economic institution, set of practices and logics for granted, and which aims to make more explicit its role in sustaining global inequities and hierarchies advanced through colonialism, capitalism, and militarization.

Another way of saying this is that the prison and prisoner have been glossed over in IR for many of the same reasons as settler colonialism. One of the implications of taking the Prisoner's Dilemma seriously as a set of competing, though not substantively different logics, is that we can begin to see their deep and intertwined history with imperial thought. The focus of this dissertation is to examine what is exposed about settler colonialism when the prison and prisoner are made visible and unpacked as a feature of its inner workings. In particular, the specific ways that coercion and the use of force feature in the prisoner's dilemma, as constituted through claims to universalism and rationality, indicates that the category of the prisoner is also crucial to the formation of racial hierarchies of superiority and inferiority. In doing so this work follows a tradition

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<sup>20</sup> So, although the use of force has already been assumed, the prison is likened to the international system and intended to illustrate a set of limited conditions that states face in making decisions about how to act within the international structure of states in order to produce the greatest number of rewards. If the state in question acts in ways that promote their self-interest as defined by the rules and norms of the international system they will reap rewards. This means punishment becomes a method to condition behavior towards the rules and norms of the system, as well as the interests of particular states.



of challenging the idea that narratives can continue to be reproduced in mainstream IR literatures as a substitute for analyses of power (Grovogui, 2001). As Grovogui claims, often such “hermeneutics [of race]” depends on understanding “that Africa has served as the counterpoint to the European trajectory in order to provide a justificatory trope for the ontology of international relations, morality, hierarchies, and structures of authority and legitimacy” (p. 426, 427). This can also be said for the Americas and the complimentary, but distinct role that Indigenous peoples were scripted within the civilizational narratives of empire (Beier, 2002).

Geeta Chowdhury and Sheila Nair (2002) argue for the interrogation of the power asymmetries and hierarchies that uphold states and their position within a global system, as well as the ways that the imperialist juncture and its related historical processes feature so prominently in these productions. Such an entry point unpacks questions of “the state, sovereignty, order and anarchy” in order to consider how the discipline’s mainstream,

is premised on an understanding of power that privileges hierarchy, “rationality,” and a predominantly Eurocentric worldview, thus mystifying the ways in which states and the international system are anchored in social relations. (Chowdhry & Nair, 2002, p. 3).

But further, bringing these social relations to light requires moving beyond critical approaches in order to account for the intersectionality of these erasures so as to theorize power in IR (Chowdhry & Nair, 2002). They advocate for the need to interrogate the Eurocentric, white, rationalist, masculine and elite assumptions of mainstream approaches and the coercive definitions of power and conditions of unfreedom they make possible.

Thus, though the state has been interrogated in critical perspective,<sup>21</sup> there remain important connections to the material and discursive ordering and operation of power made possible through (in)formal institutional, policy and socio-legal practices and arrangements and their enforcement. The ways the power relations of the prison must be erased in IR also gives us insight into the ways in which colonialism, and especially settler colonialism, must also be continually be eclipsed. Therefore, in this project I hope to provide an intervention that foregrounds an analysis of power and the ways colonial hierarchies work alongside methods and practices of settler colonial law and institutional formation in order to make possible the prison and prisoner as institutions, practices and categories of subjectivity on which settler colonialism and empire relies.

When we take imprisonment for granted, we hide a crucial strategy and means by which colonial violence as harm to bodies and lands is made possible. These of course, are not only made possible through the punitive logic at the level of the international, but at the level of state-making. For settler states, the deployment of these logics has profound implications for the terms on which inclusion and exclusion are conceived. In the case of the Prisoner's Dilemma, it produces a limited and clearly defined set of choices, punishments and payoffs. In this way, although the use of force has already been assumed, the prison is likened to the international system and intended to illustrate a set of limited conditions that states face in making decisions about how to act within the international structure of states in order to produce the greatest number of rewards. If the

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<sup>21</sup> Chowdhry and Nair (2002) provide a detailed discussion of the gaps in critical IR scholarship in pages 6-10.

state in question acts in ways that promote their self-interest as defined by the rules and norms of the international system, they will reap rewards. In such a framework, punishment additionally becomes a method to condition behavior towards the rules and norms of the system, as well as a means by which dominant power extends itself over the bodies and lands of others.<sup>22</sup> Therefore, the logics which underpin this invisibility take for granted the use of force at the same time that they deny the invasive and transnational methods of governance that were required to make colonialism and settler colonialism possible.<sup>23</sup> This is enabled by how the state is taken for granted as a unit of analysis, as others have argued elsewhere.<sup>24</sup> However, I want to suggest that when we consider the ways these methods have implicated the prison and prisoner in IR it is possible to gain insight into how the struggle to get colonialism and settler colonialism *seen* in IR is also compounded by the inability to see the prison and prisoner as well. This means that it becomes difficult to separate practices of imprisonment from colonial and imperial projects historically and on an ongoing basis.

Arguably, the prisoner's dilemma rests on much more longstanding ontological and epistemological commitments in modern liberal thought regarding the centrality of the use of force to good government and governance, as well as the ways these philosophies have often been naturalized and obscured through their application within IR. Despite their differing levels of willingness to engage with questions of power and

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<sup>22</sup> Marks (2004, 113) has also shown, both prisoners and states have the ability to affect and alter the circumstances or conditions in which conflict or cooperation occur to demonstrate that the international system is not in fact a fixed reality.

<sup>23</sup> This is reproduced when, for example, a game theory model is deployed to give an account of the scramble for Africa.

<sup>24</sup> See for example, Walker (1997), Campbell (1998).

violence, both Realists and Liberals take the prison as an institution and set of practices for granted: the reality of the prison and prisoner are assumed in the question itself. The implication of this is that practices of imprisonment as well as the prison and prisoner remain invisible and yet absolutely central features and figures in global politics.

Marks identifies that, “what matters most in the application of game theory in international relations theory is *not* the unique imagery inherent in *each* game’s underlying metaphor but how *all* the games taken in their entirety convey the same picture about what international relations is about” (2004, p. 35-36, emphasis original). This is true; however, I would like to both broaden and add specificity to this statement by suggesting that the prisoner’s dilemma can be further unpacked by establishing how it is premised on and works alongside other deeply established ontological commitments and erasures in the field. In the following section I read the Prisoner’s Dilemma as a set of logics with deeper roots in modern political thought, and as adding insight into understanding the ways in which abstraction and erasure of the prison and prisoner have become enshrined in IR. By doing so I believe we can gain greater insight into the specific ways prison and prisoners have become both central to and absent in the discipline.

### Punishment and Criminal Subjectivity in Modern Political Thought

Social contract theory rests on the premise that there is agreement to enter into society under certain conditions in exchange for security and protection from the sovereign or government. It is within this agreement that prison and punishment become possible and even desirable, since they are tools that allow the law to be upheld while also

acting as a deterrent for future violations. But what can be gained by examining the role of punishment, constraint, and coercion within these frameworks? In this section I examine the role of punishment and property in social contractarian thought to highlight that their co-constitution has been under theorized. Paying particular attention to the role of punishment, I show how claims to rationality and universalism continue to structure processes of criminalization along racialized, gendered, sexualized and classed lines. I argue that ways of being in relation to land and labour perceived as deviant become criminalized, which subsequently provides the grounds for coercion and non-consensual inclusion, as well as the means by which the use of force is normalized against particular populations. Examining these relations indicates a more comprehensive lineage of erasure in how the prison and prisoner ensure punishment and criminalization as central strategies of the settler state within empire.

Thomas Hobbes' conception of the "state of nature" works alongside and informs the Prisoner's Dilemma narrative to establish claims about human nature under anarchy and the behavior of states in an anarchic system. As Marks (2004) identifies, in the same ways Realists establish anarchy as the central problem of IR through the use of Hobbes' 'state of nature,' they also make implicit assumptions about the prison. Namely, that despite an overarching and imposed structure, they are anarchic, violent and primitive—attributes that are easily scripted onto prisoners themselves. Though these assumptions are not widely shared beyond the mainstream of the field, they are difficult to escape and still inform the basis of the most powerful schools of thought within IR alongside other such metaphors (Marks, 2004).

The Hobbesian story of human life in the state of nature as being “solitary, poor, nasty, brutish and short” (1981[1651], 186), is well known and not without problems in the way that it has been central in theorizing sovereignty and upholding the order/anarchy divide on which orthodox IR theories have been premised (Walker, 1993; Beier, 2002). For Hobbes, the state of nature is one of perpetual insecurity because under conditions of scarcity human beings will always need to seek their own self-preservation and causing the security dilemma to ensue (Walker, 1993). As Walker claims,

Among (proto bourgeois) individuals, Hobbes argues, structural relations of insecurity demand a superior sovereign for an ordered polity to be constituted. Hence, the powerful resolution of the relation between sovereign individuals and sovereign states through a contract that is both freely entered into and yet necessitated by structural conditions. (Walker, 1993, p. 93).

This conception of human nature necessitates a sovereign or Leviathan, since peace and order are impossible without.

Walker suggests that Hobbes provides a way of negotiating claims of autonomous individuals with a political community since,

...[A]ccounts of consent, participation and representation that came to be articulated as a way of holding apart, yet also reconciling, the claims of supposedly autonomous individuals with the claims of obligation to a broader collective, the community of citizens, the people, the nation, the state. (1993, p. 147-148)

Beyond the fact that reconciling freedom with sovereign authority under capitalism naturalizes the acceptance of subjugation and asymmetrical relations of power, I want to suggest that Hobbes’ account be understood as one which argues that the social contract must be entered into under conditions of constraint. This is not only because structural conditions naturalize social hierarchy but because consent as described by Hobbes, is actually about coercive “agreement.”

John Locke on the other hand, understood life in the state of nature, though

insecure, to be relatively calm, cooperative and pleasant, so long as everyone followed the rules. Locke argues that though the state of nature is one of equality and liberty, it is not one of license as “no one ought to harm another in their life, health, liberty or possessions” (1980[1690], p. 9). Similarly, to Hobbes, Locke naturalizes his own conceptions of reason, morality, property and punishment through using the state of nature as a rhetorical device that adopts his theorizations about political society. Locke’s conceptions of property have been shown to be of central importance in understanding his theorizations “since the creation of property and its preservation constitute the foundation of the state of nature and civil society respectively” (Arneil, 1996, 60). At the same time, the question of punishment is actually one of the first subjects addressed in Locke’s discussion of the state of nature, where punishment and property are already married.

Hobbes’ understanding of punishment follows rather predictably from his ideas of power, authority, order and obedience. Punishment is an action permitted by the sovereign in the event that the law is violated, since the right for security has been surrendered to the sovereign. Likewise, where there is no law, there is no crime:

... that the Civil Law ceasing, Crimes cease: for there being no other law remaining, but that of Nature, there is no place for Accusation; every man being his own Judge, and accursed onely by his own Conscience, and cleared by the Uprightnesse of his own Intention. Then therefore his Intention is Right, his fact is no Sinne: if otherwise his fact is Sinne; but not Crime. [...] That when Sovereign Power ceaseth, Crime also ceaseth: for where there is no Power, there is no protection to be held from the Law; and therefore, everyone may protect himself by his own power: for no man in the Institution of the Sovereign Power can be supposed to give away the Right of preserving his own body; for the safety where of all Sovereignty was ordained. But this is to be understood onely of those, that have not themselves contributed to the taking away of the Power that protected them: for that was a Crime from the beginning (Hobbes, 1985[1651], p. 337)

In other words, there is a hierarchy of violence and crime is only possible when there is a law to violate. Even though in the state of nature the use of force can be used against

another for self-preservation, the difference is that no one has an obligation to submit. At the same time Hobbes locates the making of sovereignty in the preservation of life in the state of nature. When the law is broken his position is that the state has no obligation to uphold the social contract with criminals since they, as the initial violator of the law (the social contract), become enemies of the state (Brettschneider, 2007). This is consistent with his position that the punishment for many crimes should be the alienation of citizenship.<sup>25</sup>

Since criminality depends on a “defect in Reasoning” and is “Of the Passions” (Hobbes, 1985[1651], p. 339, 341), unreasonableness is a criterion of criminality and vice versa. Though Hobbes projects that since rational and reasonable men enter into the contract on agreement, this ignores the structural conditions of constraint that make up the state of nature and necessitate the sovereign. Thus, when violators of the law are inevitably accused of unreasonableness and the punishment justified, this is simply an extension of the coercion and violence that is naturalized in the state of nature and foundational to the contract itself.

Although Hobbes and Locke come to different conclusions about the conditions and circumstances with which citizens authorize the just use of force in society, I argue that both try to reconcile freedom with conditions of constraint. Hobbes attempts to reconcile freedom and right with supreme and excessive sovereign authority under

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<sup>25</sup> Brettschneider (2007) also points out that not all social contractarians take such an extreme position. He says, “Whereas Hobbes labels criminals “enemies” outside the social contract, contractualist justification views even the worst offenders as citizens and requires that the coercion they face be reasonably acceptable to them” (2007, p. 181).



capitalism to achieve peace and order, whereas Locke attempts to settle it with a form of collective agreement that claims to be more measured in the use of force, but still rests on the naturalized marriage of property and punishment. Therefore, both Hobbes and Locke argue that the social contract must be coercively entered into in different ways. This means that political community and state formation are about non-consensual relations even on their own terms.<sup>26</sup>

According to Brettschneider (2007), social contractalism is not a theory of actual consent, since “[c]ontractualism aspires to be a theory of legitimate coercion” (p. 182). He goes on to argue that, “Never is a state more coercive than when it punishes, [making] punishment a paradigmatic example[...] contractualism hopes to justify.” I however want to suggest that the criteria of assessing the extent to which social contract theory attempts to legitimate coercion may be more effectively perceived by looking to the more insidious forms of its operation and contractalism’s core assumptions. Of course, the moment of punishment lends crucial insight into the operation of power and authority because of the explicitness with which personal, physical, emotional, and psychological boundaries are violated, but this moment is connected, and indeed made possible by the earlier erosion of autonomy and freedom through coercion, constraint and non-consent.

Likening the state of nature and the role of punishment for Hobbes and Locke to Realist and Liberal revisions of the Prisoner’s Dilemma suggests that more baggage may

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<sup>26</sup> Those with the option to enter in to even this coercive agreement included white bourgeois men with an interest in maintaining their security of person and property.

be at play than an understanding of game theory alone makes room for. If the question the prisoner's dilemma suggests is not *if* force will be used, but *when* and *how* (to what degree), I want to suggest that referring to Hobbes and Locke can give us some indication about the underlying assumptions that are necessary to answer this question. By making the case for the right to punish as foundational to order and good government, the assumption of punishment by force is certainly not exclusive to IR alone, but to Political Science more broadly. In this sense, the concepts of conflict, cooperation and order become illuminated, since punishment resolves any tension, or non-cooperation towards these ends. For Realists and Liberals alike power and cooperation *through* coercion is the answer that the prisoner's dilemma provides for IR. This is not simply present when the law has been violated but has a foundational purpose in the formation of political society informed by social contract traditions.

Despite the fact that Realists have selectively drawn on Hobbes for theory building purposes, the state of nature metaphor has become established in the field by the theoretical mainstream. Drawing from the work of Peter Hulme and Ludmilla Jordanova, Beier (2002) points out that social contract theorists relied on accounts from European travelogues of the "New World" to formulate the ontological basis of their theories—namely their conceptions of the state of nature.<sup>27</sup> Though Locke's articulation of the state of nature differed from his predecessor, both rested on many of the same racist and Eurocentric ideas (Beier, 2002). If Hobbes has been a staple influence in the discipline's mainstream theoretical debates, it is not to say other conceptions of the state of nature

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<sup>27</sup> See for example, Farr (2008).

have not come to bear. Acknowledging Hobbes' regard among Realists and others alike should be read within a broader context of the discipline's indebtedness to the foundational assumptions of social contractarian thought and the Westphalian state system, as well as the ways even critical approaches within the field take this foundational colonial and racist violence for granted.<sup>28</sup>

Locke's ideas about the state of nature may not have been as readily picked up by IR theorists; however, as others have pointed out, Locke was involved in colonial missions himself and his work has been shown to make arguments that provide much of the intellectual groundwork that formed modern Liberal thought and that would justify colonial conquest in the Americas (Tully, 1993; Arneil, 1996; Hsueh, 2006; Farr, 2008). Locke is also instructive here because, though he shares with Hobbes a propensity in drawing on gendered and racist interpretations of the "New World" and its inhabitants, we can read his argument as a political-economic one explicitly because of the centrality that property takes in his theorizations. In their naturalizing of contractarian theories of property, both Locke and Hobbes' claims about the state of nature also served to diminish the life ways of the Indigenous peoples of the Americas (Nichols, 2005). In other words, social contract theory provided both the justification for their indigenous removal and the means by which this could be accomplished.

In his piece, *The Colonialism of Incarceration*, Nichols (2014) indirectly follows

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<sup>28</sup> For example, this has become especially prevalent in the post 9/11 era where, in an attempt to draw attention to the profound violation of civil, political and human rights, a large body of critical scholarship reproduced the notion that extending rights makes it possible for the liberal democratic state to regain its moral and just status. This in effect serves to erase the violence at its foundations and within ongoing practices and institutions.

on this point to argue that it is for this reason that Indigenous claims provide a critique of practices of imprisonment that are based on a different normative foundation than other over-incarcerated racialized populations in the Americas. Despite the accuracy of the statement that critical prison studies has “insufficiently attended to the centrality of colonialism to the origins, scope, scale, and legitimation techniques of carceral power in North America,” he does not develop an analysis of carceral power that takes account for its transnational dimensions and therefore replicates its domestication within the bounds of the state.<sup>29</sup> Thus, though he is able to take account for the role of imprisonment in dispossession, through this framework we none the less lose access to a way of understanding relationships between punishment and property as ones that rest beyond territorialized sovereignty. This changes our understanding of carcerality itself.

An analysis of property without acknowledging punishment presents a partial image of Locke’s theorizations and what we can infer from them about the way dominant power became secured. For Locke (1980[1690], p. 19), anything that occurs in nature could be possessed by adding one’s labour to it for its improvement: “Whatsoever then he removes out of the state of nature that hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*.” As scholars have shown, Locke’s notion of property—specifically the conceptualizations of land and labour that it relies on—have a number of deeply

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<sup>29</sup> This would in turn alter the distinctions he outlines in his formulation of the critique that Indigenous peoples’ claims provide about carceral power, including whether it can be contained to the notion of critique. Similarly, though Nichols’ (2014) discussion challenging the difference between the logic of war and social pacification is helpful and a discussion to which I hope this project contributes, we miss a chance to explore the role that capitalism plays making a more nuanced theorization of violence and carcerality necessary.

problematic implications for Black and Indigenous peoples (Armitage, 2004). These assumptions include viewing slaves as property (i.e. owned labour that could be used as a tool to accumulate property for the owner), and Indigenous peoples as part of the state of nature (since they were considered as having no government or recognizable way of working and thus owning the land).<sup>30</sup> This latter move was particularly useful to Locke and his involvement in colonial settlement in the Carolinas, since it produced both an economic and ethical justification for English colonialism in the Americas, and land theft in particular (Arniel, 1996).<sup>31</sup>

Locke highlights that land—the earth itself—“is the *chief matter of property*” and makes clear the superiority of European ways of working the land (i.e. agriculture, cultivation, enclosure) and relating to the land (a hierarchical and asymmetrical relationship in which white men own and control land, labour and all that comes from it) (1980[1690], p. 21, emphasis original). The fact that Indigenous peoples’ lifeways were not understood as meeting this criteria was utilized to provide the intellectual justifications for delegitimizing Indigenous claims to the land where they have resided since time immemorial. Informed by the doctrine of *terra nullius*, these ideas contributed to the depiction of Indigenous lands vacant and empty, or as Bonny Ibhawoh has put it, “that aboriginal land was in effect no man’s land and that by conquest and “improvement,” European settlers could make legitimate claims to them” (Ibhawoh,

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<sup>30</sup> Locke makes these claims by both using Amerindians as examples to justify this theory of property and diminish any indigenous claim to land through this framework (Arniel, 1996).

<sup>31</sup> Though the emphasis in this project is on the Canadian context, at this moment in history the Carolinas were embedded in the British imperial project.

2013, p. 8; Weaver, 2003).<sup>32</sup> Although enclosure has been documented as one of the primary tools of extending colonialism in the Carolinas (Arneil, 2006), this would not be possible without the first move of universalizing settler claims and rationalizing settler possession via *terra nullius* and hierarchies of value which ascribed European ways of relating to land as superior.<sup>33</sup>

Though Locke's state of nature is less popular among orthodox IR, it is necessary for understanding the economic rationality that is assumed by them. For Locke, the state of nature not only provides the justification for a more responsible or measured version of sovereignty in comparison to Hobbes, but at its center is the necessity of a centralized authority to uphold preconceived moral and political standards for the right to punish and the right to property. It is made clear in his claims about the state of nature that *both* are crucial in forming the foundations of political society, yet this relationship seems to be sorely under theorized.<sup>34</sup> For Hobbes and Locke criminality is a major criteria of assessing reasonableness because, as previously mentioned, those who break the law are understood to do so because they do not possess the capacity to reason.<sup>35</sup> It is on these

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<sup>32</sup> *Terra Nullius* was a legal doctrine whereby indigenous lands were constructed as unoccupied or 'empty space' as a means of facilitating European occupation and theft (Ananya, 1996; Stewart-Harawira, 2005). Whereas *terra nullius* was used in the case of colonization of North America as justification for land theft, in the scramble for Africa it was used to refer to whether a territory was occupied by other Europeans and ultimately "served the role of international law in prescribing ways to avoid conflict between rival European powers" (Ibhawoh, 2013, 6; Keal, 2002). I will discuss the specificity of *terra nullius* in the context of Canada in Chapter 3.

<sup>33</sup> For example, requiring Amerindians to erect fences around their land and to provide land allotments and boundaries to settlers (Arneil, 1996).

<sup>34</sup> It is beyond the scope of this project to fully theorize the relationship between punishment and property in social contractarian thought. My intent is to point out this omission in order to establish some of the intellectual foundations for the presence and absence of prison, punishment and settler colonialism in the discipline of IR.

<sup>35</sup> In addition to the power relations previously outlined, the connection that is established in social contractarian thought between criminality and reason also maps on to ableist discourses as well.

grounds that it becomes possible to identify when the use of force is normalized as justifiable, acceptable, rational and measured. In short, when the mundane use of violence by the state is both made invisible and naturalized.

The ways in which Liberal conceptions of punishment become secured through Locke's formulations of political society are telling precisely because they, alongside property, provide justification for criminalization, slavery and Indigenous erasure and land theft in the Americas. If Indigenous life ways were made to be null and void and if the "New World" was a blank space, then there was never any room or purpose for Indigenous peoples and knowledge on the way to progress, according to Locke. Without mixing one's land and labour in what resembled European agriculture, proof of right would be difficult to establish (Arneil, 1996). Thus, this was part of the political and economic justification for why Indigenous peoples of the Americas were argued not to own the land on which they lived. In light of the under examined connections between the naturalization of punishment alongside property in social contractarian thought, it is instructive to consider how ideas of private property (and the assumptions of land and labour on which they rely) require enclosure, objectification and possession through the control and/or criminalization of undesirable people and deviant ways of life. Locke's theories about labour are equally important here, since his writings indicate that not all human beings are afforded life in the same ways. Since human beings could become property according to Locke, his theories simultaneously produce an intellectual justification for slavery alongside that of the land theft required for settler colonialism.

If criminality is determined based on the acceptability of particular ways of being

and relating to land and labour, and not only when breaking the law, then the practice of criminalization is connected to law, but not solely grounded in it.<sup>36</sup> And given charges of irrationality and inadequacy, we can also see how diffuse the idea of “reasonableness” and “rationality” is. For Hobbes, Locke and other social contract theorists criminality is a major criterion of assessing reasonableness because those who break the law must be without critical faculties to understand that they are challenging authority and “asking” to be punished. It is on these grounds that the use of force is deemed as required since those who are irrational cannot cooperate or respond to dialogue. As such, force becomes justifiable, acceptable, and naturalized.

The IR orthodoxy has done very well to draw on the “state of nature” and its corresponding assumptions as described by Hobbes and Locke to make claims about the international state system. Indeed, social contract theories have been central to the development of the modern western state. The depth with which these analogies and their suppositions permeate the discipline is part of why they come to matter when reading the Prisoner’s Dilemma. Examining their role in the intellectual and material constitution of the international can work towards demonstrating how the foundational disciplinary and positivist frameworks of Realism and Liberalism have understood prison and prisoners all along. This reading of the prisoner’s dilemma not only makes this stark empirical absence visible, but also highlights a much longer lineage of utilizing assumptions about the necessity, purpose and centrality of punishment by the privileged in the service of

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<sup>36</sup> In Chapters 3 and 4 I will discuss the complexities around settler colonial claims to ‘law’ in the Canadian context, especially in light of the erosion of the treaties and longstanding international agreements between Indigenous and European nations as a result of Canada failing to uphold its responsibilities.



universalist claims about the world. The additional context reading Hobbes and Locke provide is to suggest that questions of land and labour, through questions of colonialism and imperialism, are in fact central to how violence, constraint and coercion is constitutive of the international system, and yet must continually be hidden and erased.

### Reading Punishment and Criminalization as Features of Settler Colonialism

Instead of treating punishment as secondary to other concepts like freedom, right and equality, Andrew Dilts (2012, p. 60) asks what we can learn from Locke's *Second Treatise of Government* from the point of view of the centrality of punishment? He points out that it is especially the social contractarian canon of political philosophy that presumes "the seeming inevitability of punishment" in order to ground and operationalize its conceptions of the social contract and natural rights, since they "have no empirical referent" (Dilts 2012, p. 58-59; McBride, 2007, p. 122). The usefulness of punishment for Liberalism according to McBride lies in the way it serves as an instrument "to establish itself as a political order" (Dilts, 2012, p. 59). The logical purpose of punishment resides in being able to produce criminality in contrast to innocence, and therefore its power lies in its confounding and slippery qualities, so much so that even those who seek to deal with this as a central feature of Locke minimize the tensions it raises or attempt to resolve the contradictions punishment presents (Dilts, 2012).

The utility of the question of punishment for Locke is in the ways it comes to embody the inherent instability and unknowability of political life. This excess and instability is displaced onto the criminal in order to make possible the production of stable

subjects with the ability to enter into the social contract on the grounds established (Dilts, 2012). In other words, the production of stable subjects is only possible against those who are not: criminals, savages and other degenerates. By making criminals, (Dilts primarily discusses the figure of the thief), to carry the “burden of danger and irrationality” they not only become a physical threat that plagues the state of nature with uncertainty, risk and violence towards one’s property and oneself, but presents an ontological threat as well (Dilts, 2012, p. 61). As figures beyond reason or ability they are unknowable and must be judged through their status with the label and identity of criminal, which simultaneously allows us to know them by their past actions while controlling the uncertainty imposed by the future threat they necessarily must embody. This threat of unknowability and risk of theft and violence, having the potential to spiral out of control in the state of nature, is what necessitates Locke’s foundational claim for the commonwealth, since it is grounded only through making the distinction between the State of Nature and State of War and “the attempt to stabilize the unstable right to punish” (Dilts, 2012, p. 62).

In this conceptualization of crime as the use of force and as subjugation the thief is likened to tyrannical power and argued to produce an existential threat to one’s property and oneself *simultaneously*.<sup>37</sup> Whereas in the state of nature acts of crime may easily veer into a state of war through reciprocal punishment and slavery, within the commonwealth civil society is maintained when a crime has ended since at that moment the use of force has ceased and it becomes possible to categorize the offense and

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<sup>37</sup> Tyranny is defined as the use of force without right. In this sense, the thief becomes indistinguishable from the murderer and crime is an act of war within the state of nature (Dilts, 2012).

determine proportionality (Dilts, 2012). Society therefore becomes restored in the just use of force in the form of punishment. Slavery is intimately tied to Locke's logic and rationality of punishment as a liberty of the transgressed, since a transgressor may remain under their master's power indefinitely.<sup>38</sup>

The slave, according to Locke, was someone who was "biologically alive" but without the "rights and powers" of humanity (Norris 2005, as referenced in Dilts, 2012). This echoes Rousseau's own crude articulation: "In taking an equivalent of his life, the victor did not spare it: instead of killing him unprofitably, he killed him usefully" (Rousseau as quoted in Dilts, 2012, p. 67). Indeed, for Locke, the unstable position of punishment and slavery within the State of Nature provide the drive for civil society. Here it is worthwhile to note that it is in this context of having no resolution to *justified* punishment and slavery that a government must exist to restrain the right to punish criminals and identify aggressors in exchange for protecting one's life, liberty and property: "[t]his is done by producing the criminal as necessarily beyond reason, as animalistic and dangerous, and constitutively defining the obedient subject as rational, innocent, and, above all, free" (Dilts, 2012, p. 72). Thus, the Lockean project was already about the production of subjects devised to determine who is a rational actor by nature,

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<sup>38</sup> Dilts argues that, *Proportional* punishment, on these terms, has no boundaries, and generates the disorder and chaos that characterizes the State of Nature. While the possibility of crime might make the State of Nature unstable and dangerous, the practice of punishment makes it unacceptable. As suggested by Farr, Locke's argument in favour of slavery follows a "just war" tradition emphasizing action (2008) and in this sense differs from naturalistic accounts (1980).

but also through the foundational act of punishment.<sup>39</sup> This determination marks out the conditions of inclusion for both bodies and land.

The rational actor is the only fully human figure in Locke's framework. The slave and property-owning white man's innocence is secured at a rate higher than all else in this account and by virtue of criminalizing deviants. Therefore, the work of punishment is that the criminal must not just be managed in light of their actions, but for a way of being (Dilts, 2012). It is exactly this 'way of being' that makes space to consider how the identity of the criminal maps on to the other identities that become vilified through claims to rationality which racial, gendered, classed, sexualized and colonial hierarchies have already been established in relation to. These figures are either incapable (i.e. deficient) or uncooperative (i.e. unwilling) to enter into the social contract on the terms set out, and therefore must be coercively included through performing distinct roles that are constructed to legitimate its existence: the slave, the Indian, the criminal, and so on.

What this demonstrates is that it is also the substantive difference in the claims to land and labour other ways of being suggest that threatens the legitimacy of the contract. But beyond thinking about this as exclusion from the social contract, criminalization presents the means by which *both* labour and land, (property in addition to territory), are required through methods of coercion and extraction to make the capitalist settler state possible. Recalling Audra Simpson's (2017, p. 20) words at the outset of this chapter:

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<sup>39</sup> This included, "Lunatics and Ideots," children, "Innocents," "Madmen" etc. Criminals are also referred to as "wild Savage Beasts"—as animals, which places them in the state of nature and with others who never leave nature (Locke, 1980[1690], p. 34). On this point, we can begin to contextualize the relationship between criminality, madness and ableism, and how it overlaps with other relations of power through claims to rationality.

“For Native people, this ruse of consent marks the inherent impossibility of that freedom after dispossession, a freedom I argue is actually theft.” Simpson exposes how claims Indigenous people are free through inclusion are impossible and untrue, because of the theft of Indigenous bodies and lands on which the settler state rests. Thus, the social contract is made possible by legalized theft, (and the continued erasure of that theft), both at its founding and in perpetuity—though it can never be acknowledged as such—at the same time that punishment provides the mechanism by which claims that challenge any such reality as legitimacy become criminalized, managed and contained through the explicit use of force.

### Colonial Carceral Erasures

This reading highlights that Realist and Liberal uses of the Prisoner’s Dilemma through claims to universalism and rationality actually serve to make invisible the role and function of the prison and prisoner within IR. Constructivists, like Marks, may be able to question how these institutions and subjectivities produce the international, but they do not offer a way to interrogate the prison and prisoner as providing the material requirements of land and labour that has driven and continues to compel imperial and colonial expansion in the current moment. Critical scholars in IR, though directing attention to imprisonment and carceral space, often do so in a limited way that often reproduces this same erasure of land and/or labour in varying capacities.<sup>40</sup> In order to avoid this in this project I strive to take account for the role of the prison and prisoner,

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<sup>40</sup> I will elaborate on this discussion in Chapter 2.

and thus a reading of carcerality and criminalization, at an imperial juncture that rests on the widespread theft of bodies and labour through the transatlantic slave trade and external forms of colonization, at the same time that it birthed forms of settler colonialism that require the theft of land that continue today in ways that cannot be captured in an extractive model. Doing so requires a refusal to take the prison and prisoner as a political-economic institution, form of subjectivity, set of practices, and logics for granted, and aims instead to make more explicit its role in sustaining global inequities and hierarchies advanced through colonialism, capitalism, and militarization. The ways the power relations of the prison are eclipsed in IR gives us a great deal of insight into how the power relations of settler colonialism are elided as well.

The use of force is not only present during the act of punishing the prisoner, as the Prisoner's Dilemma seems to imply. Here we can recall that the prisoner who does not cooperate or act within the terms set out for them receives the harshest punishment in the form of a ten-year sentence. Social contract theory gives us insight into the ways claims to universalism and rationality undergird cooperation through legitimate coercion, while providing the grounding necessary to disavow the use of force and non-consensual forms of inclusion. These claims also ensure that the making of criminal subjectivity is informed by racialized, gendered, sexualized and classed hierarchies of power. This means that contrary to the story the Prisoner's dilemma supplies for IR, punishment and the use of force are not exceptional actions introduced periodically or where necessary in order to diminish violence. Rather, violence in the form of the theft of bodies and lands are necessary for the myth of sovereignty, global capitalism, and the making states within the

international system itself. Indeed, you cannot steal people's bodies, labour and land without carcerality. But because the imperial and colonial power relations must necessarily seize bodies and land as property or as targets of elimination, these erasures are in fact (settler) colonial ones which are continually evidenced in the ways carceral institutions are required to manage the relationships between bodies and land.<sup>41</sup>

Examining the political philosophical foundations of imprisonment in social contractarian thought shows how practices of punishment and criminalization become a method of erasing and “resolving” social conflict within ‘the international,’ as well as settler state contexts. In doing so land, labour, criminalization and punishment are mutually constituted in ways that link the prison and prisoner as central to an imperial and colonial project. By establishing the foundations of IR's ontological investment in prison and punishment as a method of resolving conflict we can more easily access assumptions about whose security, well-being and life ways are secured through innocence and whose ways of being must be criminalized.

We have reason to interrogate the unquestioned status of the prison and prisoner as a central institution and figure in IR, as well as the roles they play in society and in our lives. Indeed, the very presence of the prison, its foundational assumptions, and status as an uncontested and under examined institution in IR can be understood as ones to ensure conditions of the international system continue to be founded on colonial violence and maintained through forceful constraint in the contemporary moment. Settler states

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<sup>41</sup> As the central argument of this dissertation, I make this claim in depth in subsequent chapters by exploring a variety of socio-legal, institutional sites and governance practices.

continue to rely on the production of criminality and carceral space in order to redefine and reorganize relationships between bodies and lands. These ongoing histories are ones that must be historicized in place in order to fully unpack the lineage of settler state and capitalist expansion in ways that illuminate how carceral logics, imprisonment and the production of carceral space developed as a settler colonial governance strategy on Turtle Island.

In the end, the Prisoner's Dilemma can tell us very little about prison and prisoners as an everyday occurrence in IR. It can tell us little about how and why so many poor and racialized people are killed or in an increasingly privatized and expanding global prison system, or why it is predominately poor and racialized women who are increasingly criminalized or at the very least made to bear the entire burden of work and grief when their loved ones are. Prisoners cannot be conceived as citizens and workers, or even on their own terms and both the land on which prisons are built and the ways in which bodies, labour and resources are organized in order to re-constitute power and accumulate wealth and profit can be linked to ongoing settler colonial projects within political systems that still embody assimilationist, genocidal and master-slave narratives, even if not explicitly. Asking questions of the prison and prisoner in this way is central to moving towards a transnational and decolonial feminist engagement with questions of imprisonment and carceral space, which is the subject I turn to in Chapter 2. There I will draw on feminist interventions in global politics and IR to further theorize the relationship between land, labour and criminalization for the purpose of working towards a reading of imprisonment and carceral space that relies on ongoing colonial violence.



## **Chapter 2 – Towards Transnational and Decolonial Feminist Engagements with Carcerality and Carceral Space**

This dissertation, as an inherently feminist project, is indebted to feminist scholarship within and beyond IR proper. In this chapter I outline the feminist scholarship has been central to my thinking about imprisonment and carceral space in global politics, as well as how it has been central to my unthinking of these same institutions and power relationships through abolitionist and decolonial visions. I make the argument that though collectively feminist work in IR and global politics has changed how we can understand and theorize imprisonment and carceral space in critical IR, there remain gaps in the literature that limit a developing a decolonial feminist theorization of carceral space in settler colonial contexts which center on questions of land.

Drawing primarily from Postcolonial, Black and Indigenous feminisms, I argue that these approaches broaden and deepen existing categorizations of the prison and prisoner within global politics and provide us with fundamentally different starting points to understand contemporary practices of imprisonment. I argue that they offer ways of deepening our analysis along three primary conceptual lines by: 1) Deepening our analysis of institutions and everyday practices through frameworks of unfreedom and carceral space; 2) Providing a framework within which criminalization is understood as shaped by categorizations of race, gender, sexuality and class and their transnational constitution; and 3) Propose, in various ways, that forms of coercion and non-consent continue to exist at the heart of empire. By teasing out the overlaps and tensions between these approaches I attempt to highlight their centrality to both contemporary IR and carceral studies, potentially locating places within which these conversations might begin

to converge, as well as their tensions. I highlight that these radical feminist approaches effectively bring forth the role of carceral space and criminalization alongside white heteropatriarchy within neoliberal capitalism by exposing coercion and non-consent as central features of these intersecting systems of power. Through this conversation, I argue that collectively gaps remain at the intersection of questions of land and settler colonialism.

In the second part of the chapter I position myself in the project and share how my personal journey and the teachings that have been shared with me along the way have led me to this work. I highlight how these inform the way I strive to be held accountable as a settler on a journey of ongoing learning and growth so that I am capable of listening and upholding Indigenous and feminist decolonial visions of justice on Turtle Island. Here I hope to make clear how these politics inform the subsequent reading of Indigenous authors, my sites and engagement with questions of land in later chapters. Building on contributions in the previous section on the relationship between carcerality and undervalued forms of reproductive labour, I foreground the insights I have gained through the work of women and especially Indigenous feminists over the course of finding my way to and completing this project and suggest that these teachings highlight the centrality of healing work and spiritual knowledge to struggles for decolonization and ecological justice.

From the Prison and Prisoner to Criminalization and Carceral Space: Theorizing Carcerality as a Strategy of Settler Colonial Governance

Within IR, feminist political economy and security studies literatures have

provided different entry points into questions of imprisonment and carceral space as phenomena that uphold and reproduce contemporary relations of power in global politics. Feminist critical security studies has sought to examine the ways in which practices of detention are primarily extensions of state power and authority, with particular emphasis on the post 9/11 moment. Here the focus has been squarely centered on unjust uses of sovereign power and extrajudicial regimes of governance, as well as their effects on the tenuous state of political freedom within Western liberal democracies and other locales where this ‘global war’ is carried out.<sup>42</sup> Examining how the state and sovereign power are being reshaped and reproduced in the contemporary moment through the ways power is exerted on the bodies of detainees lends insight into how these practices become possible and the subject position that those bodies are relegated to in relation to the state.<sup>43</sup> Though this work has examined how bodies are criminalized and ascribed to carceral spaces, it has remained limited in the sense that it has almost completely ignores the question of the prison and the more mundane ways other kinds of criminality and carcerality are produced.<sup>44</sup>

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<sup>42</sup> This has largely been in conjunction with the cultural and aesthetic turns in the discipline where the politics of visibility and representation in everyday life has inspired important empirical connections between the necessity of speaking out against the injustices that have accompanied the U.S.-led “war on terror” cannot be disentangled from their representations and broader visual and affective economies. See for example, Shapiro, (2004), Amoore (2007), Beier (2007), Dauphinee & Masters (2007).

<sup>43</sup> See for example, Edkins (2003), Edkins, Pin-Fat, and Shapiro (2004), Masters & Dauphinee (2007), Foran (2011). Explicitly feminist in their orientations and borrowing from trauma studies, this work often shares a commitment to shift our disciplinary gaze towards politicizing bodies and everyday spaces, and to suggest that grief, loss and memory offer ways to disrupt and reconstitute dominant narratives of political communities, our relationships, and our lives.

<sup>44</sup> This work follows a wider tradition of feminist scholarship on militarization which begins to make links between the everyday practices of war and state-making, (Enloe, 1990, 2004, 2007; Whitworth, 2004), However, this work has sometimes neglected a systematic engagement with carceral institutions like prisons and police, which has often meant the question of carcerality as inherently connected to militarization has remained underdeveloped in feminist IR.

Since scholars have largely engaged ideas of criminality and criminalization as an extension of terrorist others, enemies, and the sovereign drive to reconstitute itself through political exclusion as integral to states' security mandate, this work has in some ways pointed to the utility of exclusion at the heart of sovereign power. However, as a whole this work has not been particularly attuned to the rights or safety of a broader population of prisoners and criminalized persons, and thus misses both the political and economic utility of punishment more broadly, as well as its founding role in the creation of the modern state within the international system. Largely drawing on Michel Foucault and Giorgio Agamben has led to analyses of new forms of political exclusion and subjectivity, with particular attention to the notion of 'the camp' to describe sites of detention and 'bare life' (Agamben, 1998). Though these categories have been inflected with racialized, gendered and classed categorizations, critical work in this field has not always sought a deeper analysis of these hierarchies in relation to the constitution of criminal outsiders historically speaking, or in relation to settler colonial histories. On this I follow others who have made the critique that 'bare life' is a simplified notion that does not allow understanding for the types of hierarchization and transgressions produced through the colonial experience.<sup>45</sup>

Though to some extent this critique also applies to feminist political economy literature on imprisonment, the latter has arguably contributed to an expansion in how we

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<sup>45</sup> Here it is worthwhile remembering Isin's (2002) critique of 'bare life' in terms of what it offers us in an analysis of citizenship. He argues, that there are various categories of 'others,' which all have quite different relationships and proximities to the state and the rights of citizenship, and whose "patterns of differentiation are more complex than the dualities implied by rich versus poor or possessed versus dispossessed categories" (Isin, 2002, p. 269). Isin goes on to show how these are shaped through orientalist, imperial and developmental framings of political community.

understand carceral space in IR as made possible through relations of capitalist unfreedom. Scholars like LeBaron (2011) have examined the prison as unexceptional and as both a state sanctioned and capitalist institution, which has enabled an analysis of prison labour as an example of the forms of unfreedom that are produced through neoliberal capitalism. She argues that unfree prison labour, cannot be understood outside of the conditions of constraint, immobility and coercion which shape the most recent forms of capitalist development under neoliberalism as state institutionalization of

...punitive unfree labor programs as part of a broader range of strategies to promote social and labor discipline[...] and to ideologically instantiate the legal closing off and criminalization of alternatives to wage labor. (LeBaron, 2011, p. 5-6)

By grounding the current exacerbation of already existing inequalities along gender, race and class lines within modern political-economic thought (specifically the assumption made by early classical economists that capitalism necessarily required workers who are already free in order to function most efficiently), LeBaron establishes that relations of unfreedom and carcerality exist both within and beyond the prison.<sup>46</sup> In the context of this project, we can build on this notion of unfreedom by thinking about the foundational relationship between punishment and property found in social contractarian thought discussed in Chapter 1.

Positioning capitalism and the relations of production as dominant makers of carceral space has both changed the possibilities for where we see carceral space, as well

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<sup>46</sup> Furthermore, LeBaron situates her analysis of unfreedom and the utility of Feminist Historical Materialism as a method within the integral contributions of Postcolonial, Black, Queer feminists who have highlighted the limits of white feminism as a framework and political stance that does not just erase the ongoing experience and labour of women and LGBTQ2SI+ people of colour, especially those who are poor, but de-historicizes the ways this labour has made it possible to live in and envision more progressive political communities in the current moment.

as how we understand carcerality as a set of everyday institutions and structures. From feminist perspective this has also included an expansion of where we see carceral space to include the private sphere of the household. For instance, LeBaron and Roberts (2010, p. 20) demonstrate how carceral relations exist at the intersections of state, markets and households and “at various sites and scales[... which] permeate the interrelated relations of production and social reproduction.” For capitalism to reproduce itself it requires the use of coercion, constraint and even the use of force: what they term “the capitalist relations of carcerality” (p. 20). They go on to argue that capitalist social relations and especially neoliberalism require harnessing confinement in order to ‘catch’ people, and that this inevitably requires limiting social and physical mobility in order to ascribe and lock particular segments of the population, (such as migrant workers, for example), into relations of hierarchy, dependence and subjugation.<sup>47</sup> As important as these linkages are, it also remains crucial to ask how the relations of power shaping the household, and therefore the practices of criminalization, would change from the perspectives of migrants themselves and/or from spaces outside the U.S.

In this sense, criminalization of particular populations is understood as an extension of changes in the social relations of production, rather than as an extension of the state and sovereignty alone. But equally so, the reproduction of racialized, gendered, sexualized and classed hierarchies of exclusion are accounted for primarily through the lens of the requirements of the intensification of neoliberal capitalism and hence the

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<sup>47</sup> LeBaron and Roberts are clear in articulating the role of the state and its interest in reproducing such asymmetries and stratifications, however here the question of the prison and prisoner still resides within a political economy framework and as primarily an extension of these relations of power.

former. For example, though the institution of slavery is taken account for as making mass incarceration in its contemporary iteration and the racism that undergirds it possible in the U.S., these relations do not always examine the intersection of capitalism with colonialism and white supremacy transnationally. Thus, though feminist political economists push the security studies literature by developing a more nuanced position on carceral space and carceral power within global capitalism, they often over-emphasize the social relations of production in a way that subsequently leads to the conflation of punishment and property as labour, rather than as a distinct set of social relations that play a role in state formation through a political as well as economic imperative. Neither feminist security studies nor political economy approaches have formulated a conception of carcerality systematically grounded in the colonial histories of empire.

Postcolonial feminists, whose work frequently draws on both poststructural and Marxist methods and critique, elaborate on exactly this question by building on structure-agency debates in ways that re-imagine global power and political subjectivity. Moving from the colonial experience as starting point, their interventions challenge an idyllic separation between state and market and provide theorizations of resistance that seek to dismantle and question the utility of the western canon all together (Agathangelou & Ling, 2004; Sajed, 2013). In this way, Postcolonial scholars offer ways of understanding IR that are able to fundamentally change the legitimacy of the terms of an imperial discipline and disrupt the disciplinary separation of security studies and international political economy in the process (Agathangelou, 2017). They do so by deconstructing the Westphalian state and the notions of sovereignty on which it resides by showing the

legacy of invasive colonial practices that do not just involve the extraction and appropriation of wealth in the formation of the colonies, but serve to re-shape categorizations of race, gender, class, sexuality and citizenship in Europe (Stoler, 1995), as well as through the development of international law (Anghie, 1996; 2005).

Through a Postcolonial feminist lens we gain insight into how race, gender, sexuality, class, culture and nation fundamentally shape peoples experiences of political and economic unfreedom in global politics.<sup>48</sup> For example, in charting transnational political economies of (re)productive labour, and the ways racialized, gendered, sexualized and classed hierarchies inform the process whereby particular types of labour are devalued and marginalized yet perform central roles within state-making and neoliberal capitalist empire-building projects, Anna M. Agathangelou (2004) has examined how particular forms of labour become devalued through criminalization. She has highlighted the particular ways sexual, reproductive and other forms of care work are a productive force, but that this labour must be controlled in particular ways in order to harness the most utility for states and markets and their beneficiaries. In her analysis of labour unfreedom we have to take seriously how the reproductive labour<sup>49</sup> of women is purchased transnationally by income-rich states and that there are modes of reproductive labour that continue to be unfree. This unfreedom however, cannot be understood without

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<sup>48</sup> For example, in a more recent piece LeBaron (2015) highlights this when she suggests that Marxist binaries of free and unfree labour need to be understood as shaped by social relations of power like race, gender, and citizenship.

<sup>49</sup> Agathangelou (2004, p. 3) defines reproductive labour as, “[A]n international sexual division of labour in which women’s social and economic contributions are exploited, commodified, and sold for cheap wages. It involves the purchase and sale of labour power, and the very self of the worker as a commodity (e.g. sexual desire, nurturance and the employers power to command this labour.”



an analysis of how racialized, gendered, sexualized and classed categories are productive of criminalization because it is otherwise not possible to capture this labour through a method of devaluation. To put it another way, Postcolonial feminists have provided the empirical analyses necessary to expose the social contract for the ways mappings of inclusions and exclusions remain shaped by neo and postcolonial relations. This adds complexity to the ways these power relations overlap with questions of punishment, property and unfreedom. These relations, as shaped by and within the colonial legacies of empire, also make clear how these relations and categorizations are being contested and reimagined.<sup>50</sup>

Together these contributions suggest possibilities for elaborating on the concept of carceral space and unfreedom. Agathangelou and Biemann both refer to the various kinds of care and sex work that underpin (re)productive economies and the desire industries in particular and prompt consideration for the ways this labour contains elements of unfreedom in terms of the structure of compensation, labour mobility, and workplace conditions which has subsequent implications for the forms of insecurity faced by workers in everyday life. As Biemann (2002) shows, this insecurity and violence is made possible through the economic unfreedom and the regulation of Mexican female bodies through the carceral spaces of the *maquila* and border zone. As she explains, the

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<sup>50</sup> I also think that within this literature we find space to examine the ways that unfree forms of labour necessitate their own forms of reproductive and care work that is devalued. The intersections of reproductive and care work within a political economy of imprisonment suggest the work of survival, resurgence and decolonization is also reproductive work that in many ways underpins, but also contains deep resistance to these institutions and forms of power. At the same time scholars like Biemann (2002), who I discuss in the next paragraph, explore the ways that over-determined feminized, racialized, sexualized and classed bodies as (re)producers are consumable, exchangeable, and disposable.

particular space of the *maquilas* “the reproductive functions of these bodies become strictly controlled from the moment they are determined to be productive” through technologies of discipline, control and workplace surveillance (p. 36). This occurs at the same time that women are dependent on sex-work to supplement their low factory income in conditions that have seen over 300 women murdered and disposed of in the desert. At the U.S.-Mexico border post-fordist production technologies are in effect to monitor, control, contain the movement of women’s bodies in place to ensure they remain docile in their consumption, exchange and disposability, however Biemann demonstrates that even through this women are continually finding ways to transgress the border. Together Agathangelou and Biemann highlight the importance of theorizing the conditions and transnational relations of power that make these forms of gendered, racialized, sexualized and classed work possible and their beneficiaries, in effect disallowing the invisibility of the complex forms of coercion and agency. Equally so, these interventions suggest that there are other spaces and sites of analysis that have not adequately been theorized within IR, and which would offer different vantage points from which to understand the role of constraint and non-consent as foundational to the modern state and notions of subjectivity.

The labour of social reproduction in the form of survival, and the care work that has been disproportionately displaced for centuries on to female, brown, black and Indigenous bodies continues, in some ways, to be over-looked by feminists doing transnational feminist political economy work by virtue of the sites of analysis they have privileged. Returning attention to the prison, prisoners and the communities that always

extend beyond prison walls has the potential to highlight some of the most marginalized forms of care, emotional, support and the otherwise radical expressions of (re)productive work. The place of the prison also draws our attention to the importance of thinking through the ways this labour is part of how the spatialization of power is realized. In settler colonial contexts this spatialization takes shape in particularly grounded ways and with legacies which are place-based. How do such forms of criminalization and the varied types of borders and conditions integral to creating carceral space uphold empire in the contemporary moment? As Agathangelou (2013, p. 458) states,

Terror is the opening that enables value. To understand this, it is crucial to understand the basis of global capital power as an anatomization and an archive of not just marginalization and colonization, but also slavery, opening up the space to think the reproduction process itself and its contingent methods of constituting sexual subjects and institutions from the position of those whose lives are non-value within this matrix.

Thus, whereas orthodox Marxist analyses tend to see certain forms of violence as unproductive, Postcolonial feminists attentive to these relations of power see the violence of imprisonment and the production of racialized, gendered, sexualized, classed and colonial criminality and the terror on which they rely as productive for empire since it has allowed for various tactics in the disciplining of land and labour that criminalization and carceral space enable for accumulation purposes (Agathangelou, 2013). Hence empire is made possible not through the criminalization of violators of the law, but through the devaluing (i.e. criminalization) of lifeways and ways of being that conceptualize human being's relation to land and labour radically differently, and thus embody uncontainable alternatives to the contemporary global order.

To reiterate, my contention is that these omissions, in addition to being understood

as a feature of capitalism's requirement for relations of domination to secure particular kinds of labour unfreedom and slavery also arise from a limited analysis of the intersections of practices of punishment with colonial and capitalist development in terms of relations to *both* labour and land. This means that it becomes difficult to make sense of the “historically specific role that unfree labor has played in capitalism's expansion and profitability” (LeBaron, 2011, p. 13) in a fuller sense without an analysis of the ways criminalization, (as it intersects with other relations of power), produces the rationales through which (re)productive labour, (including the labour of survival, relational, care, healing work and other marginalized and undervalued work), becomes devalued. Practices of terror and harm to particular bodies and territories, made possible through practices of criminalization, enables their production as the raw material whose possession is for profit and accumulation (Agathangelou, 2013). As Agathangelou shows, these relations are about maintaining “slavery as terror” within a sexualized economy. These different kinds of unfree (re)productive labour required by the prison system overlap with and yet cannot be contained by carcerality, including those required to cope with and struggle against systems of imprisonment and settler colonialism.

As previously argued, the modern conception of property did not only rely on particular disciplinings of labour, (i.e. slavery and other forms of unfreedom), but in harnessing and controlling land for possession and production. Though Agathangelou and other critical race and Postcolonial scholars have provided deep analyses that contribute to theorizing criminalization and carceral space, these interventions are not always seen as contributing to such discussions. At the same time, if we miss the possibility of seeing

the blind spots and gaps in different conceptions and relations of land and labour in the process of not just punishing, but criminalizing “deviants,” then we miss possibilities for aligning critical analysis of the prison, racism, heteropatriarchy and capitalism alongside colonialism. Such an analysis could be prone to reproduce the continual erasure of indigenous dispossession and settler colonialism as a foundational act of violence, theft and subjugation that allows for the contemporary neoliberal capitalist order to be realized within settler states.

With this in mind, it is useful to engage with the idea of the prison and its corresponding logics as a technology of governance. Following from Michel Foucault (1995; 2003), scholars have shown the complex ways that disciplinary power pervades institutions and spaces beyond the prison through new arrangements of actors and networks on a transnational scale (Leatherman, 2008). As Leatherman argues, the re-constitution of state power and authority under neoliberalism alongside the rise of new technologies, actors and networks has produced webs of power relations which include but are not limited to punitive and disciplinary power. Understanding how such systems of power operate through practices of surveillance, repression and violation of rights and freedoms has brought attention to new forms of carceral space but has also meant that analysis has shifted away from the prison and the organizing of carceral space as transnational phenomena. In this respect, disciplinary power employs both punitive or repressive and productive measures such as “the power to identify, order, manage and administer” which overlap and converge in a discursive field (Hunt, 2008, p. 42). And yet, the prison and production of criminality remains a central institution and set of practices

and power relations that shape people's experiences in various postcolonial and settler colonial contexts, especially at the intersections of marginality. In this sense, it becomes possible to read particular institutions and discourses as both repressive and productive in cultivating particular kinds of citizen and settler subjects.

In the context of a rich body of work on colonial governmentality,<sup>51</sup> there has been little work done that links settler-governmentality substantively with the prison and the production of carceral space and in the context of its continued utility for the settler-colonial project. Scott Morgensen (2013) argues that theories of colonial biopower naturalize relations of settler colonialism. In the Canadian context, Crosby and Monaghan (2012) have aimed to theorize 'settler-governmentality' in relation to the struggles of the Algonquins of Barriere Lake but draw primarily from a security framework to make sense of these relations. They also take for granted dominant assumptions in settler-colonial studies that reproduce racialized, gendered and classed labour hierarchies. Most centrally however, though intertwined with this absence, settler-governmentality also does not give us a way to enter into the discussion of the integral role of land in the continuation of settler states (Tuck & Yang, 2012).

Feminist work within critical IR is crucial for reading these sites because of the possibilities it offers us for understanding contemporary transnational security and economic arrangements through the knowledge of people's lived and embodied experiences. But it is Black Feminist work that has most rigorously and explicitly attuned

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<sup>51</sup> See for example, Stoler (1995; 2002), Cooper & Stoler (1997), Scott (1995), Inda (2005), Kalpagam (2011).

itself to the political economy of the prison and the racialized, gendered, sexualized and classed hierarchies that it relies upon. Despite U.S. centrism in the field, this work has made it possible to highlight and challenge a set of gross injustices that are increasingly enabled by the reality of mass incarceration, and its subsidiary institutions, as well as the ways U.S. imperialism and empire-building extends various manifestations of these practices outward in a global context. For example, the “war on drugs” and the “tough on crime” agenda that it ushered in resulted in the expansion and privatization of the prison system within the US was made possible by the extension of U.S. militarism abroad (Davis, 2005; Evans, 2005; Sudbury, 2005). Contemporary relations of confinement and servitude are also made possible through the ways a racialized system of slavery became constitutionally enshrined after Emancipation (Davis, 2005; LeBaron, 2011). Tracing this historical lineage to the master-slave relationship informs the study of imprisonment in a number of politically salient ways, not least of which because it situates a power relationship premised on racial hierarchy that, beginning with the dehumanization of Blackness, requires confinement, servitude and indentured labour alongside political disenfranchisement. It is also worth remembering that slave masters had economic incentive to control the reproductive labour of black women, since children became their property (Roberts, 1997). Scholars like Robyn Maynard (2017) have shown that these histories very much shape how Black women’s bodies becomes subject to surveillance and criminalization in public space, including in Canada where a social amnesia of slavery persists.

This context is crucial for the analysis Ruth Wilson Gilmore is able to make in

*Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (2007).

Examining the political-economy of imprisonment within California, Gilmore argues that the expansion and privatization of the state prison system and the transition to a prison economy was reliant on surpluses of capital, land, labour and state capacity, but also on the narratives that prisons would reduce crime, bring jobs to struggling communities, and stimulate economic development. Here we can see the power of ideas, discourses and cultures in the production and expansion of new markets. In practice these narratives cannot be cut off from the sites in which they are embedded: the prison. Foregrounding that racism is the “state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death,” Gilmore (2007, p. 28) is able to establish that prison expansion within the California landscape required mobilizing gendered, racialized and classed hierarchies, which make it possible for primarily poor and working class women of colour to be the fastest growing prison population in recent years (Gilmore, 2007).<sup>52</sup>

If we take the aforementioned analyses of unfree reproductive labour within and beyond the prison alongside Gilmore’s fleshing out of the context in which public-private forces and the supply-demand requirements of local economies of land and labour it becomes possible to consider the utility of a transnational feminist political economy of the prison that takes account for the different kinds of work required within prison economies, since it remains to be shown how they are also mobilized and governed

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<sup>52</sup> The number of state prisoners in California grew over 500 percent between 1982 and 2000 alone and African American and Latino prisoners make up two-thirds of this (Gilmore, 2007).



through capital and state power. Despite the ways that prison walls produce borders and barriers, methodologically accepting this division makes it impossible to acknowledge and examine the many ways these walls are illusory because they intend to make invisible the explicit and implicit forms of violence the contemporary neoliberal capitalist order relies upon. In short, taking the borders of the prison for granted reproduces a politics of social amnesia and disposability that make prisons possible. At the same time, I want to suggest that contemporary abolitionist analyses also remain partial because colonialism has not yet been engaged as a foundational set of power relations that shape prisons and the production of carceral space in the Americas.

When it comes to an analysis of land, to say that there is a ‘surplus’ continues to conceive of land within the logics of capitalism—where land is assumed to have a productive purpose tied to its economic utility. It is a different entry point to consider how the dispossession of Indigenous lands enables the prison industrial complex (PIC). As Stephanie Lumsden has argued with respect to the Californian context, Gilmore’s work naturalizes a settler politics of land theft and obfuscates ongoing settler colonialism as a primary set of power relations that make the prison possible. In short, without Indigenous dispossession the PIC would not exist (Lumsden, 13 November 2016). In this way, Gilmore’s analysis of surplus labour is also partial, since assimilationist policies throughout the Americas were also about socializing Indigenous people towards particular kinds of work through the Residential school system, incentives for vocational training, or through pressures to either move to urban centers or remain on Reserve

(McCallum, 2014).<sup>53</sup> McCallum also makes the very salient observation that studies of Indigenous peoples' labour and working histories tend not to be historically situated with close ties to histories of education. If we begin by acknowledging that the justifications for prison and carceral space can be traced back to *terra nullius*, then even the abolitionist critiques of contemporary practices of imprisonment can be understood as a colonial erasure that re-legitimizes the settler-colonial state and participates in a "spaciality of settler-colonial terror" (Lumsden, 13 November 2016).

This critique raises urgent questions about what a transnational feminist political economy of imprisonment and carceral space might look like. Chinyere Oparah makes a crucial intervention. According to Oparah (Sudbury, 2005), a transnational feminist framework makes it possible to understand how the existence of the prison system and its expansion globally uphold multiple intersecting forms of power and privilege including (settler) colonialism, global capitalism, neoliberalism and militarism, and that these global dynamics are felt, reproduced and contested in our everyday lives. Substantively, the term, 'carceral space' suggests that different spaces and geographies and those who inhabit them can be mapped through different terrains of confinement. Oparah describes these overlapping connections with the term 'global lockdown.' She writes,

Although prisons and jails are the most visible locations for lockdown, the term encourages us to think about the connections with other spaces of confinement, such as immigration detention centers, psychiatric hospitals, juvenile halls, refugee camps, or Indian boarding schools (2005: xii).

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<sup>53</sup> Interestingly, recent land reclamation efforts in the Canadian context have required indigenous people and their allies to physically remain on the land, and in more long term 'occupations' indigenous peoples have used a demonstration of their life ways in order to suggest that the land is being 'utilized' in particular ways.

In the same way that global forces shape each of these sites, they also shape the people who find themselves there and the reasons why. Oparah argues that what makes a transnational feminist analysis unique when it comes to understanding the mutually intersecting and overlapping power relations of race, gender, class and sexuality is “a central concern with how these processes articulate with the cross-border flows of goods, people, capital, and cultures associated with globalization” (2005: xiii). What would it mean to consider the wall as border that necessitates closer examination in order to better understand all the forms of work that make it possible?

Transnational Feminisms also seek to draw meaningful connections between global forces and flows and how lived experiences are embodied in everyday life. This makes it possible to understand the complex embodied experiences of punishment, (including emotions such as pain, separation and loss), across sites and contexts. It also shows that links can be made between these and the broader goals of an ever-expanding carceral regime. Further, such experiences offer crucial insight into criminalization and punishment as techniques to secure the intensification of neoliberal capitalist interests at home and abroad, especially since global practices of confinement are increasingly coming to house politically and economically marginalized populations, while then “employing” these same populations in a profit and power generating enterprise. This highlights that the role that carcerality plays in redefining land within settler colonial contexts is under analyzed.

In the Canadian context, little work has been done to situate imprisonment and confinement within everyday logics and practices of empire. That is, as mutually constituted within and across the boundaries of states. It is instructive to call on Russel Foster's (2015) discussion of empire defined as a spatial and temporal phenomenon that consists of both material and representational practices.<sup>54</sup> The resurgence of the term coincides with the end of the post-Cold War and rising U.S. hegemony which has indicated that empire in its historical incarnations and the ways this has extended to the present in new shapes and forms (Foster, 2015).<sup>55</sup> Certainly, empire is deeply tied to time and place and so part of what this project hopes to accomplish is a more attentive study of the ways that logics and practices of colonial carcerality can be understood has part of shaping settler colonialism and empire in the Canadian context. Canada has continued to occupy a strategic and embedded position with regard to both the British and American empires, while it works to secure interests at home that bolster its position in trading relationships and spheres of power, wealth and influence on the world stage.

If Postcolonial, Black and Transnational feminist work has been central in highlighting the new types of carceral spaces through the ways especially racialized female bodies must be regulated and confined and the ways (re)productive labour is central in this reorganization, then the ways different types of emotional, psychological, relational and care work is required to make the prison and other carceral spaces possible

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<sup>54</sup> Importantly, these various characteristics and markers are neither definitive nor agreed upon.

<sup>55</sup> In a historical sense, empire can be understood as, "control over extensive assemblages of lands that resulted at least in part from conquest, occupation, and at time significant colonial settlements[...] and/or to delineate a commercial network of trading posts, small colonial establishments, and often indirect rule over foreign populations" (Muthu, 2012, p. 5). See p. 4, footnote 7 also an elaborated definition.

remains an important site of inquiry. Though these types of work are made invisible, they are crucial as strategies of survival, resilience and resistance (Agathangelou, 2013; Maynard, 2017). In this sense, again I ask: Whose bodies, land and resources must be utilized and/or mobilized to do this and what practices, logics, subjectivities, forms of work and labour do they rely upon? In the Canadian context, this requires taking seriously Canada's own history of employing systems of confinement as an everyday tool and technology of settler colonial governance.

By saying that carcerality and carceral space are ongoing organizing features of empire in the Canadian context, I am referring to the ways practices and logics of confinement as well as actual spaces of imprisonment feature in everyday life and how they are part of the ways that Canada's own investments in empire have and continue to be realized. These practices and logics are extended through both foreign and domestic policies. Their extension into everyday life means their effects are felt day-to-day and in ways that are embodied. Settler colonial governance in Canada is ongoing and the numbers of Aboriginal peoples, especially women, who are disproportionately represented within the prison and criminal justice systems highlights some of the more explicit effects of using practices of imprisonment and confinement to manage Indigenous populations as a governance strategy, but this is only one part of the picture. Further, it remains important to more deeply examine the ways that categories of deviance and criminality have been constructed historically through racist and colonial imaginaries about Indigenous peoples. Historically these practices of confinement, punishment and segregation have been intimately tied to other assimilationist policies.

The case I will make in this project is that assimilationist policy continues to be made possible today through the practice of imprisonment and the production of carceral space.

Reproductive and care work is already devalued and made invisible through the very politics of the prison through criminalization, and this becomes increasingly invisibilized when layered with the politics of colonial erasure. Beyond the ways that Canadian colonialism is made invisible from history books and curriculum, colonialism as an everyday practice with no way of accounting for its own violence, and the intimate role punishment plays. In this sense, the work that many must often do on an everyday basis in order to exist goes unacknowledged. If we follow this line of thought, then reproductive and care work on the part of communities can and is being understood as the work of survival. This work includes negotiating with historical and intergenerational trauma, coping with the ongoing effects of colonialism on individuals and communities and finding ways to continue and to thrive despite the ways these injustices continue to shape people's lives so intimately. I will endeavor to show in subsequent chapters that though Canada as a settler state continues to try and appropriate and re-direct this work, it simultaneously remains a site of resistance and undoing. Even during the most aggressive period of assimilationist and genocidal policies, Indigenous resistance has been a constant that has necessitated the continual technologies of governance and power to adapt in its attempt to complete the colonial project. Collectively these practices demonstrate that the production of criminality and carceral space which have sought to manage every aspect of Indigenous peoples lives through criminalizing relationships to land and labour, are always necessitated by and produced through Indigenous resistance.

Pedagogies of Healing: Rooting Down, Wading Deep<sup>56</sup>:

“The things we want are transformative, and we don’t know or only think we know what is on the other side of that transformation. Love, wisdom, grace, inspiration—how do you go about finding these things that are in some ways about extending the boundaries of the self into unknown territory, about becoming someone else?” Rebecca Solnit, “A Field Guide to Getting Lost,” 2005, p. 5

“For the erotic is not a question of only what we do; it is a question of how acutely and fully we can feel in the doing.” Audre Lorde, “The Uses of the Erotic: The Erotic as Power,” 2007, p. 54

“And she was not one of those who learned by feeling. “Those who don’t hear will feel,” her mother was fond of saying, but no one learns to feel on demand, by dint, or sheer threat. She had learned quite early, and in a way that did not serve her, that feelings had to be buried since they did not belong to the world of the living, except on auspicious occasions as when somebody died. So the ordinary feelings of daily life always eluded her; they came as a surprise to her. She found them excessive, almost always unexpected, out of the ordinary[...]. She could no longer rely on the written in books to convey or even arrive at Truth. What was written in those books was not even a faint shadow of me; it had nothing to do with me. They knew nothing about who I was. Relying on only one way of knowing to point a path to the wisdom of the Soul. This learning would take at least the span of one life, and only the Soul could decide what would be left over for a different time, a different place.” M. Jacqui Alexander, “Pedagogies of Crossing: Meditations on Feminism, Sexual Politics, Memory, and the Scared,” 2005, p. 315

Each of these quotations, in different ways, capture my methodological orientations in this project—the very personal and political dispositions I take towards my work. Or perhaps more honestly, the orientations that this project has required of me; that it necessitated. The relationship of deep avoidance with my writing eventually taught me I was running from something. I was out of escapes. In the therapy world, some people talk about this as the moment when your coping strategies stop working.<sup>57</sup> This project has

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<sup>56</sup> Large portions of this section appear in The Peak Magazine’s *Honouring Legacies* issue (Jurgutis, 2017).

<sup>57</sup> This project required me to pursue my own healing work and this was a journey I began before I had any realization that the struggles I was facing was a place where my political work and own personal history converged. Over the course of writing this project it became clear that this healing work was very much connected to the political questions of justice and accountability that have always shaped my work, beginning with an undergraduate thesis on human security, and a preoccupation with expressions of power, domination, gendered and physical violence that have followed my intellectual career to date.

very much been about finding ways to be with experiences that I forgot were mine for most of my life. It has been about finding my feet, my position, the spaces from which shared knowledge flows and wading in deep to those embodied ways of knowing. It has been about setting foundations of trust and care for myself—the kind of foundations that make it possible to root down and wade deep as an expression of both honouring this knowledge and the work it continues to take to center it in my research and writing. This project has genuinely been about finding that place and writing from those “corporal realities,” and emotional scars as Gloria Anzaldúa (2015) puts it, with the hope of transforming and healing them; with the hope of “becoming someone else,” as Solnit writes.

The loss of my Mother in May 2015 precipitated a process of what I have come to understand as the hard work of breaking a cycle. Her loss forced me to confront the ways we build walls inside of us, but also the ways we can break cycles of harm by deconstructing and chipping away at those same walls. Her death helped me to understand that the things I was trying to escape from were not exactly the same as the things that were keeping me confined, but they were deeply connected.<sup>58</sup> I no longer needed to continue that work of making things ok, of smoothing over, of mediating, of taking the abuse, of taking responsibility, of becoming invisible, but I also know that this refusal is not an option for many women, female-identified and gender non-forming people, or anyone who is taken for granted as an emotional labourer or otherwise

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<sup>58</sup> It also brought me to a place where I could see how upholding many of the things my Mother wanted were harmful to me. Confronting such realities also showed me of my own investments in the systems that have harmed me, because of how it highlighted the ways in which we both, in different ways, learned to compromise ourselves to meet others’ expectations of us, as well as our more basic needs.



implicated in managing the destructive and abusive tendencies of toxic masculinity.

Losing my Mother brought me to a place where I could sense vividly what I needed to let go of and what was holding me back. I kept registering this feeling as the compulsion to step into something, and that I needed to overcome my fear of this unknown if I wanted something different for myself. Shedding these layers brought the raw pain and loss to the surface—there was so much I had never grieved.<sup>59</sup> Feeling these losses, in some cases for the first time consciously, and understanding how to care for and belong to myself has been deeply integral to this journey. So much so, that this project would have been impossible without it.

As a white settler, I enter into this project positioned as a survivor of heteropatriarchy and toxic masculinity, as well as someone who learned to perpetuate that harm to myself and others for a very long time. My Mother's family fled Lithuania during Soviet occupation and the Nazi-Soviet Pact and has a complicated history of traumatic family separation. My Father's ancestors came to Canada during the Irish potato famine and settled in the Ottawa valley, before eventually moving to north east Hamilton for work in the steel industry.<sup>60</sup> Like many settlers, I grew up with stories of family oppression that were steeped in Indigenous erasure—about how the Irish were discriminated against in northern Ontario by being given the rockiest plots of land barely suitable for farming, only to learn later of the complex and widespread Indigenous

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<sup>59</sup> Part of my own healing process through this project has been grieving the parts of myself that were lost to gender-based violence and childhood physical and emotional abuse.

<sup>60</sup> My Mother's father worked in the logging industry in northern Ontario for a short time and built homes in during the early period of urban sprawl on the Hamilton "mountain" and my great grandmother worked various factory jobs. I grew up with a fairly stable middle-class upbringing for the early part of my life. This subsequently declined after a series of job losses and my Mother's long-term illness and disability.

dispossession and erasure in the Ottawa Valley (Lawrence, 2012), and of escaping Communism and World War II as refugees to find freedom in a new and welcoming place that offered the immigrant promise of a better life in exchange for honest and hard work. Though my family lineage has been shaped by conditions of political strife, war and occupation, as a white settler I have also been implicated in ongoing systems of racism and settler colonial violence which is derived primarily from the ongoing assimilation, genocide and dispossession of Indigenous peoples across Turtle Island. And though I have been harmed by heteropatriarchy, it is my white settler privilege derived primarily from relationships of access to land that has meant that I am far less likely to die at the hands of this violence.

The methodological foundations of this project are therefore located in a process that has been about learning how to survive differently; about finding my feet and where and how I stand, speak and feel; about learning to be in the world in a way so that I would no longer collaborate with the forces and efforts that had been harming me for so long. My process has been about learning to value the embodied knowledge that comes from the lived experience of struggle. My process is coming to know the transformative potential we all have that can be regained and realized through our relationship with ourselves and others. My process includes the deep and spiritual knowledge that tells me that the relationships we want to survive always will in some way and that the losses we endure and must feel make space for that which we need most on our journeys.

Foregrounding my positionality and following from Naeem Inayatullah, I want to acknowledge the methodological importance of gesturing to the particular “I.” He

observes that, rather than being confessional or self-indulgent, being upfront about our motivations, needs and wounds helps provide contextualization and clarity in our projects and our writing, both in terms of theoretical and empirical depth and urgency. He suggests that, if the usual protocol is to successfully demonstrate why a particular way of doing things is better, an alternative is to seek to attend to and cultivate space in a way that fosters “the self-conscious presence of the writing subject [which] contravenes the usual fictive distance between reader and writer[... and] a substantive look at life/lives in process” (Inayatullah, 2011, 7). Thus, though this project is certainly not about myself, who I am, and my lived experience has led me to this project and informs how I approach it. Knowing this, I hope, gives the reader some indication of how I come to this work.

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A few months before my Mother died we were talking on the phone on a Saturday night. Our usual checking in aside, she wanted to tell me about a movie she had watched on TV earlier that afternoon. “It was about a woman who was in graduate school and who was trying to write her thesis. She was having a hard time with her writing.”

I thought to myself, “Really? How does she know? She knows this work is hard, but she doesn’t know *I’m* struggling with my writing.” I considered that maybe my Mother had made this up solely to make the point that she knew and that my decades long ‘I have everything under control’ charade was finally up.

My Mother continues, “Others could see that there wasn’t enough passion in her writing and it seemed as though she was emotionally cut off from what she cared most about.”

Now she had my attention. I listened.

“She was confused and frustrated and didn’t yet fully understand her situation.”

My Mother tells me about how, in her search for inspiration and direction, she happened upon a series of people and events that prompted her to remember some difficult things about her past. Through this woman’s journey and the relationships she develops, she learns with the support of others, how to make space for herself, how to come to terms with the loss of her own Mother and the ways not having support to process and cope with trauma as a child continued to shape her life and her writing.

As my Mother’s health worsened and as time went on I forgot about this conversation. About six months after her passing I was struggling with my writing. One Friday night I caught a clip of a film playing in the background of a local bar during myself and my partner’s weekly catch up and decompression. Something grabbed my attention and immediately brought me back to this conversation. Of course, I thought, how could I forget what seemed to resonate so deeply? I suppose some part of me always knew I had to find ways to emotionally reconnect and do the psychological work I needed to in order to write. But it’s easy to forget when it’s so hard to be in those places and with those feelings. For a long time, forgetting, dissociating, and numbing became a way of being. Especially when that level of avoidance has been the very survival strategy that helped me make it here relatively, though perhaps precariously, intact. I slowly started to realize and understand that being in those spaces brought more and more memories to the surface. It felt like I was being confronted with almost a lifetime of emotional pain that I

had been unable to begin to process until now.<sup>61</sup> As it turns out, sometimes you can remember good things alongside the bad, and it's like a lifeline—a rope in the middle of the ocean, except that you don't know where it leads. It's like you've been offered back a sliver of yourself, some elusive and yet vivid sensation—a feeling that I can only describe as gesturing you to what was lost or severed, almost as though its impression or ghost was still somehow present. Something was being rekindled. I have been taught by those closest to me on this journey that these sensations—of feeling deeply lost in what is both vaguely discernable and utterly unrecognizable—gives us information about what it is you most need. After my Mother died the only thing that felt good was being outside. I remembered and returned to the forest; even to the forest that I spent so much time in as a child. I started to understand. I believe this was one of her gifts to me in her passing. Her gentle guidance, intuitive understanding and our connection continues to guide me in this work.

When I returned to Medway Valley Heritage Forest (what I knew growing up as Medway Creek) I hoped it would feel familiar and comforting, but it was more like I was re-entering a memory from another life. “It's not the same as I left it,” I thought. Things seemed so different and were not quite in place, and yet I could roughly orient myself, though that certainly didn't prevent my partner and I from eventually getting lost. I knew one of the rough routes I used to travel, but there were large gaps that made it difficult to navigate. There were places on the trail where this felt like a different place entirely and

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<sup>61</sup> I've come to realize that I have been excavating this pain for some time and will continue to do so well into the future. This work is never finished.

then out of nowhere I would see the tree whose branches braided and tunneled. Some of my earliest and happiest memories were being in Medway Creek because Mrs. Norman, my grade one and two teacher, always used to take us here. Being *here* I noticed the stunning beauty, strength and warmth of embrace that even barren trees offer us simply because you can see the intricacies of how each branch winds and curls, cradles and bridges alongside the others. I remembered how this was a tree that so many of my classmates were drawn to; the one that everyone always wanted to stand with and under. I wondered about my classmates and why they loved this tree. I wondered how many of them have spaces in their life when they can feel in ways that this tree offered them.

On another occasion, when we were deeper in the forest, I found myself remembering the very precise grooves of a couple feet of a well-worn path. Except that it wasn't as though I only had a visual memory of how my feet walked through this deep-set groove in the landscape. It was a perspective and a sensation of being in that exact place on this path where the past and present collapsed and I could not differentiate myself or my body. It was jarring and vivid and my movement through this space prompted me to think, "Oh! Here I am again, just like before." Just as though no time had passed at all. Amidst a thousand moments that confirm this place *is different*, I know to be suspicious of the things that seem to be just as they were. But then I wondered, if I can find those places and moments amidst something that is no longer as it was, ones that bring me back to the embodied feelings I had as a young child, then perhaps this is something the forest can sense in me too.

Medway Creek was the first place I cultivated deep and meaningful relationships

to land and so it seems a fitting place to circle back to as a method of grounding myself as a settler *here*, but also as a method of unsettling myself. I remember once my Father found an arrowhead while we were walking and said something like, “Indians used to live here.” I didn’t understand what that meant besides what seemed to be clear: these people were no longer *here*. When I returned to Medway Creek, (which is in London, Ontario), I learned that the Museum of Ontario Archaeology had actually been built on the site where the Attawandaron village once stood on the northwest corner of the Medway Valley Heritage Forest and a subdivision of housing that is on the doorstep of the heritage site.

Called Askunessippi by the Odawa and Ojibwa, in Anishnaabe, *Eshkani-ziibi* means “the antlered river.” London and most of Southwestern Ontario is the traditional territory Anishinaabeg, Haudenosaunee, Attawandaron (Neutral), and Wendat peoples, and the Chippewa of the Thames, Munsee Delaware, and Oneida Nation of the Thames are each located approximately thirty kilometers south and southwest of the city on the shores of the river. According to the educational publication *Thames Topics*, which was produced by Celebrate the Thames in partnership with the Upper Thames River Conservation Authority and the Urban League of London (Celebrate the Thames, 1999), the land surrounding the river had once been severely depleted by settlers through aggressive farming and logging practices, and by 1900 public swimming pools were being constructed because the water was so polluted. “By the mid 1900s when much of the land had been settled and cleared for farms, activities such as ploughing, and tilling loosened the soil increasing erosion [and causing] sediment [to be] deposited in rivers and streams” (1999, p. 4). This included and increase to the fertilizers and pesticides, like

DDT, collecting in in the river following World War II. What is now commonly known as Medway Valley Heritage Forest was permitted to re-naturalize after 1945 and by has since been deemed a protected and environmentally significant area since the 1980s when residents protested the construction of a sewer line through the forest. By the 1960s the life in all of Lake Erie was severely threatened (1999).

The Askunessippi was re-named the Thames in 1792 by Lieutenant-Governor John Graves Simcoe before he ever visited the area in 1793.<sup>62</sup> As Rebecca Solnit (2005) suggests, it would seem that more often than not settlers never did understand where it is that they *were* and instead tried to reconstruct their surroundings in the image of what was left behind, often with a great deal of disregard for those whose land they were on, and the reciprocal relations to be upheld through the treaties and agreements that were established between Indigenous and European nations. As Stó:lō Nation poet and author Lee Maracle (2017[2012], p. 34, emphasis original) reminds us in reference to Coast Salish Territories: “*This is not Britain.*” In making this remark she also cautions settlers: “Get to know the land you’re standing on, what was here before and how people took care of the land” (Maracle, 2012). Housing development began in 1960 in Sherwood Forest neighbourhood.

When we re-trace our steps, it is usually with the hope of finding something that has been lost. It may also be necessary when what was once familiar becomes strange and

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<sup>62</sup> In the late 1700s and early 1800s London was pursued as a strategically useful site for European settlement in part because of its proximity to the United States and position on the Askunessippi. As an early military settlement, Simcoe wanted a location that would also act as an administrative center, controlling the fur trade and dealing with Indigenous groups in the area with the hopes that London would win out over York as the new capital (Celebrate the Thames, 1999).



unrecognizable. The question about where I am going becomes intimately tied to how I got here, even though those paths can seldom be re-traced with exact certainty. Of course, there are many ways to be lost, or even just confused, and finding *your way* involves being able to use the skills and knowledge you have about where you are to reorient yourself in place. Historian, Aaron Sachs wrote that early explorers

were always lost, because they'd never been to these places before. They never expected to know exactly where they were. Yet, at the same time, many of them knew their instruments pretty well and understood their trajectories within a reasonable degree of accuracy. In my opinion their most important skill was simply a sense of optimism about surviving and finding their way. (As quoted in Solnit, 2005, p. 14).

The life chances of explorers and early settlers in North America was deeply dependent on the knowledge Indigenous people had of the land—to live off the land, track and navigate, and of medicines (Martin-Hill, 2013). Many Indigenous languages capture this relationality between and within the self and the world, which attests to the urgent efforts for language revitalization as healing “the long held scars of removal and outright genocide” (Matt Root as quoted in Solnit, 2005, 18) alongside the healing of the land itself.

As I got older I asked for nature books of bird and plant species and I began to bring them to the forest on our class walks. I began trying to locate parts of the landscape (specific flowers, leaves, mosses, etc.) in my books, and was sometimes successful, but more often than not I could not match the plants and animals with the categories and images provided. Over time I became frustrated and remember thinking that I didn't know how to find the ‘right’ characteristics to locate the parts of the landscape with the species in my book. I remember my Mother, likely reading my desperation, saying things

like, “Here, look at the curves on these petals. They kind of resemble flower X.” But it was so often not precise enough and I also clearly struggled with wanting to know and categorize what I saw around me for the sake of coming to a better understanding of this place that I loved.<sup>63</sup> I learned to internalize what were ‘good’ educational pursuits and how to model ‘proficiency.’ Where I once felt passion for all the different kinds of life in the forest, I soon felt overwhelmed and that my work wasn’t helping build a relationship with this place. As the years passed, and as detachment and numbness set in, my desire to be with the forest faded. The less alive I felt, the more distant the forest became. I know some of what gender-based violence can mean for our relationships to the land, the water, and to ourselves. Over time I suppose I continue to circle back to similar questions, and to a place not far from where I started.

In re-tracing my steps back to Medway Creek after my Mother died I think I hoped to find something and someone I recognized, but it was when I found myself pulled in and *a part* of the forest that I realized what I was most looking for was a state of being from a time when I felt alive, unafraid, curious, uninhibited, safe and loved. That is, like most moments of deep learning this caught me by surprise and very much off guard and challenged how I was trying to relate to the world around me—that I was so clearly already somehow connected to. How did I learn to desire certain ways of knowing and relating to land? How did I learn to distrust relationships at the expense of categories and

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<sup>63</sup> In hindsight, this was certainly because the books I was using were probably not from the region, nor would they have likely taken account for its ecological destruction and redevelopment, (that is, accounting for the native species that survived amidst and alongside the non-native species introduced), or the subtle differences within types of plants and flowers that were surely present in this fragile, but still very rich ecosystem. This experience introduced complex layers into my new-found study making me wonder whether I would ever be able to know and understand this place.

labels and what parts of me were also lost to these colonial ontologies of exclusion, control, authority and harm?

Gale Cyr, who is an Anishinaabe kwe (Algonquin woman) and member the Timiskaming Band, and of French Canadian ancestry generously shared her teachings as an Elder as part of the Walls to Bridges facilitator training I was accepted to participate in during the summer of 2014 at the Grand Valley Institution for Women.<sup>64</sup> In those teachings<sup>65</sup> she affirmed that we can always re-live our memories and the deepest parts of ourselves in our stories, and that through this we can access something of ourselves that we hold most dear. We can come back to these stories differently and can tell them differently each time as a way to return to and reimagine ourselves and our relationships. Gale's teachings and the experiences and insights that were shared in our circle helped me to return as a way forward. She taught me that it is in the re-living that affirms what is past is not gone and that we can always stay proximate and keep it close, in order to carry what we most cherish forward on our journeys. As I listened and realized the possibility in Gale's story—the way she re-enacted and embodied the story as she told it and brought us with her; the way she transformed the space of the prison itself—I noticed that I could not remember a moment in my life where I've felt so hopeful.

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<sup>64</sup> The Walls to Bridges Collective (W2BC) and program creates shared learning communities between incarcerated and non-incarcerated students in correctional settings with the goal of fostering “experiences of teaching and (un)learning that challenge assumptions, stigmatization and inequality” (Walls to Bridges, 2016). The program is based out of The Faculty of Social Work at Wilfred Laurier University in partnership for Grand Valley Institution for Women (GVI). GVI is a women's federal prison located in Kitchener, Ontario.

<sup>65</sup> I have tried to reach Gale Cyr over the last few years to ask for her input and permission to write about the teachings she shared and my experience. Since I have not been able to reach her, I am not sharing the stories she shared, but rather what I have learned from listening. I hope this decision allows me to respectfully acknowledge these teachings and Gale's knowledge while respecting that the content of the teachings themselves are not mine to share.

The hope Gale left me with challenged my relationship to myself and to loss and helped me to believe that it is possible to return to moments of pain and hurt to offer ourselves the care that no one was able to provide for us then. It was possible for me to choose not to perpetuate harm towards myself or to accept it from others and to find the supports I needed to work towards something different. Reliving our memories and embodying our stories have shown me that stories hold life possibilities; possibilities that disrupt dominant temporal and spatial orientations and make other worlds, relationships and ways of being possible (Agathangelou & Ling, 2009). As Thomas King has so famously said: “The truth about stories is that’s all that we are.”

It remains impossible for me to conceive of my childhood neighbourhood and earliest sense of self, passion and purpose without Medway Creek, though those memories were lost for a very long while—not lost as in gone, just forgotten. I could talk about the education system and how we seldom create spaces for students to learn alternative pedagogies and generate their own sustained connections to the natural environment, our communities and to ourselves, or recognize it enough as a space of deep teaching and learning, of which colonial histories are impossible to separate.<sup>66</sup> This relationship couldn’t be more apparent than with Canada’s Residential School system, which was designed to assimilate, kill, and dispossess Indigenous peoples of their lands.<sup>67</sup> Of course, my class from St. Thomas More School would not have had access to a natural space within walking distance if Medway Creek was not “permitted” to re-naturalize as

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<sup>66</sup> See for example, Calderon (2017).

<sup>67</sup> I will discuss in more detail in subsequent chapters. In this context, Indigenous intellectuals have also been advocating for a return to land-based pedagogy. See for example, Simpson, L. (2014) and Tuck & McKenzie (2015).

part of a larger urban development strategy. After all, it was only ever deemed deserving of protection long after the land had been settled and exhausted through aggressive farming, logging, damning and drilling. Tuck and McKenzie (2015) remind us that within Indigenous thought systems, which are themselves unique and varied, land has material, emotional and spiritual and intellectual aspects which extend to urban spaces, and that it remains crucial for non-Indigenous scholars who are working with this knowledge to be mindful about our desires for access, limited understandings, or tendencies towards stereotypes and oversimplification of these complex cosmologies and thought systems.<sup>68</sup>

London's history has been marked by repeated floods and serious threats to its ecological diversity as a result of increasing numbers of chemicals, pollutants and other waste being dumped into the river.<sup>69</sup> And though it remains resilient and significant conservation efforts have been underway for decades, the river and ecologies it sustains within and beyond the forest remain under considerable threat. Ironically but perhaps not surprisingly, in 1947 the Upper Thames River Conservation Authority was established with the directive to protect people and property from flooding with a proposed solution of eight damming projects, only three of which were ever completed.<sup>70</sup> Currently the struggle to protect the water continues through the fight against Line 9 and other pipeline projects across the continent as a danger to the water supply and life it sustains, as well as

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<sup>68</sup> They specifically use the example of working with traditional ecological knowledge, but I think this cautionary point bears relevance for those of us who have received teachings, or knowledge that it otherwise not ours to share without consultation and consent.

<sup>69</sup> Following early settlement subsequent development along the river included a sawmill, which processed large scale clearcutting, and a gristmill, which themselves had to be rebuilt due to flooding (Celebrate the Thames, 1999).

<sup>70</sup> The Fanshawe Dam in 1953, Wildwood Dam in 1965 and Pittock Dam in 1967 (Celebrate the Thames, 1999).

a violation of treaty rights. The Chippewa of the Thames and other Indigenous nations have been on the front lines of the struggle to protect the land and water, of which we are all beneficiaries.<sup>71</sup>

Land south of the Thames was purchased from the Chippewa, Huron, Ottawa and Potawatamie Nations in 1790, and a few years later the land north-east of the Forks was purchased from the Chippewa Nation as part of Land Treaty No. 6, but the first settlement at the lucrative fork in the river didn't come until 1826. The Chippewas of the Thames First Nation (2018), was “established in 1760 along the banks of the Thames River of which Chippewa is claiming title of the Thames waterbed” and where the unceded land base comprises 3,331 hectares in Southwestern Ontario.<sup>72</sup> Changes to the river developed from mass clear-cutting of large tracts of the Carolinian forest and the draining of the wetlands. This caused not only frequent, but severe flooding and the quality of the river water was diminished (Celebrate the Thames, 1999).<sup>73</sup>

The treaties, which I will discuss further in Chapter 3, were often entered with the understanding that First Nations people would continue to have access to their traditional

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<sup>71</sup> As recently as 2016 the city of London, like a number of other municipalities across Ontario and Canada, were confronted with considerable dissent and protest of the proposed Enbridge Line 9 pipeline, which would cross the Thames River. The Chippewa of the Thames were dissenting on the grounds that Line 9 presents a considerable threat to the local water supply and the preservation of traditional lands and waters that must be honoured in the treaties. The protection and preservation of these ecologies from western and settler perspectives often comes from a framework of environmental capitalism, which relies on privileging settler colonial ways of relating to land as having productive or leisure value. The Supreme Court ruling dismissed the legal challenge by the Chippewa of the Thames on the grounds of failure to consult (Butler & Dubinski, 2017).

<sup>72</sup> See the Chippewas of the Thames First Nation website for a history of treaties.

<sup>73</sup> Agricultural settlement, industrial development and expansive urban growth have had a significant effect on the land: “After nearly two centuries of draining the land for settlement and agriculture only about 17% of the original wetlands remain.[...] It has been said that before the European settlers arrived about two hundred years ago, a squirrel would have been able to travel from tree to tree without ever touching the ground between the sites of Windsor and Montreal. Today less than 10% (and in some places 5%) of the forests remain” (Celebrate the Thames, 1999, p. 4).

lands beyond the territorial boundaries set up through the reserve system. However, as time passed local practices deviated quite substantially from these frameworks. This happened both through the repeated violation of the Royal Proclamation (1763)<sup>74</sup> and other longstanding agreements like the Two Row Wampum (1613),<sup>75</sup> and settler's neglect and mistreatment of the land and water would compromise this further. The Two Row Wampum set out that relationships between Indigenous peoples and newcomers would be based on "a mutual, three-part commitment to friendship, peace between peoples, and living in (respect and in) parallel forever" of which ecological stewardship is a fundamental part (Two Row Wampum Renewal Campaign, n. d.).

Though land settlement began in 1790 the first permanent settlers, institutions, and the incorporation of the city wouldn't be until 1826. It is significant that Simcoe's speech to the Legislative Assembly in May 1793 he urged legislators to act along three central themes: justice, morality and crime: "for the due support of Public Justice, for the encouragement of Morality, and the punishment of crime, which are necessary to the Existence of Society" (as quoted in Murray, 2002, p. 4). This suggests that there is something about the moral hierarchies that uphold the law and the right to punish criminals that grant the settler state authority and legitimacy on this new land. In 1827 the

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<sup>74</sup> See Getty & Lussier (1988), p. 29-37.

<sup>75</sup> The *Kaswentha* or Two Row Wampum is the "symbolic record of the first agreement between Europeans and American Indian nations on Turtle Island." Now over 400 years old, as the first covenant it forms the basis "all subsequent treaty relationships made by the Haudenosaunee and other Native Nations with settler governments on this continent" (Two Row Wampum Renewal Campaign, n. d.). In teachings I have received, this agreement is based on the image of two vessels (two 'rows') sharing the same river, but not interfering with each other's vessel or ability to move down the river.

city's first institution, the court house, opened with an adjoining jail and the first permanent settler, who was a hotel and tavern owner, also acted as the city's first jailer (Celebrate the Thames, 1999).

Anishnaabe intellectual and scholar Leanne Betasamosake Simpson disrupts readings of colonization and carcerality as only about laws and institutions with her analysis of the one-hundred-year anniversary of the Peterborough Lift Lock within the Trent Severn Waterway. Simpson (2008c, p. 206) describes the significance of the lift locks in terms of “the loss of territory, as the natural flow of water was artificially altered.” Protection of the water is necessary for the protection of the land, and these relationships are embodied in the responsibilities of women in the Nishnaabeg Nation.<sup>76</sup> She says, “the water, Nibi, teaches us about relationships, interconnection, interdependence and renewal” (Simpson, 2008c, p. 205). The lift locks,

meant the flooding of cemeteries and sacred sites, and it meant the destruction of our rice beds. Today the lift locks act like a system of dams constricting and constraining and controlling what the river can do. [They] block and disrupt the power of that flowing water with handcuffs and shackles, interfering with the cleansing, with bringing forth new life, and with the river's responsibility of sustaining territory. When the construction of the lift locks colonized an ancient travel route, it also colonized the lifeblood of our first mother.[...] The towering, concrete hydraulic lift lock in downtown Peterborough is a vivid, tragic representation of the colonization of women and the colonization of Mississauga lands. (Simpson, 2008c, 206-207)

Here Simpson presents a powerful image of carcerality as a feature of settler colonialism through the ways it is necessary for confining and limiting the movement of the water,

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<sup>76</sup> Simpson describes women's responsibilities as water carriers through the experiences of pregnancy and birthing ceremony as interconnected with the protection of water as “the lifeblood of ecosystems” (p. 206).



and therefore for the land and the Nishnaabeg Nation.

When Eve Tuck and Wayne Yang (2012, p. 3) ask us to take seriously their urgent call that “decolonization is not a metaphor,” they also simultaneously expose that there are practices of colonization poorly understood by the Canadian public and considered metaphorical in the sense that ideas are not always linked to *ongoing* practices on the land and people’s bodies. Even in situations where this link is made, it is often in its most extreme forms (i.e. Residential Schools). “When metaphor invades decolonization” they say, “it kills the very possibility of decolonization; it re-centers whiteness, it re-settles theory, it extends innocence to the settler, it entertains a settler future,” (2012, p. 3). Within white settler society Simpson asks us to think about how unfreedom and technologies of domination and constraint must be imposed on untamable lands and peoples. Recurring tendencies towards white settler innocence take many forms, but it remains crucial to remember how these are also ongoing everyday practices born out of European imperialism and settler colonialism and the ways of being and relating to land that are required to extend that project in an ongoing way.<sup>77</sup> These are the everyday norms, rules and practices that sustain settler colonial futures and so my questions here are organized around how to make them visible, while also re-centering that which they most need and want to evade: the land, and the removal of Indigenous bodies from that land. The imposition of settler laws and practices of imprisonment go hand-in-hand with the dispossession of Indigenous peoples of their lands (CBC Indigenous, 29 June 2018;

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<sup>77</sup> As they have observed, decolonization has tended to become a popular add-on to a social justice and/or critical checklist in ways that work in favour of ‘settler re-inhabitation’ (Tuck & Yang, 2012).

Simpson, 4 November 2016). If settlers take Tucks and Yang's challenge seriously, then when we listen to Simpson describe the water as being shackled, this is not a metaphorical description of colonialism, but a statement about what colonialism *is*. What does it mean to read Indigenous intellectuals with this methodological commitment? What does a politics of reading and listening mean as settlers for our understandings of imprisonment, carcerality and settler colonialism?

As a settler it is important to name and be accountable to the relations of dispossession, violence, harm and trauma that have made it possible for Medway Creek to be a place of refuge and healing, and which continue to privilege whiteness and colonial ways of being here on Turtle Island. Settler relationships to land and place have been steeped in harm and erasure without recognition of the prior knowledge systems and claims of Indigenous peoples, and thus part of this work is about taking account for the settler colonial structures that make such ways of thinking and acting possible (Tuck & McKenzie, 2015).

My relationship to Medway Creek is made possible by my settler privilege, but it is not contained by it. This means that even though my experiences as a child have been meaningful, important and deeply formative in a way that makes them significant for me to return to in order to acknowledge and honour what my relationship to that place has given to me, it is easy to reproduce narratives of Indigenous erasure and moves to white settler innocence since it is these that continue to inform dominant narratives of environmental preservation and uphold the colonial carceral logics integral to a settler

state. As a settler, I continue to benefit every day from land that is stolen, but it is in exploring my own relationship to land that I too can see the ways white heteropatriarchy that is so critical to the extension of the colonial project has harmed me. Rather than excuse my implication in this violence, part of being accountable in the work of decolonization is to stop perpetuating that harm in my relationships to the people and to the life that I am inherently interconnected with. I have come to learn that it is in our relationships that so much of this transformation is made tangible and that it becomes possible to imagine sets relations that look differently.

Transnational feminist scholar, M. Jacqui Alexander tells various stories of capture starting with transatlantic slavery and the Middle Passage as a way to talk about the pedagogy of boundary-keeping between the spiritual and secular. In doing so she brings together questions of empire, slavery, imprisonment, security and non-consent alongside that of self-determination, ecological well-being, queer erotics and spiritual intimacies to ask how “the requirements of citizenship for empire are disturbingly antithetical to those requirements of citizenship for collective self-determination” (Alexander, 2005, p. 3). If we are to contend with the reproduction of violence on a global scale, I wonder what personal healing work and spiritual knowledge is required of us in order to truly see and hear the magnitude of this violence? As settler, I ask this because I wonder what work is collectively required of all of us in order that this violence no longer be consistent with our being?

Medway Creek and the Walls to Bridges classroom share one thing in common: they are the only places in my educational experience where I have ever truly felt valued

as a whole person. They have been the spaces I have experienced the kind of aliveness that I can feel growing inside me, through the walls and cement, and seeping down deep. These many teachers have helped me trust that there may be something about getting lost, or relating to loss, that offers us abundance and a window into the ways life itself and all we have always hinges on what can be no longer. If we are always in relation to place and all the life that surrounds and teaches us, then lost and loss both take on new meaning. It is these teachings that have made it possible for me to orient myself in this body and on this land and which continue to allow me to ground myself in the past and present as a way forward. It's possible that in re-living and re-telling the stories we hold most dear that something can be restored, or found, just not in the ways I thought. Not in the sense that it can be fully recovered as though the damage can be undone, or that if you dig deep enough you will find yourself unscathed. In some sense then they no longer remain only memories, or even stories in the conventional sense in that they always offer us a choice in the present. What path will we walk and who and what will we bring with us on our journeys? Alexander describes that when we find ourselves at these crossings and crossroads, we are being offered the chance to “put down and discard the unnecessary in order to pick up that which is necessary” and it is in these places where we generate new possibilities and the skills to navigate them.

Gale's teachings that she so generously shared and our circle continue to teach me that it is in the re-living that doesn't simply allow us to stay proximate to the past but allows for its re-imagining affirms what is past is not gone and that we can always carry what we most cherish forward on our journeys. For the pain, I like to think that every so

often a big breath, soothing breeze, quiet moon, invigorating wave, or loving friend helps me to remember it, or hold it, and maybe every so often to release it. Noticing the transitions and transformations of the life around me helps me to notice and trust these very same cycles in myself. Sharing our stories offers the chance to create new paths that may not be familiar but will take us to that which we need most. Sometimes creating new paths requires retracing our steps. After all, and in the case that it's comforting to consider, a path seen or felt is just the impression of something or someone that used to be there. I feel that being in those places connect us to collective work and legacies much bigger than ourselves. When all else fails, I imagine us together again, walking in the forest.

"I told her she couldn't write about me unless she came to know and feel my daily life.[...] She had to come as close to the ground as I did, learning to depend on the damp rain smell to clean her insides, jar her senses and bring her to the oath I had sworn never to betray: all life is shared with those at the bottom of the ocean, the bottom of the river, the bottom of water—the meeting point of the encircled cross. She had to feel the folds and dips against those places where earth becomes level again. I wanted her to come to feel how folds and dips provided security even more than level ground, which could be deceptively friendly. Too level. Too even. Hostile to change." M. Jacqui Alexander, "Pedagogies of Crossing: Meditations on Feminism, Sexual Politics, Memory, and the Scared," 2005, p. 314-315

"I remember a poet saying  
That water carries sound,  
As is it knows how to amplify  
The movement of all living things.  
As if it knows how to speak  
The mottled tongues of the dead  
[...]  
With each stroke raised,  
Night storms on the water,  
The splinters in my bones  
I mark what can't be lost"  
Gwen Benaway, *Passage*, excerpts taken from *Lake Water* and *Terra Nullis*, p. 16; 14

### **Chapter 3 - Canada and Empire: Early Histories of Settler Colonialism in Transnational Context**

In the first chapter I argue that prison and punishment are utilized as methods to resolve conflict in ways that are embedded in managing the relationship between bodies and land, and within the state's interest in controlling colonial capitalist property and labour relations. Deeply bound up with this is an ontological project that seeks to control the inherent instability and unknowability of political life by ascribing stability and innocence to those subjects who can enter into the social contract on established grounds, and various levels of instability and criminality to those who cannot. Upon closer examination of the relationship between punishment, land and labour via social contractarian and capitalist notions of property, it becomes possible to make the claim that state-sanctioned punishment enables legal definitions and ideas of criminality to be mapped onto other ways of being that become devalued and even vilified through claims to rationality that racial, gendered, sexualized, classed and colonial hierarchies have already been established in relation to. Their exclusion through their relationship to punishment, (and the land-labour nexus on which it is based), is exactly what makes the social contract possible. At the same time punishment provides the mechanism by which the tension and conflict they present becomes managed and contained.

By establishing the relationship between punishment, the settler-state and capitalist property relations within empire it becomes possible to centralize questions of land, labour and criminality as foundational to the rationale and justification in the production of carceral space. In addition to showing that systems of imprisonment rely on racialized, gendered, sexualized and classed hierarchies, Transnational feminist

approaches have made it possible to examine prison and punishment as phenomena that utilize logics of carcerality, which extend beyond the prison and inform social, political and economic life (Sudbury, 2008). In this way, the prison and the process of criminalization can be understood as made possible within the broader conditions of neoliberal capitalism, colonialism and empire. Thinking through the relationship between land, labour, punishment and criminality introduces other places, spaces and relations to be considered as empirically relevant to an analysis of how practices of punishment and the production of carceral space feature in the possibility and extension of settler colonialism in Canada and on Turtle Island.

As I argue in Chapter 2, there remain notable gaps in how imprisonment and the production of carceral space has been examined within critical IR. With particular attention to how Transnational feminist approaches still employ selective limitations around the question of land and settler-colonial governance in their readings of criminalization and carceral space, as well as the limited emphasis on the Canadian context, it becomes important to build on these analyses towards a deeper understanding of the state-building project in Canada, and the distinct role that Canada plays in maintaining empire.<sup>78</sup> I argue that this lends insight into Canada's strategic position in relation to imperial centres as one that is understood to be both shaped by benevolent liberal non-violence and the necessity to access land to develop Canada as a resource rich economy. These attributes continue to shape Canada's role as an extractive economy

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<sup>78</sup> I also want to specify here that by labour I am also referring to the unfree reproductive and/or affective labour that upholds colonial hierarchies, though this is not the focus of this particular project.

alongside its celebrated identity as a self-consciously non-violent state, and benevolent middle power. I trace out this relationship by ideologically and physically grounding a reading of Canada's position through historically situating early settler colonial relations and the colonizing logics and doctrines that shaped them, namely *Manifest Destiny* and *terra nullius*. Through this reading, I centralize the role that land played in shaping Canada's position in and proximity to imperial desires as they were being shaped in what would eventually become Canada and the United States. I also provide necessary ground work in this chapter that allows for a politicized reading of the colonial archive in relation to how we come to understand the role of land in shaping Canadian settlement through coercion and non-consent, which will be the subject of later chapters.

#### The Role of Land in Canadian Settler Colonialism:

The quest to access land and resources motivated a great deal of land-settlement, and this continues today in the ways Canada insistently works to develop its extractive industries. Of course, Canada's position within the international order has always been shaped by European expropriation and appropriation and the relative power the Canadian state acquired over time as a result of this proximity. As Glen Coulthard (2014; Coulthard as referenced in Epstein, 2015) has argued, the primitive accumulation that capitalism requires in the context of empire is ongoing, especially in a settler colonial state like Canada. This relationship comes to define the political-economic role of states in global markets. In Canada's case commodities become branded as 'clean,' 'ethical,' and 'stable' alternatives to the 'dirty oil' or 'conflict diamonds' of the more peripheral states in the global south. This positioning of Canada as the guarantor to ethical access to land, (and as



having the moral compass to assess any such definition), provides the basis on which Canada gains its global economic advantage. A similar idea of Canada becomes mobilized through national myths of humanitarianism, peacekeeping and diplomacy.<sup>79</sup> Politically and economically Canada continues to benefit from misleading representations about itself as empire's progressive compass and guide on a more principled path towards the same civilizational pursuits. As I will outline in this chapter, the tradition of benevolent and paternal Liberalism has deep roots in British colonial legal and political tradition that come to be embodied in the particular strategies and models employed as methods of colonial governance during early settlement.

Tracing these histories and relations is timely in the context of the Truth and Reconciliation Commission (TRC) Final Report and its recommendations, (which include 94 Calls to Action), and the public discussions it is fostering, but also in light of its silences (The Survivors Speak; Calls to Action; 2015).<sup>80</sup> As Indigenous intellectuals and activists have long pointed out, conversations of land must necessarily accompany conversations about reconciliation (Belcourt as referenced in McMahon, 2016; Simpson, 5 March 2016; Manuel, 2017). Beyond the national question, this analysis is of relevance to the discipline because of the ways it contributes to our understandings of the role that land acquisition and theft plays as the *ongoing desire and practice* of settler colonialism (Couthard, 2014; as referenced in Epstein, 2015). As alluded to earlier, Canada's political and economic history has been deeply shaped by multiple imperial interests in land and

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<sup>79</sup> This has occurred alongside significant shifts in the nature of humanitarianism and warfare. For a comprehensive discussion see Beier and Wylie (2010).

<sup>80</sup> I elaborate on critiques and silences of the TRC in Chapter 6.

resource accumulation, especially the French and British Empires. In recounting the history of these founding economic relationships in the fur trade for example, it becomes crucial to foreground Indigenous knowledge of the land and labour expertise in making these relationships of exchange possible (Martin-Hill, 2017; Daschuk, 2013).<sup>81</sup>

Developing connections between policies on criminality and land use as strategies of settler colonial governance is also increasingly urgent in a moment when Canada can mobilize the language of reconciliation while it continues to deny its dependence on land that is stolen, as well as through the theft of the bodies of Indigenous women, children and Two-Spirited peoples. Canada's investments are steeped in basing its economic advantage in the extractive industries at the same time that it participates in removing Indigenous peoples from their communities and lands and silences ongoing calls on the part of Indigenous peoples to return stolen land and stewardship of the land. If, as McCalla (2008) argues, the economic basis for empire in the Canadian context is land, and the imposition of institutions for its management and security, then it becomes crucial to connect these histories.

Based on recent numbers, Canada's extractive industries, which include mining, quarrying, oil and gas account for the third highest percentage of the GDP at 8.2%. If the agriculture and forestry sector were included, this would tie with the manufacturing sector

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<sup>81</sup> It was the work of Cree women in particular, that made the trade possible, because they were those with the skills to tan and treat the hides. Demand for beaver pelts and moose hides drove initial trading expansion, but over time it produced incentives for the French and British to begin to see the opportunities in sending more settlers, (usually young men initially), to settle additional lands and diversify Canada's economy for the purpose of acquiring and accumulating resources and wealth. Raw materials like lumber, minerals and food stuffs were sought to support industry other imperial efforts, including plantations in the West Indies, investments in the East India Company, and the first and second world wars (McCalla, 2008).

for second place at approximately 10%. Though manufacturing has declined in recent decades it is worthwhile noting that it includes processing plants such as pulp mills, oil refineries and chemical processing plants—industries that are resource dependent. Comparably, in 2015 Canada's natural resources sectors accounted for 17% of GDP (Natural Resources Canada, 2016). Canada's top grossing industry remains real estate (including selling, managing, renting and leasing) at approximately 13% of GDP. Though this sector is seemingly removed from the kind of land use required for more environmentally invasive forms of resource extraction, the industry is not possible without large segments of "developed land" while also continually carving out new land for development. When looking at recent land defense struggles it becomes clear that this industry is equally complicit.<sup>82</sup> With Indigenous people in control of only 0.2% of Canada's land mass, it is very clear who is the beneficiary of the wealth the land has generated (Manuel, 2017).

Canada is no longer branded as a resource rich country quite as crudely as it was by former Prime Minister Stephen Harper did; however, Prime Minister Justin Trudeau continues to push the extractive industries in less overt and sometimes more insidious ways. For instance, at the World Economic Forum in January 2016 Trudeau stated, "My predecessor wanted you to know Canada for its resources[, but] I want you to know Canadians for our resourcefulness" (Wherry, 2016). Although Trudeau campaigned on a platform of environmentalism and Indigenous consultation, Trudeau's economic and

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<sup>82</sup> For example, the land reclamation in Caledonia, Ontario at *Kanonhstaton* ("The Protected Place," formerly known as Douglas Creek Estates) in 2006, was a housing development on Six Nations land granted under the Haldimand deed. In 1990, the Oka crisis resulted from approval for the expansion of a golf course and condo development on traditional Mohawk territory at Kanehsatà:ke and Kahnawake.

resource development policies have proven to be unilateral and hostile (i.e. the Kinder Morgan pipeline) (Minsky, 2016). So, although Canada has moved away from the overt message that it is an open extractive economy, the policy approach of the Liberal government shares much with their Conservative Party counterparts, as well as a deeper British colonial tradition that positions Canada as an ‘ethical innovator’ and ‘moral provider’ while at the same time actively seeking to mobilize entitlement to land and resources as a major economic advantage in the global economy.

The vast majority of economic activity let alone our own well-being and survival is not possible without the gifts the land and water give us within and beyond Canada’s own national boundaries (Wong, 2013; Athabasca Chippewan First Nation and the Tar Sands, 2012; Caibaiosai, 2012; Polacca, 2012; Christian & Wong, 2017). The imposition of European notions of property and the commodification of land map onto racialized, classed, gendered and sexualized hierarchies that work within and to reproduce narrow and exclusionary notions of capitalist prosperity and citizenship. Innocence and criminality help us to understand the production of these hierarchies within settler colonialism since what become acceptable notions of social, political and economic subjectivity emerged alongside ideas of innocence and criminality within the context of colonial settler state consolidation and advancement within the British empire. In settler colonial contexts these are concepts that I argue are historically situated and emerged alongside notions of acceptable relationships to land and property.<sup>83</sup>

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<sup>83</sup> In the discipline of Political Science, ‘innocence’ is a rather loaded expression having both legal and social signifiers. In the context of this project I use the term to connote the socio-legal categorizations of subjectivity which at times overlap with legal categories, but also which always exist beyond them. As alluded to in discussions of criminalization in the previous chapter, I set up a discussion of innocence as an

The land dictated patterns of settlement and it continues to be what makes political life and all life possible. In the same vein, the ways ideas of subjectivity became formulated through ‘correct’ ways of being in relation to land (i.e. the idea of citizenship as linked to an educated, property owning and otherwise assimilated man), makes it possible to position deviance and criminality as historically situated in forms of subjectivity and community that are resistant to colonization. In short, innocence becomes ascribed in particular ways to ‘good Indians’ (read: cooperative, compliant, assimilated), but never as fully as white settlers. This means that forms of discipline and punishment, and eventually a carceral apparatus becomes required to manage ‘bad Indians’ alongside other ‘deviants’ as a means of continuing the settler-colonial project. When land is central to a settler colonial state, but also part of what is repeatedly foregrounded in ongoing claims for self-determination and cultural expression, then relationships to land become a key site of re-definition and re-constitution in both colonizing and decolonizing work (Simpson, 2008a; Tuck & Yang, 2012).

Systematically analyzing the emergence of a legal and policy framework as providing a basis for the subsequent development of a carceral apparatus requires charting what, at times, was a messy and even ad hoc arrangement. However, this serves to demonstrate some of the ways these logics, hierarchies and ideas affected people’s lives

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intersecting set of racialized, classed, sexualized and gendered privileges which are upheld by dominant institutional frameworks. In this sense, we could say that even the ‘good Indian’ who becomes assimilated still does not have access to the forms of privilege that mark settler innocence. In this chapter, and in Chapter 4, I begin to outline how the term, alongside criminality, maps onto relationships to land and property in settler colonial contexts, which becomes upheld by the imposition of colonial law and governing institutions. In the first chapter I trace the term to notions of punishment and land in social contract theory.

in practice, as well as how dismantling the most aggressive institutional arrangements, though deeply urgent, is only decolonizing in a very limited sense if it is not connected to deeper and more insidious colonial practices. These histories, though messy, affirm that there is much work to be done in understanding how these aforementioned hierarchies inform the privileging of particular kinds of land use alongside notions of deviant and criminal subjectivity—a double move that provides the foundation for the continued criminalization and colonization of mostly poor, Indigenous communities, and people of colour globally.

In previous chapters I established that questions of land and its relationship to criminality and punishment remain under theorized in the discipline and that there are gaps in site specific work that seek to trace out these relationships, especially with regard to settler states. As discussed in Chapter 2, Postcolonial, Black and Transnational feminist scholars (Agathangelou, 2004; Stasiulis & Bakan, 2005; Ong, 2006; Davis, 2003; 2005; 2012; Gilmore, 2007; Sudbury, 2005; 2008) allow us to connect the work on productive and reproductive labour to complex notions of criminalization. At the same time these have not been thought in relation to land and the role of the carceral apparatus in reproducing these hierarchies requires additional theorization to unpack how it upholds dominant relationships to land in the settler colonial context. Bringing these scholars together highlights the necessity of a Transnational Feminist framework to take account for how criminalization becomes possible through the ways bodies are positioned in ongoing re-concentrations of power mobilized in the context of neoliberal capitalist state-making practices within empire. Indigenous feminist scholars introduce the settler

colonial question of land in relation to criminalization and in particular, the practice of re-defining and criminalizing Indigenous relationships to land. Through these scholars work I attempt to highlight the urgency and necessity for IR to think questions of land, labour and carcerality together in order to make sense of settler state building projects within empire, as well as a necessary effect of the mainstream's desire to deploy practices of coercion, confinement while simultaneously claiming freedom for all.

As Mohawk and Anishnaabe scholar, Vanessa Watts (2013, p. 22) argues, “Colonization is not solely an attack on peoples and lands; rather, this attack is accomplished in part through purposeful and ignorant misrepresentations of Indigenous cosmologies.” I also seek to access this kind of “critical space” by foregrounding land as an important analytical category whose history requires unpacking alongside settler colonial governance practices. I take my direction on this re-centering of land and relationships to land through what I have learned from Indigenous and decolonial intellectuals, thinkers and activists I have had the privilege of learning from and sharing political space with. That is, although I do not wish to re-center colonial institutions, voices and legal categories, I draw my attention to them here so as to create space in a way that allows for further critique of the settler colonial state premised on unearthing how land has been made invisible, yet central, to its operation.

Within Political Science, IR, and other related disciplines land is commonly treated as a passive space and place that is always acted upon. The narratives produced are ones still primarily influenced by enlightenment and scientific traditions that understand human beings to be the agents in control of actively shaping of their

environments. Indigenous worldviews take a radically different starting point and consider human beings to be in co-responsible relationships with and to land, water, as well as the animal and plant nations (Watts, 2013; Simpson, L., 2008a, 2017). Watts describes ‘Place-Thought’ through Haudenosaunee and Anishnaabe cosmologies as “the non-distinctive space where place and thought were never separated because they never could or can be separated. Place-Thought is based upon the premise that land is alive and thinking and that humans and non-humans derive agency through the extensions of these thoughts” (2013, p. 21). Although what I can offer to understanding this relationship is limited as a settler that is still learning to build these relationships and (un)learning colonial worldviews that have come to discipline the ways I relate to all the life forms and teachers that I coexist with on this land, I attempt to be accountable to Indigenous and decolonial worldviews by foregrounding the land as an active presence in this project. By this I mean that I attempt to relate to land in ways that seek to acknowledge its agency and life force.<sup>84</sup>

As a settler state proximate to empire’s center but with different political histories, Canada’s mythology has been sustained through a settler politics of safety, multiculturalism and benevolence that has served (at times) to claim that we have no

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<sup>84</sup> The primary way I attempt to do this in this project is by joining the work of many others to unearth the impositions of the colonial-capitalist worldviews to which the land and all life forms on Turtle Island continue to be subjected, and by using this as a means to think through the ways carceral space becomes necessary to the settler colonial project. Other ways of unsettling the politics of knowledge production in the academy is to interrogate our disciplinary origin stories and their contemporary reproductions (Tuck, 2017). It is central that within this unsettling we acknowledge that universities across Canada and the research they produce were and still are implicated and invested in the settler colonial project through, for example, the training of residential school teachers, bureaucrats, conducting scientific experiments on residential school children, and so on.



colonial past (O’Keefe, 2009). Always having been defined in relation to or against the U.S., Canada has produced an image of itself as an international humanitarian and champion of peace, order and good liberal governance, but has always relied on the attempted subjugation of Indigenous peoples and lands (Razack, 2004). Central to the decolonization process is the rematriation of Indigenous lands and ways of being and therefore Indigenous voices must be at the center of decolonial futures (Tuck & Yang, 2012; Greene, 2017).

Here Indigenous feminist scholarship points to other cosmologies for understanding relationships between land and life that IR systematically erases and obscures. My emphasis on land comes directly from insights that have continually been pointed out to me by Indigenous feminists and I use it here in a way that strives to situate it in Indigenous cosmologies of inter-relationship.<sup>85</sup> Indigenous cosmologies are not interchangeable, but they do share the worldview of relationality between all living beings, including the lands, waters, animal and plant nations.

### The Colonial Archive, Liberalism and Manifest Destiny

Beyond the question of criminality, Postcolonial studies has been crucial in pointing out the similarities and differences in Empire across time and space changing the grounds of the analytic field to reflect the ways patterns and hierarchies of shared inclusion and exclusion between the metropole and the colony are co-constituted. In doing so the more discreet and contested forms of difference and difference-making,

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<sup>85</sup> For example, Watts discusses this in relation to Haudenosaunee and Anishnaabe cosmologies, however other nations will have different articulations of this relationality.

practices of struggle and resistance become both apparent at the same time that their categorizations become unstable and inadequate (Stoler & Cooper, 1997). As they assert, “[c]olonial efforts at social engineering did not constitute the whole story [but] they do[...] provide entry points to question how people who lived inside those categories could turn them around” (p. 7). Following on this tradition then, a closer analysis of the establishment of the settler colonial state and the ways its hierarchies of inclusion and exclusion manifested in everyday life lends insight into how British colonialism took shape in early settlement Canada, as well as the ways this project has always remained incomplete and subject to embodied readings of its ongoing presence and undoing that attest to the complex and lived realities of Indigenous people (Lawrence, 2004).

When examining the deployment of European systems of law in the colonial world, scholars have long highlighted its tiered and selective imposition, suspension and otherwise tentative status (Razack, 2008; Hansen & Stepputat, 2005; Hussain, 2003; Mbembe, 2001). As Sherene Razack (2008, p. 14) puts it, “What the state of exception made possible in the colonies was a brutal inscription of the power of the colonizers on the bodies of the colonized, a violence that was legally authorized.” The exploration of the history of the deployment of Martial law, emergency and exception in colonial contexts is necessary and deeply demonstrative of the nature of colonial power and its assumptions that the racialized other can only understand the use of force, as Edward Said (1993) argued. However, in pre-Confederation Canada the practice and establishment of colonial law occurred in a context within which jurisdiction was not always clear, enforced, or agreed upon, and was subject to ongoing contestation and dispute by

Indigenous communities on the grounds of treaty commitments and other agreements (Harring, 1998). This context therefore complicates the ways we can read the law and state power, as well as the deeply racist, gendered, sexualized and classed assumptions underpinning it. Though certainly this period of history might be considered by some as less violent, its possibility rests on Indigenous communities already suffering profoundly negative effects of European arrival. It also sheds important light on the more mundane and insidious operations of power. In some ways hierarchies of power can become more visible at moments when the law is weak and provisional.

It therefore becomes telling to unpack these more mundane and messy transitions as a means of grounding the influence and practice of colonial law, governance and settlement practices in the Canadian context, and understanding how these shifts made way for increasingly aggressive assimilationist policies post Confederation. My hope here is to come to a better understanding of some of the ways criminality mapped onto ‘Indianness’ in early settlement Canada and to demonstrate the extent to which this transition was linked to an assimilationist agenda through the ways it targeted land and sought to redefine and restructure relationships to land. Exploring these early colonial contexts can in some ways be more challenging but are important for understanding the particularities of how legal categorizations were employed, as well as how they shifted and changed (sometimes in less overt ways) over time. Though I certainly agree that violence exercised through the right to punish is, “fetishized as a weapon of reason and preservation of freedom of the citizens vis-à-vis the threats from outsiders, from internal enemies, and from those not yet fit for citizenship – slaves and colonial subjects[...].”

(Dyer, as quoted in Hussain, 2003, p. 95), I also wonder what referring to these relations as simply violent glosses over.<sup>86</sup>

Indigenous scholars, intellectuals and activists have long pointed to how colonial law, when analytically unpacked, complicates categories of inclusion and exclusion and how these became mobilized through political-economic and socio-legal institutional arrangements in particular times and places.<sup>87</sup> Mi'kmaw scholar, Bonita Lawrence reminds us that discursive and legal means of colonialism are only one dimension of “a vast range of destructive processes that have been utilized to destroy Native people” (2004; p. 17). Thus, it remains an important task to connect the political legal apparatus of the state to these practices at the same time that it is crucial to remember that these histories are always partial. Ann Stoler uses the term “minor histories” which she defines as a history that “attends to structures of feeling and force that “major” history might otherwise displace” and which “marks a differential political temper and critical space” (2009, p. 7). For the purposes of this project I am attempting to locate this space through foregrounding the voices and knowledge of Indigenous thinkers’ critiques of settler colonialism and carcerality.

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<sup>86</sup> In light of a close empirical reading of the legal and legislative history in Chapter 4, I believe that in the Canadian context more work is needed to understand the intricacies of how ideas of race and ‘Indianess’ became necessary to link to ideas of criminality and what this helps us understand about the specific conditions and ways a settler colonial project emerged in Canada through the desire for and pursuit of land, and the relationships on which this relied.

<sup>87</sup> I believe this kind of knowledge has the potential to contribute to a politics of decolonization because it lends insight into the less overt ways that colonialism becomes possible through criminalization and some of the formative assumptions and relationships that need to be disrupted in order to make meaningful transformation possible.

As previously discussed, the social transformations required for extending colonialism “are a product of both global patterns and local struggles” (Stoler & Cooper, 1997, p. 4), and often challenge the theoretical poignancy of European thinkers in capturing the nuance of colonial and postcolonial spaces and experience. In its early stages British colonial imposition in what would become Canada was not all encompassing. Rather, Canada’s Indigenous nations

remained sovereign political communities long after colonial contact, either because early authorities *de facto* recognized that sovereignty, or because they lacked the power to interfere with it. (Harring, 1998, p. 10)

However, even in light of this it is important to recall some of the earlier impacts of European arrival and co-existence on Indigenous peoples, which is to say that there are other effects (largely negative, but sometimes positive) even if there were not conscious or deliberate attempts to subjugate Indigenous peoples.<sup>88</sup> As Mohawk scholar Dawn Martin-Hill (2017) has argued, the claim that a history of Canada can be clean, coherent and fully understandable in the context of Indigenous resistance to genocide is impossible and it is important that the histories we do tell generate the discomfort necessary to contend with these legacies of horror, trauma and survival, while also recognizing that the violence of settler colonialism and Indigenous resistance is ongoing and demands understanding and action in the present.

The Treaties, which will be discussed in more detail in the next section, are demonstrative of both explanations above, however closer examination of their

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<sup>88</sup> Martin-Hill (2017) suggests there is little work done on the real impacts of disease, or work documenting the tensions that emerged through during initial periods of co-existence, where settlers were very much dependent on Indigenous knowledge of the land, medicines and labour during the fur trade.

imposition, language and practice is telling of the deeper intentions and “a darker colonial vision” that this particular brand of British colonialism makes possible (Borrows, 2017, p. 22). Harring notes that though there were marked changes in approach through the 19<sup>th</sup> century, its paternalistic benevolence had quite different implications for European settlers than it did for First Nations.

Euro-Canadians were being prepared for a fully functioning role within empire, including local self-government, economic prosperity, and rich social and cultural lives. Indians were being prepared for a position on the margins of Canadian society, working as farmers and labourers, living on small reserves under the despotic control of petty local officials, deprived of their own cultures and traditions, and subject to the regular incursions of settlers. While ‘liberality’ in the context of loyalists meant the provision of free lands, the ‘liberal’ material benefits bestowed on Indians were minimal educational and social support, designed to speed up their assimilation. (Harring, 1998, p. 12)

This makes clear the racial and classed hierarchies that order Liberalism, even if there was a conscious attempt that Canada as a colonial project would be less violent. In this sense, and as the trajectory of Canadian colonialism makes clear, overt violence can be displaced but only rhetorically, and in so far as the colonial vision can be realized. Of course and as Lawrence (2004, p. 30) points out, Canada’s minute military budget and upper hand in the expansion westward “cannot be understood without taking into account how British officials have *always* used the threat of warfare and its attendant starvation south of the border to control Native populations[...].” The idea that British rule and justice was a privilege bestowed on the colonized was not unique to Canada, however British colonial strategy underwent a consciously strategic shift after 1812. The benevolent gift of colonial rule during this period was an approach that sought legal procedure and the rule of law in structuring colonial relations towards assimilation, (i.e. procedures for land purchase, adequate land for reserves, presents and full legal rights

under English and Canadian law), before changes that would mark the pursuit of a more hostile and genocidal colonial agenda (Harring, 1998; Lawrence, 2004).

The kind of Liberalism that structured the colonial frontier was one which proclaimed a deeply moral commitment to good governance, the rule of law and non-violence. Colonialism meant the delivery of “the highest ideals of British justice and humanitarianism around the world” and “an orderly frontier regulated by the rule of law[...] extending ‘the privilege of British justice’ to all of Canada’s inhabitants” (Harring, 2008, p. 17; 16). Combined with the deep conservatism of the ruling class, the courts and government of Upper Canada would inform the idea that Canadian governance would be distinct from their American counterparts and fueled by the goal that the centrality of the rule of law would enable non-violent settlement. Of course, from within a Liberal frame the rule of law and the institutions that uphold it cannot be understood as violent, yet colonial strategy during the 19th century increasingly employed a centralized strategy of the rule of law to subjugate and displace Indigenous people from their lands. This means that the early imposition of colonial law and policy benefited from the ability to subjugate while simultaneously believing in the active pursuit of a more ethical and moral agenda compared to how British colonialism was being pursued elsewhere, including south of the border. As a result, the threat of military violence (Lawrence, 2004), as well as the violence inherent to its possibility was always actively being erased and displaced at the same time that it was mobilized as justification for its continuance.

This lends insight into the ways the logic of Liberalism continues to make Canadian settler colonialism possible.<sup>89</sup>

Thus, it is within this political and historical context that the law became a central strategy in desired land settlement and one of the means through which assimilationist and genocidal agendas were sought. Harring notes that both the early application of criminal and civil law supports this claim, but also that it can be understood as ironic or contradictory on some level given Liberalism's claims. In contrast, I want to suggest that this logic is deeply central to Liberalism's modus operandi. The rule of law was a strategy that intended to govern (read: colonize) better and specifically with the hope that it could do so without the resistance that was generated in the U.S. Within this framework the "determinat[ion] to take Indian land and then, with Christian humanitarianism, provide for the needs of impoverished Indians" can become necessary since it is 'for their own good' (Harring, 1998). And as a number of thinkers have shown, the 'white savior complex' can only be operative within civilizational narratives of racial progress, which are simultaneously racialized, gendered, classed and sexualized (Puar & Rai, 2002; Razack, 2002; 2008) and because "racial hierarchies come into existence through patriarchy and capitalism" (Razack, 2002, p. 6). Puar and Rai emphasize that these hierarchies which sustain terrorist monstrosity also map onto circuits of normalizing power, including those communities that must be targeted in projects of correction. Of course, Indigenous non-compliance and resistance resulted in more forceful impositions of white heteropatriarchy. Towards the latter part of the 19<sup>th</sup> century this resistance would

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<sup>89</sup> I will elaborate on this point further in future chapters.



be met with more aggressively assimilationist and genocidal policies, but which must be understood as having been made possible by the deeper colonial visions and their subsequent racial, gendered, sexualized and classed hierarchies embedded in the philosophies, legal traditions, intentions and succeeding (in)action pre-Confederation.

Manifest destiny, though in many ways a uniquely American phenomenon, became informed by these histories and took shape over time accordingly in Canada and its regional contexts. Manifest Destiny refers to a belief system reliant on a frontier narrative that promoted national expansion and what Stephanson (2009) and MacDonald (2009, p. 11) refer to as a flexible political trope that demonstrates “the power of a nationalist narrative to convince its speakers of themselves and their place in time and space.” Such a narrative also relies on particular conceptions of settler and indigenous relationships to land (Hixon, 2013). They argue that this belief system, though sharing certain core tenets, took on unique variance in the national contexts within which they emerge, which I believe points to the ways a sort of American imaginary was both uncontainable by national boundaries while also acknowledging the specificity of its development within an emergent and corresponding ‘Canadian’ imaginary.<sup>90</sup> In the Canadian context, it was a narrative of imperial dominion manufactured at home and abroad which was especially pronounced following Confederation and the desire for westward expansion and the railroad, and which mobilized an understanding Indigenous peoples as obstacles on the way to a form of normative and civilizational progress reliant

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<sup>90</sup> This also creates an opportunity to challenge notions of Canadian exceptionalism that often emerge in U.S.-Canadian comparative exercises. See for example, Chamberlin (2009).

on consolidating the land base that would eventually come to define the territoriality Canada as an emergent settler colonial state (Hixon, 2013). However, even this would continue to take on the discourses of non-violence, moral governance, and “a posture of innocence and denial” previously discussed despite actively using the U.S. context of the Indian wars, “starvation and territorial limitation brought about by the destruction of the buffalo” as tactic in treaty negotiation with nations in the north (Lawrence, 2004, p. 30).

Canadian colonialism has thus also always developed in relation to the U.S. context. As Bonita Lawrence points out, though the Canada-U.S. border remains largely irrelevant to Indigenous people it has come to demarcate “distinctly different ways of regulating Native identity” and that these histories are interwoven (Lawrence, 2004, p. 6). These demarcations meant that such a belief system also had distinct ways of regulating indigenous land as well. In contrast to American exceptionalism, Canada’s role within empire has become operative through the distinct ways it claims non-violence, the rule of law and critical ethical conscientiousness as a moral governance strategy.<sup>91</sup> Though Canada very much sees itself as in line and keeping with British tradition in this regard, in a settler colonial context these discourses take on forms of rule which are always erasing, making invisible and perpetuating colonial violence through institutional means that are considered independent from its operation, while at the same time promoting their own

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<sup>91</sup> As Lawrence (2004, p. 7) elaborates, “The fact that Native identity in Canada has primarily been shaped by a system of regulation and control that Britain developed as a global imperial power, while the peculiarities of the United States’ origin as a settler colony in rebellion from the same network of imperial power prevented the American government from implementing direct legislative control over tribal identity until much later in the process of Manifest Destiny, has meant that distinctly different ways of controlling Indianness have developed in two otherwise very similar settler states.”

assumptions of superiority<sup>92</sup> and moral legitimacy that borrow all the perceived positive benefits from British tradition without any of the colonial baggage belonging to *us*.<sup>93</sup> This is how Canada maintains its position and continues to benefit from empire. Canada actively generates a distinct type of legitimacy through forms of rhetoric that highlight its ethical alternatives, except that it is these “alternatives” that have always served to enable its continuance. Arguably, this results in its even more insidious operation. It also signals that part of the work of undoing colonial violence requires systematically examining how these historical lineages and multiple institutional histories are co-constituted as a means of understanding the ways that more peripheral settler states perform distinct roles within empire.

Settler colonial governance in Canada has sought to manage every aspect of Indigenous people’s lives, however in re-telling these histories here it becomes crucial not to write out the nuances of these relationships or the ongoing agency that has been asserted by Indigenous peoples to shape and work towards mutually beneficial relationships with European settlers. As Anishinabe and Ojibway legal scholar John Borrows (2017) points out, when it comes to thinking through the politics of settler colonial governance there are tensions in reading Canada’s history as one of displacement, force and conquest on the one hand and legal altruism on the other. Borrows (2017, p. 19) suggests that “Canada’s formation does not just rest on racism,

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<sup>92</sup> As Robert Vitalis (2000) discusses drawing on the definition provided by Dorothy Ross (1991), American exceptionalism includes writing “their own past as unique in relation to some other allegedly more common course through time” as well as other accounts that have described this in terms of notions of superiority.

<sup>93</sup> In an age of reconciliation these logics continue to dominate and take on new forms. I will discuss this further in Chapter 6.

force, and discrimination[, but] is also rooted in doctrines of persuasion, reason, peace, friendship, and respect.” Harring (1998) also points out that though certainly there has been a distinct line of legal inquiry focused on colonial conquest or ‘imposed law’ and that perhaps this is most well-known, this has sometimes been at the expense of accounting for Indigenous legal history, as well as the relationships and interaction between Indigenous and European legal orders.<sup>94</sup>

Foregrounding this politics of erasure and ongoing silencing is crucial, because it exposes the limits of colonial law and policy as sites of analysis, as well as a reading of the colonial archive more broadly. As Stoler writes, engaging with the colonial archive also means “attending to that which is not written” both in terms of colonial common sense and epistemological anxieties that have always surrounded coming to know “the Other.” With reference to her own methodological orientation in the reading of the Dutch colonial archives in Indonesia she says,

I attempt to distinguish between what was “unwritten” because it could go without saying and “everyone knew it,” what was unwritten because it could not yet be articulated, and what was unwritten because it could not be said [... and that] perhaps the unwritten looms largest in the making of colonial ontologies themselves. (Stoler, 2009, p. 3)

As such, it is not only a question of which histories come to matter and are listened to, but the politics around that which remain unsaid (in addition to what is unwritten). And certainly, the politics of what remains unsaid is deeply pronounced not just in terms of the colonial common sense of the day, but the deep danger that was present for those who

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<sup>94</sup> For instance, Harring suggests that though scholars may know a great deal about how Europeans affected Indigenous societies, much less is known about the influence that Indigenous communities’ laws and knowledge systems had on shaping European settler ways of life, many of which have been appropriated rather than rightfully acknowledged.

may be seen as resisting colonial law by continuing to practice language and culture.<sup>95</sup> As Harring points out, in these early settlement years Indigenous people's positions, responses and resistance would have been noted but not necessarily with an understanding of their meaning or legitimacy. Some of these histories are well documented, but others may reside with communities, and it is deeply important that communities can be self-determining in how and if this knowledge is used and shared (Beier, 2005). Equally so, it is crucial not to overemphasize the role of law and legislation as a colonizing force, or to imply that its dominance has erased traditional life ways more than is expressed by Indigenous peoples themselves (Lawrence, 2004).<sup>96</sup>

Alongside these complexities, I want to foreground the variance and particularity required in re-visiting these many diverse narratives and stories, as well as in the power relations and politics of re-telling them here as a settler. My goal is not to represent the full complexity of these layered and living histories or claim that this is a worthwhile possibility. I also wish to foreground that the argument I present here is not in any way an authoritative account, nor does it claim to be the most productive way to understand these relationships. Rather, I offer this analysis humbly; explicitly with the intention of engaging with and upholding the teachings I have received from Indigenous and decolonial intellectuals and teachers, while also building on these analyses. My hope is to

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<sup>95</sup> Canada's own record keeping was very poor until it became more formalized in the 1950s. Before then it was not uncommon for certain government documents to go missing or be destroyed. I am appreciative to Alex Williams for sharing this observation.

<sup>96</sup> It is important to contend with the overrepresentation of anthropological accounts of Indigenous people and culture, and the extent to which Indigenous traditions have come to be represented by non-Indigenous people with power of voice. I foreground this politics of erasure to contend with it in order to gesture, at the very least, towards disrupting the ways that Indigenous peoples' social, political and economic contributions continue to be stolen, appropriated, made invisible and otherwise colonized in the academy.

contribute to the ‘knowability’ of settler-colonialism on Turtle Island and especially to echo the foregrounding and centering of the question of land as vital to the carcerality of ongoing settler colonialism in a way that makes visible the use of land, labour, and bodies. The gaps present here are indications of both the limits of my knowledge and understanding of these histories as a settler, which I wish to always be working to be accountable to.

### The Politics of Place: Terra Nullius and Early Nation-to-Nation Agreements

The historical and intertwined processes of settlement and the extension of the Canadian state has meant that experiences of colonialism are varied across time and with important regional differentiations that continue to have implications for the struggles of Indigenous peoples and communities. As Sarah Carter (2008, p. 200) has argued, “The entrenchment of settler control was a protracted and uneven process and for many years settler authority was limited, fragile, and contested.” However, despite there being no one pattern of contact or relationship with settlers, European interests were in the acquisition of land and resources and made possible through deliberate mass immigration waves in combination with policies and practices of cultural genocide and land theft that, over time, would erode Indigenous title and make it more difficult to resist such practices (Carter, 2008).

The process of state formation and legitimization was sparse and drawn out and the Canadian context differed from other British colonies because of the diversity of both Indigenous people and their lands. The settlement and development of land was more concentrated in areas with agricultural lands that were sought after by settlers. As noted

by Carter (2008, p. 200),

Aboriginal land for agriculture was desired by settlers in many localities, but not in others where Aboriginal labour was necessary to extract resources, and where land did not invite invasive settlement, as in the massive territories of the fur trade that persisted well into the twentieth century.

Carter argues that far from a coordinated effort, British imperial efforts, outside of the land acquired through the colony of Newfoundland and the commercial and territorial endeavors of Hudson's Bay Company (HBC), resembled more of an "ad hoc set of responses to local conditions" rather than a "consistent, uniform policy" all of which were directed by "initiatives, politics and diplomacy of Aboriginal nations seeking to direct the structure of their relationship to the British" (p. 200).

The Royal Proclamation (1763) is the first document that sets out the terms co-existence between The Crown and First Nations in what became British North America and would provide the framework for future treaty-making.<sup>97</sup> In contrast to Indigenous people's concerns about land preservation and sovereignty, the Crown was attempting to access territory and jurisdiction and the resulting document would come to embody these tensions (Carter, 2008).<sup>98</sup>

The Proclamation declared that all lands forming the part of British North America that had not been ceded to or purchased by the British were to be considered 'reserved lands' for Aboriginal people. The document implied that no lands were to be taken without their consent and that their territorial integrity and decision-making power over their lands was to be respected and protected. Colonial

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<sup>97</sup> R.S.C. 1985, App. II, No. 1. Though the Royal Proclamation was unilateral it subsequently informed the Treaty of Niagara in 1764. At the Treaty of Niagara twenty-two Indigenous Nations were present and represented by 2,000 Indigenous people (Borrows, 2017). Two Row Wampum (1613), which I reference in Chapter 2, is the oldest agreement between European and Indigenous Nations on the continent.

<sup>98</sup> The Royal Proclamation followed the Treaty of Paris and the end to the Seven Years War or the Beaver Wars in the same year (1756-1763). These wars are significant because it was the first to span the globe (Europe, India and America) between rival imperial powers Britain and France. Britain hoped to eliminate France as a commercial rival and much fighting took place in North America over these interests and Britain's desire to take possession of their colonies. Thus 1763 marked the end to large scale European conflict in North America and the solidification of British control.

governments were forbidden to survey or grant unceded lands, British subjects were prohibited from settling on unceded lands, and private individuals were prohibited from purchasing Indian lands. But the Proclamation also outlined a policy designed to extinguish Aboriginal rights to land, for the British had included statements that claimed ‘dominion’ and ‘sovereignty’ over lands reserved as Aboriginal territory. (Carter, 2008, p. 201)

Though the Proclamation was intended to apply to all colonies in British North America, it was unevenly applied, eroded and in some cases completely ignored by colonial governments (in the cases of Nova Scotia, Prince Edward Island, Cape Breton, New Brunswick, and Newfoundland).<sup>99</sup> In Quebec, the arrival of Loyalists led to the Crown’s attempt to make land available despite the initial promise that the Proclamation would protect Indigenous lands.<sup>100</sup> The establishment of Upper and Lower Canada provided the impetus for further settlement so much that in Lower Canada the Proclamation would generally be ignored, except farther north.<sup>101</sup>

Carter points out that the application of the legal doctrine of *terra nullius*<sup>102</sup> across British colonies varied. She suggests that despite the underlying presence of intention to extinguish Aboriginal title and claims to British sovereignty, the Royal Proclamation marks a notable difference when compared to Australia, where a more explicit version of *terra nullius* applied; namely an understanding of Indigenous lands as ‘no man’s land.’ In New Zealand the Treaty of Waitangi (1840) outlined British sovereignty and right to pre-empt Maori land (Havemann, 2001, as referenced in Carter, 2008). Though the Royal

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<sup>99</sup> The Proclamation was presented to a multi-nation assembly at Niagara in 1764. For a discussion of the regional variances in settlement, violation of the Royal Proclamation and implications for indigenous land, see Carter (2008).

<sup>100</sup> Settlers could access and gain possession of Indigenous lands simply by pledging an oath to the Crown (Carter, 2008).

<sup>101</sup> Settlers also encroached on reserved lands set aside and then sold off in smaller plots by religious orders, such as at Oka (Kanesatake) (Carter, 2008).

<sup>102</sup> See p. 47, footnote 32 for a definition of *terra nullius*.



Proclamation perhaps more firmly establishes Aboriginal title, it is unevenly applied across the country (Carter, 2008).<sup>103</sup>

Although it is significant to note the commitments of the Crown as exemplified in the Royal Proclamation, the fact that it would be significantly and increasingly neglected by local governments, regionally and over time suggests practices justified through the logic of *terra nullius* were very much alive during early settlement in Canada. Further, the pattern within Canada over time where treaty entitlements were explicitly eroded or subverted throughout the 19<sup>th</sup> century alongside an increasingly aggressive colonial policy suggests that Britain's maturity and subsequent pressures and/or resistance as a growing empire resulted in a changing strategy as new colonies were solidified. That is, it is not so much that Britain's approach is substantively different, but rather that their imperial strategy was revised over time with some notable similarities, both in response to local conditions and imperial demands.<sup>104</sup> Remembering that empire is not just about access to new markets and resources, but also a knowledge production exercise that includes assumptions about local populations used to both justify and extend imperial governance, Britain necessarily sought to learn and refine their mechanisms for colonial domination over time.

Eve Tuck and Wayne Yang's powerful and unsettling critique in their article,

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<sup>103</sup> As stated, the colonial governments of the Maritimes generally disregarded the Proclamation. Additionally, the British believed that French occupation extinguished First Nations land rights even though Mi'kmaq and Maliseet maintain that they "had only granted usage and usufruct to the French, and who did not understand themselves as conquered by the British" (Carter, 2008, p. 202). For further explanation of the Maritime context, see Carter (2008, p. 202-203).

<sup>104</sup> As a British colony state formation in Canada took on a number of traits that worked to establish both limited political independence and that deepened colonial ties through 'responsible government.'

*Decolonization is Not a Metaphor* reminds us that understanding *place* and context matter a great deal if we are to understand the various contours, shapes and features of settler colonialism (Tuck & Yang, 2012; Tuck & McKenzie, 2015; Fanon, 1961). Settler colonial studies has pointed out the ways settler colonialism generally relies on a number of shared attributes (Wolfe, 2006), the specific shape these structures take in a particular place shape the colonial experience, institutions, structures, and practices have direct implications for decolonial strategy. Indigenous critiques of settler colonialism point us to different ways of understanding place, which challenges claims to abstract universal truths and instead includes recognizing the knowledge systems that are unique to the life systems and ecologies of particular lands; in other words, place and land are not synonymous (Tuck & McKenzie, 2015).<sup>105</sup>

In their book, *Place in Research: Theory, Methodology, and Methods*, Tuck and McKenzie (2015) systematically highlight that the way space and place have been taken up in the social sciences has contributed to the erasure of Indigenous knowledge systems, and often pose tensions to Indigenous articulations of shared concepts and call for a deeper engagement with place in social science research.<sup>106</sup> We can see that when settlers

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<sup>105</sup> Decolonizing work includes re-centering the knowledge systems from particular places on those lands. Although I do my best in this project to center the voices of Indigenous thinkers and especially those whose traditional territories and lands I am speaking about, I do not claim this alone is decolonizing unless it succeeds in dismantling colonial processes and “recover Indigenous land and life, and shape a new structure and future for all life” (Tuck & McKenzie, 2015, p. 11). Though my analysis in this project has been deeply informed and shaped by the teachings I have received from Indigenous and decolonial scholars, thinkers and friends, I do not understand myself as contributing to the traditional knowledge systems of particular places or lands. As a settler, I also do not claim to possess deep cultural and land-based knowledge that in any way is a substitute for indigenous knowledge systems, nor do I believe that centering whiteness or settler voices in these conversations moves us closer to a vision of what decolonization might look like.

<sup>106</sup> For instance, they argue that Indigenous work needs to be taken up on its own terms, rather than simply being included within a framework of Liberal pluralism (Tuck & McKenzie, 2015).

“discover” and lay claim to a specific place through Manifest Destiny *and terra nullius* they impose their interpretations (under the guise of rationalization and universal truth), which then become enforced by institutions. In contrast to settler objectification and exploitation of land and people as property, Chickasaw scholar Jodi Byrd argues that land “both remembers life and its loss and serves itself as a mnemonic device that triggers the ethics of relationality with the sacred geographies that constitute Indigenous peoples’ histories” (Byrd as quoted in Tuck & McKenzie, 2015, p. 57).

The continual omission of *terra nullius* as an ongoing strategy of settler colonialism through Indigenous erasure often translate into analyses of carcerality as systemic discrimination understood solely in terms of over-representation of Indigenous people within the criminal justice system while failing to also consider the ways colonial practices of confinement historically and today have extended state violence into every aspect of Indigenous people’s lives as a strategy of dispossession (CBC Indigenous, 2018). The settler colonial desire and requirement to have uninhibited access, possession and use of land—to control land—is deeply tied to the twin requirement to control the bodies of Indigenous women and Two-Spirit people and to make Indigenous people disappear. As Dhillon (2015, p. 6) argues,

The principle of “empty” lands served, historically, to unlock the ideological gates and secure the secular and religious rationalizations leading to the “legal” dispossession of Indigenous peoples from their original territories and the subsequent implementation of laws and social policies that institutionalized the forced assimilation of Indigenous peoples and elevated the cultural and social status of white settlers.

This exposes the self-fulfilling prophecy of *terra nullius*, because it signals that even though lands in North America may not have been constructed as “empty” in the same

ways as other British settler colonies the logic of *terra nullius* was embodied in settler institutions and actions in order to justify and establish the moral and legal grounds for further European expansion and settlement, including formal policies and informal practices of forcible removal of bodies from land. In such a framework, delegitimizing particular forms of land use and relationships to land can be realized through methods of criminalization that kill or remove indigenous peoples from their lands through a variety of strategies. The claim I make in this dissertation is that practices of imprisonment, detention and the production of carceral space are central strategies in the control of Indigenous lands and bodies and therefore comprise a central site to expose the ongoing enactment of the logic and legacy of *terra nullius*. Acknowledging the shared lineages between imprisonment and settler colonialism in Canada means that struggles for decolonial and abolitionist futures are deeply intertwined.

Foregrounding the land, in other words, makes space to expose foundational material and epistemological violence at the same time that it makes space for the lifeforce of land to be acknowledged and listened to. Linking the epistemological and material violence of settler colonialism provides us with an entry point into understanding why the use of force through practices of imprisonment become required to extend the settler colonial project, (why imprisonment and land are linked towards the ends of dispossession), and highlights the importance of connecting subsequent discussions on coercion and non-consent to the most aggressive and violent colonial practices, in order to make sense of how this becomes possible. In the next chapter I examine the Treaties and the imposition of colonial law in Upper Canada to explore how the contexts in which they

were negotiated lend insight into the ways that settler law and governance gained power through the non-consensual inclusion and criminalization of Indigenous peoples at the same time that power and innocence became ascribed to white settlers.

#### **Chapter 4 – ‘The Privilege of British Justice’<sup>107</sup>: Treaties, Colonial Law, Criminalization and Reconstituting Relationships to Land and Community in Early Settlement Canada**

In Chapter 3, I highlight that Canada’s position as a settler colonial state has been defined through its relationship to land, and ongoing proximity to empire’s center. I argue that this lends insight into Canada’s strategic position in relation to imperial centres as one that is understood to be both shaped by benevolent liberal non-violence and the entitlement to access land to develop Canada as a resource rich economy. I do this by ideologically and physically grounding a reading of Canada’s position through historically situating early settler colonial relations and the colonizing logics that shaped them, namely *Manifest Destiny* and *terra nullius*. Through this reading, I centralize the role that land played in shaping Canada’s position as proximate to imperial desires as they were being shaped in what would eventually become Canada and the United States. I also aim to disrupt this process by foregrounding Indigenous articulations of land as an analytical entry point to read the (settler) colonial archive, which I argue must be considered in a way that is both incomplete and non-determining, and which seeks to recognize and foreground Indigenous knowledge as central to any analysis of settler colonialism. I argue that without foregrounding the way practices of *terra nullius* continue to be ongoing, we cannot engage questions of carcerality and carceral space in a settler colonial context.

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<sup>107</sup> This title is partially borrowed from Sidney L. Harring’s first chapter title: ‘The Privilege of British Justice’: Colonialism and Native Rights, in *White Man’s Law: Native People in Nineteenth-Century Canadian Jurisprudence* (1998, p. 16).

In this chapter I follow on this work by analyzing the Treaties in fuller detail to show how the imposition of colonial law and legislation in Upper Canada shaped processes of land acquisition by re-defining land and Indigenous and settler peoples' relationships to land through practices of coercion and criminalization. I argue that early conditions and tools of colonial governance were made possible through practices of coercion and non-consent, and that redefinitions in Indigenous and settler relationships to land characteristic of this period laid important groundwork for the subsequent formation of Canada as a settler state. By tracing out these histories, I argue that together these conditions and practices of criminalization are intertwined with an assimilationist agenda through the ways they sought to redefine Indigenous and settler relationships to land, as well as the broader move to secure legal frameworks of protecting private property. I subsequently argue that this sets the stage for Confederation and the most aggressive period of colonial governance practices. Doing so, I show how the use of force and criminalization becomes required as a strategy to reconstitute Indigenous and settler relationships to land through the frameworks of criminality and innocence. In this sense, practices of criminalization and the use of force through 'the rule of law' can be read as an intimate feature of how carceral space is produced in the Canadian context, and in ways that allow us to read these histories, institutions and governance strategies as emerging together and as mutually supportive towards the project of settlement that continues today.

In this chapter I draw on work from a few key Indigenous and Canadian legal scholars and historians, and Indigenous feminist authors to begin to explore important

legal and legislative developments in Canada's colonial history along the questions of Indigenous justice to read the colonial context of the Treaties, the imposition of English common law, and important pre-Indian Act legislation (the Land Acts, the Gradual Enfranchisement and Gradual Civilizational Acts). Indigenous law scholar John Borrows (Anishinabe and Ojibway) (2017), legal historian Sidney Haring (1998), Mi'kmaw feminist scholar Bonita Lawrence (2004) and feminist historian Sarah Carter (2008) have each explored the political meaning and contexts of legal and institutional development and their implications for indigenous persons and communities. Drawing primarily from this work and their expert historical and legal analyses as an entry point, as well as primary source documents, I suggest that Indigenous people have been increasingly coerced through criminalization and punitive laws and policies. This increasingly aggressive deployment of an assimilationist agenda throughout the 19<sup>th</sup> century required the mobilization of both criminal and civil branches of colonial law, and subsequent legislation that explicitly sought to target Indigenous relationships to land through framework of criminalization and assimilation. I demonstrate that there is a close relationship between the way the relationships to land are re-constituted in policy and law and the simultaneous ascribing of innocence and/or criminalization to settlers and Indigenous people as well as the capacity for Canada as a settler state to acquire additional land and to both actively and passively participate in the process of land dispossession and theft. In various ways, Indigenous peoples' relationships to land become a site of increasing discipline and control in settler colonial legislation and legal



frameworks through the 19<sup>th</sup> century, whereas settler behavior is ignored, trivialized or explicitly decriminalized.

Initially emerging in the context of British Liberalism and moral governance through claims regarding the denial of the use of force, the law becomes a crucial site of negotiating the colonial relationship in ways that are considered ethical but are also a means to better strategic governance in the colony (Lawrence, 2004). Examining pre-Confederation ‘Indian policy’ indicates that the imposition of English common law tradition, which is centered on private property (Harring, 1998; Girard, 2008), was organized and sustained based on colonial, racialized, gendered, sexualized and classed hierarchies that order relationships to land, sometimes through logics and practices of criminalization. These hierarchies inform both the disregard for community sovereignty and autonomy, as well as the ways that Indigenous interests and relationships become defined in colonial law, which subsequently created openings for a considerably more vigorous assimilationist agenda based on re-defining, re-constituting and criminalizing relationships to land and culture more broadly in the period leading up to and following Confederation. What I hope to contribute in this chapter is an analysis of some of the specific sites and the ways legislative practice worked together to achieve this, especially in the context of the need to secure emergent Euro-private property arrangements, which then became used in the management and erosion of the Treaties and nation-to-nation agreements. Examining these histories demonstrate that it was not only the pursuit of land that is vital to the settler colonial project, but the need and desire to manage and control

Indigenous relationships to land through criminalization and the punitiveness of colonial law and policy.

Treaty-Making, Land Acquisition and the Politics of Re-Defining Land during Early Settler Colonial Expansion:

As recently as the 1996, the Royal Commission on the Rights of Aboriginal People (RCAP) made the claim that *terra nullius* was “legally, morally and factually wrong” (Report of the Commission on Aboriginal Peoples: Looking Forward and Looking Back, 1996). Borrows (2017) points out that statements such as this enable its concealed operation. Such a claim also can be said to reproduce problematic myths and national tropes of British and Canadian acceptance and even kindness towards Indigenous people, in contrast to their more brutal treatment to south of the border in the United States. For example, though regional differentiation in social, economic and political terms would have changed the way in which a nationalist vision became recognized (Nichols, 2009), this glosses over an analysis of the centrality of land in these histories and the regional and local interests at stake in this pursuit. In this narrative Canada becomes the ethical, virtuous, and self-reflective colonizer that is simply “respond[ing] to outside pressures rather than from strong internal demands for land” (Creighton, as quoted in Nichols, 2009, p. 148), when these dynamics are not mutually exclusive. Their oversight however, implies that Canadians do not need to contend with their own violent colonial histories (an ongoing practice) simply because they are abstractly determined as

less harmful than other British colonies and especially their American counterparts.<sup>108</sup>

This can stall meaningful political progress by manifesting as entitlement at best and forms of toxic self-righteousness that hails discourses of reconciliation with little understanding of how such a position shuts down critique and silences Indigenous peoples.<sup>109</sup> It also ignores that colonialism across the continent regardless of its borders is part of a larger American project.

It remains crucial to interrogate the political utility of erasing the role of land enabled by settler state institutions, as well as its desires for unwavering access to land that contributes to colonial erasure and revisionist narratives that make settler colonialism possible as an *ongoing* practice. “Canada’s Aboriginal peoples were here when Europeans came, and were never conquered” (*Haida Nation v British Columbia*, 2004, para. 25; Borrows), and this claim can be further developed through an understanding of how colonialism and genocide occurred alongside the establishment of a settler colonial state. It therefore becomes important to begin to unpack the ways these lineages informed and hierarchized relationships to land in less overt ways.<sup>110</sup> In this sense, Indigenous people do not have to be “conquered” for the racist assumptions and logics embedded within *terra nullius* doctrine to have achieved a certain level of success in advancing both

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<sup>108</sup> This is not to suggest that there is no empirical support for these claims as I explore in Chapter 3, however intellectuals should be suspicious of how these narratives depoliticize Indigenous claims in the present, as well as reproduce (white) settler privilege and innocence.

<sup>109</sup> Prime Minister Justin Trudeau’s brand of self-reflective and feminist masculinity becomes instructive here, since the face of such action has served to temper its violence through discourses and action otherwise associated with particular branches of progressive and/or Liberal politics.

<sup>110</sup> In a landmark decision in June 2014 Canada’s highest court acknowledged Aboriginal title as applying to a certain site, stating that “The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada, as confirmed by the *Royal Proclamation* (1763)” Harrington, 2014; *Tsilhqot’in Nation v. British Columbia*, 2014, para. 69).

European desires for land and positioning those ways of relating to land within a legal-institutional apparatus that privileges them as dominant.<sup>111</sup> Thus, though *terra nullius* has undoubtedly been determined a fiction that sought to uphold the doctrine of discovery (Harrington, 2014), it remains important to interrogate simplistic founding and constitutional narratives and especially crucial to examine the ways these legal concepts became operative via such assumptions and the ways the rule of law was mobilized and employed in the Canadian context. Further, in the context of an emerging settler state it remains crucial to consider how colonial law and policy also became operative through the unwritten, unspoken, less formalized, and even ad hoc practices and institutional arrangements.<sup>112</sup>

It also remains crucial to attend to the nuances of time, place and position in how the historical relationship between Indigenous peoples and settlers shifted and changed. Borrows argues for attending to colonial power relations, while at the same time rejecting attempts to ‘reconcile’ these competing stories.

Attending to Canada’s constitutional inconsistencies is not a demand for their reconciliation. Reconciliation has problematically dominated the jurisprudence dealing with indigenous issues and is a flawed metaphor in this field. Any compromise with colonialism causes us to be compromised by colonialism. (Borrows, 2017, p. 20)

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<sup>111</sup> In this chapter I explore some of the ways these logics became operative through the imposition of English common law. More specifically, I offer a reading that allows an understanding how criminalization and dispossession are intertwined processes within the emergence of colonial and settler state legal systems.

<sup>112</sup> As Stoler reminds us, attending to the limits, gaps and openings is not to suggest that these provide the “real” story of colonialism and empire. Indeed, all these sites and kinds of knowledge matter, but it is in drawing attention to this critical “space in the craft of governance, a diacritic of sorts that accents the epistemic habits in motion and the wary, conditional tense of their anticipatory and often violent register” (2009, p. 7).

State and capitalist expansion consistently had to address the local and regional dynamics of communities and lands, as well as the shifting interests and intentions of settlers and Indigenous people alike. Different Indigenous nations were affected and responded differently to colonial law and governance, even though there were also similarities and/or consistencies across time and space. Legal histories, which have regional differentiations as part of the state-building project, often have much to do with geographical context (Harring, 1998). This in and of itself would suggest that *land* plays a determining role in shaping the political and life possibilities within a particular *place*. As such, where possible I do my best to attend to the nuance of place and geography in recounting these historical legal and policy developments, while also establishing relationship and necessary connection to national and international dynamics.

Finally, in the context of conversations about land and the imposition of a European system of private property I do not mean to suggest that Indigenous communities did not already have their own frameworks of understanding similar kinds of relations. Indigenous nations have been put under a great deal of pressure by assimilationist agendas, but they have also always sought to maintain their sovereign status and relationships to land. As has been argued by many others elsewhere, Indigenous peoples' cultures were dynamic and alive in their responses, resistance, negotiations, compromises and struggles with European frameworks (Robertson, 2016; Hill, 2008; Simpson, L., 2008a; Harring, 1998) and their continued survivance today presents both a deep and profound unsettling of contemporary practices of Canadian governance and territory (Chartrand, 2017; Cheechoo, 2008; Pitawanakwat, 2008;

Simpson, L., 2008b). This also highlights the necessity of moving past one-dimensional readings of Indigenous peoples' relationships to Canadian law, which continue to make invisible the ways Indigenous peoples have always "acted to structure the impact of Canadian law on their lives" (Harring, 1998, p. 14).

Following on my discussion in Chapter 3, although the way the notion of *terra nullius* came to be practiced and understood in the Canadian context varies in some ways from other settler colonial contexts, it remains a defining force in Canadian legal history. In the Canadian context, *terra nullius* and Manifest Destiny informed settler expansionism (Macdonald, 2009; Nichols, 2009) and worked in tandem to produce the racial, gendered, sexualized and classed hierarchies that would inform increasingly aggressive and coercive colonial policy intended to manage and control Indigenous relationships to land and lifeways. Centering these concepts and foregrounding their unique influence as part of Canada's historical constitution is an important political act in the contemporary moment because of ongoing efforts to minimize questions of land in the often-cumulative political disputes between Indigenous communities and the Canadian state. This is especially urgent given a political history of national myth-making that actively denies ongoing claims by Indigenous leaders, activists, artists and intellectuals that state land must be front and center in any conversation about reconciliation (Belcourt as referenced in McMahon, 2016; Manuel, 2017).

The earliest agreements and treaties were based on the participation and consent of First Nations peoples and a commitment from the Crown to peace, respect and friendship. The Treaty of Niagara (1764), now over 250 years old and understood by

many as one of Canada's founding documents, sets out that settler governments would not interfere in First Nations governance or affairs and that the Crown would mediate any such instances (Carter, 2008; Monchalin, 2016a; Borrows, 2017). Similar agreements were made by the Mi'kmaq, Maliseet, and Passamaquoddy from the Maritimes (Borrows, 2017). The Royal Proclamation (1763), which the Treaty of Niagara ratified (Gehl, 2013), upholds similar commitment to respecting Indigenous lands and governance, though it can also be said that there is a move in this agreement to make space to enable a deeper colonial project. As Borrows (2017, p. 22) states:

Though the Royal Proclamation contained a darker colonial vision, it nevertheless contained solemn promises to ensure local governments ceased molesting and disturbing Indigenous peoples. Under this vision Canada was to become a peaceful place for "Indians" and foreign settlers, based on persuasion and the rejection of force. Again, this was largely premised on the view that First Nations leaders accepted the constitutional arrangement which precluded local governments from dealing with them in matters related to their land, governance, or resources.

It is significant that these founding agreements so clearly indicate that Indigenous peoples were to remain fully autonomous and outside the authority of settler governments. This also lends insight into the nature of this autonomy—one that is not only articulated in terms of governance in the sense of control over land, and resources, but also the determination of justice and accountability within Indigenous communities. Certainly, within this framework the nature of autonomy should preclude what would soon follow when superiority would be granted to British claims to sovereignty, including identifying Indigenous peoples as subjects of the Crown.

Despite the promises of the Royal Proclamation, the Constitutional Act of 1791, which created Upper and Lower Canada, would lead the Crown to offer free land in order

to entice settlement and in exchange for Loyalist allegiance.<sup>113</sup> This also marked the arrival of English law and the courts in Upper Canada (Harring, 1998). Recalling that the Proclamation would come to be ignored in Lower Canada, it was after 1791 that “the Aboriginal policies of Upper and Lower diverged” (Carter, 2008, p. 204).<sup>114</sup> Thus, even though the Proclamation has been a determining framework for subsequent treaties and in constitutional agreement criteria, including Confederation,<sup>115</sup> the Crown’s almost simultaneous pursuit for land and lip service to and/or disregard of the Proclamation signals the centrality of privileging overwhelmingly white settler acquisition and ownership of Aboriginal lands as a method of settlement. This strategy is of course not unique to Canada, however this hypocritical double move where agreements are rhetorically upheld and/or diminished on an ad hoc basis at the same time that the land base of Indigenous peoples is persistently and deliberately eroded is still deeply apparent in contemporary state of Canadian governance. This is embodied in the eventual designation of Indigenous affairs to the federal government in contrast to the provincial mandates, which continues to be the source of tension over land governance today.

Whereas initially the military (and later the British Colonial Office) was the branch of the government dedicated to Indigenous affairs, following the War of 1812 (when Aboriginal peoples were no longer seen as necessary allies), they come to be understood to pose a more explicit threat to European settlement (Cummins and Steckley,

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<sup>113</sup> This practice intensified after 1812.

<sup>114</sup> Although settlement on Aboriginal land was advanced in Lower Canada, including at Oka (Kanesatake), the Canadian Shields land remained nearly all Aboriginal territory throughout the nineteenth century (Carter, 2008).

<sup>115</sup> For instance, it was present in the majority of treaties signed in southern Ontario and on Vancouver Island (Borrows, 2017).



2003; Dennis, 2014).<sup>116</sup> Carter (2008, p. 205) notes this as a turning point in British policy and in 1818 the Lords of the Treasury decided that “colonies should pay for the acquisition of land, and a system of perpetual annuities was devised to replace the lump sum payments” which was welcomed by Aboriginal leaders as indication of a committed and lasting partnership with the British and would subsequently become characteristic of future treaties with the Crown.<sup>117</sup> In 1867 the British North America Act granted exclusive legislative jurisdiction “of Indian and Lands reserved for the Indians” to the federal government effectively making them wards of the state (Cummins and Steckley, 2003). The Indian Act intended to solidify this and aimed to centralize, codify and fortify all existing pieces of legislation pertaining to Aboriginal peoples (Cummins and Steckley, 2003).<sup>118</sup> These were colonial, and therefore deeply racist, gendered, and assimilationist policies that attempted to systematically eradicate Indigenous culture and absorb Indigenous people into the Euro-Canadian mainstream.

Additionally, upon closer examination of the legal and policy frameworks and practices deployed over time by the settler state and its foot soldiers (i.e. Indian Agents, the Royal Canadian Mounted Police and the Church), suggests a deliberate and

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<sup>116</sup> Indian affairs remained with the British Indian Department, a branch of the military until 1830 in Ontario and until 1840 in Quebec, when Upper and Lower Canada joined to form the province of Canada and authority was transferred to civil authorities and the Lieutenant-Governor. In 1844 this authority was transferred to Canada and placed under the authority of the Governor General (Cummins & Steckley, 2003; Carter, 2008). Indigenous affairs was handled by the Secretary of State (1867-1873), the Department of the Interior (1873) and eventually a separate Indian Affairs department was formed by Sir John A. MacDonald in 1880. 1873 is also the year the North West Mounted Police was formed (Cummins & Steckley, 2003), which I will discuss further in the next chapter.

<sup>117</sup> Annuities were funded by interest payments by land purchasers. During this time Indigenous leaders understood the need to work with the influx of new settlers (British immigrants and Loyalists), however their relative position had waned due to population loss from the other effects of settlement in the region (i.e. warfare and disease as well as the loss of game) (Carter, 2008).

<sup>118</sup> It does not pertain to Métis or Inuit peoples.

progressive shift intended to subjugate and assimilate Indigenous peoples in the years leading up to and following Confederation. In particular, the shift in power from the Crown to the settler government, and then subsequently to provincial governments identifies some significant departures from the tone of earlier agreements (Borrows, 2017). Importantly, these shifts also indicate a deep seeded imposition that can be connected to clear desires for land, and the necessity for upholding particular ways of relating to land. The irony of this is that despite settler and colonial government desires to control land, the land is what makes possible all patterns of settlement. Recognition of this irony reverses the colonial logics that are premised on the simultaneous disavowal of the centrality of land to the settler colonial project. It is these logics, discourses and rhetoric that continue to make land invisible and perpetuate violence towards it and ourselves.<sup>119</sup>

In addition to Indigenous peoples actively seeking to define their relationship to the Crown and the seeming shift in the Crown's priorities especially following 1812, the impetus for the Numbered Treaties also came from the government's pursuit of land, resource development and desire to establish the parameters of provincial authority.<sup>120</sup>

The Upper Canada Treaties (commonly referred to as 'land surrenders') were negotiated

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<sup>119</sup> It is for this reason and following the lead of Indigenous intellectuals that I believe it becomes politically significant to recover and re-center the land on different terms, and in ways that might contribute to making the land and our dependence on it present and felt.

<sup>120</sup> Treaties 1-11 (1871-1921) covered the eastern part of British Columbia, parts of the Yukon and Northwest territories in the West, the Prairie provinces and large part of northern Ontario (Dashuck, 2013; Monchalin, 2016a). There were also a series of Mi'kmaq Treaties that explicitly referred to hunting, fishing, trapping entitlements: The Treaty of Portsmouth (New Hampshire, 1713) and the Mascarene Treaty and Treaty of Boston (1725) (Cummins and Steckley, 2003). For more detailed elaboration on the contexts and conditions of the Numbered Treaties, see Monchalin (2016a, p. 92-102).

between 1781 and 1862 and largely intended to settle land on an ongoing basis in order to uphold guarantees to Loyalist and eventually European settlers for the purpose of “peacefully establish[ing] an agricultural colony in the region and help[ing] the Crown compensate its Aboriginal allies for losses incurred during the war with the Americans” (Indigenous and Northern Affairs Canada, 2017).<sup>121</sup> Though these Treaties often provided reserve land, this was not always the case.<sup>122</sup>

The so-called peaceful creation of an agricultural colony was the result of First Nations peoples needing to make the best choices under increasingly constrained, unfree and hostile conditions if they hoped to continue to access land and their traditional territories. The idea that this process occurred peacefully is misleading, since it relied on the non-consensual arrival of growing numbers of settlers who were promised and felt entitlement to land for their British loyalty. Even though through the 1830s and 1840s British officials were active in the management of colonial policy and, “because they were convinced that local settlers could not be trusted in this area,” colonial law actively benefited these incoming settlers primarily through land acquisition (Harring, 1998, p. 16). Combined with the general disregard by local governments of colonial policy and the

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<sup>121</sup> Between 1783 and 1812, fifteen land surrender treaties were negotiated in the Upper Canadian peninsula. From 1815 to 1860 treaties were negotiated that included all the remaining lands of Upper Canada, which included rich agricultural lands south of Lake Huron to lands around Lake Superior and Georgian Bay which were known for their resources (Indigenous and Northern Affairs Canada, 2013). The Robinson Treaties (1850) involved land north of Lake Superior and Lake Huron (Cummins and Steckley, 2003).

<sup>122</sup> “Before 1818, Aboriginals were compensated with one-time payments in goods or money or both, paid to the signatories at the time of the treaty.[...] After 1818, British administrators opted for a yearly payment, or annuity, in an effort to reduce the initial expense of treaty-making. Annuities could be funded by revenue earned from the sale of the surrendered lands. Annuity monies were used by the Indian Department to build agricultural communities on which they intended to settle Aboriginal peoples. The annuity money funded home construction and purchased agricultural implements and livestock” (Harring, 1998).

waning capacity and political will of Britain to pursue such matters, these new settlers had deep incentives to participate in further land acquisition and theft not only because southern Ontario was an emerging agricultural economy, but because there were no substantive repercussions for doing so.

The general approach to the Upper Canada treaties was based on the Royal Proclamation and the particular relationships to land that it sought to uphold. The determination that “indigenous people had legal right to their lands and both needed to be respected by settlers and enforced by colonial authorities” was prompted by an 1836 parliamentary inquiry in Britain that was the result of the combined efforts of the Anti-Slavery Society, the Aborigines Protection Society, and a number of other Christian liberal forces (Harring, 1998). Despite the limited recommendations and lack of political enforcement, these findings would largely affirm what was set out in the Royal Proclamation but attempt to fit it within the bounds of English common law. In addition to noting the growing asymmetries in the relative power of Indigenous nations and the Crown, Harring (1998, p. 27) highlights that the objections raised in the Parliamentary Select Committee on Aborigines Report which included a focus on the treatment of Indigenous peoples and protection of their rights in Canada,

... were drawn, not from international law, but from the law of contract: unfair and unequal contracts were unconscionable. [...] [T]he committee’s recommendation on this point was inconsistent with the legal foundation of the treaty-based policy of land acquisition set out in the Royal Proclamation of 1763.

Treaty-making within this framework was perceived as increasingly contractual and law-makers attempted to make sense of Aboriginal title within a private property

framework.<sup>123</sup> In addition, while some treaty negotiations were consistent with the process set out in the Royal Proclamation, many were fraught with manipulative tactics, dishonesty, and misrepresentation, as well as the subsequent failure of the Crown to uphold their treaty agreements.<sup>124</sup> Heidi Kiiwetinepinesiik Stark's work (2016) is important here, because she outlines how criminalization was a strategy of territorial sovereignty by showing that logic of contract alongside criminalization became a method to re-frame the treaties and erode Indigenous political authority. Stark for example, highlights the ways both Canada and the U.S. instrumentalized the treaties as a means of acquiring consensual agreements with Indigenous nations, but then actually found ways to continue to perpetuate harm and coercive inclusion through assimilation and genocide.

It would become clear that British colonial policy found the solution to the protection of Indigenous land within English common law, yet it is deeply apparent that this framework did not and could not protect Indigenous land from settlement due to the complications of the above factors, but equally because the British empire continued to benefit from vast expansion and acquisition of land for very little cost. For the settler state, the move to understanding Indigenous relationships to land through a private property framework finds lineage in and was to be structured through the treaty-making process in relation to indigenous savagery and criminality (Stark, 2016).<sup>125</sup> This is important to note because it indicates that no room was afforded to conceptualize

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<sup>123</sup> By this point much of the land in Upper Canada had been acquired by the Crown. Additionally, the report stated that forced servitude of Indigenous persons was illegal (Harring, 1998).

<sup>124</sup> This is documented in First Nations oral histories and in a number of southern and northern Ontario treaties. See for example Shanahan (1994) and Schmalz (1991).

<sup>125</sup> For further discussion on the relationship between savagery and criminality, see Luana Ross (1998).

relationships to land on the terms of Indigenous peoples themselves. As a result, Aboriginal title would often be belittled, diminished or ignored on racist grounds stemming from different valuations and the racialization of relationships to frontier land. As Harring (1998, p. 35) states,

The law of property is at the core of English common law, but little in the history of English land law helped structure the distribution of land on the frontier; indeed an analysis of the land problem reveals the disorder of early Canadian law.

This is not surprising since as early as 1791 there is documentation that British authorities assumed that Indigenous persons were the Queen's subjects and therefore equally subject to English and Canadian law (Milloy, 1988; Tobias, 1988).<sup>126</sup> It is this assumption and non-consensual inclusion that actively extended the colonization process. In the Canadian context this would set the ground work for a more centralized system of law and policy which would privilege forms of subjectivity that relied on particular utilizations and understandings of land. It was through re-defining Indigenous relationships to land that notions of 'Indianness' became possible (Lawrence, 2004). This further became reified through the ways such identities were produced by and through practices of dispossession (Bhandar, 2016).

These foundations by the colonial government and newly emerging local authorities set important groundwork for what would become the Indian Act and re-centering them provides some basis for re-positioning the land as the grounding for such a colonial strategy. Further, while land was being redefined in colonial law, criminal law was actively extended to Indigenous people. The imposition of colonial law as early as

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<sup>126</sup> Though this was more difficult to enact on unsettled lands, in Rupert's Land there was a practice of respecting Indigenous autonomy unless it interfered with the HBC.

1791, which was subsequently reinforced in the select committee's 1836 report,<sup>127</sup> justified that Indigenous people were subject to criminal law. However, Indigenous property rights were not upheld by civil branches and Indigenous people “were not in a position to defend their property against the advancing tide of settlement” in a way that would be legally recognized (Harring, 1998, p. 30). Not only access, but the re-definition of land was such a foundational means of assimilation that the inability for Aboriginal title to be understood and respected was an afterthought to which the policy through the 19<sup>th</sup> century would attest. Thus, not only was it impossible for the Canadian state to demonstrate a willingness to respect Indigenous relationships to land, but it also could not provide land protection through its own imposed framework of property relations contrary to its promises and claims.

Aboriginal title as conceptualized in English common law was steeped in a broader framework of racist paternalism that sought to mitigate colonial conflict over land and assimilate Indigenous people. It is important to note that in the earliest articulations of colonial policy these goals were pursued together and in a way that was understood as mutually reinforcing. In the Canadian context law was conceived as a strategic means of social control and this would eventually be embodied in increasingly forceful ways through the residential school and pass systems. As Harring (1998, p. 18) notes, “the imposition of prison sentences accompanied the loss of aboriginal land and the impoverishment of aboriginal people.” In other words, the belief that the Canadian state could “protect” Indigenous lands within settler colonial law and policy was a means

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<sup>127</sup> For a discussion of the select committee of 1836, see Harring (1998).

of establishing the only legitimate method of governance on this land. It included the ability to incarcerate Indigenous peoples, (since they were subjects of the Crown), at the same time that it possessed the means to re-define, re-constitute and criminalize relationships to land and traditional lifeways. This double move ensured Indigenous people were faced with decreasing levels of autonomy and increasing levels of restriction, unfreedom and legal confinement *through* their inclusion within the Canadian state. It can be read as a primary means by which carcerality becomes embedded within the Canadian settler colonial project.

The inability for colonial law to approximate understandings of land that would lead to a full and sovereign recognition of Indigenous persons, and the problem that liberal recognition poses for Indigenous agenda-setting and resurgence (Simpson, A., 2008; Coulthard, 2007), highlights the limits and inadequacies of settler-colonial law in Canada. These follow suit with liberal tradition as seeking the benevolent, yet non-consensual inclusion of Indigenous people through their basic humanity, while simultaneously having no substantial desire to address systemic inequality and harm, including the obvious harm of such a founding. It also explains why examining the most aggressive forms of colonial legislation make it difficult to get at the question of land since, by its very nature, Canadian law and its epistemological basis has attempted to erase the land, essentially writing it out or as anything other than a commodity, or property and reducing human relations to land as bounded—more often than not as property and transactions of production and/or extraction. Examining pre-Confederation colonial law and policy provide sites to make this connection, however the later



articulations of colonial policy after dominion, when read as such, provide additional layers and institutional arrangements set to mitigate these relations, which I will examine in the following chapter.<sup>128</sup> Situating this in the ongoing desire of settler colonial states to erase the land on which their continued existence is possible raises important political questions about the limits of analyzing these sites independent of the Indigenous thinkers and knowledge systems that have critiqued them (McCoy, Tuck, & McKenzie, 2017).

In the latter part of the 19<sup>th</sup> century the new dominion under the leadership of then Prime Minister Sir John A. MacDonald, would undertake a vision for westward expansion with the goal of settling what were known to be productive lands.

The expansion of non-Native Canadian interests westward after the foundation of Canada and the purchase of land from the Hudson's Bay was the impetus for the numbered treaties, 1-11, signed between 1871 and 1921.[...] As was true of the Robinson treaties (which included land upon which mineral deposits had recently been discovered), there was a close connection between the federal government wanting something and the pressure for treaties to be signed. (Cummins and Steckley, 2003, p. 15).

The building of the railroad and desire to settle large tracts of agricultural lands led to Treaties 1 to 7, Treaty 8 closely followed the discovery of gold in the Klondike and Treaty 11 followed the discovery of oil in Norman Wells. Treaty 10 followed the establishment of Alberta and Saskatchewan. Here we can see that the possession of land for territorial sovereignty is deeply bound up with desired access to land for capitalist expansion in ways that connect settlement to new forms of exploitation of lands and other living beings.

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<sup>128</sup> Following this line of thought, looking to the most aggressive period of colonial law and history tells us a great deal about some of the most explicit forms of violence, assimilation and genocide within settler colonialism, but does not always provide the basis from which to examine subtleties that are a part of this process of re-definition. I believe this has the potential to be a productive entry point into understanding the less visible ways legal and institutional legacies in Canada continue practices of dispossession.

Conceptualizations of land as outlined in some of the earliest Treaty negotiations were both contested and demonstrate a desire to come to shared understandings as a means of moving forward in these agreements. Treaties 1-3, negotiated in the 1870s with First Nations in northwestern Ontario and Manitoba, were the first priorities as they were crucial negotiations to make to enable the desire for access to the west (Harring, 1998). Commissioners were intent on exporting Indian policy developed in Upper Canada to their western negotiations and were faced with a demeanor and demands that surpassed their expectations. For example, the Saulteaux from Treaty 3 territory took a strong and resonant stance in their negotiations with the federal government. Ma-we-do-pe-nais, articulates the community's position in negotiations as follows:

All is our property where you have come... This is what we think, that the Great Spirit has planted us on this ground where we are, as you were where you came from. We think where we are is our property. The sound of the rustling of the gold is under my feet where I stand; we have a rich country; it is the Great Spirit who gave us this; where we stand upon is the Indians' property and belong to them. (Ma-we-do-pe-nais, as quoted in Harring, 1998, p. 131)

The expression of the Saulteaux's land as their property here is clear, yet the claim to this is prefaced with the assertion that this particular idea of ownership or 'belonging' is enabled through the Great Spirit. Harring (1998, p. 131) also suggests that this is evidence that the Saulteaux do not approach the treaty process as an act of selling their land, but "as a process of protecting their rights by limiting and clearly defining the scope of crown encroachments." This is a significant inference, especially because it is important to consider its reading in its political context and in light of the strategic positioning of the Saulteaux on their land. At the same time, it is not the prerogative of this project to determine whether or not the notion of property is part of the Saulteaux worldview.

Rather, it is important for settlers to consider listening to and finding significance in what the Saulteaux are choosing to share with the government negotiators both as an expression of what they are asking the government to understand and take seriously about their position and demands.

This is how, despite the very clear claims and efforts to negotiate articulated in the Saulteaux's expression above, it becomes possible to diminish these claims. Thus, in a modified reading we might interpret the idea of property put forward by the Saulteaux as both belonging and as a gift of the Great Spirit, as a means to express the legitimacy of their claims to their land in a way that would be registered by commissioners and also express nuance and difference about their relationship to both land and the idea of property. In a sense then, this expression also represents a spirit of negotiation in the ways that it demonstrates the ability to listen, understand and respond to European frameworks of property relations, as well as the interests of the newly consolidating settler state for the purpose of coming to mutual understanding about the terms on which the land will be shared.<sup>129</sup> This history becomes important for significant legal cases in the coming years, which would seek to re-establish the nature of Aboriginal title.<sup>130</sup>

In the next section I give an overview of how the practice of English common law and the development of Indian policy in Upper Canada enabled both Indigenous land dispossession and theft, and enabled the increasing criminalization of Indigenous persons and their relationships to land. This provides important foundations on which a national

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<sup>129</sup> The Saulteaux's position became well known for its strength and influenced the demands First Nations in western Canada would make in subsequent treaty negotiations. For a more detailed account of what this negotiation included, see Haring (1998), pages 128-131.

<sup>130</sup> In particular, the St. Catherine's Milling case. See Haring, p. 132-134.

Indian policy and a corresponding institutional framework was developed, which will be the focus of Chapter 5. In doing so I hope to begin to trace out how the establishment of a colonial-carceral apparatus is an extension of the desires of settlers and the settler-state to re-constitute relationships to land through Indigenous removal and assimilation.

### The Development and Practice of Colonial Law and Legislation in Upper Canada:

“Laws for nineteenth century Ontario Indians, meant either the legal basis for settler claims to their lands or the reason for their being locked in a jail cell for violation of some crime under Canadian law, most often an offence unknown to Indian tradition.” Sidney L. Harring, “White Man’s Law,” 1998, p. 89

In the early 19<sup>th</sup> century the imposition of English common law and the development of Indian policy in Upper Canada worked hand in hand to both dispossess Indigenous people of their lands and selectively criminalize them. This occurred through land rulings and policy that favoured squatters and land speculators, as well as through the criminal code (Harring, 1998). Highly influential jurists, especially John Beverly Robison<sup>131</sup> played a significant role in shaping English common law in Upper Canada towards the interests of settlers at every expense it seems, even when it proved inconsistent with the legal formalism, judicial conservatism and the interests of the Crown, which were so heavily present in English common law tradition.<sup>132</sup> He practiced by broadly applying racist and paternalist Indian policy and the principles of the law, despite the absence of any concept of sovereignty or land rights, and its inability to ‘rule

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<sup>131</sup> Robinson’s thirteen reported Indian law opinions spanned twenty-seven years, which was more than any other North American judge during this time (Harring, 1998). He was also a land speculator and as a private lawyer had vested interests in canal-building projects and the family compact.

<sup>132</sup> Though Robinson practiced ‘polyjuralism’ he actively refused to borrow from highly relevant cases on Aboriginal title south of the border, in Quebec, or even British colonial history. For a full discussion of polyjuralism, legal formalism, judicial conservatism, and other characteristics of this particular legal tradition as practiced in Upper Canada, see Harring (1998).

the frontier' as he had hoped.<sup>133</sup> Essentially, Robinson's problematic patchwork of rulings and the confusion and inconsistency that would follow prevented any precedent on Aboriginal title and actively benefitted settlers at the considerable expense of Indigenous people, yet this was something Robinson himself would never be accountable to. Further, Indian policy during this time was poorly developed and generally neglected since much authority still resided with the Crown.

During these years the Royal Proclamation became selectively employed as convenient for the purpose of making the question of Indian legal status within newly emerging law irrelevant. This occurred by privileging interpretations that favour the idea that Indigenous land is simply Crown land and that Indigenous Nations only occupy the land, rather than own it through any mechanism of legal title.<sup>134</sup> Additionally, a large number of cases involved Six Nations of the Grand River which, despite having a unique trust relationship with the Crown, were understood by Upper Canada jurists and legislators to be applicable to relationships with other nations (Harring, 1998). The racist and paternalistic protection narratives often employed in rulings indicate that rationales were being constructed based on the belief that Indigenous people were unable to govern themselves and must be assimilated or relocated away from settler communities because

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<sup>133</sup> His peers during this time, though less influential, were also no more capable of upholding the inherent rights of Aboriginal peoples or the precedents set British colonial history in Canada or elsewhere (Harring, 1998).

<sup>134</sup> Recalling Borrows (2017) claim that the Royal Proclamation makes possible this 'darker colonial vision,' this move highlights the capacity for the Crown's colonial vision to be achieved.

they were believed to be incompatible with the European legal tradition (Harring, 1998).<sup>135</sup>

Robinson's rulings on land dispute cases are especially demonstrative of the extent to which the limited consistency and selective enforcement of settler law and policy definitions of land were central in upholding settler interests. Robinson had clearly argued that "Indians were fully amenable to the criminal laws of Canada," yet as Harring demonstrates,

Robinson avoided taking on these important legal issues [involving Aboriginal rights to land] in a direct way.[...] He was both denying the importance of policy in coming to a holding that put Indian lands up for sale, and boldly asserting that the courts were not obligated to defer to legislative policy in determining Indian rights under the law. (Harring, 1998, p. 66)

Here it becomes possible to take seriously, even if abstractly, how the law becomes selectively upheld in settler colonial contexts. Not only were ideas of individual possession and property central (though certainly not always successful) in imposing a dominant framework of relating to land that de-centered Indigenous relationships and ways of knowing within English common law tradition, but the partial, discriminating and inventive techniques used by judges and settlers alike suggest that even in situations where it might be possible, though certainly still problematic, to interpret Indigenous land rights within this framework, they are not (and cannot be) protected to the same extent that settler rights are.<sup>136</sup> Further, Indigenous people were not afforded the same defence

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<sup>135</sup> With regard to the latter, it was particularly convenient to argue for the paternalistic protection of Indigenous people and their land without needing to acknowledge that they were entitled to any legal rights.

<sup>136</sup> Robinson's ruling history includes questioning the legal status of Six Nations and the legality of the Haldimand Grant as applied to Six Nations legal land title, even though legal title of Loyalist's land through the same grant remained unquestioned. For example, in *Doe Ex. Dem. Jackson v. Wilkes* (1853), Robinson used the case between two settlers, one of which had Crown title and the other a land speculator who did not, but who "had extensive holdings in formerly Indian lands," to challenge the legal status of Six Nations

within the law for protecting their lands (Harring, 1998). The resulting situation is one in which settler actions and interests in land become trivialized and decriminalized, while and Indigenous maintenance of their land becomes criminalized and suspect. Importantly, this is not always through charges, arrest and incarceration, but through a legal system that is persistently punitive; at the very least placing limits on their livelihood and survival by weakening, failing to recognize or exploiting historical agreements and the experiences of Indigenous people as valid in these processes.<sup>137</sup>

Squatters and land speculators were equally inventive in attempting to construct legal scenarios that could work to their advantage in frontier conditions. This often involved presenting cases in ways that made themselves the innocent victim of trespassing (i.e. *Little et al. v. Keating*, 1840), arguing that in making improvements to the land it was rightfully theirs (i.e. *Brown v. West*, 1846), claiming no criminal intent or by feigning ignorance (i.e. *Regina v. Baby*, 1854), or simply by jury bias and hedging bets that they could come up with complex legal scenarios that would trump Aboriginal claims

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in addition to their land title by arguing them as a ‘constructive corporation’ and that the land grant was “defective for want of a guarantor” even though this ruling was beyond the scope of the case (Harring, 1998, p. 68; 67; *Doe Ex. Dem. Jackson v. Wilkes*, 1853). Essentially Six Nations land titles were deemed illegal in Upper Canada courts and “only those holding land titles from the commissioner of crown lands had legal titles, a holding consistent with the Royal Proclamation” (p. 68). In a number of squatter cases, and despite Robinson’s own disdain for them, he ruled in their favour. For example, in *Little et al. v. Keating* (1840) two chiefs had initiated a complaint about a squatter on Walpole Island who was subsequently convicted by the commissioner of crown lands, yet Robinson ruled that the commissioner had no jurisdiction over crown lands and had failed to prove the land in question was Indigenous land under the strict requirements of a penal statute. Thus, the conviction was reversed. In this case, the land in question was unceded territory and so the Royal Proclamation clearly applied even with the policy outlined in the 1839 Indian Act, which Robinson failed judicially enforce. Harring notes that that “[t]his omission [by either party] may indicate that the Royal Proclamation was not seen by lawyers and judges of the day as protecting Indian rights independent of the early Upper Canadian Indian acts [... which] were much narrower in scope than the Royal Proclamation” (p. 69-70).

<sup>137</sup> In *Little et al. v. Keating* (1840) for example, the implications for the Royal Proclamation were that it could be overturned based on the rules of evidence within the common law tradition. The Indian Agent was himself twice arrested for trying to evict squatters from reserve land.

when taken to court because of the “complexity of the landholding arrangements in effect at the Six Nations Confederacy at mid-century was almost beyond the capacity of the law to adjudicate” (Harring, 1998, p. 72) (i.e. *Doe d. Sheldon v. Ramsay et al*, 1852).<sup>138</sup>

Indeed, the incapacity and unwillingness for the court to uphold that Indigenous people had legal title to their land through an individual property framework was evident when Robinson stated:

We cannot recognize any peculiar law of real property applying to the Indians – the common law is not part savage and part civilized. The Indians, like other inhabitants of this country, can only convey such lands that they legally hold[...] by deed executed by themselves, or by some person holding proper authority. (Harring, 1998, p. 73-74)

Essentially, Robinson made it legally impossible for Indigenous people to dispossess settlers by imposing a system of private property based in a racialized hierarchy in which Indigenous people’s ability to live up to legal categorizations of ownership would always be questioned. Further, though in theory Indigenous peoples could be thought to ‘own’ their land, they “lacked the same legal right as other Upper Canadians to protect them” (p.76).

In order for settlers to position themselves as legitimately innocent under the law in these ways they were almost always suggesting that they were the rightful owner or leaser of the land in question and that their interests were worthier of being upheld by the law by virtue of the privileged relationship to land that their settler status maintained.

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<sup>138</sup> In the case of *Brown v. West* (1846, p. 117) for example, Chief Justice Robinson stated “that the crown, while recognizing that Indian title could not be acquired by settlers, often protected settlers’ property rights in improvements built upon Indian lands under traditional doctrines of equality[...] and that some interests of squatters were so substantial that a court of equity could hardly refuse to acknowledge them” (Harring, 1998, p. 72). In the case of *Regina v. Baby* (1854) Robinson, for the first time, rejected the land speculator’s arguments as against the public policy of protecting Indian lands.



Indigenous peoples were, on the other hand, described by Robinson and other officials as dependent and desperately in need of government protection in a manner that presented themselves as the experts in the delivery of these interests which were often framed in terms of enjoying their property.<sup>139</sup> It is worth noting that though Indigenous persons were deemed subjects of the law and therefore had access to criminal and civil courts, few individuals and no nation was a legal party in a 19<sup>th</sup> century land case. Beyond the courts being socially, economically and culturally inaccessible, the legal precedents set during this time suggest that the odds of being successful were negligible.

Robinson and his colleagues at the time openly disagreed on the legal status of squatters in some cases, but none were so substantive that they challenged the prevailing racist and paternalist logic of the imposition of English common law in Upper Canada. For instance, Judge James Macaulay authored an 1839 report on the position of Indians in Upper Canada

centered on the duty of Canada's Indian 'citizens' to settle on individual plots of farmland and work hard; if they did so, the report maintained, they were certain, like the Irish, to better their lives[... since] Indians' collective ownership of property made it impossible for them either to advance socially or economically or to understand the notions of individual responsibility that underlay English law. (Herring, 1998, p. 82)

This report marks a moment when the logical connections between the legal precedents of English common law in Upper Canada and the beginnings of a national Indian policy

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<sup>139</sup> As Herring (p. 92) outlines, even this assessment is partial because of record-keeping practice since "[r]eporting systems were commercial enterprises published for sale to the legal profession" and because determination about which cases would be published was "based primarily on the commercial importance of the case to the profession." As such across the 1800s only sixty-three cases involving Indigenous people and their rights were reported in Ontario. Poor record-keeping, but also a large number of cases will be being held in various provincial archives. Further, "[c]ourts were held in rural locations[... since] [j]udges, lawyers and clerks travelled long distances to bring Anglo-Canadian justice to the farthest corners of Upper Canada" (p. 92).

organized around property relations begin to dovetail in more explicit ways. Despite these rulings, the courts were no closer to resolving the land question. Through the imposition of English common law in the lives of Indigenous peoples in Upper Canada, it becomes clear that a private property framework within a paternalistic legal apparatus played a role in dispossession (Bhandar, 2016). Re-organizing relationships to land become pursued through a private property framework by using land as not only a tool of settlement, but of assimilation, so the land and ‘Indian question’ might be “resolved.” And though the poorly researched, unimaginative and explicitly racist legal and political opinions of the day might be deemed deeply problematic by today’s standards, they are less surprising when considered alongside an increasingly coercive legal and legislative apparatus with a shared intent to ‘correct’ and ‘rehabilitate’ Indigenous persons towards Eurocentric ways of being as means to accessing and controlling land in ways favourable to settlement and resolving the increasingly obvious difficulties the land question posed. Born out of both the lack of desire and inability on the part of the emergent settler state apparatus, as well as the ongoing resistance of Indigenous persons and communities, the state would eventually turn to more explicit and visible uses of force in order to extend its colonial vision but with historical precedent of legal and legislative coercion already embedded within the so-called non-violent institutional frameworks of the state.

Long before this would be the case, it is important to take note that despite the rhetoric of protecting Indigenous lands, the legal and legislative apparatus as taken up by Robinson and others actually resulted in less protection for Indigenous lands than was to have been ensured through colonial policy (Harring, 1998). This also had the effect of

changing how Indigenous peoples could use their lands, as well as who would own improvements on collectively owned land.<sup>140</sup> The Land Acts of 1850 furthered the policy of paternalistic protection since though they claimed that ‘Indian land’ would be protected from “trespass or injury” they inevitably imposed relationships of dependency by making it highly difficult for Indigenous people to contribute to their own livelihood.<sup>141</sup> Though they were set up with the explicit claim that settlers would be held to account and criminally charged, the policy would essentially control how Indigenous peoples were able to use land to survive. In this framework, Indigenous people could be punished for particular uses of the land if they were deemed to be using it in ways that could be strategically conflated with the destructive capacity of settlers and land developers. This would have the effect of severely limiting their ability to prosper on their own land.<sup>142</sup> At times this practice even violated assimilationist policies that aimed to encourage agricultural subsistence, since permits from Indian Agents became required to sell their goods and, in some cases, Indigenous people were arrested and jailed by Indian Agents for doing so (Harring, 1998). At the same time settlers who were able to find legal loop holes often found criminal convictions for trespass and theft overturned. Essentially, Indigenous people could be “protected” and had “rights” as long as this was synonymous

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<sup>140</sup> In these cases, Six Nations customary law was often ignored in favour of upholding the individual property rights of settlers at the expense of the individual property rights of Indigenous persons.

<sup>141</sup> This will be further discussed in Chapter 5.

<sup>142</sup> For example, in *Feagan v. McLean* (1869) a settler was criminally charged with trespassing and purchasing cut wood from a member of Six Nations. Even though the wood was from land he legally occupied the crown argued that “Indians on reserve land have no interest in the soil. They have the right of occupation and cultivation, and of clearing their land for cultivation, and of taking their necessary firewood; but not the right of cutting and selling the timber without regard for cultivation” (Harring, 1998, p. 97).

with assimilation and eradication via systematic erosion of Indigenous peoples' land base.<sup>143</sup>

Individual legal rights linked to the assumed sovereign authority of the Queen essentially made it possible for Indigenous people to be subjected to Canadian law, since this analysis makes clear that the policy and legal arrangements of the day made it nearly impossible for Indigenous people to derive benefit from this framework. As Haring (p. 109) notes, "For Indians, full access to the 'privileges' of British law' more often meant the opposite of legal protection of their land rights: they went to prison." This is telling because though in practice there was ambiguity and confusion in the early part of the century with regard to criminal jurisdiction over Indigenous people, their rates of arrest grew after the 1870s (Haring, 1998).<sup>144</sup> Whereas in the earlier part of the century land title cases were the most common type of reported cases, by the middle of the century criminal cases involving Indigenous people had surpassed these and often resulted in jail time due to not having the resources to appeal the decisions. This raises questions about how the law as a tool of dispossession changed through the 19<sup>th</sup> century through shifting notions of criminalization. In one sense such notions seem to highlight that the threats Indigenous peoples were seen to pose are not just ones about acceptable forms of subjectivity, but threats to the consolidation of the settler state through its desired claims

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<sup>143</sup> Haring argues that the fact that Indigenous people had rights is "the most important legal difference" between Canadian and American law during this time, but it remains difficult to understand how these rights in this context could be understood as beneficial, especially when not extended to Indigenous nations.

<sup>144</sup> Some officials presumed authority over criminal matters involving indigenous persons, but others did not.

to territoriality and private property.<sup>145</sup> This could also suggest that the criminal branch of law was becoming a more powerful or strategic tool of both dispossession and assimilation, as well as that the ongoing resistance of Indigenous peoples would have created increased anxieties for control and keeping Indigenous and other racialized people ‘in their place’ through other forms of coercion. Importantly, though notions of criminalization would have been shifting, these would have relied on the same or similar racist assumptions and remain derived from different ways of being in relation to land and property, including practices of slavery.

Reported cases in criminal law stem from a number of previously outlined issues, including paternal protectionism which upheld racialized, gendered and classed hierarchies in the ways the law was selectively upheld.<sup>146</sup> Criminal law claimed to protect Indigenous people from the violent actions of settlers, but in a number of significant cases no action was taken to hold settlers criminally responsible. At the same time in some cases where settlers were victims of crimes by an Indigenous person criminal law became mobilized to make examples out of Indigenous perpetrators for fear “that the lives of frontier settlers would be in jeopardy” (Harring, 1998, p. 112). The location of where crimes took place was relevant in how these narratives could be mobilized to ensure settler law continued to be extended to frontier lands; however, failed promises that the state would intervene meant Indigenous people were discouraged from practicing customary laws around these matters. It essentially produced a situation where crimes by

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<sup>145</sup> It also suggests the multiplicity of tools that may have been being deployed towards the ends of both dispossession and assimilation.

<sup>146</sup> For a detailed description of reported cases, see Harring (1998), Chapter 5.

settlers went unchecked, while Indigenous peoples had no real means of protecting themselves under Canadian law.<sup>147</sup> In other cases sentences of Indigenous people were commuted on the grounds that they were savages and without the capacity to understand British rule of law (Harring, 1998). Yet, in cases where Indigenous women were killed by Indigenous men new questions seemed to be raised about sovereignty, treaty rights and the limits and parameters of Canadian justice, both on and off Indigenous lands.<sup>148</sup> These cases and broader trends indicate inconsistency in the application of colonial law as well as a level of indifference and procrastination on the part of local officials and the crown.

At a time when Indigenous peoples have been increasingly impacted by colonialism, heteropatriarchy and land theft, these issues are not unrelated. When the extension of English common law to land acquisition continues to be rationalized, but the safety of Indigenous people remains trivial we can gain much insight into the logics of colonial-carceral power in the selective extension of the law since the ways land and relationships to land needed to be re-defined is also premised on the idea of Indian removal and the genocidal logics of disposability of Indigenous bodies, especially the bodies of Indigenous women, children, and Two Spirit persons. Meanwhile, the ability to arrest and incarcerate Indigenous people for petty crime and disturbances signals similar trends towards their increasing criminalization relative to settlers and a means to establishing order in ways deemed consistent with productive agricultural settlement as

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<sup>147</sup> Harring also notes that records indicate that a number of Indigenous people were killed by settlers without consequence in the late 18<sup>th</sup> century. Two significant cases involved the killings of two Mississauga chiefs (one of these cases involved both the chief and his wife) by British soldiers. In one case there was no indictment and in the other the killers were acquitted.

<sup>148</sup> Without having the space to do justice to the particularity of each case here, see Harring (1998, p. 113-114).

understood within a Eurocentric private property framework.<sup>149</sup> In short, incarceration was a means of both institutionalization within the settler state and of removing Indigenous people from their communities and land base, which would have inevitably affected how, on a micro level, claims to land can be made when squatting and land theft was an ongoing threat and when increasingly punitive limits were being placed on how people could survive within these conditions.

In addition to the ways that we can read early colonial law as selectively upheld, examining histories of criminalization alongside those of re-defining land, demonstrates that these processes occurred together as part of the settler colonial project. Another way to put this is that criminalization and the use of force as extended through the law occurred alongside, and indeed enabled, processes of land theft and assimilation. In the next chapter I will explore how these foundations set the stage for more hostile, racist and assimilationist policies in the coming years at the same time that they firmly establish how the criminalization and the carceral apparatus were being constructed well before the most violent period of Canadian colonial history. These processes are rooted in the ongoing settler colonial desire to disrupt indigenous title to land, as well as to enable a variety of removal strategies that sought to dispossess Indigenous people of their lands. This suggests that, rather than only reading the imposition of colonial law as selectively upheld and resorting to a variety of exceptions and exclusions, it is also important to think through how processes of criminalization and carcerality become established and reified through the ways colonial hierarchies of power shape criminalization as a racialized,

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<sup>149</sup> I will elaborate on this idea in Chapter 5 in the context of westward expansion.

gendered, sexualized, and classed category. When so much of the violence directed at Indigenous peoples stems from the variety of ways they have been non-consensually and selectively included within the British empire and Canadian state, it is important to establish that ‘colonial carcerality’ cannot only be theorized within this framework, since it is not only about exclusions from the law and settler-state, but the conditions of ‘inclusion.’

The Production of Carceral Space through the Emergence of National Indian Policy:  
Targeting relationships between bodies, lands and lifeways

The policies that would come to make up the Indian Act were made possible by the enactment of colonial law and the cumulative effect of legislation that mounted throughout the 19<sup>th</sup> century, which was already negatively affecting indigenous communities in a variety of ways. Their eventual amalgamation and enforcement in the Indian Act would end up having serious and detrimental effects on the well-being, autonomy, and traditional governing structures in communities across Turtle Island. The earliest statutes included in the Act mostly pertained to the management and “protection” of Indian land and came to be known as the Land Acts.<sup>150</sup> As outlined by ‘An Act for the Better Protection of the Lands and Property of Indians in Lower Canada’ (1850) a commissioner would both hold Aboriginal land in trust and possess executive power to

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<sup>150</sup> The differences in land policy in Upper and Lower Canada are illustrative of the varying allegiances, however limited, to the Royal Proclamation and Britain’s priority to settle Loyalists and British immigrants in Lower Canada through land entitlements. The Treaty of Paris would also see the arrival of new British laws in Lower Canada, where the seigneurial system had been the primary mechanism of land organization among French settlers. Though this system of private agreements and property rights was initially maintained, the township system was introduced and developed as colonization intensified and additional pressures were placed on economic development. The seigneurial system was not officially abolished until 1854.



dictate land usage. ‘An Act where the Better Protection of Indians in Upper Canada imposition, the property occupied or enjoyed by them from trespass and injury’ outlined that Crown approval was required for any dealings with Aboriginal lands and gave increasing power to Commissioners appointed to work on behalf of the Crown.<sup>151</sup>

What came to be known as the Gradual Civilization Act of 1857 reaffirmed this earlier legislation and contained a more blatant assimilationist agenda. Its goal was to remove legal distinctions between Aboriginal and non-Aboriginal people, urge enfranchisement, and promote new kinds of loyalty among Aboriginal peoples to European notions of citizenship, land ownership and capitalist prosperity, (i.e. the vote, private property and wealth accumulation), as a means of absorbing Indigenous peoples into settler society.<sup>152</sup> As Smith (2009, p. 45) summarizes, this assimilationist legislation was focused on “liberal notions of individual property ownership and land tenure[...] which also continued to include promotion of agriculture, Christianization, and education in European values.” The Upper Canada Land Act as included in the Gradual Civilization Act (p. 1) indicates applicability only to land that has not been surrendered, or that is already Reserve land, which means that land held collectively was targeted as a way of moving towards a system of individualized property ownership. This suggests that early conceptions of ‘Indianness’ were being re-defined through imposing particular relationships to land.<sup>153</sup>

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<sup>151</sup> Crown approval would also establish taxation exemption, judgement and seizure.

<sup>152</sup> For example, it has already been documented that Aboriginal communities were taking up agricultural practices to actively engage with and adapt to changing economic conditions (Carter, 2008).

<sup>153</sup> The Act also contained the widespread criminalization of alcohol consumption by and/or sale to Indigenous persons, regardless of legal status and this represents a large number of cases—third after

Alongside its explicit civilizational narratives, this policy was one of benevolent racism and embodied paternalistic and patriarchal assumptions that Indigenous lands could be “protected” and that Indigenous people would only benefit from individualized private property rights. These paternalistic outlook towards the land and people emerge together and with the expectation treaty rights would be voluntarily given up in exchange for the ability to vote, that land would be parcelled for homesteading, and other privileges. The Gradual Civilization Act states:

[A]ny such Indian of the male sex, and not under twentyone years of age, [who] is able to speak, read and write either the english or the french language readily and well, and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt, then it shall be competent to the Governor to cause notice[...] that such Indian is enfranchised under this Act; and the provisions of the third section of the Act aforesaid, and all other enactments making any distinction between the legal rights and liabilities of Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof. (Gradual Civilization Act, 1857, p. 2)<sup>154</sup>

Essentially, under this Act an Indigenous man who demonstrated the ‘capacity’ and ‘potential’ to progress towards the lifeways and morals of European settlers would be eligible to apply to the federal government for land. If, upon the Commissioner’s recommendation, he were deemed fit he could be given a land ‘grant’ that he would own and which would enable his undifferentiated citizenship within the newly consolidating Canadian state.

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criminal cases and squatter land-title cases. However, as Haring (2004) goes on to note, in this regard settlers fared much better in court.

<sup>154</sup> The Act goes on to state that exceptions can be made for uneducated Indians as long as they can speak English or French, are “of sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs,” and are not over forty years of age (p. 2).

Yet, these intentions are suspect when Indigenous men who met property requirements were already able to vote on the terms of white settlers before this legislation. Therefore, here it becomes clear that one of its primary intentions was to provide the grounds on which Aboriginal people would forego their status. As Carter (2008, p. 208) points out, this Act was intended to “eliminate Aboriginal people’s claim to special status, and the expenses associated with that status.” The Act states that enfranchised Indians shall be allotted,

a piece of land not exceeding fifty acres out of the lands reserved or set apart for the use of his Tribe, and also a sum of money equal to the principal of his share of the annuities and other yearly revenues receivable by or for the use of such tribe; such sum to be ascertained and paid to him by the said Superintendent, and due consideration being had in the allotment of such land to the quantity of land reserved for the use of the Tribe and to their means and resources; and such sum of money shall become the absolute property of such Indian, and such land shall become his property, subject to the provisions hereinafter made, but he shall by accepting the same forego all claim to any further share in the lands or moneys then belonging to or reserved for the use of his Tribe, and shall cease to have a voice in the proceedings thereof[...]. (p. 3)

Through this process land, which was otherwise difficult to organize through a system of private property and which was considered integral to this status according to the Crown and the treaties, could be targeted as a means to erode Aboriginal title in an attempt to resolve the land question that English common law tradition could not.

Thus, though the Act claimed to extend the rights of citizenship, it produced and perpetuated legal distinctions, and created and formalized inferior status for Aboriginal people in advance of Confederation as wards of the state. The shifting grounds of inclusion and exclusion within this context required not just non-recognition and delegitimizing the sovereignty and autonomy of Indigenous communities, but the active targeting of the remaining land base through this process. By being granted full individual

ownership of parcels of reserve land, this method sought to erode the community holding of land by reconstituting it through individual ownership, which also meant that individuals and their families would be excluded from the franchise or any communal payments.<sup>155</sup> Education achieved through residential schools was part of this vision, since it was hoped to help facilitate this transition and the erosion of the Reserve system, which First Nations governments in the south recognized and resisted (Milloy, 1999).<sup>156</sup> Essentially, this policy carved out a legal categorization for Indigenous people that depended on their inferior position in relation to the white male Euro-citizen—it made it impossible for them to benefit from both their status as Aboriginal people or from the promise of the same rights of other Canadians. One of the primary channels for achieving this was through constructing ideas of ‘Indianness’ alongside new legal categories whereby property ownership was a primary dimension and means of enabling and incentivizing assimilation.

Upon closer examination it becomes clear that one of the implications of enacting a pseudo system of private property and ownership is that it privileges the individual and patriarchal family over the community by extending assimilationist notions of community membership through the incentivization of agricultural homesteading.<sup>157</sup> This would

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<sup>155</sup> Further, under this framework enfranchised Indians would not be able to buy or sell reserve land and “were not competent to sue or be sued” with the idea that they would be “‘gradually’ trained for the full responsibilities of citizenship” (Carter, 2008, p. 208).

<sup>156</sup> This included announcements by First Nations leaders that they would no longer sell land and would lobby the Prime Minister on his visit, and/or by removing children and financial support from the schools (Milloy, 1999).

<sup>157</sup> The freehold allotment of land was twenty hectares and, as Lawrence (2004) points out, where this land was taken in the form of freehold tenure from the reserve *without band permission* explicitly violated the Royal Proclamation.

create the patriarchal family as an independent economic structure intended to shape community relations more broadly through redistributions of power and wealth to individual male property owners, as mediated through Commissioners and/or Superintendents from Indian Affairs.<sup>158</sup> Though the Gradual Enfranchisement Act of 1869 sought to regulate Indigenous self-determination by increasing government control of political systems on reserves and replacing traditional systems of governance with a voting system (Milloy, 1999; Lawrence, 2004; Smith, 2009), we can already see elements of this intended disruption of community relationships and autonomy in this earlier legislation since enfranchisement itself is outlined as grounds for removing individual's abilities to contribute to and/or materially benefit from the determination of community and collective land use before the political system in communities would be explicitly targeted.<sup>159</sup>

This imposed framework of property relations would simultaneously target the individual and the community through acceptable standards of heteronormative and monogamous family life alongside appropriate methods of farming and controlled land usage deemed to have productive value. It outlines that enfranchisement will be transferred to “the wife, widow, and lineal descendants[...] and [they] shall not be

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<sup>158</sup> The terminology of ‘Commissioner’ and ‘Superintendent’ are noteworthy here, as they indicate that these Indian Agents in their earliest conceptions occupied a role that was granted political and economic power within communities by the government.

<sup>159</sup> The premise that land could be excluded from the Reserve without the permission of the band also violated the Royal Proclamation (Miller, 1989); a process that would be enabled by the British North America Act of 1867 (Milloy, 1999) and legalized under the Indian Act (Lawrence, 2004). In the years to come, as Milloy says, Indian Affairs would “determine who was and who was not an Indian, control the election of band council, manage reserve resources, development initiatives, and band funds, and even impose individual landholding through a ticket-of-location system.”

deemed members of his former tribe” unless any widow or female descendants marry a non-enfranchised Indian. Upon the death of an enfranchised Indian,

the Superintendent General of Indians shall become the ipso facto tutor of such child on property rights in Lower Canada and the guardian of such child as to property rights in Upper Canada, until it shall attain the age of twenty-one years; and the widow of such Indian, being also the mother of any such child, shall receive its share of the proceeds of the estate of such Indian during the minority of the child, and shall be entitled to reside on the land left by such Indian, so long as in the opinion of the Superintendent General she shall live respectably (Gradual Civilization Act, p. 4).

As such the newly acquired property can be passed down patrilineal lines as subject to the laws of the province where the lands reside; however, without any descendants the land “shall escheat to the Crown” (p. 4). This qualifies the terms on which Reserve lands can fall into Crown possession, as well as how children and spouses become understood within a framework of property relations under colonial heteropatriarchy.<sup>160</sup>

Here it becomes clear, especially if read alongside the paternalistic tone of the legislation, that the uniquely marginalized position of Indigenous people with respect to colonial law provides an implied trajectory for Indigenous people to be taught and guided towards assimilation. It is this position, wherein settler colonial governance does not just incentivize and reward cooperative and assimilationist behavior, but implies behavior

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<sup>160</sup> The significance of different relationships to land in Upper and Lower Canada (i.e. in terms of extent to which Crown responsibility is upheld through the Royal Proclamation) is notable, and also signals differences in the state’s relationship to Indigenous children—as either tutor (Lower Canada) or guardian (Upper Canada). Though perhaps not explicitly outlined here, the policy’s understanding of the relationship between the state and Aboriginal children provides insight into the educational and assimilationist burden of the state to educate Indians into acceptable whiteness. For example, the role of the state would become a colonizing force through education and social services like child protection. While these relationships are different, in the context of Canadian colonialism they are not dissimilar since Residential schools were also spaces where children were placed under the guardianship of the Church and state against their and their family’s will. Education through Residential School and the eventual widespread child removal through the ‘60s Scoop’ and foster care system indicate that Canadian law still provides the grounds to target Indigenous children for removal from their families and communities.

deviating from this outcome will be disciplined. For example, the grounds on which children are entitled to stay with their mothers consist of residing on the land so long as “she shall live respectfully” (p. 4). In this sense, children can remain the possession of their mother’s (as opposed to the state’s) as long as her living, assumedly, upholds acceptable ideals of motherhood within this framework. Based on the priorities outlined in this legislation one can assume that this could include the maintenance of suitable standards of woman- and mother-hood, as well as continuing acceptable practices of land use.<sup>161</sup> Though behaviors that deviate from these ideals may not be punishable in the form of jail time, they are nonetheless criminalized and, in that movement, become subjected to new forms of surveillance.<sup>162</sup> Further, through the discussion of the conditions on which the state can take indigenous children into their possession, the Act indicates that failure to meet these stipulations may simultaneously create the grounds for child removal. Here the Act states that the widow of a deceased Indian, “being also the mother of any such child, shall receive its share of the proceeds of the estate of such Indian during the minority of the child, and shall be entitled to reside on the land left by such Indian, so long as in the opinion of the Superintendent General she shall live respectably” (p. 4). This can be read as essentially a heteropatriarchal and punitive response that seeks to harm Indigenous women and children by either disciplining their relationships to family, community and land, or by attempting to sever them.<sup>163</sup>

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<sup>161</sup> Though it remains unclear to what extent this might be expected, if farming was the family’s primary means of subsistence then it is likely that farming practices may have had to be continued out of necessity.

<sup>162</sup> For an extensive discussion of the effects of the historical criminalization and surveillance in relation to Black bodies, especially Black women, in Canada see Maynard (2017).

<sup>163</sup> Though no further instruction for action is provided if women are deemed to not be living “respectfully,” this Act provides the interpretive basis for and foreshadows the subsequent and much more violent policy of

Since widowed mothers would be entitled to annuities (held in trust) Superintendents and Commissioners maintained a great deal of power beyond determining whether grounds exist for child removal. Within this arrangement government agents, whether or not they exercised it, possessed the power to withhold funds as means of discipline and compliance. Since this policy provided the conditions by which citizenship could be granted to Indigenous men, it also provides a legal entry point into how these men's families will be subject to Canadian law. However, it is important not to assume that this transition is as simple as Indigenous persons simply becoming subject to the newly forming legal apparatus of the settler state in the same way that British subjects would be. This assimilationist legislation was based on the presumption that Indigenous persons would actively give up their lifeways in favour of "progress" beginning with property ownership. However, it is clear that additional legal mechanisms were required to maintain adherence to the European system. For instance, the fact that the Act outlines that any fraudulent misrepresentation of oneself as enfranchised "shall be liable, on conviction before any one Justice of the Peace, to imprisonment for any period not exceeding six months" (p. 3) shows that other legal mechanisms were considered necessary to target Indigenous persons for the purpose of both mediating this transition and establishing punitive responses for those who may otherwise find themselves looking for and/or needing other means of economic subsistence outside the restrictive Reserve model within a changing economic landscape (mainly the transition to farming and

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child removal that would accompany the Indian Act well into the twentieth century through granting jurisdiction over Indigenous children to other government institutions, such as the child welfare system and adoption programming.



agricultural methods of subsistence). By criminalizing such actions as fraudulent the colonial legal apparatus sets out the criteria for creating hierarchies of ‘good’ and ‘bad’ Indians through seeking to re-define their status in ways that increasingly constrained their relationship to both land and culture.<sup>164</sup>

As previously outlined, though First Nations peoples had settler state laws imposed upon them, they also had very restricted grounds on which they could derive any of the benefits from such laws. Of course, any arrangement that positions assimilation as a benefit already says a great deal about the terms of this conversation. If enfranchisement was pursued they would lose their status to any collective entitlements. If enfranchisement was not pursued they would be limited in their possibilities for certain kinds of economic activity and land use. Yet the most explicitly punitive response (in the form of jail time) comes with behavior by Indigenous persons that rejected these possibilities as mutually exclusive.

Canadian court decisions regarding Aboriginal title still rest on problematic concepts and proof of ‘Aboriginal primordality’, which are contingent on Indigenous people being able to demonstrate that they do not engage in any practices that “sever their special relationship to land” (Mainville, 2001, as quoted in Lawrence, 2004, p. 4). As Lawrence (2004, p. 5) argues,

In such contestations of identity (which are always on white terms), Native people who are revealed as transgressing the boundaries of so-called authenticity through their modernity can be dismissed as fakes, or extremely restricted in their abilities to develop their communities in contemporary ways.

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<sup>164</sup> In a period of approximately sixty years, only 102 individuals voluntarily enfranchised (Lawrence, 2004).

Situating the court decisions previously discussed in broader analytical and more contemporary context, Lawrence and Mainville remind us that such a requirement necessarily demands that Indigenous people exist as both pre-modern and unchanging traditionalists, and further demonstrates the extent to which notions of ‘Indianness’ correspond with limits on land usage that are imbued with racist tropes which enable punitive measures that constrain Indigenous people’s basic wellbeing, self-determination and sovereignty.<sup>165</sup> It is significant to note that the state’s necessity to maintain its sovereign right to territory is married with the notion that it holds the sole entitlement to exploit the land (i.e. power over the land). This is one strategy to eliminate Indigenous people—by not just severing relationships to land through assimilation, but by killing Indigenous people through killing the land itself. In this sense, the regulation of Indigenous identity can be understood as part of a larger carceral apparatus that seeks to punish and constrain Indigenous persons and communities as a means of extending the colonial project of assimilation and genocide.

A few years following Confederation the Gradual Civilization Act was followed by the Gradual Enfranchisement Act (1869), which built on previous legislation by granting sweeping powers to the Superintendent of Indian Affairs and Indian Agents working on his behalf. These powers included “the right to determine who could use Indian lands, [and] to stop or divert Indian funds and annuities” (Lawrence, 2004, p. 33). This legislation also included a method of extending more explicit government control in

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<sup>165</sup> This is the same logic that enables other colonial and essentialist tropes, and which makes invisible mixed race, as well as urban Indigenous populations (Lawrence, 2004).

communities. This occurred through imposing an elected Band Council system, which was intended to subvert traditional governance bodies “and the power of confederacies, the large geopolitical and spiritual units that had for centuries asserted their jurisdiction over different regions of what is now Canada” (Lawrence, 2004, p. 22; RCAP, 1996). This Act essentially came to embody an increasingly more aggressive, restrictive and punitive assimilationist agenda. This agenda included dividing reserve land into individual private plots and targeting the status of Indigenous people through blood quantum and mixed-raced marriages (Lawrence, 2004).

Lawrence argues that the regulation of Indigenous identity was not only crucial to a growing assimilationist agenda, but to regulating and controlling resistance. She reminds readers that the threat and practice of violence was foundational to state-building practices, even though these appear nowhere in Canada’s own national myths of such times. She states,

[W]hen backed by the possibility of state violence or loss of access to government monies if one does not comply with government agendas, controlling Native identity becomes central to subverting or suppressing Native resistance. Viewed hemispherically, or even in terms of the individual settler state, the question of who is an Indian begins to loom larger and larger, both in terms of the land theft it has enabled (and continues to enable) and in terms of its contemporary implications for Indigenous empowerment. (Lawrence, 2004, p. 17)

Here Lawrence explicitly ties these practices of regulation to practices of land theft and the suppression of indigenous resistance. These ‘regulatory regimes,’ which included the policies and practices that sought to manage identity, were crucial in determining how Indigenous people came to know themselves, (for example, to get indigenous people to think ‘Indian’), and their resistance continues to be stated and embodied with respect to

the ongoing ways the Indian Act seeks to play a determining role in the lives of Indigenous peoples individually and collectively.

By re-examining some of these regulations here, I hope to have demonstrated that early pre-Confederation expressions of colonial legal and legislative arrangements played a role in the eventual erosion of the Treaties, and nation-to-nation agreements through methods of coercion and non-consensual inclusion which were reliant on the imposition of private property relations. By specifically examining the imposition of English common law alongside the Land Acts during the transition from imperial to settler colonial governance I argue that practices of criminalization and the reconstitution of Indigenous and settler relationships to land occurred *together* and were a constitutive feature of the reproduction of colonial hierarchies along racialized, classed, gendered and sexualized lines at the intersection of empire and settler colonial governance. These methods enabled settler innocence and dominance, through naturalizing and decriminalizing their entitlements to land. Finally, this further suggests that there is room to build on the role of land in shaping the hierarchies on which the social contract is based beyond coercion and non-consent in the midst of claims of protection, benevolence and non-violence. Instead, analysis that foregrounds the relationship between land and criminalization could suggest new ways of taking account for the constitutive violence within the settler colonial context of Canada, and the creation of the international.

## **Chapter 5 – Producing and Resisting Colonial Carcerality: Reserves, Residential Schools and the Pass System**

In Chapter 4, I demonstrate how the arrival of colonial law sought to redefine land through the imposition of legal frameworks of private property that were made possible and upheld through racialized, gendered, sexualized and classed hierarchies, and which informed how Indigenous and settler relationships to land could exist within a framework of state recognition. These hierarchies alongside settler desires for land informed the Crown and colonial government's intentions and approach to treaty-making, as well as the ways settler interests would be upheld and preserved through an emerging legal and legislative apparatus. I make the argument that relationships to land are a primary site where settler and indigenous subjectivities become shaped towards notions of innocence and criminality respectively, and that this was achieved through the mobilization of both civil and criminal branches of law historically, as well as through pre-Confederation legislation that set the stage for the development of a national Indian policy. In addition to resulting in the disproportionate arrest and detention of Indigenous persons, this produced a legal system laden with punitive and coercive logics which created conditions of punishment, constraint and confinement for Indigenous people in everyday life, which subsequently shaped settler citizenship and subjectivities through entitlement and ease of access to land. This reading suggests that histories of criminalization, punishment and constraint occurred alongside the move to re-define land and enable a settler colonial project based on land theft and assimilation.

The confused and contradictory practice of assuming Indigenous people to be the Queen's subjects meant the ad hoc, inconsistent and eventually more blunt subjection of

Indigenous people to colonial law. Acknowledging paternalistic coercion at the basis of this inclusion also means recognizing the foundations on which it becomes possible to target, criminalize and punish Indigenous people through law and policy. More specifically and as an emerging settler state, these policies actively and passively disrupted Indigenous relationships to land and enabled dispossession at the same time that they limited how Indigenous peoples could defend themselves, their lands, and their livelihoods.

These conclusions suggest a number of important implications for IR with regard to how the discipline has theorized the use of force, unfreedom, and exclusion. As outlined in Chapter 1, dominant understandings of the use of force understand it as a rational response to a breach of the law and social contract. This research suggests that in settler colonial contexts, and the Canadian context the use of force occurs through the rule of law, as well as the law's inadequacy (i.e. colonial law). One way to theorize this is to identify the arbitrariness of how the rule of law is selectively upheld in colonial contexts as scholars such as Sherene Razack (2008) have suggested; however, this has not always begun from a place of acknowledging how conditions of inclusion are coercive and often non-consensual. Thinking through this starting point and the ways that criminalization and carcerality became reified re-shapes this theorization to recognize that the Westphalian state and the Eurocentric political thought on which such accounts are based, begins from a place that takes for granted confinement, indenture and non-consensual relations more generally. In this case, when critical theorists have sought to problematize conditions of political subjectivity through how individuals and collectives

are excluded from the state, they miss an opportunity to question the foundational conditions of non-consensual inclusion that the settler state is built on. For example, Canada itself is only possible because of the ongoing consent of Indigenous peoples, yet this can never be acknowledged in mainstream discussion and debate. One of the implications of this is that even when politicians claim they respect consultation and consent, consent is constructed narrowly and in ways that often completely erase complex socio-legal and political-economic systems of coercion in which Indigenous peoples' existence almost always requires negotiating resistance to assimilation at the same time that self-determination must always be struggled for.

Acknowledging conditions of unfreedom as foundational to settler state-based forms of political community, enables a different starting point to conceptualize the intersections between political-economic life and how lands and bodies were mapped and became knowable through colonial governance strategies. That is, it is impossible to separate out civil, criminal and international branches of law, institutional formation, policy and material circulations of capital in taking account for the ways notions of criminality and innocence become ascribed onto bodies and place. This starting point also makes it impossible to think settler colonialism outside a total project, and as a system that seeks to manage and discipline even the most intimate aspects of life. These technologies were directed towards whole populations, but Indigenous peoples were targeted for correction as part of an assimilationist agenda when less overtly coercive policy failed. What Chapter 4 outlines are the ways criminalization and carceral space were co-constituted within the settler state alongside relationships to land and that

criminalization was central to the longer-term re-definition of land as property alongside racialized, gendered, sexualized and classed lines. In this sense, the use of force can be understood as connected to land and the unfreedom that is required in order to mobilize land towards a settler colonial state-building project. Equally, this shifts how exclusion can be theorized—not just with respect to taking for granted the assumption of desired inclusion, but in prompting reflection on how political subjectivities are shaped through relationships to land through colonial ontologies of inclusion and exclusion, authority, control and harm. That is to say, the land, water and other living beings must also be cordoned off, killed and/or exist within necessarily unfree conditions in the process of state-making and capitalist accumulation within empire.

The term I propose to take account for the ways colonial governance makes itself possible through relations of carcerality is ‘colonial carcerality.’ Colonial carcerality is the central analytical contribution of this dissertation and proposes that colonialism is not possible outside of carceral relations. Colonial carcerality is a governance strategy that relies on inflicting ongoing harm to land, and to Indigenous, gender non-confirming and poor people of colour through criminalization. In the settler colonial context of Canada colonial carcerality brings together carceral logics (as outlined in Chapter 4) alongside the notion of the carceral apparatus (Chapter 5), the ‘carceral net’ (Nason, 2016) (Chapter 5 and 6), and practices of containment (Chapter 6) to argue for an understanding of carcerality as integral to settler colonialism through the ways it is required to re-organize the relationships between bodies and land. Through a reading of Indigenous feminist articulations of carcerality, I argue that colonial carcerality is a method of governance,



while also not containable by the constructed borders within which governance literature resides. This is because the concept of ‘colonial carcerality,’ must also necessarily apply to land, water, and all living beings whose existence, knowledge and being are diminished by colonial capitalist logics of harm.

In this chapter, I explore how the carceral apparatus subsequently developed through increasingly aggressive colonial legislation, as well as the institutional systems, arrangements and practices that ensured a carceral apparatus continued to form alongside the creation of the settler state. As I show, the Department of Indian Affairs, the Royal Canadian Mounted Police (RCMP), Church and local officials all relied on the reserve, residential school and pass systems in order to surveil indigenous populations, limit their mobility and force their assimilation based on racialized, gendered, sexualized and classed hierarchies and power relations. Through an analysis of the reserve, residential school and pass systems, I argue that the production of carceral space can be read as a distinct feature of settler colonial governance. Further, I suggest that the way these legal, legislative and institutional frameworks operated together as a broader system of settler colonial governance was made possible through what I term ‘colonial carcerality.’ In this chapter, I trace out these interconnected systems alongside important socio-legal developments and practices historically—namely the precursors to the Indian Act of 1876—in order to highlight the relationship between carcerality and early stages of state formation. I do this in order to theorize the relationship between carcerality and settler colonialism through the exploration of law, policy and institutional development. I also suggest a nuanced account of the socio-legal and political-economic context that

produced these shifts towards increasingly aggressive colonial policy. In this chapter I focus on Upper Canada and the West in the period leading up to and following Confederation. Finally, I extend a theorization of the concept of ‘colonial carcerality’ by drawing on Indigenous feminist interventions in carceral studies.

Colonial Carcerality: Producing the carceral space of settler colonialism in Upper Canada and the West

Deliberate erosion of Aboriginal title and the land base of Indigenous peoples in Upper Canada was based on non-consensual inclusion, criminalization and constraint. The production of a racialized, gendered, classed and sexualized criminality and carcerality is a central tenant of the settler state building project and these foundations set the stage for more hostile, racist and assimilationist policies in the coming years. This shows that logics of punitiveness and correction central to the construction of a carceral apparatus was being constructed well before the most violent period of Canadian colonial history.

The land accumulation processes and assimilationist policies that became more pronounced throughout the 19<sup>th</sup> century were emblematic of both the extension and abandonment of British justice, which harmed the autonomy of Indigenous nations to uphold their customary laws on their lands, though many would continue to do so. If, for a time, there was “one set of rules [to] prevail for crimes occurring within reach of British authority [and] another for crimes between Indians in their own lands” (Harring, 1998, p. 110), the entrenchment of white settler innocence as practiced entitlement to land and as a legal category that enabled land theft was made possible through the expansion of settler

state power and institutional reach. The carceral apparatus that would subsequently be developed towards the end of the 19<sup>th</sup> century was not only about the dominion's desires to consolidate land and an agricultural economy but was also a response to Indigenous resistance to pre-Confederation colonial law and legislation.

These early elements of colonial law and legislation set important foundations for subsequent government action and policy-making, because of the ways they sought to reconstitute the relationships between bodies and land. In this sense, these pre-Indian Act policies would bear similarities to the imposition of the allotment system south of the border during the late nineteenth to mid twentieth century as a means of assimilation. As Anishinaabe and Chicana scholar Dory Nason (2016) highlights, there were new systems of surveillance and methods of governance that came through the loss of land that the allotment system generated. Though Nason is speaking about the particular context of Salish territory in the U.S. through an analysis of Indigenous literature, I raise this point here to highlight a framework for understanding carcerality that centers on the role of land dispossession.<sup>166</sup> In an emerging framework of property relations and where power is transitioning from Britain to a newly emerging settler colonial government in Canada, there is a limited capacity, will and understanding within the law and its officials to honor treaty rights, which includes respecting reserve lands as politically and economically autonomous.<sup>167</sup>

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<sup>166</sup> Nason's work is relevant here because of the ways she connects the U.S. national policy of allotment to the particular practices of surveillance and policing on Salish territory. She does so by analyzing the experiences and implications for the characters in D'Arcy McNickle's *The Surrounded* and Janet Campbell Hale's *Claire* (2016).

<sup>167</sup> This becomes further compromised when power is transferred to provincial authorities and a responsible government tradition emerges.

The systems of classification that sought to control Indigenous identity and bodies, also sought to control the land. These ways of thinking and epistemologies of control and confinement are not simply logics, but material practices that target all life. As Indigenous scholars have pointed out, the targeted elimination and genocide of Indigenous women and Two-Spirit people in particular are linked to the settler colonial desires to restrain and violate the land as well (Lumsden, 13 November 2016; Simpson, L., 2008c; Lawrence, 2004). The policies that would come to make up the Indian Act were made possible by the enactment of colonial law and the cumulative effect of legislation that mounted throughout the 19<sup>th</sup> century, which was already negatively affecting Indigenous communities in a variety of ways (Getty & Lussier, 1988). Their eventual amalgamation and enforcement in the Indian Act would end up having serious and detrimental effects on the well-being, autonomy, and traditional governing structures in Indigenous communities across Turtle Island.

Before and after Confederation and in the midst of a growing desire for additional agricultural lands obtained through westward expansion, the repressive legislation and policies developed during this period contributed to significant asymmetries in subsequent treaty negotiations and sought to normalize more forceful expansion (i.e. the subjugation of western nations to these policies through various methods of force, including starvation). Assimilation and segregation were central strategies towards these ends (Lawrence, 2004).<sup>168</sup> Lawrence (p. 33) writes that after the Enfranchisement Act in

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<sup>168</sup> Over time Indigenous people could be enfranchised for having an education, serving in the military, or by living off-reserve long term for employment (Lawrence, 2004).

1869, “Indian legislation became even more punitive and restrictive.” The 1874 Indian Act, which compiled all earlier colonial Indian legislation, “brought Indigenous people in Manitoba and British Columbia under its control [and] was primarily taken up with criminalizing those western Native people who were facing the first onslaught of colonization” (Lawrence, 2004, p. 33).<sup>169</sup> The Act targeted western nations’ land bases with legislation previously deployed in the east. It further sought to restrict the mobility of Indigenous persons who were living or hunting outside their band’s land, including on the land of another band (Jamieson, 1978).

Following Confederation, in 1870 the Colonial Land Ordinance was passed, which essentially legalized squatting for European men who were eighteen years or older. This was a “policy of land pre-emption or grants[...] that disregarded Aboriginal title” and granted legal rights to settlers “regardless of any pre-existing Indigenous rights to this land” with the exception of reserve lands (Monchalín, 2016a, p. 91). This meant that any “unoccupied, unsurveyed, and unreserved Crown lands[...] not exceeding three hundred and twenty acres” were up for the taking (Mathias & Yabsley, 1991, p. 35). This ordinance accompanied the other legislation intended to assimilate Indigenous people and target their land rights. By 1877 the federal government aimed to simplify the administration of the western provinces and remove any “threats that Indigenous peoples or their potential claims to land and resources might have to non-indigenous settlement”

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<sup>169</sup> For example, Indigenous persons who were found to be intoxicated could face up to one month jail time under this new Act (Jamieson, 1978).

(Smith, 2009, p. 47). One of the many amendments to the Indian Act included making it illegal for Indigenous people to hire a lawyer in land claim cases (Monchalin, 2016a).

During Westward expansion, and immediately following the 1885 Rebellion, the Indian Act was further amended with the intention of targeting Indigenous resistance with violence and serious punishment. Both the newly formed Department of Indian Affairs and these Indian Act amendments sought additional oversight and control of reserves, while also classifying whole bands as “loyal” or “disloyal.”<sup>170</sup> Bands deemed disloyal were targeted with aggressively punitive measures and “widespread persecution” including lengthy jail sentences and death in the form of hangings of fifty and eight Cree and Métis strategists and leaders, respectively (Lawrence, 2004).<sup>171</sup> Of course it was not only those who were jailed or put to death that suffered. Following the 1885 Rebellion in addition to having eliminated or imprisoned community leaders “Canada then persecuted and starved out local Cree communities” in order to break the resistance (Lawrence, 2004, p. 34).

As the 19<sup>th</sup> century progressed it becomes increasingly clear that settler-state expansion in Canada requires not just the control and management of lands, but also the direct access to and control of bodies. Or to put it another way, the control of bodies in addition to land under legislation and the law becomes increasingly important and

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<sup>170</sup> As Lawrence (2004, p. 34) points out, the classification of Plains bands was especially problematic given that they attempted to remain neutral during the essentially Métis rebellion, even within the context of emerging starvation tactics “hoping to mount a widespread movement for renegotiation of treaties rather than take up arms.”

<sup>171</sup> This included, “withholding monies and rations, confiscation of horses, and in some cases the breaking up of bands and their forced integration into other bands” (Stonechild and Waiser, 1997, p. 254-263, as quoted in Lawrence, 2004, p. 34-35).

apparent in light of ongoing indigenous resistance to assimilationist policies already in effect. My argument here is that this is the context in which a broader carceral apparatus emerges in Canada as an intensified and definitive governance strategy. It is at this point where the direct use of force becomes embodied in these policies both in their content and to make their extension possible, and where previous legal ambiguities around how Indigenous peoples and lands would be subjected to the law would attempted to be resolved. It also at this moment that the carceral apparatus emerges as an overt dimension of colonial carcerality so as to explicitly and unapologetically target Indigenous bodies and lands for assimilation or death. This requires not only controlling the relationships between bodies and lands but determining how and for what purpose bodies move and are in relation to land, and as a means to harness and exploit the life force of the land itself. In addition, these ambiguities resonated especially with regard to criminal law in Upper Canada, since this conversation too was complicated by questions of territory and jurisdiction. Thus, criminal law in colonial contexts can also be read as foundational to the ongoing reconstitution of the relationship between bodies and lands because of the restrictions placed on what bodies can do, as well as where they can be on the land.

If in the 1820s in Upper Canada “there was no consistent policy on extending criminal jurisdiction over Indians” and the colonial office would not resolve the issue, nor would Judge Macaulay’s 1839 or 1844 Indian affairs reports despite previous British statutes that dictated otherwise (Harring, 1998, p. 114), then the ambiguity, disagreement and/or procrastination on the part of judges is evidence that it may not have been possible to extend criminal jurisdiction given the local context and position of Indigenous nations

on the matter. However, during the expansion westward, this quickly developing punitive and assimilationist national policy was deployed in a context where Indigenous people were already being actively targeted, restrained and harmed as a means to extend control over lands and suppress growing resistance.<sup>172</sup> During this period, policy developments shift from being generally punitive and constraining towards the desire to stop any threat that would prevent European settlement and the creation of an agricultural land base. Indian Agents were granted increasing powers during this time and the Royal Canadian Mounted Police often worked in tandem to actively surveil communities (Smith, 2009). Other repressive measures ensued, including laws “to prevent Native people from congregating together” and restricting access to the reserve after dark (Lawrence, 2004). The Pass System was devised to limit mobility by requiring individuals to gain permission from the Indian Agent if they wanted to leave the reserve (Lawrence, 2004; Williams, 2015).<sup>173</sup> Though it was nowhere to be found in law, it was approved by the highest levels of government (Williams, 2015). Cultural and spiritual practices were also criminalized (i.e. Sun Dance ceremonies and the Potlatch), as well as the wearing of ceremonial regalia (Miller, 1989; Lawrence, 2004). In this sense, it was not enough to reconstitute relationships between bodies and lands. These shifts attempt to control the

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<sup>172</sup> For example, the building of Stony Mountain Penitentiary, which opened in Manitoba in the late 1870s, corresponded with westward expansion and growing unrest (Harring, 1998). The Red River Rebellion (1869-1870) was met with police presence and harassment and the North-West Rebellion (1885) was met with the deployment of troops and large numbers of police. Following the 1885 Rebellion forty-eight Métis and Cree persons were sentenced to Stony Mountain, where they were put to work to build the building’s west wing.

<sup>173</sup> Permission needed to be sought for any reason to leave the reserve, including selling produce, hunting, and visiting friends and family on neighbouring reserves, for example (Williams, 2015).



nature and extent of the relationships Indigenous people have to land and other living beings.

Therefore, the expansion of a national Indian policy in the latter half of the nineteenth century was made possible through an interconnected system of formal and informal institutional arrangements and practices. Operating together this governance scheme used various modes of violence, punishment and discipline in order to make settlement possible in the expansion westward, as well as to entrench these arrangements as essential dimensions and strategies in the governance of the dominion, and especially to manage and control Indigenous resistance with the expressed goal of eventual assimilation. The production of a carceral apparatus was not only crucial for the formation of the settler state because it created the possibility for settlement, but because of the continued to attempt to control and manage relationships between land and bodies in ways that are racialized, gendered, sexualized and classed.

In talking about these national policies and the expansion of corresponding institutional arrangements, it remains important to remember that these became acutely shaped through local conditions and practices. The practices at particular institutions were in some cases more punitive, violent and extreme than others, and in other cases particular Indian Agents play lesser or fuller roles in determining how policies were put into practice and enforced. When examining this system from a broadened stance it becomes important to foreground that despite these variances—which certainly have very tangible effects in the lives of survivors and their families—the system as a whole intended to fulfill an assimilationist agenda—to eliminate the “Indian problem.” As

Chapter 4 argues, the “Indian problem” can be re-framed and understood as shorthand to resolving the land question through the processes of eliminating indigeneity. In this chapter I look more closely at how this took shape through other institutional arrangements in order to take on a more aggressive and hostile assimilationist agenda (i.e. residential schools and killing the Indian in the child). I argue that this included redefining land and how it was used, and by removing bodies from the land as a means of targeting indigenous relationality to land and other living beings.

The post-Confederation treaties, having been negotiated in a context of growing numbers of settlers and the diminishing game supply and near extinction of buffalo in the 1870s and 1880s, created a context of uncertainty and insecurity for many Indigenous peoples in current-day Alberta and Saskatchewan.<sup>174</sup> Scholars and community members have pointed out that the killing off of the buffalo was also an act of genocide and greed, and directly sought to harm and constrain Indigenous communities across the West (Martin-Hill, 2017; Daschuk, 2013), primarily for the purpose of compromising their strength in treaty negotiations, if not eliminating them (Monchalin, 2016a).<sup>175</sup> Authorities in Canada and the U.S. knew the well-being of Indigenous people and their livelihoods were tied to the buffalo and thus the negotiations of Treaty 6, for example, came out of an urgent understanding that treaty negotiation was the best way “to safeguard their culture from being devastated by the inevitable incursion of settlers,” though there was

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<sup>174</sup> The Plains Cree, Woodland Cree, Assiniboine, Saulteaux, and Chipewyan were the nations primarily affected in this context (Monchalin, 2016a).

<sup>175</sup> For instance, in Treaty 4 rights were secured to hunting, fishing and trapping; in Treaty 6 reduced to hunting and fishing and in Treaty 7 diminished to only hunting (Williams, 2015).

disagreement within communities about how successful this would be in securing what had already been gravely injured (Monchalin, 2016a, p. 96).<sup>176</sup>

The expansion westward and the pursuit of policies of assimilation and extermination cannot be understood outside of a context where the land, water and other living beings were being subjected to equally destructive practices. Within three years of signing Treaty 6 the buffalo had disappeared (Monchalin, 2016a). Cree lawyer, Sharon Veene explains that, “[a]s settlers grew rich and prosperous from the lands of Indigenous peoples, these [hard dark biscuits known as] dog biscuits replaced buffalo, moose, deer, ducks, geese, roots, and berries” (2002, p. 200).

There were other treaty violations. Euro-Canadians drilling deep into the land (rather than keeping to the depth of the plough) extracted minerals without Indigenous consent, and, only two years after signing the original treaty, the government reduced the agreed upon \$15 per person annual cash provision to only \$5, where it remains to this day. The Indigenous peoples who negotiated this treaty were told that the money from this reduction would be “set aside for them in Ottawa for their future use,” but their descendants have yet to see this money.” (Monchalin, 2016a, p. 98; Veene, 2002, as quoted in Monchalin, p. 98)

In addition to these betrayals, Elders also maintain that in written form Treaty 6 includes language that was not agreed upon at the time of negotiation that specifically misrepresents the status of title to land and conditions on which land would be shared, not surrendered (Veene, 2002).

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<sup>176</sup> Monchalin also discusses the hunting and poisoning of wolves with strychnine, which would cause torturous deaths for any living animal that ingested it. Wolves were hunted to stop them from preying on livestock, as well as for the same reason as buffalo—because their pelts could be sold for large sums of money in Europe. Buffalo pelts were also used to for manufacturing plant materials in Europe (Daschuk, 2013).

### *Reserves*

The creation of reserves—“lands reserved for Indian use” according to the Indian Act of 1876—was sometimes part of negotiated treaty conditions, or otherwise determined through agreements made with governments and other settlers over time and before and after Confederation.<sup>177</sup> Modeled off of the Upper Canada aspiration, the idea of reserves was to fit with a broader civilizing mission that saw them as ‘serviced settlements’ outfitted with “houses, barns, churches and schools, [and] with training in agriculture and all the arts and crafts of settler life” in order that communities could gain autonomy within a modern economy (Milloy, 1999, p 11). The process of moving communities to reserves however, was often a coercive process.<sup>178</sup> Reserve land, though “[m]ost indigenous people assumed they could keep these lands for their children in perpetuity,” was Crown land that could be used, but could not be owned by Indigenous communities (Monchalin, 2016a, p. 103). In conjunction with the expanding role of Indian Agents, police, and local and government officials, reserves would become useful ways to control the mobility of Indigenous persons and ensure racial segregation so that settlement would not be inhibited. Thus, reserves were one part of geo-spatial arrangement that relied on militarization, policing, as well as disciplinary and punitive structures, practices of imprisonment and surveillance designed to border space, control mobility and create conditions for forcible removal from the land base. This analysis therefore, moves well beyond how logics of punishment, coercion and correction

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<sup>177</sup> The earlier definition of “reserve” in pre-Confederation treaties would have been modified with this revision.

<sup>178</sup> Land set aside for reserves was a small fraction of nation’s traditional territories.

organize institutional spaces like prisons and residential schools in order to demonstrate how they impact the governance of space more broadly in ways that make settler colonialism and empire possible.

The Canadian government's relationship to reserves has shifted several times throughout history largely due to their ongoing failure to assist in serving the dream of full assimilation. This is not to suggest that they have not been useful towards the ends of the settler-state, capitalist expansion and settler prosperity, but rather to indicate that Indigenous people have always found ways to continue to survive and maintain cultural practices.<sup>179</sup> Historian, Keith Smith suggests that reserves in the Canadian context were intended as “reformatory spaces” and to “uphold physical geographic border[s] in addition to the racial and cultural barriers in evidence elsewhere” (2009, p. 48; 8). Church and government desires included that reserves were to be spaces to learn how to socially and economically assimilate through encouraged education and agriculture. They also functioned to serve the interests of largely white settlements and expanding urban centers by providing protection from so-called threats to their safety, public order and property.<sup>180</sup> Alexander Morris, Lieutenant Governor of Manitoba and former Canadian negotiator for Treaties 3 to 6, stated that small reserves were more advantageous than the U.S. system because it was a protective measure to avoid Indigenous-settler conflict, but also because reserves had the potential to “diminish the offensive strength of Indian tribes, should they become restless” (Morris as quoted in Smith, 2009, p 49). The

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<sup>179</sup> Reserves also serve as a safe haven from certain forms of racism, discrimination and violence, and hold multiple and sometimes conflicting meanings for people.

<sup>180</sup> Except, as Monchalin points out, the quality of the land was, in some cases, poor enough to prevent this.

production of these physical, cultural and moral fault lines, however partial, served to uphold the colonial project by producing their own rationales for further colonial expansion and heavy surveillance carried out by a network of institutions and actors (Smith, 2009).<sup>181</sup> Reserves, like other colonial infrastructure, became more aggressively transformed and mobilized towards assimilationist ends during this period of resistance and westward expansion, but they have also always remained dynamic spaces of resistance where people made their homes and lives, and could escape from certain forms of racism.

As was often the case, if reserve land was deemed valuable by settlers then they would be diminished in size, or entire bands would be relocated to lands thought to be less desirable, often without or with very limited consultation. In the case of the Papaschase and Michel Nations, they were pushed out of the Edmonton area where their reserves were located under Treaty 6 (Monchalin, 2016a). There are numerous cases of relocation. In some cases Indigenous people (for example, the Salish peoples) were considered “to be *encroaching* on an emerging Euro-Canadian suburban neighbourhood” despite living on the land for centuries (Monchalin, 2016a, p. 104, emphasis original). Even if communities were relocated to rich lands it was difficult to get investment in land that was not owned (Monchalin, 2016a). Additionally, beginning in the 1880s Indigenous persons were, by law, restricted from selling any agricultural products without permission from Indian Agents. This continued until 1941, when additional restrictions were placed

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<sup>181</sup> Smith suggests that Canada’s reserve policy “represent[s] a degree of segregation and potential for surveillance unparalleled in the British empire, with the possible exception of South Africa (2009, p. 8).

on the sale of wild animals and furs. Indigenous peoples were not only prevented from engaging in agriculture and horticulture, (which for some communities was already a longstanding practice<sup>182</sup>), but in the trade of these goods, as well.

### *The Pass System*

Reserve restrictions would come to be reinforced by other policies and practices of segregation, where limits continued being placed on the political and economic mobility of Indigenous persons. In 1885 the pass system, which forced First Nations people to seek the permission of Indian Agents to leave the reserve for any reason, was imposed in Treaty 4, 6 and 7 areas in order to separate Indigenous and settler populations and to limit the wellbeing, health and livelihood of communities “effectively imprisoning [indigenous people] on their own lands” (Williams, 2015).<sup>183</sup> In the film, *The Pass System*, Elders chart the implications of living within this system. Elder Rosie Red Crow from Kanai First Nation recalls that her parents and father always had to get a permit and that if they were late they could be charged by the Indian Agent, and even sent to jail. This system would stay in effect for more than sixty years (Williams, 2015), and would attempt to ensure social, political, and economic forms of dependency and isolation through mechanisms of confinement and punishment.<sup>184</sup>

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<sup>182</sup> For example, Elder Danny Musqua from Keeseekoose First Nation says that as Ojibwa people who worked the land most of their lives (Smith, 2009; Williams, 2015).

<sup>183</sup> There has been some discussion about the effectiveness of the pass system, however these have relied largely on government documents or limited references. Following Williams, my position is that these assessments must be questioned in their failure to consult Elders and in a context where there is so little archival evidence largely because documents were destroyed, but also because oral histories have been devalued as historical record (Williams, 2017).

<sup>184</sup> For instance, passes were required for things such as “hunting game for food; three weeks,” “to visit daughter at Industrial School; 15 days,” “to get married; 10 days” and even to visit friends and family on neighbouring reserves (Williams, 2015).

The pass system was technically illegal according to Canadian law in the sense that it certainly went against the treaties that had been negotiated only a decade earlier; however, the pass system does not deviate significantly from restrictions being placed on First Nations people elsewhere in Canada, nor does it seem wholly inconsistent with the colonial-carceral logics already manifest in pre-Confederation law and policy.<sup>185</sup> The timing of the pass system followed the treaties and then Prime Minister Sir John A. MacDonald's national policy of westward expansion and the railway; however, and perhaps most clearly, the system was linked to the need to control resistance and dissent to these actions immediately following the Northwest Rebellion. One way this can be seen is in how the pass system was imposed on First Nations that attempted to stay neutral in order to uphold treaty commitments in addition to those that were part of the resistance (Milloy and Miller, as referenced in Williams, 2015). The system would become part of the normalized carceral conditions that Indigenous people experienced under colonialism.

The idea to demand that passes be issued originated in 1884 with an ambitious Indian Agent, Hayter Reed (who would go on to become the Commissioner of Indian Affairs), and would subsequently be approved by his superiors and then MacDonald with the knowledge that it went against treaty rights and with hesitation that if formally proposed it would spur resistance (Williams, 2015).<sup>186</sup> The informal operation of the

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<sup>185</sup> No prairie treaties include restrictions on movement. They negotiated the reserves and promised access to traditional territories despite increasingly negotiating diminished rights (Williams, 2015).

<sup>186</sup> At this time MacDonald also suggests that, "If the pass system could be generally introduced with safety it would be in the highest degree desirable to adopt it" and with the added caveat that "... should resistance be offered on the grounds of Treaty Rights the obtaining of a pass should not be insisted upon" (MacDonald, 1885, as quoted in Williams, 2015).



system, including directives given for non-enforcement where necessary, was motivated by concerns and perhaps also some fear for further indigenous opposition and struggle. Smith (2009, p. 61) also points out that earlier correspondence between the U.S. and Canada regarding border crossing and the Northwest Mounted Police's (NWMP) concern with their ability "to exercise authority over Canadian territory and especially over Indigenous people."<sup>187</sup> In this sense then, the inspiration and practical implementation of the pass system was a result of the clear downgraded status and blatant disregard for treaty commitments. This disdain and neglect are also demonstrated in how local, national and international interests would play out in ways that sustained and reinscribed racialized, gendered, sexualized and classed hierarchies through organizing and ordering relationships to land.

More specifically, these relationships would be reconstituted in ways that criminalized more and more aspects of indigenous peoples' lives and which mapped onto dichotomies of innocence and deviance as a means of upholding settler privilege. So, despite the fact that the pass system can be said to have been largely devised as an emergency measure following the Cree and Métis insurrection, these policies were also being normalized through other institutional channels (i.e. policing, the DIA) and concerns (i.e. sovereign jurisdiction over territory, and control of indigenous movement across reserve, urban, and international state borders).<sup>188</sup> This means that Indigenous

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<sup>187</sup> This led to an eventual Order in Council where Canada would suggest that permits be granted by both nations to any Indigenous persons who were looking to cross the border.

<sup>188</sup> As Sarah Carter outlines, this was imposed in order to keep people on reserve during the resistance. Winona Wheeler, who is an Indigenous historian of Cree/Assiniboine/Salteaux and English/Irish descent points out that all First Nations were made to pay for the resistance and that this moment was an

nations across the prairies would be punished not only because Canadian authorities would not have always been able to identify what First Nations resistance might look like, but also because these systems had other desirable effects that were understood as already consistent with governance practices, strategies and goals under liberal capitalism. These objectives were of course connected to upholding racially ordered organizations of public and private space that disproportionately targeted the bodies of racialized, poor, female and gender and sexually non-conforming persons.

The pass system was made possible through the intersecting authority of the DIA and police in order to extend national policy. Indian Agents in particular, held powers that were remarkable in scope and went well beyond the mandate of “the delivery of treaty provisions.” This included,

the power to recommend that a chief or council be removed, the authority to impose residential school attendance, the responsibility of limiting traditional customs or practices deemed by the state as “uncivilized,” the duty of dispensing rations to individuals defined as in need, the ability to stand in as a justice of the peace when First Nations people violated laws, and the power of asserting control over First Nations people’s movements on and off reserves. (Monchalin, 2016a, p. 105).

Indian agents were responsible for implementing government policy on reserves, which in most cases violated treaty provisions. Essentially almost all levels of oppression and justice were embodied in Indian Agents. As Dr. Shauneen Pete attests, “...[Indian Agents] were the law[...] they were the judge, they determined who got rations, who could be successful...” (as quoted in Williams, 2015). They were also able to summon

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opportunity for the government to remove and eliminate First Nations and Métis leadership (Carter and Wheeler, as referenced in Williams, 2015).

the RCMP.<sup>189</sup> Beardy First Nation Elders, Kenneth and Therese Seesequasis state that one of the repercussions of Indian Agents' role and powers was that people became used to being controlled and this was passed on to children, who also learned to live with it. Jacob Pete adds that this was instilled and reinforced through other institutions, like residential schools (Pete, as referenced in Williams, 2015).

The timing and implementation of the pass system corresponded with the expansion of policing in the West, but also with changes to the Indian Act that were becoming increasingly punitive through the late 1860s to the 1880s. The 1869 Act for instance “collected all previous legislation pertaining to Indians into a body of law comprising over a hundred sections” that targeted community governance structures, the collective land base, as well as more aggressive trespassing laws, control of reserves, and so on (Lawrence, 2004, p. 33). The 1869 Act also began the process of either forcing women to become members of their husbands' tribes, or the loss of status for marrying someone who is not indigenous, as well as through the ways it disrupted other matrilineal practices (Lawrence, 2004). Keeping this context in mind suggests that, combined with the fact that the system was affirmed at the highest levels of government, the pass system did not actually deviate significantly in content or form from other existing legislation and practice. However, this is not to downplay the increasing brutality and hardship that

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<sup>189</sup> There were some differences between the power of Indian Agents in the east and west. In the west they had magisterial powers to facilitate expansion whereas in the east powers were more centralized on the reserve (Williams, 2017, personal communication). Williams also suggests that MacDonald's civilizing narrative in the expansion westward became further mobilized through using Six Nations as a model for the rest of Canada because they were the 'good Natives,' even though this goes so clearly against a more complex history of Six Nations' dealings with the colonial government and courts as Haring (1998) so clearly outlines.

indigenous people would have to assume as a result of its implementation. Passes were required to hunt, go to urban centers, and even to visit friends and family on neighbouring reserves. The pass, signed by the Indian Agent, would outline the reason and duration of each trip (Williams, 2015). Anyone found beyond the reserve without a pass, or who extended the duration or purpose of their permitted trip was open to arrest and sometimes detention.<sup>190</sup>

In 1885, the year MacDonald signed off on the system, was the same year that land belonging to cities and towns became municipal property and trespassers could be arrested and removed from city limits. This move assured largely white communities of their safety, while guaranteeing economic advantages to them. At the same time, it criminalized Indigenous persons simply for being in urban centers, conflating public city space with whiteness, and providing rationales for keeping Indigenous people out, or arresting and removing them otherwise.<sup>191</sup> For example, the assumption that if Indigenous people came to the city it was not to trade, but to steal, drink, and trespass.<sup>192</sup> Indian Agents possessed the power to control indigenous women through this labelling and the

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<sup>190</sup> Some of the most restrictive passes (i.e. with the expiry of sunset) were given on reserves of “loyal” communities (Williams, 2015). This suggests that punishment was used as method of punitive deterrence through fear.

<sup>191</sup> It is within this context that the continuing practice of ‘starlight tours’ can be historicized and understood, since the very presence of Indigenous people within city bounds was grounds for criminalization via harassment, arrest and ‘deportation’ to the reserve or city limits. ‘Starlight tour’ refers to the police practice of picking up indigenous persons and bringing them to the outskirts of town and leaving them there to find their ways back, sometimes in extreme cold or after being subject to violence (Green, 2006). This practice has been fatal for a number of indigenous persons like Neil Stonechild, who froze to death after being left outside Saskatoon by police, as Green discusses. Thank you to Alex Williams for this insight, for sharing archival research on this practice and for discussing it further.

<sup>192</sup> For example, drawing on the work of Carter (1997) Lawrence speaks about the gendered and racialized dimensions of westward expansion and white settlement, which targeted the removal of Indigenous women in part through criminalization and punitive laws like the Indian Act. For example, urban Aboriginal women were increasingly classified as “prostitutes” within the criminal code after 1892 (Lawrence, 2004).

determination of laws that regulate homelessness and other ‘vagrancies’ (Lawrence, 2004). These were the same laws that led to the surveillance, regulation and criminalization of black bodies, especially female bodies in public spaces (Maynard, 2017).<sup>193</sup> Far less attention has been granted to the effect of the pass system on Indigenous women and Two Spirit peoples. Passes were rarely granted to women and women were especially targeted and harassed if found off reserve.<sup>194</sup>

### *Policing*

Smith (2009) argues that churches, police and government officials were all part of a growing surveillance network that sought to enable liberal capitalism in western Canada.<sup>195</sup> As a result, he notes that the working class, (especially union organizers and the unemployed), in addition to Indigenous persons were of particular interest, since they posed general annoyances and, in some cases, considerable threats to the orderly development of the frontier in such a manner. Infractions of the Indian Act were criminalized, but the vagrancy laws were also a primary means to criminalize working class, racialized, poor and Indigenous persons within city spaces.<sup>196</sup> Police were required not just to monitor Indigenous persons movement off reserve, but to secure municipal lands and urban centers from the threat of moral ills. In addition to general monitoring,

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<sup>193</sup> Maynard (2017) highlights that the surveillance of especially Black female bodies in public places was directly linked to their regulation in private spaces as domestic slaves.

<sup>194</sup> It would also be interesting to know whether there is any correlation between enforcement and how close reserves were located to largely white settlements.

<sup>195</sup> Interestingly, Smith (2009) notes that even though these institutions had a number of shared interests, they also participated in surveilling the actions of each other.

<sup>196</sup> Smith outlines that this can be seen with the development of the British Columbia Provincial Police (BCPP), since it was created to monitor and control the mass influx of people into the Fraser River area during the gold rush. The BCPP was the first territorial police force in Canada. It formed in 1858, a decade and a half before the Northwest Mounted Police (NWMP).

the British Columbia Provincial Police (BCPP) was also involved in returning escaped children to residential schools and worked with the Department of Indian Affairs (DIA) to regulate and monitor gaming licenses and infractions.<sup>197</sup> All of which meant that Indigenous people and communities had increasing contact with police, as well as all others whose resistance and presence needed to be policed in public and private settings in the service of concerns for white settler safety, business interests and general preference (Smith, 2009).

Though the NWMP were part of Macdonald's national policy, their deployment in the West was without treaty or agreement despite the fact that it was the lack of consultation with First Nations and Métis communities regarding the transfer of Rupert's Land from the Hudson's Bay Company to Canada was the cause of conflict.<sup>198</sup> Although the national mythologies surrounding the NWMP have led to claims that they facilitated a "peaceful transformation of an untamed and unpopulated wilderness" in Western Canada, Carter argues that this would not be possible without the "strategies and actions of the Aboriginal residents" since the numbers of Mounted police were so small (Smith, 2009, p. 58; Carter, 2008). Smith argues that the primary role of the NWMP "was to facilitate the peaceful occupation of the West by Anglo-Canadians and to allay their fears of Indigenous people once they arrived," but also notes that Macdonald confirmed that the Mounties' priority was to "keep peace between white men [and] Indians" (Smith, p. 59).

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<sup>197</sup> For instance, the DIA requested that the BCPP not issue game licenses to anyone who had a previous conviction under the Indian Act in the previous year (Smith, 2009).

<sup>198</sup> Following Red River in 1873, nine commissioned officers were appointed to the NWMP and soon following another 150 were recruited. The following year 300 officers marched west to establish Fort Macleod and Fort Calgary in 1874 and 1875 (Smith, 2009).

The NWMP were responsible for upholding Canadian law and policy, but they also aimed to be a persuasive presence during Treaty 7 negotiations and to enhance their own capacity, as well as to assist the Department of Indian Affairs in their work. For instance, in 1892 an NWMP Comptroller asked the DIA to “notify the nearest Police detachments when parties of Indians leave their Reserves” including their numbers, purpose and destination (White as quoted in Smith, 2009, p. 59-60).

Therefore, the NWMP were not only implicated in extending a national policy and upholding the law, but actively participated in their creation through the ways they became invested in broader information gathering, monitoring and surveillance activities, which in turn contributed to the justification for their own existence and institutional expansion. Similar to the role of the law and legislative apparatus in Upper Canada, the idea that these practices were “peaceful” obscures the very often violent and forceful and at the very least structurally constraining policies that were necessary to make settlement possible. These national myths and narratives continue to be extended in ways that attempt to hide the ongoing disposability of Indigenous lives through the theft of Indigenous lands children, women, and Two-Spirit people.

The role of the RCMP alongside that of Indian Agents would therefore embody similar tensions and affirmations of the power of the settler state, though at one time the RCMP protested the system.<sup>199</sup> Jacob Pete, who is the First Treaty Indian Member of the

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<sup>199</sup> The RCMP initially protested the pass system because it was not law by issuing orders not to continue to send people back to the reserve, but this was overturned by Reed, who was now in charge of Indian affairs (Williams, 2015). Reed also indicates at this time that he knows there is no legal basis for the system but maintains that this “needs to be kept secret for as long as possible” and that it “... need not stand to strictly on the law...” (Reed, as quoted in Williams, 2015). This is indicative of the ways that the RCMP may have been looking to hold Canadian jurisdiction and law in part, through upholding the treaties.

RCMP and from Little Pine First Nation, describes the dual role of the RCMP as both part of the colonization process because of their mandate to enforce government policy, but also as actors who were to uphold the law as represented in the treaties (as referenced in Williams, 2015). In effect, the DIA and its agents, the RCMP, and the Church would together implement and maintain a system of surveillance and confinement, with additional assistance of local settlers and officials. In the context of westward expansion government authorities generally attempted to apply the strategies used for similar ends in Upper Canada to control mobility and ensure racial segregation but it is unclear to what extent a pass or permit system operated.<sup>200</sup> It was in 1902 when representatives visited the west to document the system and how it could be implemented in the South African context shortly after as a “precursor to apartheid” (Monchalin, 2016a, 106). The pass system has been documented to be in effect until the 1930s (Monchalin, 2016a), however there have been passes located that are dated as late as the mid-twentieth century (Williams, 2015).

In this context, the very lands that were claimed as spaces to ensure indigenous autonomy and well-being were transformed through the implementation of a carceral apparatus intended to impose constraints on basic freedom and mobility. These policies and practices have been understood as processes of criminalization and as “prison-like” enclosures (Monchalin, 2016a; Lawrence, 2004). This also holds a great deal of insight for thinking through the ways the land, and other living beings on the landscape also

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<sup>200</sup> As Monchalin (2016a) points out, this was intended to be implemented in Upper Canada after 1828. The system was also practiced in British Columbia (Smith, 2009).



necessarily needed to be controlled and confined in order to extend the goal of colonial carcerality in this context. That is, colonial carcerality was the means by which bodies, lands and their relationships to each other could be redefined and reconstituted. For example, the genocide of the buffalo was used to coerce communities onto reserves, while people were then subjected to practices of rationing. At the same time, the traditional resources of the area were being depleted through the desires of a growing settler population and the pursuit of practices to enable large scale agricultural production, which supported settler communities and war efforts abroad.

### *Residential Schools*

These connections become even more stark and apparent when considering the lineage of the Residential School system in Canada, and the experiences of children who attended them. As national policy developed in this area church sponsored schools that had been running through the earlier part of the nineteenth century became incorporated into a broader federal system organized through government-church partnerships that were then formalized in 1892 (Monchalin, 2016a) and a result of the perceived failures of existing assimilationist policy in the earlier part of the nineteenth century.<sup>201</sup> The federal government was “the senior partner” as it “provided the core funding, set the standards of care, was to supervise the administration of the schools, and controlled the children” who were understood as state wards (Milloy, 1999, xiii). Recommendations for the large-scale adoption of a system of boarding schools intended to assimilate Indigenous children by

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<sup>201</sup> The first recommendation for residential schools came in 1820 where they were articulated to be the way to teach agricultural settlement to children as a means of assimilation (Milloy, 1999).

teaching working class agricultural and mechanical skills in order that they would become “a self-supporting member of the State” (Oliver as quoted in Milloy, 1999, p. 3). Recommendations also came from highly militarized influences like the RCMP and the close study of the adoption of Indian boarding schools south of the border headed by a U.S. army official.<sup>202</sup>

In 1879, the *Report on Industrial Schools for Indians and Half-Breeds* (also known as ‘The Davin Report’) made the recommendation to target and assimilate Indigenous children by educating them in boarding schools that were isolated from their families and culture.<sup>203</sup> The report stated that “... if anything is to be done with the Indian, we must catch him very young” and that children needed to be removed “from the influence of the wigwam” in order to become civilized and like non-Indians (The Davin Report, as quoted in Monchalin, 2016a, p. 123). Nicholas Davin drew on strategies employed south of the border to achieve assimilation as efficiently as possible. He was particularly influenced by the first residential school in the United States: the Indian Industrial School located in Carlisle, Pennsylvania.<sup>204</sup> Inspired by a deeply colonial and militarized history—the experience of a group of Indigenous political prisoners captured

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<sup>202</sup> In the early years, residential schools were largely framed as a response to failed efforts for assimilationist goals to be realized, however officials attempted to further these efforts by finding ways to deepen the connections between educational objectives and the reserve landholding system with the Gradual Civilization Act (Milloy, 1999).

<sup>203</sup> At the time of the David Report there were already four residential schools operating in Ontario alone, including the Mohawk Institute (Milloy, 1999). The Mohawk Institute, located in Brantford, Ontario opened in 1831 and was the first residential school and a boarding school for boys from Six Nations. In the 1850s the federal government also opened a number of schools across the country with the exception of Newfoundland, New Brunswick and Prince Edward Island (Monchalin, 2016a).

<sup>204</sup> A number of officials were also influenced, including “the Father of Responsible Government” Lord Elgin, towards this idea by seeing similar kinds of industrial boarding schools in operation elsewhere in the British empire (Milloy, 1999).

during the Plains Wars and sent to Fort Marion in St. Augustine—the architect of the first American residential school was an army official, Richard Henry Pratt, who supervised these prisoners at the newly transformed jail with the intention that their incarceration could be used for “rapid assimilation” (Pratt, as quoted in Monchalin, 2016a, p. 124).<sup>205</sup> When prisoners were released Pratt convinced the Indian Office to allow some of them to be sent to an educational institution in Virginia for former slaves, since this method had proved to be successful for “transform[ing] and assimilate[ing][...] black savages” through total immersion (Pratt, as quoted in Monchalin, 2016a, p. 124).<sup>206</sup> Pratt would go on to advocate that Indigenous persons be granted a separate school because he believed they had the potential to be more fully assimilated into white society.<sup>207</sup> Though a number of Canadian officials alongside Davin visited Carlisle in the 1880s, Milloy (1999) notes that several features that were operative at the school were not copied in the Canadian vision for future schools.<sup>208</sup> A year prior to the Davin Report the RCMP issue their own recommendation for the adoption of residential schools in 1878 (Annual Report of the NWMP, 1878).

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<sup>205</sup> Monchalin (2016a) outlines that the Carlisle school was organized with military-style logic and discipline as a means to assimilate children. Practices that included bathing and haircuts to long hair upon arrival, as well as new clothing (i.e. uniforms) are particularly reminiscent of the process of orienting military recruits into their new identities and roles. In addition, a system of rewards and disciplinary measures were used to order behavior and administer punishment and/or promotion accordingly.

<sup>206</sup> The Hampton Normal and Agricultural Institute was established after the Civil War to provide an education to former slaves.

<sup>207</sup> It is not entirely clear what is meant by this, but it seems as though Pratt believed that it was possible for “Indians” to more successfully pass as white once assimilated in addition to not wanting Indians and African Americans to be connected in the public mind (Monchalin, 2016a). This lends insight into the ways the white supremacy of Canadian and American settler state institutions attempt to generate conflict between racialized persons as a means of maintaining power.

<sup>208</sup> Residential schools were first carried out in New France as early as the beginning of the seventeenth century as part of early assimilationist policy (Milloy, 1999).

In 1920 children's attendance at day and residential schools became mandatory, which meant that "authorities could compel attendance at residential schools when there were no other educational options [and] [p]arents who refused to send their children were threatened with fines and imprisonment" (Monchalin, 2016a, p. 126). Children were forced to speak in either English or French, renamed, assigned a number, and had to follow strict rules and protocols, or would otherwise be punished with physical, sexual, emotional and psychological abuse.

[I]f children spoke their Indigenous language, they could be whipped publicly, given lashes, or beaten, or forcibly confined for days. Another torture for this infraction was to have needles stuck through children's tongues [and] often left in place for extended periods. For wetting the bed, a child could be forced to take his or her pants down in front of peers so as to receive a vicious lashing. Other punishments for bed-wetting included forcing children to wear diapers or their soiled clothing. Some children would be shamed continually and called names such as "heathen" and "savage." Some children were beaten into unconsciousness and to the point of receiving permanent injuries, including broken limbs, fractured skulls, and shattered eardrums. (Monchalin, 2016a, p. 127-128)

In many cases however, children did not have to do anything 'wrong' to be mistreated or abused. In addition to sexual abuse and rape by authority figures, some children were trafficked, used in pedophile rings and were subsequently forced to have abortions, be sterilized, or have their babies killed. The conditions of schools themselves were often so unsanitary and overcrowded, that children died from diseases like Tuberculosis (Monchalin, 2016). Children were malnourished, sometimes as a result of nutrition experiments conducted on them through the 1940s and 1950s (Mosby, 2013; Monchalin, 2016a).

In addition to the punishment, abuse, violence, deprivation and mistreatment that numerous children experienced, the language of "catching" children and the widespread practices of the violent and traumatizing removal strategies involving Indian Agents and

the RCMP say a great deal about the broader militarized and policing infrastructures that were mobilized to forcefully extend the colonial mission. The system of reserves, residential schools, and the passes essentially operated together to both sever relationships to land and to family and community, and to ensure that culture and traditional knowledge could not be passed down to children. The pass system, upheld by Indian Agents and the RCMP, worked to maintain that reserves and schools could be sites of containment and isolation, since parents and family members could be prevented from visiting their children and children were forbidden to leave. Even so, many would escape, though they would not always survive to see their families. In addition, since residential schools were often located far from reserves, making the trip could be burdensome or impossible for some families.<sup>209</sup> For children, this distance put them in serious jeopardy if they were successful in escaping the schools, however clearly children were not the only ones harmed in this process. Parents, Grandparents and extended family and kin also suffered violence and loss through the theft of their children and the younger generation within their communities.

Residential schools not only resembled prisons because they were institutions of punishment and confinement, but because they were institutions built on the slave labour of children. This stolen labour was often considered part of their training for the professions they would enter into when their education was complete.<sup>210</sup> Indeed, as

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<sup>209</sup> For instance, in 1893 the Minister of the Interior Thomas Mayne Daly claimed that schools should be located far from reserves in order to ensure the their parents' influence could not reach their children (Monchalin, 2016a).

<sup>210</sup> For example, in husbandry, agriculture and mechanical trades for boys and domestic arts and science for the girls (Milloy, 1999).

Milloy (1999, p. 15) outlines, the early schools were “designed to prepare the child for life within the Aboriginal community that would itself be remodelled to approximate as nearly as possible a respectable, industrious settler community.” This indicates the extent to which the production of carceral space and criminalization is so intimately tied to assimilation via cultural genocide and land theft, and the ways this becomes achieved through practices of undervaluing the labour of Indigenous children and workers. Since it was children’s reproductive labour that made the institution possible, it is important to consider the extent to which the very government and Church mandate of assimilation was largely made possible through the stolen labour of the children that attended the schools (McCallum, 2014). Children also participated in food growing, which was then sold for profit to the surrounding community (McCallum, 2014).<sup>211</sup> Children were never the beneficiaries of the fresh produce that they worked to grow and instead their health and well-being were compromised through practices of starvation, disease and malnourishment.

Discourses of civilizational benevolence during this time were married to practices of punishment, confinement and discipline. These practices understood that it was not just Indigenous culture, but the love of children’s families and communities that were uncivilized and in need of correction. Thus, residential schools were designed to replace the care, concern and loving home-like conditions of the families children were removed from with ones of stern education with proper discipline to become particular

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<sup>211</sup> For elaboration on the role of producing Indigenous workers to fill domestic labour markets, see McCallum (2014).

kinds of subjects, but were also understood to be providing more adequate “care” to children. There is no question that assimilation in its most basic sense is violent, and so any claim otherwise is either dishonest, or an attempt to recuperate the logics and institutional structures towards alternative ends without proper interrogation of their constitutive assumptions. In this case, claiming that institutions designed for the purpose of assimilation can love or care in both a full and healthy sense is impossible and represents an erasure of the care and work that Indigenous families and communities were already providing for their children in spite of ongoing hardship.

The so-called value of punishment as a pedagogical tool was largely about the belief in conformity through fear and the threat of physical force and violence. Therefore, ideas of ‘firmness’ and ‘discipline’ were “both a pedagogical technique and a civilizing influence” which aimed to create “persistent obedience to authority, order, and discipline” (Milloy, 1999, p. 43). This was positioned in contrast to the permissive culture and other ‘problematic’ attributes of Indigenous parenting. G. Manuel, a national Aboriginal leader and residential school graduate, said that as students we were taught to respect through the act of being punished, while “our mothers and fathers, aunts and uncles and grandparents, failed to represent themselves as a threat, when that was the only thing we had been taught to understand” (Manuel, as quoted in Milloy, 1999, p. 43).

In the vision of residential school education, discipline was curriculum and punishment was pedagogy. Both were agents of civilization; they were indispensable to the “circle of civilized conditions” where the struggle to move children across the cultural divide would play itself out in each school situation, child by child, teacher by teacher. (Milloy, 1999, p. 44)

The image for civilizational progress included teaching students how to become parents who would one day be willing and able to exercise appropriate authority over their

children, and in effect aid in producing them as an active force in rearing the new civilized generation, rather than working against it (Milloy, 1999). Here it becomes clear that the productive and reproductive labour of Indigenous people was intended to be mobilized towards the assimilationist vision. Methods of coercion were central to enabling this possibility in both the public and private realms, which means that theorizing carceral space in settler colonial Canada must take account for these intersections and overlapping socializations. Institutional arrangements and surveillance infrastructures did not just remove people from land, culture and community. They sought to invade and collapse public and private realms and harness the undervalued resources and labour of Indigenous children and families towards these ends.<sup>212</sup>

When Father Albert Lacombe, one of the industrial school system and the eventual principal of High River industrial school in the Northwest Territories<sup>213</sup>, spoke about the pedagogy of residential schools, he states that it was “a great mistake to have no kind of punishment in the Institution” and that “it is absurd to imagine that such an institution in any country could work properly without some form of coercion to enforce order and obedience” (Lacombe, as quoted in Milloy, 1999, p. 44).<sup>214</sup> The very explicit ways coercive power is embodied as an extension of the capitalist settler state building project during this period demonstrates the extent to which white heteropatriarchal power is embodied in state institutions like prisons, residential schools, the police, as well as the

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<sup>212</sup> Despite the grand visions of the Church and state, schools were underfunded and under resourced for the same reason (Milloy, 1999).

<sup>213</sup> Lacombe was also an Oblate missionary to the Blackfoot (Milloy, 1999).

<sup>214</sup> Lacombe’s successor, E. Claude, concurred and spoke punitive techniques such as solitary confinement, deprivation of food, and other methods that qualify as torture (Milloy, 1999).



nuclear family. This also suggests the extent to which punitive and carceral logics and practices permeate social, political and economic life and the incentives among another marginalized within capitalist expansion and the settler state to take up investments in such frameworks. It is historicizing these practices as tied to the extension of an imperial and settler colonial project that gives a much more complex account for how assimilationist and corrective discourses and practices are intertwined.

Corporal punishment would come to play a very specific role in the schools, where it was permitted in extreme circumstances, but with limits. Of course, there was no real oversight and priests, nuns and other Church and government officials possessed a great deal of power and discretion. Near the turn of the century certain measurable force was permitted:

...[C]hildren are not to be whipped by anyone save the Principal, and even when such a course is necessary, great discretion should be used and they should not be struck on the head, or punished so severely that bodily harm might ensue. The practice of corporal punishment is considered unnecessary as a general method of discipline and should only be resorted to for very grave offenses and as a deterrent example. (As quoted in Milloy, 1999, p. 45)

Of course, the utter pervasiveness of practices of violence and harm is well documented since the Truth and Reconciliation Commission published their findings as shown in the overwhelming testimony that Indigenous persons shared.<sup>215</sup> In addition, because residential schools were places of education, work, and where they lived these practices of bodily punishment must be read alongside the more mundane ways Indigenous bodies were regulated as students and workers through complex sets of intimacies and

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<sup>215</sup> See TRC Final Report (2015). Milloy also points to evidence that suggests Church officials were always able to justify punishment by stating that Indigenous children were difficult and insubordinate.

interpersonal relations. The intent and effects of corporal punishment, like other forms of assault and discipline, follow heteropatriarchal capitalist notions of property relations, where the bodies of women, children, and other ‘deviants’ are deemed possessions of patriarchal power, whether embodied in the state, workplace or the family. Corporal punishment and gender-based violence are the ultimate expression of this ownership and its effects, since it is meant to convey that even your body does not belong to you. This means that practices of punishment, discipline and other forms of surveillance and regulation in these spaces are never purely a state monopoly, since this power intersects with the capitalist logic of alienation and is co-constituted through interpersonal psychological, emotional and physical abuse.<sup>216</sup>

### Theorizing Colonial Carcerality

“Off the reservation” is an expression current in military and political circles. It designates someone who doesn’t conform to the limits and boundaries of officialdom, who is unpredictable and thus uncontrollable. Such individuals are seen as threats to the power structure. They are anomalies: mavericks, renegades, queers. Seen in this historical context, designating someone as “off the reservation” is particularly apt. Originally the term meant a particular kind of “outlaw,” a Native person who has crossed the territorial border, called the reserve or reservation, set by the United States or a state government. In those days “the reservation” signified a limited space, a camp to which Native people of various nations were confined. Those who crossed the set borders were deemed renegades. They were usually hunted down, and most often, summarily shot.” Allen, “Off The Reservation: Reflections on Boundary Busting, Border Crossing, Loose Canons,” 1998, p. 6

In Dory Nason’s analysis of Darcy McNickle’s *The Surrounded* and Janet Campbell Hale’s “Claire” in her collection of short stories, *Women on the Run* she suggests that the varying ways land and bodies have been subjected to carceral power has

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<sup>216</sup> Here I want to suggest that alienation does not entirely capture this phenomenon because, though it too has an explicitly psychological dimension it does not capture the full spectrum of violence and power relations embodied in these practices.

always been a central thematic framework found in Indigenous literature and feminisms. Reading these writings together Nason (2016, p. 142) argues that “Native literature has always offered an evolving and consistent critique of settler colonialism’s carceral conditions” which position assimilationist policies as “depend[ing] on criminalizing and surveilling Native people.” Nason goes on to state that this occurs by targeting racialized bodies, especially female bodies, within and beyond reserve spaces, but also directs us to the forms of resistance that emerge within these analytical frames.<sup>217</sup> When brought together, these frameworks make it possible to read the imposition of a carceral apparatus as a direct means to control the relationships between bodies and lands for the purpose of reconstituting them towards ends central to the settler colonial project of assimilation, dispossession and theft.

Whereas historians like Smith have pointed to the “liberal surveillance complex,” as a conceptual means of organizing the institutions and practices that led to settlement in the Western provinces, I want to suggest that it is Indigenous feminist interventions in carceral studies literature that make it possible to theorize the aforementioned relationships, beyond what can be accounted for within literature bound by a governmentality approach.<sup>218</sup> Smith rightly locates the ability to constitute and therefore to know the other as a colonial technique of control, but does not theorize the relationships that these institutional arrangements and organizations of space have with

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<sup>217</sup> Nason (2016, p. 142) states that such “literary forms of resistance[...] have evaded most scholarship on the subject.”

<sup>218</sup> For instance, beyond a place-based analysis the question of land is overwhelmingly absent. This means that this literature has done little to consider the deep challenge that Indigenous and decolonizing approaches pose to critical work within IR, and the social sciences more broadly.

land, dispossession and assimilation, nor the racialized, gendered, classed, and sexualized hierarchies that are simultaneously upheld and reproduced through these practices. Alternatively, for Nason these institutions and practices are directly responsible for targeting Indigenous bodies on the land for the purpose of their disappearance and death as a form of non-consensual inclusion, whether that be through relocation, containment to Reserves, arrest and detention in cities, disproportionate jail time for petty offences, the kidnapping and confinement of children to residential schools, policing, or surveillance and information gathering by the government, Church and local settlers. In this sense, dispossession and land theft cannot be understood outside of the rigid management and control of indigeneity and the relationships to land on which it is based.<sup>219</sup>

Since the land base is central to Indigenous language and culture, attempts to sever these relationships is foundational to assimilation. Further, and as shown in Chapter 4, the attempted reorganization of relationships to land through property-based frameworks were aimed to more quickly facilitate this process. When Indigenous people failed to assimilate in ways that were expected more aggressive tactics were used; however, this coercion must be located in this earlier imposition of English common law,

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<sup>219</sup> For example, this is how in the case of the verdict on the killing of Colten Boushie, Gerald Stanley can become not-guilty since the epitome of settler innocence is a white cis-gendered man who is claiming to protect his property in the Prairies (i.e. his land and his family). Gerald Stanley, a Saskatchewan farmer, was deemed not guilty in the death of Colten Boushie, a 22-year-old from Red Pheasant Cree Nation, who he fatally shot in the head on August 9, 2016. His innocence rested on the all-white jury's belief he was not criminally culpable in his death. Here we can see vividly how white male settler relationships to land as property are explicitly linked to particular forms of innocence and freedom, while Boushie could be killed for the ways his body was read on the land and in relation to Stanley's property as already criminal.

whereby both civil and criminal branches and its administrators enabled the circumstances in which the criminalization of Indigenous persons was given legal grounding because of how it connected the re-definition of land and relationships with land to broader governance objectives. This linkage establishes the central role that criminalization and the coercive and punitive elements of colonial law and policy played in the longer-term redefinition of land as property.

Nason (2016) notes that early twentieth century Criminologists were active participants in this process through racist logics which criminalized land-based economies and other ways Indigenous people survived under colonial conditions. This goes beyond relationships between bodies and land to particular kinds of movement and relationality on and with the land that are based on other ways of being. A carceral apparatus, which accounts for the organizations of space, institutions, and informal practices, became the logical and commonsensical response to resistance in the form of the continued assertion of indigenous lifeways, which were also subsequently and explicitly criminalized. For scholars like Nason, these institutions, actors and broader practices play a mutually constitutive role in creating the carceral conditions of settler colonialism. Thus, it becomes impossible to de-couple the punitive and corrective elements of criminalization. In other words, one way or another the ‘Indian problem’ will be eliminated, whether that be through identification and education towards ‘correct’ ways of being (read: English-speaking, white heteropatriarchal, middle class values), or otherwise inevitable death; both of which are framed in terms of rescue narratives which trap Indigenous people within the bounds of settler colonial intellectual, institutional and

legal traditions and rationales. In short, there is no way out of the colonial carceral logics and practices set up by the settler state, except when the terms are set by Indigenous peoples' themselves.

Ideas of surrounding, entrapping and catching Indigenous persons speak to the lived experiences Indigenous people have navigating, surviving and escaping the carceral apparatus as a method of settler state formation and territorialized sovereignty. That is, and to follow on questions initially raised in Chapter 2, this terminology is not metaphorical, but based on the lived experienced of Indigenous peoples within particular places. I also want to suggest here following Indigenous feminist scholars that focusing on the ways carceral structures attempt to control, order and assimilate the relations of bodies and communities to lands means subjecting the land itself to this same violence and harm. It is for this reason that Indigenous women and Two Spirit persons become some of the largest and most unmanageable threats to the settler colonial project, since “despite the consequences, the women are the ones to assert the viability and desirability of that alternative to colonial management[...] and the possibility of a resurgence of those traditions in answer to the pain of colonialism,” which is embodied in bonds created between older and younger generations (Nason, 2016, p. 145). In her reading of the female characters in *The Surrounded* and “Claire,” Nason’s analysis does not take for granted that the ways the characters are geographically situated is crucial for understanding how they resist and survive the unique manifestations of the carceral apparatus in place, which is still always shifting in its shape and form. The authors

accomplish this by “focusing specifically on the geographical spaces they travel in order to restore themselves and plan for their future” (Nason, 2016, p. 145).

Following Nason, I suggest that practices of surveillance, policing and confinement were co-constitutive dimensions of land dispossession and assimilation. This is because part of the way the carceral apparatus functions is by “dislocating crucial knowledges from their traditional mapped locations” through targeting Indigenous knowledge systems that made possible other ways of governing and relating (2016, p. 146). The carceral apparatus enabled a corrective institutional framework premised on Eurocentric knowledge systems that sought to hierarchize, categorize and contain, and which separate and elevate human beings from the natural environment and its other life forms (Tuck & McKenzie, 2015; Grande, 2004). Indeed, it is not accidental that this framework also provides the epistemological, ontological, and methodological foundations of carceral logics. If settler colonialism and the carceral apparatus it requires sought to dismantle Indigenous knowledge systems by attempting to sever the relationships between Indigenous peoples and their lands, the women “not only know what to do to challenge this re-ordering of their indigenous world and worldview, they also know *where* to go to make things right again” (Nason, 2016, p. 146). In the context of Nason’s analysis this means returning to traditional lands because the “land [is] the birthplace of resurgence” (p. 146).

When Indigenous knowledge systems have unique ways to understand relationships between bodies and lands as particular to place, the harm caused by the carceral apparatus does not only have implications for bodies. Rather, it equally enables

violence to the land. For example, borrowing from Paula Gunn Allen, Nason employs the expression “off the reservation” as a way to think about bodies and space. Importantly, the relationality expressed in this term accounts for the ways that, within this conceptualization land and bodies are theorized *together*.

“‘Off the Reservation’ ... designates someone who doesn’t conform to the limits and boundaries of officialdom, who is unpredictable and thus uncontrollable. Such individuals are seen as a threat to the power structure. They are anomalies: mavericks, renegades, queers.” (Allen, 1998, p. 6).

According to Allen (1998), you cannot read Indigenous bodies without deriving meaning from where they are on the land and vice versa. The deviance that those bodies hold to colonial power has implications for *both* how their bodies and the land must be forcefully governed. Though meaning is always shifting with regard to the terms on which Indigenous persons and the reservations are deemed threatening, this adds to the conceptual framework in the way it offers space to understand how the terms of the settler state are also always elusive, or just out of reach. And as Nason points out, the ways these boundaries are always shifting across bodies and the land, (especially, for bodies on the land in ways that can be criminalized), is what defines the carceral net as a settler colonial governance strategy: that no matter how many ways people find to disentangle themselves or escape, there is always the looming possibility that Indigenous bodies on the land will be “surrounded at every turn” and that there is “*nowhere* to run” (Nason, 2016, p. 149). Settler colonialism as a modality requires that Indigenous peoples must always be trapped, captured, or killed.

This can be seen explicitly in how particular borders of the reservation, everyday institutions, and even the home must be subjected to hyper-policing, surveillance and



confinement in certain moments and that these must always be strategically navigated, contested, and out-smarted by the female characters in the texts that Nason explores. This is not only the case at the moment the border is crossed, but it is actually when bodies are out on the land that this presents the most immediate threat and therefore the possibility of capture. However, it is also “a place of possibility for indigenous agency and resurgence” (Nason, 2016, p. 147). As Nason outlines, this “ungoverned” space in McNickle’s *The Surrounded* is the mountains which are part of the Salish people’s vast traditional territories. “The people called that place Sniel-emen [or the] (mountains of the surrounded) because there they had been set upon and destroyed” (McNickle, 1936, as quoted in Nason, 2016, p. 147). This place name highlights the ways land became understood as being shaped by the carceral and militarized logics of the settler state. That is, the name reflects how the embodied relationality of the Salish people to their land shifted through the deeply militarized and carceral logics of entrapment. However, this does not stop the women from acting to restore inter-generational kinship relationships and “the tribal narrative histories and attendant legal traditions that are encoded by a specific place and territory” which “underscores the links between land and indigenous self-determination” (Nason, 2016, p. 146). Colonial carcerality harms people and lands simultaneously, but Indigenous feminisms tell us that the work of women to restore intergenerational relationships between Indigenous bodies and lands is a life-affirming practice that denies the ontological and epistemological grounds of the capitalist and settler colonial state and therefore upholds the possibility for ways of relating to land and each other that make possible more just forms of community across Turtle Island.

Indigenous feminisms also theorize a direct connection between these historical practices and the contemporary moment. Luana Ross (2016), a Salish sociologist, argues that contemporary over-incarceration of Indigenous persons in the United States, especially women, is the result of historical practices of legal and political imposition, including the widespread practice of reservation surveillance. In Chapter 6, I explore these connections in the Canadian context. In order to do so, I reposition national conversations on reconciliation within historically- and geographically-situated carceral relations, where Canada's ongoing desire to access and control land is still being accomplished through what I term 'colonial carcerality.' 'Colonial carcerality' is a governance strategy that relies on inflicting ongoing harm to land, and to Indigenous, gender non-conforming and poor people of colour through criminalization. I conclude that scholarship on settler colonialism in the Canadian context requires a clearer theoretical and empirical base to facilitate understanding how struggles for decolonization and abolition are intertwined.

## **Chapter 6 – Colonial Carcerality in an Era of “Reconciliation”**

The distinction between “Native” and “settler” informs all power in settler societies and their relations with societies worldwide. Sherene H. Razack, “Race, Space, and the Law,” 2002, as quoted in Morgensen, 2011, p. 1

Bringing indigeneity and Indians front and center to discussions of U.S. empire as it as traversed across Atlantic and Pacific worlds is a necessary intervention at this historical moment, precisely because it is through the elisions, erasures, enjambments, and repetitions of Indianness that one might see the stakes in decolonial, restorative justice tied to land, life and grievability. Byrd, 2011, p. xiii

In Chapter 5, I argue that the production of carceral space can be read as a distinct feature of settler colonial governance in Canada. I demonstrate this by showing how a carceral apparatus emerges in the context of westward expansion and the development of a national policy. As I show, the Department of Indian Affairs, the RCMP, Church and local officials and settlers all relied on the reserve, residential school and pass systems to surveil Indigenous populations, limit their mobility and force their assimilation based on racialized, gendered, sexualized and classed hierarchies and power relations. These interconnected systems alongside important socio-legal developments and practices historically—namely the Indian Act and its precursors—point to the roles that the production of carceral space and criminalization played in early stages of state formation and capitalist expansion.

This builds directly on the argument I make in Chapter 4 where I show that the elements of early colonial law and policy were coercive and punitive. I argue that the longer-term redefinition of land as property occurred not only through the extension of colonial law, but through various forms of criminalization required to reconstitute these relationships. This was also made possible by the ways that Indigenous peoples would be non-consensually included under the law as ‘the Queen’s subjects.’ This inclusion led the

criminalization of Indigenous persons through both civil and criminal law and had the effect of entrenching settler innocence through particular ways of devaluing Indigenous life and ways of relating to land. This means that criminalization was exercised during the earliest stages of colonial capitalist expansion and state formation in was that directly targeted the relationships between bodies and lands as part of a wider assimilationist vision. Of course, this vision would be more aggressively pursued in subsequent years.

In this chapter, I therefore bring a historicized account of colonial carcerality to bear on contemporary national conversations of reconciliation in Canada in order to theorize it as a governance strategy in the current moment. By re-positioning national conversations on reconciliation within historically- and geographically-situated carceral relations, I argue that ‘colonial carcerality’ as a governance strategy relies on inflicting ongoing harm to land, and to Indigenous, gender non-conforming and poor people of colour through criminalization. Further, and following from the work of Indigenous feminists I argue that harm to land and other living beings must be read as a constitutive feature of these racialized, gendered, sexualized and classed hierarchies if we are to take ecological justice seriously as constitutive of decolonial and abolitionist visions. A close reading of Indigenous feminists’ articulations of carcerality within settler colonial societies tells us that carcerality goes much deeper than questions of governance. Since, Indigenous feminists have demonstrated that violence to bodies and lands, waters and other living beings are interrelated processes in the ongoing pursuit of dispossession and assimilation, IR needs not only to be pushed in terms of understanding the role of carcerality in the production of the international through the theft of land and labour.

Rather, I argue here that engaging with Indigenous readings of carcerality as the suppression of life, and relations within and between forms of life, offers deep insights on the politics of decolonization and abolition, and the power relations that settlers are being asked to contend with therein. I subsequently argue that Indigenous feminist articulations of carceral space allow us to deepen Indigenous theorizations of recognition and refusal by highlighting how the liberal politics of recognition is reliant on the politics of containment of bodies, lands and full expressions of life which challenge white colonial capitalist heteropatriarchy. When read alongside one another, Indigenous feminist readings of colonial carceral and resurgent relations between bodies, lands and waters generate a different understanding of carcerality—one which actively recognizes the ongoing labour and knowledge of Indigenous women in pursuit of ecological and reproductive justice as central to undoing the carceral net.

Thus, in this chapter I ask: How, if the production of carceral space is central to settler colonial governance and extending the settler colonial project, does it become the solution to the harm that settler colonialism has itself perpetuated? If carcerality can be identified as a central and deeply harmful component of settler colonial governance, then it is not possible for prison and other forms of apprehension, theft, coercion and non-consent to become part of the solution or claims on the part of the settler state to “reconcile” or “decolonize.” Therefore, this chapter begins to draw connections between contemporary expressions of colonial carcerality. I begin with the limits and critiques of the Truth and Reconciliation Commission (TRC), but then move to the over-incarceration of Indigenous persons in Canadian correctional facilities and state custody and/or

possession, the ongoing criminalization of land defense struggles, and the struggle for justice for Missing and Murdered Indigenous Women (MMIW). Through linking these as contemporary expressions of colonial carcerality through Indigenous feminisms, I argue that we can understand these sites as exemplary of both the ongoing desires of Canada for dispossession and assimilation, and of ongoing Indigenous resistance and resurgence.

I begin this chapter by situating and reading contemporary national conversations on reconciliation through the lens of non-consensual recognition and refusal in order to show that colonial carcerality is an ongoing feature of Canadian governance. Here I argue that liberal recognition can be understood as a logic of containment that does not only apply to Indigenous bodies, but to Indigenous lands. In the last section of the chapter I connect these insights to the ways Indigenous feminisms allow us to read contemporary critiques of recognition and refusal through the ways they understand the relationship between bodies and lands. Indigenous feminist articulations of carcerality and resurgence not only challenge contemporary understandings of carcerality in settler colonial contexts, but show us through their ongoing work what reparative and restorative justice must look like within the legacies and ongoing practices of colonization and harm.<sup>220</sup> I argue that this work challenges the settler state and settlers themselves to understand their systemic investment in and personal embodiment of carcerality through the ways they expose the slow death and disappearance of the full expression of life, and relations between life, on which we all rely. Over incarceration, apprehension, theft, harm to land

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<sup>220</sup> By restorative justice I am referring to methods of justice that actively challenge punitive and retributive institutions, practices and cultures while prioritizing methods of healing and accountability within and between people and communities. For a discussion of restorative justice in Canada, as well as its relationship to Indigenous traditional justice practices, see Monchalin (2016, p. 280-285).

and water, environmental racism and death are mutually constitutive processes which rely on the ongoing disappearance of both Indigenous bodies and lands. Colonial carcerality makes visible the ongoing reliance of the Canadian state on stolen land and life. For restorative justice to be decolonial means it must seek to repair the full expression of life, its relationality, and the possibilities that lie therein.

“Reflections on Reconciliation”<sup>221</sup>: Contemporary Colonial Carcerality and the Politics of Indigenous Recognition and Refusal

What I see is that the lands are being destroyed, the waters are being polluted[...] our markers of success have to change. So, our markers of success have to be that we can go over to that river and dip a cup in and be able to drink the water. That has to be our marker of success. And so, if we can reach that then I see a lot of hope.[...] But we really have to change our mind, not just us, not just Indigenous people, but also non-Indigenous people. We have to wrap our mind around how can we collectively move toward creating clean lands and clean waters to ensure that the future generations of people, animals, of all beings[...]. And so, it's not too late. We can do that, but there doesn't seem to be a whole lot of movement in that direction right now. Christi Belcourt, Reflections on Reconciliation, 2016

Contemporary conversations and mainstream discourses in the Canadian context argue that Indigenous peoples and Canadians are in a process of reconciliation (Reconciliation Canada, 2017); however, many Indigenous intellectuals and artists have not been so persuaded (Simpson, L., 2011; Belcourt, 2016; McMahon, 2016; Palmater, 24 July 2017; 15 February 2018, Sinclair, N. 2018). The Truth and Reconciliation Commission, which was created by the Indian Residential School Settlement Agreement,<sup>222</sup> was the result of decades of work of Residential School survivors (Sinclair,

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<sup>221</sup> These words are borrowed from the title of the first episode of a mini-series by Red Man Laughing podcast (host: Anishinaabe/Métis comedian, writer and actor Ryan McMahon), in conversation with Michif Artist, Christi Belcourt.

<sup>222</sup> The Indian Residential School Settlement Agreement is the largest class action lawsuit in Canadian history, involving an agreement between the Government of Canada and approximately 86,000 residential school survivors.

Littlechild & Wilson, 2015).<sup>223</sup> Though the importance of making space for survivor stories and testimony cannot be underestimated, others have argued that there is little evidence to suggest that now will be the time Indigenous people's voices will be listened to. Chief Commissioner of the TRC Justice Murray Sinclair (2015) has emphasized that reconciliation is a long intergenerational process of repairing and rebuilding relationships that is not without barriers, and that "it is a Canadian problem."

The TRC has been an important venue to begin to contend with the horrors of the legacy of Indian Residential School that has permeated public discourse in a way that has not been possible in years past, but these discourses have been wrought with a full slate of injustices that continue to shape Canada as a settler colonial state.<sup>224</sup> For example, Indigenous critics have explicitly argued that conversations about reconciliation in Canada must necessarily be about the land (Belcourt as referenced in McMahon, 2016; Simpson, L., 5 March 2016). As Belcourt says,

I don't actually even know if reconciliation at this point is even possible, and the reason why I say that is because we're living in this country that is 100% stolen land. We don't have any of our land and the health and wellbeing of our peoples and our nations is dependent on our connection to land. [...] We're talking about reconciliation all over the place, but nobody's saying return the land. And what I'm seeing is that the results of residential schools, the intergenerational effects and all the stuff we see happening in our communities: the extreme poverty is all due to our dispossession off the land. So, the solution to me seems pretty obvious: that is has to include land. (Belcourt as quoted in McMahon, 2016)

What Belcourt's words indicate is that though Indigenous people's stories and experiences have become part of the conversation in a way that has been difficult to

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<sup>223</sup> For a detailed explanation of the TRC's mandate, see <http://www.trc.ca/websites/trcinstitution/index.php?p=7>.

<sup>224</sup> The TRC proposed 94 Calls to Action, which span the areas of health, education, justice, and many others (TRC, Calls to Action, 2015).



ignore, the politics of reconciliation have in no way translated into comprehensive justice for and on the terms of Indigenous peoples themselves. Arguably, reconciliation has been more about Canada and settler desires to feel better about themselves and to ‘move forward’ than it has been about listening deeply to the truth telling of Indigenous people within and beyond the commission or ensuring that the way forward is shaped by Indigenous visions of justice. As Belcourt states at the outset of this chapter, and as others have argued, it is not only the return of the land, but the wellbeing of the land and water that will indicate whether it is possible to move forward to heal our relationships to each other. Without seeing evidence that Canadians are ready for reconciliation, Belcourt explicitly prioritizes healing relationships to land in her art practice because dispossession “severed our ties and alliances and respect for the nations we depended on and that gave us life” (as quoted in McMahon, 2016).

In the current moment, reconciliation in Canada can be understood as selectively drawing on practices and instruments that fit settler state objectives within the broader transitional justice paradigm.<sup>225</sup> As feminist and postcolonial scholars in the field have argued, transitional justice as an international framework of state-based institutions and norms rely on hierarchies and myths about conflict, progress and violence derived from neo-colonial legacies where liberal democratic states become the experts on justice which

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<sup>225</sup> Matsunaga (2016, p. 28) points out that transitional justice theory is commonly understood as a way of making sense of justice “that is used in times of political flux to address state wrongdoing” and which “emerged from the creation of new justice instruments to respond to state-sanctioned atrocities associated with WWII and the Cold War” (Teitel, 2000; 2003). Teitel (2003, p. 70-72) argues, that we can understand how these instruments rely on the rule-of-law and liberal democracy, and how they are used in nation-building processes when situated in their “historical and geo-political conditions.” For instance, in the way such tools have developed in close proximity to countries that have dealt with the aftermath of former authoritarian regimes.

other states must learn from on their path to development (Matsunaga, 2016; Rosser, 2015). Authors interested in interrogating white, Eurocentric, human rights and international institutional frameworks have argued that postcolonial and transnational feminist interventions in transitional justice literature have often meant upholding the relations of power that ensure their dominance within a neoliberal capitalist world order. This has meant omitting settler colonialism despite an overwhelming focus on settler colonial states (Matsunaga, 2016), and has uncoincidentally downplayed or ignored the knowledge of Indigenous women and women from the global south (Rosser, 2015).<sup>226</sup> This leads to assumptions that harm and violence are in the past and that settler states like Canada have little work left to do, if any, to right these wrongs.

Jennifer Matsunaga (2016, p. 28) outlines that the underlying assumptions of this transitional justice framework are ones that lead to problematic articulations that somehow “historical ‘truth’ is in question” and that liberal states are “good and follow the rule of law.” Since the orderings of states within global hierarchies rely on race, class, gender, and sexuality it is most often that states which are Western and/or European (i.e. read as white, wealthy, rational), are understood as both innocent and correct in their values and actions. In other words, the same hierarchies that have influenced the scripting of innocence and criminality onto settlers and Indigenous people alike within expressions of transnational relations of power in local context also deeply inform and

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<sup>226</sup> Rosser states that universal categorizations of ‘women’ in the context of gendered and sexualized violence has entailed erasing the knowledge of poor women of colour and indigenous women through the erasure of histories of imperialism and colonialism, which postcolonial and transnational feminist scholars have sought to disrupt (Alexander & Mohanty, 1997).

make possible Canada's poor and underwhelming response to calls for justice and accountability by Indigenous peoples. As shown in Chapter 4, the ability for Canada to claim its liberal moral authority and proclaimed ethical values is always connected to paternalism and knowing better as a means to justify the imposition of settler law and policy onto Indigenous and other colonized peoples. These frameworks of knowing were made possible by conceptions of *terra nullius* which meant that they were always connected to the assumption that settler claims to land could be based in knowing how to use the land better, which was central to the dual processes of criminalization and dispossession.

Postcolonial thought has not only been integral to reading these inscriptions of power within IR, but alongside subaltern studies has provided avenues for critical dialogue to explore similarities and tensions across anticolonial and decolonial struggles. Kilibarda (2014, p. 301) puts it well when he states that the charting of the post and decolonial interventions in the field are “enabling scholars to reimagine the worlds remaining settler colonies in both precolonial and postcolonial terms.” Charting some of the history of these intellectual traditions, which can be located as emergent in different times and places, (i.e. anticolonial struggles in Africa, Asia, and Latin America and then in the American Indian movement in the 1960s and 1970s), Byrd and Rothberg suggest that postcolonial thought, notably that of subaltern studies and Gyaatri Chakravorty Spivak's ‘Can the Subaltern Speak?’ (1988), has provided “important conceptual tools for

Indigenous scholars, even if postcolonial scholars rarely consider that the inverse is also true” (2011, p. 2).<sup>227</sup> They claim:

While many scholars in ethnic, indigenous, and postcolonial studies have been troubled by the notion that marginalized subjects cannot ‘speak’, the focus on the inability to ‘hear’ opens up the possibility for building bridges across marginalized locations. Indeed, the salutary shift from the conditions of (failed subaltern) production to the conditions of (failed elite) reception is one of the things that makes the dialogue between postcolonial studies and indigenous studies simultaneously possible and desirable, as both movements struggle with how to articulate the tension between overweening colonial power and resilient, resistant actors. (Byrd & Rothberg, 2011, p. 5-6)

Here we can begin to unpack the possibility that emerges in understanding the differences between how subjectivity is being understood and theorized by Indigenous scholars. In this project, I want to hold these important solidarities, but I am also compelled by Byrd and Rothberg’s critique, since it points to the danger in collapsing different structures of colonialism in a moment when Indigenous peoples are struggling against ongoing practices of colonization and where Indigenous scholars own work is often not being seen and acknowledged by even the critical academy.<sup>228</sup>

This tension is one which offers us possibilities and indeed seeks to point to the tangible reimaginings and the resulting realities of Indigenous peoples ongoing work towards decolonization; however, Indigenous peoples themselves have been more inclined to articulate discomfort with the term ‘postcolonial’ for reasons that encompass a spectrum of concerns with grave cross disciplinary implications. Citing Elizabeth Cook-Lynn’s assertions made in the mid-1990s and then again in 2012 with *A Separate*

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<sup>227</sup> Byrd and Rothberg specifically cite Ranajit Guha and Spivak’s co-edited anthology *Selected Subaltern Studies* (1988) and Spivak’s *In Other Worlds* (1987).

<sup>228</sup> There is certainly a growing number of meaningful engagements with indigeneity, and Indigenous critiques of settler colonialism in the discipline of International Relations following initial interventions by Beier (2005; 2009), Shaw (2002; 2008), Crawford (2007), and others.

*Country: Postcoloniality and American Indian Nations*, Byrd (2016) suggests that postcolonialist frameworks have not been particularly helpful for working towards tribal autonomy, nationhood and justice. A struggle that is as much about the conditions of a corporatized academy as it is about land, Byrd (2016, p. 77) argues that “the predicament of the “post-” is that it forever anticipates that future at the same time that it forecloses it from ever arriving.” Indeed, this suggests that the space opened up by postcolonial scholars when in conversation with indigeneity, has not been one without its own positionalities as shaping conditions of inclusion, and the desire to determine what justice in the struggle(s) against colonization looks like while benefitting from different forms of settler privilege.<sup>229</sup> I raise this here, because there are significant stakes for political struggle if the depth of the claims made by peoples who continue to be colonized cannot be heard by others who are also actively involved and navigating their relationships to postcolonial and decolonial struggle.<sup>230</sup>

The tension that becomes exposed in conversations between postcolonial, transnational feminisms and indigeneity is that even in expressions of solidarity and work which attempts to take account for these relations of power, there are limited ways to engage with land as constitutive of Indigenous subjectivity, (and in a different way, settler subjectivity), and as underpinning settler-Indigenous relations, especially white but also other forms of settler privilege, within the settler colony. What I hope this work contributes to is a conversation about how racialized, gendered, sexualized and classed

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<sup>229</sup> For an in-depth analysis of these tensions in the context of South Asian and Indigenous struggles see Patel (2016).

<sup>230</sup> For a more thorough discussion of the relationships between transnational feminisms and settler colonialism and indigeneity, see Patel, Moussa, & Upadhyay (2015).

power relations reproduced through settler colonialism, which those engaging in transnational feminist thought have taken on and which I engage in here through the framework of ‘colonial carcerality’, are constituted and upheld through harm to land and other living beings. This highlights the deep contribution that Indigenous studies and Indigenous feminisms in particular, make to a critique of liberalism, its frameworks of recognition and the urgency for us to hear this critique, as well as to discussions within transnational feminisms in the contemporary moment. As Byrd and Rothberg (2011, p. 3) argue “question[ing] Euro-American constructions of self, nation-state, and subjectivity” are inherently different when unpacked from Indigenous perspectives, since indigeneity refers to “an intellectual theorization[...] where analyses of colonization intersect with peoples who define themselves in terms of relation to land, kinship communities, native languages, traditional knowledges, and ceremonial practices.” It is therefore crucial to acknowledge, especially by those of us that have settler privilege, that violence towards land and other living beings is a central way in which global hierarchies of power in settler colonial contexts are reproduced.<sup>231</sup>

If we take seriously that these challenges to liberal thought come from “juridical exercises of colonialist power that deploy and constrain sovereignty for justification for land dispossession” (Byrd & Rothberg, 2011, p. 3), then I want to argue that the conversation about criminalization and carceral space necessarily must also shift. If the ongoing assertion of Indigenous intellectuals is one about the inability to hear Indigenous

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<sup>231</sup> This is particularly true in Canada, since frameworks of cultural recognition have been a central means by which ‘Aboriginality’ has been acknowledged (Simpson, A., 2008). Here I think it becomes clear that one way settler privilege manifests itself in transnational feminist discussions is in the erasure of land, waters and other living beings as an organizing feature of the power relations we seek to unpack.

subjectivity as inherently connected to land, then it is not only a question of Indigenous bodies and indigeneity needing to be criminalized by (settler) colonial power. If land must also be targeted and redefined in the same move then to what extent does it become accurate to argue that land must also be criminalized? And indeed, if Indigenous scholars have highlighted that the reorganization of the relationship to land and criminalization is central for the production of ‘Indianness’ then what would it mean to consider how criminalization comes to bear on the relationality between bodies and lands? In the following section I will bring Indigenous feminist thought on carcerality together to read the ways that the lands, plants, animals and waters are living beings, which colonial carcerality has also attempted to silence.

Within IR, the bordering of land, its utility and/or destruction are either understood through Marxist frameworks of alienation, or environmentalism more broadly. Both of these stem from the assumption of land’s status as object (i.e. as largely material), but rarely have we interrogated the idea that land is being subjugated. Even in environmental literatures, the natural environment remains a category of life distinct from and/or below humans, even if co-dependency and the desire to repair ongoing harm is acknowledged.<sup>232</sup> Within the critical literatures on space and place, largely having stemmed from interventions in critical geography which have subsequently been taken up in IR through border studies, what we might understand as land has been granted some visibility in the form of understanding it as dynamic and as a performative space;

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<sup>232</sup> Though there are moves away from such frameworks within ecological justice and feminist and queer ecologies literatures, these have rarely taken up the contributions of Indigenous scholars. See for example, Mortimer-Sandilands & Erickson (2010).

however, these literatures have largely failed to engage with Indigenous conceptions of land as life and being.<sup>233</sup> Even recent trends in international law and within national courts to grant personhood to specific bodies of water through legislation and legal decisions (D’Andrea, 2018), remains controversial from Indigenous perspective.<sup>234</sup>

Virginia Marshall, when speaking about the Australian context argues,

Australia is in western terms a nation state. If we measure Australia’s short history against the thousands of years of Indigenous heritage, bound as a birthright in a familial connection and relationship with everything on, above and below the land and waters, since time immemorial, the latter far outweighs any value flowing from propositions of legal personhood. (Marshall, 2018)

Marshall states this is problematic from an Aboriginal perspective, because it relies on ignoring the inherent relationships, meanings, values, and knowledge that Aboriginal law and creation stories hold about the relationship between all life and that “this western legal construct is complicit in decoupling the oldest living and continuing Indigenous culture in the world” (2018). This is argued to be because within a rights of nature framework legal protection becomes required through the assumption that all living beings actively seek to be destructive to the earth and its life forms.<sup>235</sup>

Returning to Byrd and Rothberg (2011, p. 6) with this in mind, we can read their claim that, “It is important to be precise about the kinds of non-reception at stake” with

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<sup>233</sup> I acknowledge these literatures and conversations broadly here to signal their presence, but it remains beyond the scope of this project to engage with them here in a way that would adequately take account for their nuances.

<sup>234</sup> For example, Autumn Peltier, who is an Anishinaabe youth water activist from Wikwemikong First Nation, has advocated for water’s personhood at the same time that she has been very clear to acknowledge that, “water is alive [and] has a spirit” (Kent, 2018).

<sup>235</sup> When referring to the ‘UN Declaration of the Rights of Mother Earth,’ Marshall states that it “fails to identify the unique position of Indigenous peoples[...] which informs and connects Aboriginal identity (freshwater peoples, saltwater peoples etc.) in ‘a web of relationships’ balance” (2018). Marshall further elaborates that a rights-based framework is based on hierarchy, “separating ‘each being’ in ‘relationships’ with the ‘mother earth’.”



the land and water in mind. They argue that failed reception remains different than reception that is partial or distorted since this is not cultural incommensurability, but rather a result of power disparities. Imperial powers already use mechanisms within the carceral state, (i.e. surveillance), where listening means upholding existing power relations rather than seeking to transform them. They argue that,

[I]ncommensurability often functions as the raw material of the state's translational powers[...] but also that, incommensurability marks the place of a form of difference yet to be acknowledged [...] and where] indigenous difference is identified and recognized, but only in order to be translated into a language commensurable with the very state that is structured on the disenfranchisement of fundamental indigenous claims. (Byrd & Rothberg, 2011, p. 7; Povinelli, 2011 as referenced in Byrd & Rothberg, 2011, p. 7)<sup>236</sup>

Here it becomes possible to read the TRC as a site of translation to liberal commensurability, since by and large one of its effects has been to recolonize stories of Indigenous trauma, pain and suffering into a framework that allows it to co-exist with the ongoing machinery of settler colonialism. This is not to diminish the power of the stories and knowledge that have been shared with the commission. Rather, I am arguing that its institutional limits and constraints facilitated a process whereby Indigenous peoples are often not fully heard, or the magnitude of their experiences not fully registered, appreciated and brought to bear in light of the persistent silencing that Indigenous peoples are challenging across Turtle Island. This has occurred both in the way the commission mandate was limited to experiences with residential schools as opposed to the wider experiences of colonial harm, as well as in the ways it has become impossible to hear Indigenous calls for the return of land and stewardship of the land.

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<sup>236</sup> They provide specific examples of Canadian and Australian court decisions drawing on the work of Turner (2006) and Povinelli (2011).

Although survivor testimonies have generated discomfort for many Canadians, the TRC is one more example in a very long line of the politics of silencing within settler colonial states which entails a deep resistance to listen to and hear the concerns, needs, interests and desires of First Nations, Inuit, and Métis people across Turtle Island. It is connected to a broader method of coercive and non-consensual inclusion, because at this moment it has become important that Canada can understand itself as no longer a perpetrator of colonial violence. As Agathangelou and Killian (2016a) tell us, it is always important to ask how and why it becomes possible to ask these questions at this historical moment? This provides an opening to take seriously what is being both put on hold and made possible by the repeated mobilization and calls for justice by Indigenous peoples on these lands right now. Leanne Simpson (2016) and Sarah Hunt (2015) problematize white, and settler state-centric notions of justice by asking how a focus on individual pain and suffering, but not dispossession, means utilizing Indigenous trauma as a method to reconsolidate Canada's power as a settler state. And so, an institution meant to provide justice for historical wrongs becomes aligned with the aims and interests of an abuser who continues to perpetrate harm, yet requires their victim to validate their behavior within a model that is not directed or centered on the terms of survivors (Couthard, 2014).<sup>237</sup>

For Canada to get what it needs requires that Indigenous peoples and lands be compromised, harmed and subjected to ongoing colonial violence. Here it might be easy

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<sup>237</sup> For a thorough discussion of tensions, limitations and challenges of truth commissions, see Rosser (2015).

to suggest a that there is a grey area of consent, where Indigenous peoples are clearly participating in the process, however I want to emphasize that there is nothing ambiguous about consent. The very suggestion signals that the ongoing claims of Indigenous people are not being heard. This is because it inappropriately conflates participation in the commission as consent beyond its terms by reading implied consent into it, and as a result distorts the claims for justice that First Nation, Inuit and Métis peoples have been seeking, which involves conditions of decolonization now and into the future. For this to be true would assume that Canada's practices and institutions are already decolonized. It also rests on an inability to see the everyday coercion and non-consent that makes the Canadian state possible. Recalling the argument I put forward in the first chapter of this project, the legacy of the prison and prisoner in the context of global and (settler) colonial expansion is carcerality and criminalization as a means of the theft of land and labour, and inclusion based on non-consent. That this is a conversation that has persistently necessitated that Indigenous peoples across Canada continue to assert that reconciliation must be about the land and their own frameworks of being, highlights the particularity of the legacy of IR's erasures in the ongoing life of settler states.

This perpetual erasure of land is the result of the Canadian government and officials not taking the boundaries of Indigenous consent seriously, which not only results in extractive and instrumental forms of inclusion within the TRC but translates to the extension of colonial carceral logics beyond the commission. Extractive forms of inclusion, (Smith, L. T., 1999; Simpson, A., 2014; Coulthard, 2014), continue to prioritize the utility that Indigenous peoples and lands provide for the Canadian state over the

reality of their conditional or non-consent. This claim follows the critique of rights-based frameworks from the perspective that Indigenous rights become taken up as cultural rights, and not inherent sovereignty (Simpson, A. 2008; Coulthard, 2014; Bhandar, 2016). Following from this, what I want to suggest here that here there is not only incommensurability present in how land is continually erased from the conversation, but rather that this extension is made possible by the ways land must also be coercively included in the Canadian state-making project. And further, here I want to argue that the framework for cultural recognition that has been so extensively critiqued is part of what makes it possible within a transitional justice framework for Indigenous testimony to become registered as pain and trauma rather than explicit calls for transformational and decolonial change (Hunt, 2015; Simpson, L., 2016). It is not only that the land cannot even be registered in a framework of liberal redress, but that it has been impossible for the state to conceive of the return of land to Indigenous stewardship. What would it mean to acknowledge the deep violence and harm that the lands and waters have been and continue to be subjected to? And what would it mean to move towards an understanding of restorative justice that is based in forms of knowledge that know allowing the land and other living beings to heal is part of how we can begin to heal relationships to ourselves and each other?<sup>238</sup>

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<sup>238</sup> Here I mean to suggest that settlers also need to decolonize and heal their relationships to land, but I do not mean to suggest that the stakes are the same given the ways especially white and upper-class settlers currently benefit from the gross power differentials in a settler colonial state. Though our survival as a species is at stake, I also want to acknowledge the possibilities for such a discourse to be mobilized towards new forms of settler innocence that both appropriate indigenous knowledge and seek to erase ongoing complicities in colonial harm.

The transformative possibilities of the TRC are limited by the ongoing presence of colonial carcerality as a governance strategy across Turtle Island and by continually trying to fit Indigenous peoples, their voices, and claims into Canada through notions of liberal recognition to their detriment (Coulthard, 2007; 2014). Engaging the work of Charles Taylor (1993; 1994), Dene political theorist Glen Coulthard (2007, p. 443) argues that the relations that undergird the settler state ensure that ‘recognition’ through such a framework “prefigures its failure to significantly modify, let alone transcend, the breadth of power at play in colonial relationships.”<sup>239</sup> Coulthard engages extensively with the contributions that Frantz Fanon’s thinking provides for the politics of recognition in the context of settler colonial Canada, the ongoing struggle for indigenous rights and the ways settler colonial power will only guarantee forms of recognition that remain unthreatening. More specifically that they “[do] not throw into question the background legal, political and economic framework of the colonial relationship itself,” since it “promises to reproduce very configurations of colonialist, racist, patriarchal state power that Indigenous peoples’ demands for recognition have historically sought to transcend” (Povinelli, 2002, as quoted in Coulthard, 2007, p. 451; Coulthard, 2014, p. 3).

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<sup>239</sup> Drawing from Fanon’s work, primarily *Back Skin, White Masks* (1967) Coulthard highlights Fanon’s contributions about the relationship between the material and subjective realms while also demonstrating that historical and contemporary work by Indigenous scholars on cultural recognition “have often been expressed in ways that have explicitly called into question the dominating nature of capitalism social relations and the state-form” (Adams, 1975, 1999; Watkins, 1977; Marule, 1984, as referenced in Coulthard, 2007, p. 447).

To give sufficient attention to the distinctly liberal underpinnings of the politics of recognition in the Canadian context and identify the ways in which he is interested in drawing on Fanon whose theorizations came out of the context of the Algerian war of independence, Coulthard makes the point that “colonial relations of power are no longer reproduced primarily through overtly coercive means, but rather through the asymmetrical exchange of mediated forms of state recognition and accommodation” (2014, p. 14). This raises an important question for this project in the sense that I am arguing that the liberal Canadian state still requires coercion and violence to make itself possible. Even if this does not look the same way as it did during the era of residential schools for example, the work of this project has been to demonstrate the importance of drawing links between these historical and contemporary relations of colonial carcerality. In particular, I think it becomes useful to draw links to pre-Confederation law and policy, which was the subject of Chapter 4, to highlight that the punitive and carceral logics underpinning liberalism are an important part of what made more aggressive forms of coercion and assimilation possible in subsequent decades. So, although I would not dispute that the contemporary politics of liberalism entails the practice of mutual accommodation and recognition, this description could become limited by the ways it reproduces the central erasures on which the discourse of liberalism thrives. As earlier discussions in this dissertation highlight, proponents of liberalism are always seeking to position it as a framework of cooperation rather than coercion, when countless examples suggest to the contrary.

In this sense, Coulthard's work could in some ways be argued to be in tension with Audra Simpson's work on theorizing recognition and subjectivity precisely because Simpson's notion of refusal is not just about moving towards transformative forms of self-recognition in the affirmative, but also places priority on not forgetting the non-consent and coercion on which even these less violent colonial mechanisms of the settler state. In this sense, both Coulthard and Audra Simpson can be said to leave us with slightly different articulations of land and subjectivity. In particular, it is Simpson's idea of carcerality and non-consent that helps us to see that an over-emphasis on the less coercive aspects of liberal governance (Coulthard, 2014), provides us with a more limited framework within which to understand and apply the relevant problematics of recognition-based politics within neoliberalism to the subjection of the land within these same frameworks. Here I will argue that beginning the conversation with non-consent and non-consensual inclusion allows us a different vantage point to read the politics of containment, what I argue to be the underside of contemporary articulations of liberal and neoliberal politics of recognition and a feature of contemporary expressions of colonial carcerality.

Borrowing on the work of Philip Deloria (2004), Audra Simpson argues that surveillance, "pacification, containment, and demobilization" are not only central objectives of the settler colonial imaginary, but part of the politics of recognition and non-consent in the ways they seek to organize Indigenous subjectivity (Simpson, A. 2008, p. 195). Through an examination of the criminalization of Iroquois tobacco trading practices she states,

If a refusal to recognize also involves using one's territory in a manner that is historically and philosophically consistent with what one knows, then it is an incident of failed consent: Mohawks, in this case, refused to consent to colonial mappings and occupations of territory. Such refusals, or failures to consent, require a legal response to contain the refusers, a move that then incites settler anxiety about the containability of Indian bodies and practices. That the territory and the people of Akwesasne cross four state and provincial boundaries and jurisdictions as well as an international boundary line bifurcating their territory, that this territory was divided without their explicit consent, that their boundaries of this space are different than those mapped by relatively new nation-states and peoples, was not up for discussion or analysis. It is simply the Indian's perceived misrecognition of boundaries (and the inability to contain their trafficking and their economic practice) that was the issue. (Simpson, A. 2008, p. 195-196)

By explicitly drawing a relationship between the ways Indigenous subjectivity is produced as through the non-consensual inclusion of Indigenous land we can see that the containment of Indigenous bodies happens concurrently with that of the land through territorialization and the jurisdictional claims that derive from imposed national, provincial and state mappings and boundaries since these are what make criminalization possible as a method of ongoing colonial legitimation.<sup>240</sup>

Importantly, this is a slightly different articulation than we see in Coulthard's work, since his analysis reproduces an erasure that is also present in postcolonial thought within and beyond the Marxist tradition. Namely, though dispossession is argued to be an ongoing practice, it is not always granted equal attention in the process of producing colonial subjects in part through his emphasis on reading Fanon. Though much is gained by drawing on Fanon's theorization of the projection of the colonial subject that introduces nuance into Coulthard's critique of liberal recognition, I think this emphasis

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<sup>240</sup> By non-consensual inclusion I do not mean to imply that ongoing exercises of refusal or failed consent are not effective. Rather, I am suggesting that settler states will continue to criminalize these actions, even though as Simpson points out, it is these very actions that expose its fragility. These tactics of coercion and suppression are also the conditions within which states like Canada and the U.S. attempt to claim they are invested in dialogue and cooperation.



reproduces elements of the colonizer-colonized relationship through the colonial context of Algeria. But perhaps more deeply, it is Fanon's own taking on of Hegel's master-slave dialectic in particular that leads to a focus on the subjectivity of the colonizer and colonized and reproduces some of the erasures made by French colonial power and the master-slave dialectic itself. This does not take away from the important contribution that Coulthard is able to make through Fanon, but rather to begin to think through the ways that the colonial legacies of such a reading are continuing to inform the dialectic. I wonder in what ways such readings continue to shape the erasure of land in the production of colonial subjectivity, as well as the ways this relation of non-consent is related to but also distinct from the non-consent from the subjectivity of the slave and native in particular contexts.<sup>241</sup> Coulthard (2014, p. 60) of course, arrives at the idea of "grounded normativity" which is about the return to a land based ethics, but this does not go as far as to suggest that liberal erasures of land, though they too derive from a politics of recognition, are also about the ways land must first continually be non-consensually included within the settler colonial project of Canada.

The idea of failed consent or the refusal to consent that Simpson draws on indicates that ongoing coercion and force become required to manage Indigenous subjects deemed unruly and criminal. This occurs purely by Indigenous peoples occupying and

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<sup>241</sup> I state this critique tentatively and as a site of future research, since it is beyond the scope of the project to begin to explore these relationships in detail in Fanon's writings within the Algerian context. Further, the work of Stephanie Clare (2013) has already begun to explore the question of land in Fanon's work, whereas Agathangelou (2014) explores Fanon in terms of colonial violence on the body and revolution and Agathangelou & Killian (2016b) have engaged with Fanon through the questions his work opens up on time and temporality. In thinking about the theft of lands and following from Patrick Wolfe (1999), Simpson points out that in a temporal sense the postcolonial is still very much an aspiration.

moving on their lands and waters in Akwesasne with the attempt to prohibit “the possible role of Indian political orders” effectively also criminalizing trading under the Jay Treaty (Simpson, A. 2008, p. 196).<sup>242</sup> Importantly, this coercion attempts to correct even through the ongoing refusal of settler state recognition. At the same time, when it comes to thinking through the ways land becomes understood through cultural recognition frameworks it is exactly within this framework where it becomes possible to remove its full expression of life in ways that can be contained in the imaginary of the liberal subject (i.e. personhood granted through the law). These frameworks attempt to capture the lands significance and contain the land and water as living beings only insofar as they can be useful within the framework of the settler state in much the same ways to that of the cultural right and recognition frameworks seek to celebrate select and limited expressions of indigenous life within multiculturalism, while otherwise mobilizing ongoing practices and discourses of meaning and value that rest on the simultaneous disappearance and slow death of Indigenous bodies and lands.

Not only is Canada in a relentless pursuit of itself as no longer a perpetrator of colonial violence, but it is continually demanding a particular form of recognition by Indigenous peoples that demands indigenous rights remain at the level of the cultural. Simpson states: “These different interpretations regarding boundaries and territory are part of an interpretative process in Canada of using especially static and culturalist methodology to mete out recognition” (2008, A. p. 211).<sup>243</sup> We can say then, that these

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<sup>242</sup> The U.S.-Canada border divides the Mohawk reservation of Akwesasne.

<sup>243</sup> Though there are differences in the ways race is conceptualized and mobilized in the U.S. and Canadian contexts, (blood quantum versus cultural purity), Simpson points out that each are more similar than different in the ways they rely on problematic and essentialist notions of race.

bordering practices on the land are playing a constitutive role in dictating the subjectivity of Indigenous peoples in a way that requires erasing or otherwise containing the full expression of Indigenous life. This suggests that seemingly distinct moments of non-recognition coercively include land in its state making and capital accumulation efforts.

Indigenous refusal and non-consent replicate similar patterns of critique and dissent in that they attempt to dispute the ways that Indigenous subjectivity is being re-mapped by Canada in the contemporary moment. As Audra Simpson (2008, p. 214) argues, the criminalization of trading practices as “smuggling” is part of what aims to erase the “temporal dimension of conquest” and that “to speak of aboriginality, a form of (recognizable) identity that is predicated upon a *temporal* relationship to land and to others[...] not within its own legal histories or mappings, but in the settler state itself, structured always through the frame of settler law.” Simpson’s analysis demonstrates that Indigenous relationships to land are necessarily *past*, in part, because Indigenous peoples are constructed as disoriented and somehow lost on their own lands. Thus, it is not just the issue of misrecognition of settler state borders and mappings of space, but that of criminalization that is required to re-orient and physically *put* Indigenous peoples in their proper place.

More recently, Audra Simpson has further unpacked the notion of refusal alongside that of consent to expose the colonial assumptions that shape it as ongoing theft through settler entitlement, license and interpretation. She argues that, “the particular way in which law in colonial contexts enforced Indigenous dispossession and then, granted freedom though the legal tricks of consent and citizenship[...] marks the inherent

impossibility of freedom after dispossession, a freedom I argue is actually theft” (2017, p. 20). We can read Simpson’s deepened notion of refusal, as a theorization of some of the deepest forms of carcerality and non-consent found within the settler state, since she argues that its conditions (‘contractual thinking’) mark its impossibility. Acts of refusal within spaces of containment show that the “state’s effort to enclose *life for land* and sometimes their failure at this [is] a kind of cunning practice of recognition and governance” (Simpson, A. 2017, p. 29, emphasis added).<sup>244</sup> Inspired by Simpson’s work, here I ask: how can we read carcerality on the land beyond the more explicit bordering practices of states and even reserves, residential schools and policing? Certainly, if we take seriously that the logics of settler colonialism produce territoriality and property in the same move that they produce non-consenting subjects, there is something else to be said about land and non-consensual inclusion. How do these frameworks of cultural rights and recognition operate alongside other neoliberal logics to maintain the coercive reimagining of the inclusion of land within the settler state? In other words, what possibilities are there for land to refuse these terms of recognition? Whose knowledge is required to understand what the land and other living beings are telling us? What role does the coercive inclusion of land in the settler state play in the ongoing inability to hear Indigenous peoples’ claims?

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<sup>244</sup> This is a deepening of the theorization she provides in earlier work. For example, when she says the possibility of undoing “a state of lawfulness and containment, which is an ontological state of political subject-hood that is highly regulatory and does significant legal work upon the territories, bodies, and cultures of Indians in Canada [... so] that Indians reside somewhere between ward, citizen, and people presumed to be savage who must have their savagery recognized first, in order to be governed,” more emphasis was placed on how Indigenous rights to trade were being impeded and less was granted to the particular forms of refusal that were continuing to be practiced by the Iroquois traders (2008, p. 215).

Shalene Jobin, who is Cree and Métis from Red Pheasant Cree First Nation in Treaty Six territory, gives us some indication about how we might begin to answer these questions. Jobin (2013) argues that it is important that resistance to state control does not further entrench systems of economic exploitation through market notions of citizenship where Indigenous identity and connections to the land are seen as distinct and where “indigenous rights are settled through state negotiations and then land is therefore free to be exploited through market forces” through resource development and extraction models. Exploring Cree notions of citizenship<sup>245</sup> through her process of speaking with a community Elder, Jobin says that,

Through one reading of a Cree ontology, citizenship entails specific roles and responsibilities to other living beings. In this indigenous view of citizenship there is a reciprocal relationship between economic interactions (relations to land) and modes of subjectivity (relations with land). How we relate to the land impacts who we are and the types of rights and responsibilities we can lay claim to. In contrast a liberal economic model can falsely accept that to fundamentally alter our relationship to the land will not significantly alter who we are. A notion of indigenous citizenship is not a negative right but includes responsibilities to the earth itself. So, when I’m looking at this idea of market citizenship, especially during this era of self-government, I see that indigenous people striving for self-determination within the Canadian state, that we’re being pushed into a foreign version of citizenship based on the values of the market. So this push of equating self-determination to self-government has constructed the movement along what I see as a neoliberal trajectory directly impacting communal ideologies and relationships with the land.

Here we can see how Jobin’s starting point of a Cree notion of citizenship as embedded in Cree ontology changes the possibilities for understanding Indigenous claims about the relationship between land and subjectivity. More specifically, it offers us the examination of a broader framework of neoliberal recognition as one bound up in attempting to

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<sup>245</sup> There is not necessarily a direct translation of western notions of citizenship in Cree. A Cree articulation of citizenship can be understood as *Acimostakewin*, which means the act of living, or the act of living well (Jobin, 2013). Jobin also states that other Cree teachings that emphasize the act of having good relationships with other living beings central in her understanding and thinking through of *Acimostakewin*.

enclose what Cree citizenship is through constraining and containing Cree relationships to land as a relation of exploitation and harm. Jobin's analysis allows us to see that such a relationship would necessarily require harming Cree people and ways of being, so she explicitly takes up Coulthard's notion transformative praxis through de-subjectification, and builds an understanding of Cree citizenship from Cree ontology itself.

When Jobin argues that what we are currently seeing within the framework of state recognition is made possible by logics of neoliberalism, we can more easily see how logics of colonial carcerality are facilitated beyond state-based governance frameworks. For example, this highlights how land and space need to be re-organized and re-bordered in ways that facilitate the smooth production and circulation of capital by not only decoupling Indigenous peoples from their land base, but by actively imposing new frameworks that dictate the terms of the relationship under the guise of 'self-government' and 'decolonization.' Here I think it becomes important to also revisit analyses of carcerality within the literature on neoliberalism and border studies, and the ways this has emphasized limited movement of people while enabling the 'free' and 'uninhibited' movement of capital.<sup>246</sup> Though it is common within this literature to understand neoliberal logics as limiting or curtailing the mobility of particular people and labour, and 'freeing up' capital and its circulation, (by turning land into capital through extraction, accumulation, marketization and financialization), Jobin's analysis makes space to draw attention to the underlying assumption that this logic actually rests on. Even radical critiques of neoliberalism assume and take for granted a coercive relationship with land;

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<sup>246</sup> See for example, Rygiel (2008), Waquant (2008).

where lands, waters, and the life force of other living beings and their relationships to each other must first be actively constrained in order to make possible commodification through objectification, alienation and other types of invasiveness and harm.

Returning to the TRC and broader politics of transitional justice from this standpoint it becomes possible to suggest that the inability to hear and take seriously Indigenous people's claims to land is made possible through the ways land continues to be forcibly included within the settler state making project. As a result, I would like to propose that we can read Indigenous critiques that have called for a return of the land as alluding to exactly this. Therefore, what I want to offer here is an analysis that helps to articulate the ways carceral logics of non-consent persist to make the forceful and non-consensual inclusion possible through ongoing harm of the land. This feels particularly important in a moment when it is not just liberal frameworks of recognition that erase the land from view, but also the ways in which attention to particular elements within liberalism by other critical and decolonial intellectuals has also repeatedly meant on some level the erasure of land as constitutive of Indigenous and settler subjectivity in very different, but related ways. Looking to the relationships between Coulthard's, Simpson's and Jobin's work gives us one way to enter into these ongoing assertions, tensions, and erasures, and ultimately provides a way to understand the politics of recognition as a politics of containment. Arguably, what ties these logics of recognition together with narrow modes of neoliberal self-government and modern treaties with the TRC is that they are all still based on a politics of containment.

Returning to the questions of transitional justice from this vantage point entails moves away from settler innocence (Matsunaga, 2016) and rather an act of unsettling and decentering settler subjectivity (Mackey, 2016) in order that Indigenous stewardship of land and a return to treaty relationships can necessarily be part of the ongoing reparative work of healing in which the harmful aspects of settler systems of governance are systematically dismantled.<sup>247</sup> As Coulthard (2014, p. 108) points out,

[I]n settler colonial contexts—where there is no period marking a clear or formal transition from an authoritarian past to a democratic present—state sanctioned approaches to reconciliation must ideologically manufacture such a transition by allocating the abuses of settler colonization to the dustbins of history, and/or purposely disentangle processes of reconciliation from questions of settler-coloniality as such. (Coulthard, 2014, p. 108)

Drawing on Indigenous resurgence literature highlights that in the contemporary moment new forms of containment and criminalization must be imagined in order to place constraints on even the limited space that is being afforded to Indigenous peoples through “reconciliation” and the TRC and which continues to be extended through other channels. In the next section I explore how Indigenous feminist readings of colonial carceral and resurgent relations between bodies, lands and waters generate a different understanding of carcerality—one which actively recognizes the ongoing labour and knowledge of Indigenous women in pursuit of ecological and reproductive justice as central to undoing the carceral net.

#### Resisting and Refusing Colonial Carcerality: Indigenous Resurgence and restoring life within the settler colony

To us, the Trent Severn Waterway meant the loss of territory, as the natural flow of the water was artificially altered. It meant the flooding of cemeteries and sacred sites, and it meant the destruction of our rice beds. Today, the lift locks act like a system of dams

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<sup>247</sup> For example, Matsunaga (2016) argues that transitional justice and decolonization are incommensurable.



constricting and constraining and controlling what the river can do. The lift locks block and disrupt the power of that flowing water with handcuffs and shackles, interfering with the cleansing, with bringing forth new life, and with the river's responsibility of sustaining territory. Leanne Betasamosake Simpson, "Nogojiwanong: The Place at the Foot of the Rapids," 2008c, p. 206

To me, dispossession is a structural relationship Indigenous peoples have to the state. The destruction of Indigenous bodies takes place to remove us from our physical, mental, emotional, and spiritual relationships to land primarily so that the land can be exploited for natural resources. How can we utter the word "justice" in Canada and not be talking about that? Christi Belcourt, *Reflections on Reconciliation*, 2016

As shown in the previous section, the government of Canada's commitments to reconciliation are steeped in the maintenance of colonial carceral relations. Colonial carcerality as a governance strategy requires mechanisms of coercion that continue to find new ways to non-consensually include Indigenous peoples and lands within the neoliberal capitalist settler state. Further, through the liberal politics of recognition, the very logic of governance is one based on the containment of the full expression and practice of Indigenous life through upholding relationships with the lands, waters and other living beings. This, of course, rests on Canada's ongoing dishonouring of the treaties and nation-to-nation agreements. This makes it possible to argue that the politics of non-consensual inclusion and containment is one that does not only apply to Indigenous bodies, but to Indigenous lands as well.

In this section of the chapter I bring together Indigenous feminist engagements with carcerality and resurgence to further illustrate contemporary expressions of colonial carcerality which still seeks to contain Indigenous self-determination through dispossession. I argue that Indigenous feminisms show how colonial carcerality upholds racialized, gendered, sexualized and classed power relationships through its targeting of relationships between bodies and land, as well as the full expression and relationality

within and between forms of life which challenge white colonial capitalist heteropatriarchy. In particular, Indigenous feminist articulations of carcerality allow us to read the ongoing harm to lands and waters, the criminalization of land defense struggles, the over incarceration of Indigenous peoples, and the disappearance of women, Two-Spirit peoples, and children through state apprehension and death as contemporary manifestations of colonial carcerality through their theorization of the relationship between land and subjectivity.

Indigenous feminisms are not only central to decolonizing questions of carcerality, as this section of the project hopes to show, but Indigenous feminists themselves have highlighted the importance of their knowledge to contemporary movements for resurgence. For example, Gina Starblanket (Cree/Salteaux and French/German) argues that Indigenous feminisms are central to “illuminate and deconstruct the ways in which the production and representation of indigeneity continues to be highly gendered in the context of resurgence” especially since within the resurgence movement “gendered notions of cultural authenticity and tradition can function as a containment strategy” which prevents critique of the ways colonial heteropatriarchy impacts Indigenous communities (Starblanket, 2017, p. 39). Discussing what makes Indigenous feminisms distinct from White feminism and Indigenous resurgence, Rowe and Tuck state that they,

attend to the intersections of settler colonialism and heteropatriarchal gender violence. They are an intervention on White feminism’s erasures of indigeneity, land, and the violence of ongoing occupation. They are also an intervention into Indigenous studies, which may not adequately address gender or sexualities, or can rely on binary notions of gender or heteronormative notions of sexualities. (Rowe & Tuck, 2016)

I argue that in addition to providing articulations of carcerality that allow us to read a liberal politics of recognition as resting on logics and practices of containment, Indigenous feminist theorizations of carcerality and resurgence seek to repair and build relationships between living beings that foster forms of life and relations that outsmart and outgrow the colonial carceral net. In this way, Indigenous feminisms generate different understandings of carcerality, which actively recognize the ongoing labour and knowledge of Indigenous women in pursuit of ecological and reproductive justice as central to undoing the carceral net.

Indigenous feminisms tell us that gendered, sexualized, classed and racialized violence is connected to the ongoing harm perpetuated to the lands and waters, and that these economies of violence are transnational in scope (Altamirano-Jiménez, 2013). In the contemporary moment Canada is expressly pursuing aggressive and extractive resource development (especially in the oil and gas sector) with considerable push back from Indigenous and environmental groups (Jaremko, 2017; Smart, 2018; Stacey, 2018). Medical research indicates a relationship between proximity to fossil fuel extraction, contaminated water supplies and increased cancer risk (De Souza, 2016), however this knowledge has been held and asserted by communities themselves for many years (Wohlberg, 2015). Alongside illness and dispossession caused by environmental racism, Indigenous women are recognized to be disproportionately affected by sexualized and gendered violence and the fastest growing prison population (Public Safety Canada, 2014;

No More Silence, 2016; Office of the Correctional Investigator, 2016; Ebert, 2017).<sup>248</sup>

Indeed, many First Nations, Métis and Inuit women and Two Spirit persons who are incarcerated are themselves victims of gendered and sexualized violence, including by police (Monchalin, 2016a; 2016b; 2016c), and currently nearly half (46%) the youth in the Canadian correctional system are indigenous (Malone, 2018). Right now there are 1,182 documented cases of missing or murdered Indigenous women, girls and Two-Spirited persons in Canada (No More Silence, 2017), however other reports state the number is likely closer to 4,000 (Tasker, 2016).<sup>249</sup> As Lisa Monchalin (2016a) argues, the lack of accountability by police and the criminal justice system have perpetuated harm by upholding ideas that Indigenous women are “rapable” and disposable.<sup>250</sup> Further, she outlines countless cases of abuse of Indigenous peoples, especially women, girls and Two-Spirited persons ranging from criminalization, harassment and unnecessary use of force, and rape. It is not surprising that with this kind of treatment that disproportionate numbers of Indigenous people die in police custody (Razack, 2015; Palmater, 2016).

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<sup>248</sup> These numbers are equally staggering in the U.S. context, especially for Indigenous women and gender non-confirming persons (Ross, 2016). The 2014 Annual Report of Corrections and Conditional Release notes that incarcerated persons who are Aboriginal on average enter the system at a younger age, receive longer sentences and are more likely to serve those sentences in high security facilities.

<sup>249</sup> These numbers are up from the 582 women that Sisters in Spirit had estimated in 2010 (Monchalin, 2016a). Though calls for a national inquiry and the work to bring attention to the crisis of missing and murdered Indigenous women and girls and the search for justice for families have been being pursued for many years, it was not until December 8, 2015 that the Government of Canada announced an independent national inquiry would be established. For the interim report, see (Buller, Audette, Eyolfson & Qajaq, 2017). This was after the UN special rapporteur on the rights of Indigenous peoples, Human Rights Watch and Amnesty International all found cause for concern, and after the high profile murder of Loretta Saunders in 2014.

<sup>250</sup> For example, the sexualized violence perpetrated by police in British Columbia towards Indigenous women and girls was documented by Human Rights Watch in 2013, as well as similar reports in Val d’Or, Quebec (Palmater, 2016; MacKinnon, 2016; Shingler, 2016). For further discussion of histories and representations of racialized, sexualized and gendered violence of Indigenous women in the North American context, especially by police and law enforcement see Monchalin (2016a; 2016b) and Deer (2015).

Beyond documenting abuses of power and the perpetuation of settler colonial relations by police, law enforcement, and the criminal justice system more broadly, Indigenous scholars and activists have been central in drawing transnational links between harm to land through extractive economies and violence against Indigenous communities. Racist, gendered and sexualized violence, which were central to European conquest, were processes that sought to subjugate especially Indigenous women, Two-Spirited persons, children and lands, and about undermining the role of women as knowledge producers actively involved in “complex socio-environmental community processes” (Green, 2017; Smith, 2005; Altamirano-Jiménez, 2013, p. 4). Currently, in addition to oil and gas development, Canada’s mining sector has received less attention, though it equally complicit in perpetuating harm to Indigenous communities and lands at home and abroad.<sup>251</sup> Documenting the history of human rights abuses and environmental destruction by Canadian mining companies in Guatemala, Scott Price (2016) states that in addition to roughly 75% of the world’s mining and exploration companies being based out of Canada, they are one of Canada’s most powerful sectors “account[ing] for 42 billion dollars of Canada’s gross domestic product” and that essentially Canada’s financial sector has been built with wealth generated from mining capital. This has meant that in Guatemala there has been ongoing forced removals to make way for mining projects (Rosser, 2015). In particular, the Maya Q’eqchi people in Guatemala have dealt with targeted deaths of land defenders and the threat of sexualized violence (Price, 2016).

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<sup>251</sup> A well-known example of anti-Black environmental racism in Canada is the case of Africville where, as Maynard (2017, p. 77) notes, “a centuries-old Black community[... was] deliberately underserved, impoverished and used as a dump by the city of Halifax”. See also McKittrick & Woods (2007) and Williams (2018).

Hudson Bay Mining and Smelting Ltd (Hudbay Minerals), which has a long history of involvement in Guatemala and Latin America, has also been responsible for conducting mining in northern Manitoba without the consent of the Mathias Colomb Cree Nation (Price, 2016).<sup>252</sup>

Pushing the frameworks within which we can understand contemporary manifestations of the carceral apparatus, Mi'kmaq lawyer Pamela Palmater (2016; 15 May 2017; 22 February 2018; 27 February 2018) argues that there is an important relationship between non-consent, harm to Indigenous communities and lands through ecological, racialized and sexualized violence, and the constitutive role of police, law enforcement and government agencies as perpetrators of this violence. She argues that these systems of colonial violence are characterized by a lack of accountability, as well as the inability to listen to and seek consent from Indigenous communities under conditions that are “free from misrepresentations, deceptions, fraud or duress” without which reconciliation is impossible:

That process of truth, justice and reconciliation will be painful. It requires a radical change. Nothing less than the transfer of land, wealth and power to Indigenous peoples will set things right. The true test of reconciliation will be whether Canada respects the Indigenous right to say ‘no.’ (Palmater, 15 May 2018)

This challenge to Canada comes at a moment when corporations, and government agencies like police and foster care function based on the assimilative idea that Indigenous peoples do not know what is best for their communities and therefore need to

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<sup>252</sup> Other Canadian mining companies that have been under fire for human rights abuses outside Canada include Barrick Gold, Fortuna Silver, Sherritt International, IAMGOLD, Curis Resources, Tahoe Resources Inc., Denison Mines Corp., First Majestic Silver, TVI Resource Development, Inc., Nevsun Resources Ltd., New Gold Inc., and GoldCorp (Price, 2016).

be guided towards the ‘right’ decisions.<sup>253</sup> If Indigenous people cannot understand what is “best” for themselves within white neoliberal and rationalist frameworks of civilizational progress, then the logic follows that they otherwise require coercive and corrective frameworks in order to create desired outcomes that do not fundamentally challenge white, settler and capitalist interests.

For example, even with the Trudeau government’s recent announcement of a new legislative framework (Government of Canada, 2018), Palmater points out that this was accompanied by the claim by Justice Minister Jodi Wilson-Raybould that this is not to imply that seeking consent somehow means Indigenous peoples have the right to veto (15 May 2018). In their newly released Special Report: *Canada’s Emerging Indigenous Rights Framework: A Critical Analysis*, The Yellowhead Institute has concluded that the new framework clearly seeks to “domesticate Indigenous self-determination within Canadian Confederation” and direct “First Nations towards a narrow model of “self-government” outside of the *Indian Act*” (Yellowhead Institute, 2018a). The final report states:

The Indian Act is on its way out; the land claims regime and self government policies are being broken down and re-packaged; and changes to fiscal relations ultimately focus on accountability and avoid addressing questions of land and resources. Indeed, we find that nearly all of Canada’s proposed changes to its relationship with First Nation peoples neglect issues of land restitution and treaty obligations. Instead, whether relational, policy or legislative reform, they focus on the creation of self-governing First Nations with administrative responsibility for service delivery on limited land bases. Decision making powers are constrained to the local (including any notion of free, prior and informed consent). Provincial, territorial and federal governments will continue to patronize and intervene in the lives and lands of First Nation peoples. (King & Pasternak, 2018, p. 5)

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<sup>253</sup> Currently there are approximately 11,000 children and in “care,” which is more than at the height of the residential school system (CBC Indigenous, 29 June 2018).

As documented here, the settler colonial terms of reconciliation are clearly built on a vision that requires the indefinite continuation of colonial carceral relations without the permission of Indigenous communities in order to constrain the possibilities for the relationality between land and life as determined by Indigenous peoples themselves. The racism and misogyny that informs the theft and disappearance of Indigenous bodies and lands through capital accumulation is perpetuated and reproduced through a broader coercive apparatus of policing and imprisonment. Monaghan (2013), Pasternak (2017), and Crosby and Monaghan (2018) outline, in different ways (through property and security regimes), the various roles of government agencies and authorities in attempting to surveil and manage Indigenous struggles for environmental justice and to uphold responsibilities to their territories.

Whether through racist and violent interactions with police, confinement, illness, dispossession or death, these harms further disrupt and destabilize family, community and kinship relations. As Hupa scholar, Stephanie Lumsden states (2016, p. 33), incarceration not only legitimizes settler law, but “physically removes Indian people from their land, which leaves it open for ne waves of settler encroachment, exploitation, and theft.” Through ongoing attempts to criminalize Indigenous peoples and subject them to carceral power, the originary violence of settler colonialism is perpetuated through the targeting of relations between bodies and lands, which subsequently continues to lay the ground work for child theft through the foster care system and the further marginalization of women and Two-Spirited peoples’ roles as leaders in their communities (Monchalin, 2016a). Palmater (27 February 2018) outlines that Indigenous youth and girls that go through the



foster care system are at heightened risk of incarceration, sexual exploitation, abuse and death, which highlights the extent to which ongoing child removal is a continued legacy of the residential school system and the larger cycles of emotional and psychological trauma that facilitate cycles of colonial violence and degradation of Indigenous women before and after their death.<sup>254</sup> Taken together, we can see how colonial legacies in the form of ongoing death, dispossession, and assimilation carry forward in the way it requires the removal of Indigenous persons from their families, communities and homelands through ongoing practices of colonial carcerality. Indeed, this is only possible in a broader framework that normalizes coercion, forcible inclusion and non-consent that harm and destabilize Indigenous peoples' relationships to land in order to continue the settler colonial project.

Looking to the relationship between land and subjectivity found within Indigenous feminist articulations of carceral space, offers an important vantage point to unpack their contributions to carceral studies literature, as well as to IR. This literature specifically highlights that carceral logics shape land and bodies together through relations of non-consensual inclusion, and containment (Simpson, A. 2008; Jobin, 2013; Nason, 2016). For instance, both Simpson's articulation of failed consent, criminalization and coercion, like Nason's articulation of the carceral net and its entrapments, highlight that it is not just that the relationship between Indigenous bodies and Indigenous lands needs to be redefined, but rather that it is the precise ways in which Indigenous peoples are *relating to*

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<sup>254</sup> Lumsden (2016) points out that in the Californian context, Indigenous children were kidnapped as a method of assimilation where children would be coerced into boarding schools and their parents into slavery.

the land that is exposed in the policing, criminalization, and containment of their movement and activities (i.e. land defense struggles, land reclamations, land based economies, ceremony). Jobin highlights the relational implications of unquestioned extractive development models that accompany neoliberal market notions of citizenship, which rest on finding new ways to bring Indigenous peoples into the neoliberal capitalist settler state building project.

Paula Gunn Allen allows us to think about how the location of Indigenous bodies are on the land is a central condition of how they must then be governed. Nason's notion of the 'carceral net' can be defined as a method of governing Indigenous bodies and lands whereby the boundaries are always expanding, contracting and shifting across time and space so its terms are always elusive and just out of reach. Together Allen and Nason allow us to understand the logic and ongoing material practice of colonial carcerality as ideas and practices that stifle and restrict the full expression of life of all living beings and their relationships with each other. This network of logics, institutional arrangements, practices and orderings of land and space work together to form the carceral net. Nason tells us that the carceral net by its very nature, must always shift its boundaries to ensure its bounds can expand and contract in contemporary service of colonial carcerality. No matter how many ways people find to resist, there is always the looming possibility that Indigenous bodies on the land will be surrounded and trapped (Nason, 2016). A similar idea is communicated by Audra Simpson (2017) when she points out that refusal within spaces of containment (or the carceral net) highlights that the "state's cunning practice of recognition and governance" is an "effort to enclose life for land" and that freedom within

setter state dispossession is in fact theft (p. 29). Both Simpson (2008, 2014) and Nason (2016) highlight that the criminalization of indigenous survival shows us both the ways the carceral net targets Indigenous life by surrounding, catching and/or killing it, and that the only way out is when the terms are set by Indigenous peoples themselves.

Together these authors point our attention to the ways land and subjectivity is co-constituted within the settler colony through carceral relations. Whereas we might tend toward thinking of land as requiring containment and subjects to be non-consensually included, reading these authors together suggest that we can deepen their reading of carcerality by examining these processes of targeting land as non-consensual inclusion and that the liberal politics of recognition is a politics of containment. As such, by way of critique I argue that one reading of an Indigenous feminist theorization of carceral space is a critique of liberalism that historically situates carcerality, in different expressions and iterations, as foundational to the settler colonial project. This occurs through the non-consensual inclusion of Indigenous bodies, lands and other living beings through mechanisms that seek to constrain the full expression of life and its relationality. However, Indigenous feminist interventions are not only substantive critiques of liberalism and settler colonial power, nor do they remain confined by the inherent limits of such a focus. Reading them as such would be a move to re-colonize and contain the depth and scope of their knowledge in the service of IR, rather to have IR contend with its erasures of settler colonialism, and the decolonial visions and practices of Indigenous feminisms. Instead, they must be understood as generative, world-building, transformative, and decolonial in the ways they enact and repair the life that can and

cannot be captured by the carceral net. Though it may be seductive to imagine that Indigenous women are only perpetually escaping, they are in fact calling in and entering into life-affirming practices based in frameworks of reproductive justice that are about valuing and upholding the life of all living beings. As Jobin (2013) and TallBear (2015) highlight, this is a deliberate move that seeks to restore the possibility of good relations with other living beings as decolonial praxis. I believe we can also read this as a radical decolonial vision of abolition and restorative justice.

The premise of non-consensual inclusion of Indigenous lands and life is an ongoing theme within Indigenous Feminist writing on carcerality, and this can further be noted in the ways this literature engages with the racialized, gendered and sexualized impacts of colonialism by centering the relationship between the wellbeing of lands, waters and women and Two-Spirited peoples.<sup>255</sup> Acknowledging their roles as decision makers, knowledge holders and life-givers with deep connections to place tells us that their dispossession historically through the Indian Act (Ebert, 2017) is based on ongoing legacies of racialized, gendered, sexualized and classed hierarchies that have entailed their ongoing explicit targeting through containment and the carceral net (Simpson, L. 2017). Harm to their bodies and harm to the land through poisoning, death, removal and assimilation all work to disconnect relationships to land, culture and community and therefore continue the settler colonial process of dispossession through contemporary

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<sup>255</sup> Drawing on the work of Deena Rhymes (2008), Dory Nason (2016) points out that there is a long tradition of carceral critique within Indigenous writing. For example, Kanien'keheka intellectual Joseph Brant criticizes North American prisons as early as 1786 in a letter to a British colonial official. Mohawk feminist Beth Brant in *A Gathering of Spirit* (1988), included a number of contributions from incarcerated women as part of this anthology of Native writing (Rhymes, 2008; Nason, 2016).

practices of imprisonment, assimilation and containment for the purpose of theft.

Indigenous feminists therefore suggest that practices of carcerality go beyond neoliberal governance models and are rather about central categories of racial and gender formation within capitalism and empire (Bird, 2011), which require frameworks of knowledge production that make it possible to forcibly include land and other living beings for subjugation through forms of non-consensual dominion over life that are perceived as legitimate.

With respect to her own nation, Leanne Simpson (2017, p. 8) describes Kina Gchi Nishnaabeg-ogamig as a place, hub, network, and web of deep relations and “connections to each other, to the plant nations, the animal nations, the rivers and lakes, the cosmos, and to our neighbouring Indigenous nations[...] cycling through time” and as “an ecology of intimacy[...] an ecology of relationships in the absence of coercion, hierarchy, or authoritarian power.” Simpson therefore suggests that it is not just through explicit criminalization, surveillance, and policing of women’s bodies, but the ways they are subject to ongoing harm through the continual imposition of settler colonial institutions into their everyday lives, much the same ways as the land and water are harmed through invasive governance practices and resource extraction. Therefore, for colonial carcerality to succeed it could not have only been about constraining, restraining and suffocating the life of Indigenous persons that seemed deviant and criminal, but of targeting the life force of the land, water and animal and plant nations that Indigenous peoples have been in longstanding relationships with since time immemorial.

Contemporary struggles for the land and justice for Missing and Murdered, women, girls and Two-Spirited persons are not only about re-building relationships to land and territory, but about restoring life in what many may consider the least likely of places. Erica Violet Lee speaks of this in her piece, *In Defence of the Wastelands: A Survival Guide*:

Spaces that are considered not simply unworthy of defence, but deserving of devastation, are named “wastelands.” Wastelands are places where no medicines grow, only plants called “weeds.” A wasteland is a place where, we are taught, there is nothing and no one salvageable. A wasteland is a person denied safe haven because she is full of the chemicals that make survival less painful. Wastelands are spaces deemed unworthy of healing because of the scale and amount of devastation that has occurred there.

Wastelands are named wastelands by the ones responsible for their devastation.

Once they have devastated the earth—logged the forest bare, poisoned the water, turned our neighbourhoods into brownfields so that we must grow our vegetables in pots above the ground—once they have consumed all that they believe to be valuable, the rest is discarded.

But the heart of wastelands theory is simple. Here, we understand that there is nothing and no one beyond healing. So we return again and again to the discards, gathering scraps for our bundles, and we tend to the devastation with destabilizing gentleness, carefulness, softness.

When Tina Fontaine’s body was found in Winnipeg’s Red River wrapped in a duvet weighed down by stones in August 2014 and Raymond Cormier was found not guilty of second-degree murder after the trial in February 2018, representatives of Tina’s family and community leaders highlighted the ways the so-called safety net of institutions meant to protect her had all failed her (CBC Indigenous, 22 February 2018).<sup>256</sup> They highlighted that Tina’s life makes clear how the more included she became within settler state institutions, the more insecure she became. Instead, settlers’ relationships to land and

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<sup>256</sup> For example, her family and community was clear that what happened to Tina was hard evidence that the Winnipeg police, Child and Family services, and the justice system could not fulfill those promises of “protection.”

property are to be secured at all costs (Palmer, 22 February 2018). I want to suggest here that the harm Tina suffered as a result of this coercive inclusion can be understood as the same harm that is happening to the lands and waters and other living beings through contemporary exercises of colonial carcerality. By coming to recognizing the land as territory and property it becomes possible to see the precise ways settler innocence remains enshrined in settlers' relationships to land and Indigenous life.

Standing in solidarity with the family of Colten Boushie, whose white killer, Gerald Stanley, was acquitted only a few weeks earlier, community leaders stated that reconciliation is about *all* Canadians taking responsibility for the preservation of colonial innocence in our institutions and making a choice to stand with Indigenous peoples to ensure that this does not happen again.<sup>257</sup> Lee (2016) tells us, "To provide care in the wastelands is about gathering enough love to turn devastation into mourning and then, maybe, turn that mourning into hope." "It's hard to distinguish between mourning and hope for me, except that mourning is about knowing there have existed creatures here worth saving who could not be saved," she says. Asserting that Tina's presence was with her, Tina's aunt Thelma Favel calls for healing and says, "She was silenced but still her cries are being heard everywhere. This is not over yet. She is going to do something."

Despite the ongoing harm to communities, Indigenous women continue to rebuild relationships to the land, each other, and other living beings including ancestors, forming networks of kinship in resistance. Lee and Favel acutely remind us that colonial

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<sup>257</sup> Gerald Stanley's innocence rested on the all-white jury's belief he was not criminally culpable in his death.

carcerality can never be theorized in isolation from resurgence—a point that must be foregrounded. What they draw our attention to us that it is in this restoration and healing of *all* life that we might find a way to move forward. It is in this claim where we find a framework of reproductive justice that includes all living beings in its vision (Boissoneau & Sewell, 2018), and which I read as gesturing that for settlers to understand the violence of our institutions, we must necessarily contend with ourselves as perpetrators of colonial harm, and/or as complicit in the white settler institutions that make this harm possible.<sup>258</sup> And indeed, the violence within which we are very well capable of exercising shows us something about the relations of harm we, in different ways depending on our relations of privilege, are also made by. If settlers are able to contend with the idea of the disappearance of Indigenous women, girls and Two-Spirited persons, then we should also be able to contend with the idea that the harm colonial carcerality perpetrates contributes to the relational ecologies of intimacy that are also causing the lands, waters and other living beings to disappear. What reparative and restorative frameworks of decolonial justice would allow us to begin to contend with the magnitude of this harm and suggest possibilities to begin a process of healing and accountability to Indigenous struggles for justice on and for this land?

The conditions of non-consensual inclusion through the settler state are many and are still finding ways to extend themselves into every aspect of Indigenous people's lives. Whether Indigenous peoples must leave or are removed from their land, due to

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<sup>258</sup> For additional elaboration on the concept of reproductive justice from Indigenous perspective, see Lumsden (2016).



imprisonment, or from their families and communities through the foster care system, or environmental racism, or protesting pipelines and mining projects, the Canadian state continues to govern by keeping Indigenous peoples, children and lands in custody through containment and the carceral net. When Indigenous people do not have any or enough control over education, or access to traditional healing and ceremony, or are coerced into allowing resource extraction on their lands, and siphoned into particular labour markets as a means of assimilation, each of these is evidence of the varied expressions of the carceral net in content, but not in form. Even when Indigenous peoples are killed, their death is a form of exploitation because it directly facilitates the state's ability to acquire land. In order to exist, Canada requires and utilizes a variety of coercive and punitive mechanisms in order keep Indigenous peoples in a state of forcible inclusion in order to make their labour, land and bodies into a useful and exploitable force that extends settler colonialism. Acknowledging this violence amidst ongoing Indigenous resistance and resurgence means we must acknowledge Canada as criminal and settler colonialism as the condition whereby Indigenous people are never allowed to say no to the continuation of the settler colonial project, and yet they continually find ways to do so.

Though it may be a bold statement, this project claims that without colonial carcerality, settler colonialism would not be possible in its current iteration in Canada and on Turtle Island. This also means that, as previously mentioned, abolition is a uniquely constitutive part of struggles for decolonization but not synonymous with it (Tuck & Yang, 2012). When lands and waters are granted personhood the underlying assumption

is that personhood and citizenship is qualified, ready and able to protect them. What Indigenous feminisms highlight in terms of a critique of (neo)liberal recognition is the ways in which these frameworks have also been applied to land in the Canadian context as a coercive and assimilationist exercise. In other words, it is a framework that continues to legitimate non-consensual harm through forceful inclusion, which has implications for criminalization and assimilation of land and bodies within the settler state and raises foundational questions about how we can take account for land within transnational feminist theorizing of the hierarchies of power shaping colonialism and empire in IR.

## Conclusion – Towards Decolonial Visions of Abolition and Restorative Justice

Borders and prisons—walls and cages—are global crises. Walls and cages are fundamental to managing the wealth, social inequities, and opposition to the harms created by capitalism and the present round of neocolonial dispossession. The work of making and remaking state institutions of citizenship, punishment and war shapes the human condition at this moment. But what *is* this moment, and what kind of crisis is this? Jenna M Loyd, Matt Mitchelson, & Andrew Burrridge, *Beyond Walls and Cages: Prisons, Borders, and Global Crises*, 2012, p. 1

How did they get our blueberry meadows  
our spruce willow groves  
our sun clean streams  
and blue sky lakes?  
How did they get  
their mansions on the lake  
Their cobbled circle drives  
With marbled heads of lions on their marbled gates?  
[...]  
How did they get all the stones?  
Those stones in their fireplaces,  
Those stones around their necks,  
The boulders in the whites  
of their eyes  
Those stony stares,  
How did they get the marbled stones in their hearts?  
[...] Emma LaRocque, *My Hometown: Northern Canada, South Africa*, 1992 [2017], p. 67

### Bridging Carcerality: Situating Colonial Carcerality within Global Politics

If “borders and prisons” and “walls and cages” are themselves global crises, then this project suggests that it is impossible to understand this crisis and work towards abolition without connecting the institutions of citizenship, punishment and war to the taken for granted assumptions, hierarchies and theft of bodies and lands that formed the international system and modern state. Floris White Bull’s words at the outset of this project recount the moment when she learned “that at the base of the system is a person in a cage” as water protectors were being arrested by police at Standing Rock Reservation (Dewey et al., 2017). I believe this knowledge foregrounds that the foundational violence

of settler colonial states is that carcerality extends and manages harm to *both* Indigenous bodies and lands. This violence continues with differences and similarities today in the midst of ongoing resistance and resurgence, where relationships to land and life are being restored and healed despite ongoing efforts to re-cast the carceral net. This foundational violence also cannot be understood outside the theft of black bodies and lands as making possible both the expansion of settler colonialism in the Americas at the same time as it facilitated imperial and colonial expansion in Africa and Asia.

One of the central contributions of this project is the notion of colonial carcerality, which allows us to bridge contemporary theorizations and practices of carcerality through a historically informed analysis of the role of imprisonment and the production of carceral space in reconstituting relationships between bodies and lands which are transnational. While I make a variety of connections throughout this project to the ways the expression of colonial carcerality in the Canadian context has always been and continues to be transnational, there has not always been space to fully explore all the ways its historical and contemporary manifestations intersect with other racialized, gendered, sexualized, classed and ableist hierarchies. I argue that as a governance strategy, colonial carcerality relies on inflicting ongoing harm to land, and to Indigenous, gender non-conforming and poor people of colour through criminalization. It therefore provides a framework to understand land alongside labour as integral to the social relations of power that make Canada possible as a settler state within past and current practices of empire. Drawing from the contributions of Indigenous resurgence and Indigenous feminist literature, this concept understands ongoing harm to land, waters and other living beings as a condition

of possibility for carcerality within the settler state and, following from these insights, begins to imagine possibilities for restorative justice that value the life of all living beings as an entry point into an understanding of decolonial abolition within the settler colony. Charting its imperial legacy is a necessary dimension of this work in order to be able to ground an analysis of carcerality in place through its distinct role in the Canadian settler colonial context. This is necessary because “global politics exceeds the study of imperial administration, but the field of IR arises out of it” (Shilliam, 2018). Therefore, I aim to establish some central connections to contemporary theorizations of carcerality within global politics in light of both their intellectual importance and political urgency.

This entry point to the project and its vision is made possible through the analytical insights of Postcolonial, Black, Indigenous, women of colour and queer feminisms and in this sense the contribution I provide here is only novel in so far as it builds on lifetimes and communities of work fighting the lived experiences of oppression. The very possibility that I could write this project comes out of the work of so many other radical women and visionary intellectual and political leaders. What types of connections does colonial carcerality allow us to make to understanding the contemporary practices of imprisonment and production of carceral space as contemporary global phenomena? How does the extension of settler colonialism in the Canadian context lend insight into and inform the role of carcerality in ongoing settler colonialism and empire? When Chinyere Oparah suggests that there is not a “universal and undifferentiated global carceral regime” but that the “prison is a local manifestation of transnational flows of people, products, capital, and ideas” I am prompted to interrogate the specificity of these linkages through

Canada's relationships as a settler colony as always slightly peripheral to empire's center (Sudbury, 2005, p. xii). Still, more work could be done to trace out these flows in historical and contemporary context. What this project allows for in this future work is a contribution to carceral studies that centers land and the work of Indigenous feminists who, like Black feminists, have generated knowledge out of the lived experiences of criminalization and the carceral net. In honouring the historical and geographical situatedness of these relationships, tracing out the role of land and indigeneity in this project primarily will make this future work possible.

At the outset of this project I establish that carcerality is part of what makes the theft of labour *and* land possible. I believe this has important implications for the kinds of connections that can be made between forms of violence, as well as the ways less extreme or visible forms of violence make possible their more extreme iterations. For example, Aimee Meredith Cox (2015; Cummings, 2018) speaks about slow death in contrast to forms of lethal force and police brutality as a way of understanding the other forms of harm and diminished value experienced in African American communities in the United States. Anna M. Agathangelou (2015) also challenges us to think about the global dimension of similar questions when she highlights that the violence black bodies are subjected to through police brutality is linked to militarization and globalized racial terror, especially when this brutality is deeply embedded in historical legacies of struggles against white supremacy. In doing so she suggests the importance of situating the killing of black bodies in a reading of black criminality that allows us to understand that

racialized bodies must continue to be positioned as a source of danger and threat within global neoliberal capitalism.

This project follows on these interventions by suggesting a theorization of carcerality that also seeks to link these forms of violence, not because they are the same, but because they allow us to tease out their relationships to each other and their corresponding (in)visibilities as a means of understanding the production and consolation of different kinds of dominant power for the purpose of its undoing. Though there is a growing acceptability of the role of anti-prison work in struggles against capitalism, colonialism and militarization, this project more explicitly provides a framework through the concept of colonial carcerality to understand *land as integral to the production of carceral space*, and which makes Canada possible as a settler state. As such the contribution of this project goes beyond an analysis of the role of carcerality in IR but changes the way we can theorize carcerality within settler colonialism and empire whether the point of analysis is logics, institutions or broader governance practices.

Deconstructing the Walls at IR's Margins: Contributions at the intersections of settler colonial and carceral studies

The decolonial and abolitionist visions and political commitments of this project are also about interrogating both their disciplinary validity and transgression. For instance, I argue that the inability for IR to 'see' the prison and prisoner is connected to its inability to 'see' settler colonialism. This is not an argument for inclusion within a framework in exchange for the perpetuation of violence and its justification. As I show in Chapter 1, when we begin an analysis of carcerality with that of coercion and non-consent

we arrive at radically different possibilities for understanding the terms of political community. The role of property, but especially punishment, has largely been taken for granted in IR and Political Science. As I show, in Chapter 1 and over the course of subsequent chapters in this dissertation, it is actually in the exploration of the relationship between property and punishment where it becomes clear that the conditions of non-consent are ones which shape the continual forceful inclusion of Indigenous bodies and lands in a project of assimilation and genocide.

The question this project began by asking is: How do practices of imprisonment and the production of carceral space uphold and reproduce empire and settler colonialism in the Canadian context? Whose bodies, land and resources must be mobilized to do this and what practices, logics, and subjectivities do they rely on? As I establish in the first chapter, when we begin from a place that exposes IR as a venue for imperial politics we must necessarily interrogate the ways the production of the international system relies on carcerality, not only to uphold racialized, gendered, sexualized and classed hierarchies, but as a method of stealing land and labour. Therefore, rather than only viewing the prison as an institution and technology of power that was exported during the colonial period, this work establishes the logics of carcerality as bound up in social relations of power that are part of what makes imperialism and colonial expansion possible. Here I demonstrate the prison and prisoner to be central to imperial and colonial expansion, and that land, in addition to labour, is a central requirement and target of carceral power, which always becomes reconstituted through struggles against and resistance to this



dominant power. This is an underexplored relationship in IR, whose own legacies can be traced to the modern social contract canon.

The literature on imprisonment in International Relations is unpacked further in my second chapter, where I argue that there remain notable gap in how imprisonment and the production of carceral space has been examined within critical IR. In this chapter I demonstrate that Postcolonial and Black feminist approaches provide a constructive way into understanding the role of coercion and criminalization in the production of the international and the reproduction of global relations of power, however there are still selective limitations around the question of land and settler colonial governance in their readings of the social contract and the production and governance of criminality. I argue that it therefore becomes important to build on and contribute to these analyses through an in-depth reading of the role that carceral logics, institutional frameworks, and governance practices play in the state-building project in Canada. I also argue that examining these relations historically lends insight into Canada's strategic position in relation to imperial centres. As I show, without taking up land and the settler colonial question, even radical decolonial and abolitionist engagements can result in contributing to the criminalization of Indigenous life and land by failing to establish how categories of criminalization are informed by the settler colonial mappings land, place and their attendant relations.

In Chapter 3, I historicize land and settler colonialism in the Canadian context. I argue that Canada's unique and strategic position in relation to imperial centres as one that can be understood to be both shaped by benevolent liberal non-violence and the

necessity to access land to develop. I do this by ideologically and physically grounding a reading of Canada's position through a reading of early settler colonial relations and the colonizing logics that shaped them, namely *Manifest Destiny* and *terra nullius*. Through this reading, I centralize the role that land and liberalism played in shaping Canada as a British colony and show how these histories continue to shape Canada's role as a resource-driven economy alongside its celebrated identity as a self-consciously non-violent state, and benevolent middle power.

In Chapter 4, I examine the ways that Indigenous and settler relationships to land were reconstituted in early settler colonial Canada through pre-Confederation law and legislation. Through an analysis of the Treaties and early agreements alongside the imposition of English common law and pre-Indian Act policy (The Land Acts, the Gradual Enfranchisement Act, and Gradual Civilizational Act), I show that Indigenous and settler relationships to land were being redefined through frameworks of criminality and innocence. Further, punitive and coercive policies and increased criminalization in the form of jail time coincided with an increasingly assimilationist agenda which sought to redefine relationships to land through a private property framework. By primarily exploring how relationships between bodies and lands are reconstituted during this period through the framework of carceral logics, I begin to theorize the concept of colonial carcerality. Here I illustrate the role of carceral logics as central to the early stages of colonial expansion and state formation through examining the role of coercion and non-consent in dispossession. As a whole, this chapter demonstrates how logics of punishment and carcerality are at work well before the most aggressive period of colonial expansion,

a period made possible through these less overt iterations of these logics. Here the contribution to postcolonial and decolonial approaches in the discipline is made by highlighting the particularity of how empire and colonial relations of power and Indigenous resistance unfolded historically in the Canadian and Upper Canada contexts.

In Chapter 5, I analyze early stages of state formation prior to and immediately after Confederation to highlight how westward expansion and the development of a national policy coincides with a more aggressive period of assimilation and genocide through the creation of a carceral apparatus as a central mode of Canadian governance. The creation of the reserve, residential school and pass systems, alongside the formal and informal practices of the Department of Indian Affairs, Indian Act, police, Church and local officials were part of more aggressive strategies of child removal, confinement, limited mobility and punishment which explicitly targeted and criminalized Indigenous relationships to land and the precise ways in which Indigenous peoples were moving on and interacting with the land (i.e. ceremony, hunting practices, maintaining kinship and family relationships between communities). During this period, the development of a carceral apparatus operates to uphold and reconstitute racialized, gendered, sexualized and classed relationships to land and the policing of ‘public space’ becomes more pronounced (i.e. methods of surveillance and policing for arrest and detention). Here I outline how Canadian settler colonial governance relies on a carceral apparatus during the earliest stages of state formation to develop increasingly aggressive assimilationist policies alongside the clearing of the land for more invasive agricultural practices and to consolidate territory.

In Chapter 6, I draw on Indigenous resurgence and Indigenous feminist literature to argue that contemporary claims to “reconciliation” in the Canadian context are occurring alongside ongoing practices of colonial carcerality. I argue that Indigenous critiques of liberal frameworks of recognition build on the notion of colonial carcerality and I subsequently develop this claim through the ideas of containment, non-consent and the carceral net. Bringing a historicized account of colonial carcerality to bear on contemporary conversations of reconciliation, allows for an analysis of colonial carcerality which connects the ways imprisonment and the production of carceral space continue to be used to reorganize, constrain and harm the relationships between bodies, land and life. Indigenous feminist articulations of carcerality foreground the relationship between land and subjectivity and continue to assert the ongoing work of Indigenous women towards reproductive and ecological justice. The concept of colonial carcerality therefore provides a framework for carceral space which highlights ongoing harm to land, water and other living beings as a condition of possibility for carcerality within settler colonialism and empire, and draws from these insights to begin to imagine possibilities for restorative justice that value the life of all living beings as an entry point into an understanding of decolonial abolition within the settler colony. Here I contribute in more precise ways to Transnational feminism in IR by analyzing the role of land in the creation and fostering of decolonial subjectivities in settler colonial contexts.

As previously mentioned, this project contributes to theorizing the role of carcerality in IR primarily through demonstrating the connections between more and less overt types of violence: the use of force, coercion and non-consent. Beginning with the

notion of non-consent as an entry point into the harms of white heteropatriarchy, this project is explicitly feminist in its orientation and highlights the importance of a Transnational feminist framework as a method of exposing the relationship between ecological violence and genocide that Indigenous feminists offer. The understanding that the subjugation of bodies and lands occur together pushes contemporary feminist articulations of gendered and racialized violence, state formation and capital accumulation in the discipline, as well as transitional justice paradigms for reparative and restorative justice.

This project also introduces the question of land to carceral studies and specifically builds on Black feminist articulations of a globalized carceral apparatus and Prison-Industrial Complex. For example, challenging the notion that prisons are built on ‘surplus land’ or that postcolonial and neocolonial racialized geographies that require capturing bodies can accurately account for settler colonialism that is ongoing. In this sense, restorative and reparative justice from the harm of prisons and policing including the experience of family separation remains incomplete as an abolitionist strategy without centering relationships to land. Restorative justice frameworks are also not the same as a traditional governance practices within Indigenous communities, though they may share some similar commitments and goals (Monchalin, 2016). Reproductive justice (Khatim, 2018) necessarily requires the return of people to their families and to their lands, and a return of the land to Indigenous stewardship so that relationships can be healed (Belcourt, as referenced in McMahan, 2016).

This project can therefore also be said to be situated at the intersection of carceral and settler colonial studies, where abolition becomes impossible without dismantling the institutions and structures of settler colonialism itself. Finally, but most importantly, a reading of carcerality within settler colonial studies is not possible without listening to the theorizations of carcerality already present in Indigenous feminist scholarship and activism. In this sense, I hope I have contributed to the visibility of Indigenous feminist knowledge production and to a feminist politics built on advancing the struggles for reproductive justice and life for all living beings as integral to both decolonizing carcerality and conjuring visions of decolonial abolition.

#### Towards Decolonial Abolition and Restorative Justice

What do decolonial visions and practices of justice put forward by Indigenous peoples require of settlers? What processes of transformation are required for settlers to deconstruct and disappear institutions and practices of colonial carceral space through the affirmation of life? What does it mean to understand abolition as deeply embedded in a decolonial project? Prison abolitionists tell us that alternatives to the harm of prisons are possible and are deeply embedded in visions of restorative justice. However, if we understand carcerality as central to a settler colonial project, and the concept of colonial carcerality as a framework within which it becomes possible to view carcerality as not only a strategy of assimilating, stealing and disappearing bodies, but also lands, ecosystems and the life force and relationality within and between living beings, then the spaces of abolition and of restorative justice defy the artificially constructed walls of prisons themselves. This affirms that the critiques that Indigenous artists, intellectuals,

and activists have been making about reconciliation need to be upheld and that settlers need to listen and take responsibility for understanding our role(s) as ongoing perpetrators and beneficiaries of colonial carceral violence, coercion and non-consent. What would it mean to begin to understand the harm that those of us who are settlers are capable of by honouring the truths of Indigenous peoples as a way to begin to excavate the truths within ourselves, in our unique and varied positionalities as perpetrators and also often victims of racialized, gendered, sexualized and classed violence?

This project brings forward a notion of carcerality that is centered on its relationship to settler colonialism, however it remains important to uphold that there is nothing inherent to prisoner or abolitionist struggles that ensures they are compatible with Indigenous peoples' struggles for decolonization. This calls for a much clearer theoretical and empirical base to understand various histories and reproductions of carceral power as a method of governing distinct populations deemed deviant and/or non-conforming as a means of upholding neoliberal colonial capitalism. In claiming that carceral logics, institutions and practices of governance are a central feature of settler colonialism, I offer ways of engaging with carceral relations that denaturalize its legitimacy, claims and perceived naturalness. I also strive to theorize carceral relations that center Indigenous thought systems, life and land in any conversation about carceral power in settler colonial contexts and on Turtle Island. As Scott Morgensen asserts,

Settler colonialism is naturalized whenever conquest or displacement of Native peoples is ignored or appears necessary or complete, and whenever subjects are defined by settler desires to possess Native land, history, or culture. Settler colonialism thus must be denaturalized not only in social and political spaces but also in definitions and experiences of subjectivity. (2011, p. 16)

Following from this, we might begin to imagine what it would mean for struggles for abolition to de-naturalize settler colonialism. To take seriously and address colonial carcerality as a governance strategy also means challenging ideas of subjectivity that do not take account for the role of land in shaping settler subjectivities as well.

This means that even though I am arguing that abolition is impossible without decolonization, this does not mean there are not important tensions between the ways the power of carcerality and settler colonialism are being articulated across Turtle Island in the contemporary context.<sup>259</sup> Paula Gunn Allen (1998) argues that colonial, classed, racialized, gendered and sexualized hierarchies between life forms require each other to be made possible, however it is also important to remember that the way privilege maps onto these systems in varying contexts creates tensions between struggles for justice, especially when their co-constitution is not thoroughly unpacked and taken account for (Morgensen, 2011).<sup>260</sup> This is one way in which “settler moves to innocence” obfuscate that decolonization at its core “brings about the repatriation of Indigenous land and life” (Tuck & Yang, 2012, p. 1). Tuck and Yang (2012) remind us of the dangers in including struggles for decolonization within the broader social justice umbrella since it is this type of non-consensual inclusion that constitutes a dangerous “form of enclosure.” This is

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<sup>259</sup> An important element of future work in this area is to more clearly chart the histories and contemporary manifestations of abolitionist and decolonial struggles in order to unpack these overlaps and tensions.

<sup>260</sup> For instance, in Morgensen’s study of the emergence of modern queer politics in the United States, he demonstrates how Non-Native queer modernities and politics attempt to “reconcile them to inheriting conquest” by coping with queer exile through establishing their relationship to Native culture and sexualities as a means of naturalizing their place on the land (2011, p. 3). Engaging further with Allen’s work, he points to the danger in non-Native queer identities and desires being seen as the same as or wholly consistent with Indigenous and Two-Spirit struggles for self-determination and exposes the seduction of especially white queers to ‘become Native’ because it recoups the discomfort of what it would mean for queer people to acknowledge their complicity in land theft and in a settler colonial project.



because it tames and settles what is precisely so unsettling about the claims of Indigenous peoples on this land by attempting to re-cast settler complicity and innocence that are so often reproduced in other theories of social change. The ways in which settler innocence is articulated here as bound up with multiple forms of enclosure is telling, because this means that if we do take care to understand Indigenous feminist articulations of carceral space within their experiences and theorizations of settler colonialism as not simply metaphorical, those of us who are settlers are left to contend with our reproduction of both the material and immaterial implications of this epistemological violence. This requires acknowledging that carcerality does not only work alongside and through settler colonialism, it also functions through the disciplining logics of whiteness, heteropatriarchy and capitalist dominion, even when the political claims are something different.

Eva Mackey argues that since the notions of settler certainty and settler futurity (Tuck & Yang, 2012) are central to the colonial process, visions of decolonization must necessarily unsettle these. She states that,

denaturalizing settler beliefs and authoritative practices based on supposedly self-evident certainties about the primacy of settler state sovereignty over Indigenous lands and peoples is important, both in terms of law and public policy, and also for settler subjects and national cultures (Mackey, 2016, p. 125)

It is these assumptions, she says, that comprise our “cognitive prisons” as settlers on this land (p. 125). Considering decolonization as a material practice of land repatriation is central (Tuck & Yang, 2012; Mackey, 2016), but I believe there may be ways of understanding this process as settlers that more readily allows us to contend with the reparative work that healing from colonialism requires of us. For example, the return of

land and stewardship of the land must be honoured not just out of principle, but because the knowledge that comes from the repair of these relationships, if Indigenous communities and peoples wish to share it with us, will continue to show us what work those of us who are settlers need to do to repair the harm we have caused and allow for healing. This is knowledge that Indigenous communities across Turtle Island have maintained through their survival of genocide, and it is through Indigenous peoples' embodied practices of this knowledge that are already asking *all* Canadians to contend with these truths and questions. Here I wonder what it would mean for settlers to learn to heal relationships land as a practice that dismantles settler futurity through settler de-subjectification.

In this sense there is a need to step into practices of fulfilling treaty responsibilities or, in unceded territories, to acknowledge that treaties (and their dishonouring) are what makes Canada possible as a settler nation, while at the same time holding our very real capacity as settler individuals and as a settler society to do harm. This suggestion is not intended to create paralysis, but to initiate accountability measures to be held to Indigenous people's visions of decolonial justice interpersonally and institutionally. How do settlers become accountable to upholding Indigenous visions of decolonial justice on this land, when this inherently means accountability to the land, water and all living beings? Practices of decolonial and restorative justice are about our capacity to move towards a transformative future. I have come to understand these practices as uncomfortable and always deeply challenging, however the ongoing personal healing they have required of me has prompted me to be able to understand that we can

outgrow and outlive the visions of life that are dictated to and for us. I believe this has the capacity to change our collective visions of and desires for decolonial futures. These teachings surround us, but we have to be willing to seek and listen. I have yet to experience a more transformative, revolutionary and life affirming act.

### Some Final Reflections: Gathering and returning the stones

The quotations included and juxtaposed at the outset of this chapter by Loyd, Mitchelson, and Burrridge, and LaRocque highlight some of the tensions and overlaps between contemporary studies of imprisonment within globalization and transnationalism, and then the ways Indigenous feminisms have a long tradition of making connections between historical and contemporary carceralities across time and space by understanding harm to the land and to Indigenous bodies as part of an assimilative and genocidal project. What would it mean for settlers to de-invest from participating in upholding unaccountable white settler institutions and forms of privilege? What would it mean to understand that the stones settlers use to build borders, prisons and walls as the same stones that weighted down the blanket that carried Tina Fontaine's body to the bottom of Winnipeg's Red River? What if, as Métis scholar and poet Emma LaRocque suggests, the marbled stones at our gates are the same stones that so many settlers hold in their hearts?

Recalling Chapter 2 and the methodological commitments I make in this project, I endeavour to be held accountable to Tuck and Yang's challenge that "decolonization is not a metaphor" by listening deeply to the analyses of Indigenous feminists. This means that when Leanne Simpson (2008) describes the waters as being shackled by damming

projects, or when Six Nations artist Shelly Niro, in her short film *Niagara* (2015) speaks to Niagara Falls as her grandmother who is in jail, I journey towards hearing what it is that I am being asked to hear, while also respecting that there is knowledge and meaning I am not permitted to have access to. In my understanding and journey through this project this has come to mean hearing that these are not metaphorical descriptions of settler colonialism, but what settler colonialism is, *literally*.

This learning has changed how I have come to understand the extent of the deep contributions of Indigenous feminisms to carceral studies. Through this reading and writing, I have also come to appreciate the feelings and guidance I am being asked to pay attention to, including what my own heart is telling me, even when it is difficult to keep myself open and to trust. At those times, I come back to a familiar and comforting mantra of the Walls to Bridges program,<sup>261</sup> which has been so central in my shaping as a scholar and educator, and tell myself to “trust the process” because sometimes this work is much larger than ourselves. This project and the continual obstacles I faced writing it, was itself evidence of the healing work I needed to do to be able to listen and hear in the ways I have spoken about here. In these ways, I am committing myself to a process of doing the ongoing work required of me in order to fulfill my responsibilities in upholding the treaties and being accountable to Indigenous visions of decolonial justice on this land in light of the harm that has been done as a result of their disregard. I have come to understand this as continuing to work in the capacity that is necessary and asked of me

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<sup>261</sup> I speak about the Walls to Bridges program in Chapter 2. For additional information, see <http://wallstobridges.ca/>.

towards the reparative and restorative healing that our relationships to each other, ourselves and other living beings require. What I have come to learn through my relationships and the spaces I have shared with Indigenous peoples is that this work requires settlers to respond to a political project in which we are being asked to play an important role without dictating what that role is or its terms. I think that when those of us who are settlers can begin to contend with our ability to perpetrate colonial harm and violence that this brings us closer to drawing connections to other forms of gendered and racialized violence. For example, where it becomes clear that survivors must set the terms because it is their experiences and needs that will tell us how to move forward in a good way. The healing needs of survivors will tell settlers a great deal about ourselves if we are willing to listen.<sup>262</sup>

If we come to understand that the stones in our (white) settler hearts, are the same stones that were made to sink Tina's body to the river floor, then our relationship to and implication in colonial harm changes. This therefore can no longer only be harm that settlers and the white settler state have caused, but this harm is what whiteness and settlerness *is*. LaRocque reminds us that the ways these settlers have come to possess the stones are not without some cost for settlers and implication for their fate as well, even if it pales in comparison to Tina's, or to the thousands of missing, murdered and stolen Indigenous women, Two-Spirited persons and children across Turtle Island.

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<sup>262</sup> At the same time, I do not claim to be able to hear everything I am being asked to hear by Indigenous feminists, or the Indigenous women, youth, and Two-Spirit peoples in my life. When this is pointed out to me, I strive to always remain accountable by acknowledging when I have failed to listen or act.

The work that Indigenous scholars have done to prioritize questions of de-subjectification as rejection of the colonial politics of recognition and as a means of survival and healing is gesturing to settlers that we also need to contend with what it means to begin a process of undoing settler subjectivity with the goal of transforming our relationships to each other and to this land so that there are no longer any colonizers. Acknowledging the capacity of white settler institutions and individuals invested in them to perpetrate harm and being willing to be held accountable for this must be prioritized. This is because doing so reminds us that settlers are not equipped, nor are we in a position to direct the way forward, since this must be dependent on the needs, visions, and embodied knowledge of Indigenous peoples themselves. LaRoque tells us it is possible, and I read her words to suggest that the work of de-subjectification of (white) settlers is work that requires embarking on a journey toward a deep understanding of the ways the violence settlers are capable of is not without cost since it is not only about putting the stones in service of harm, but about the belief that the stones can be objectified and appropriated in the first place as the crux of settler subjectivity. LaRocque implies that this harm perpetuated by settlers also allows us to harm ourselves, which prompts me to ask: How do settlers learn to use the land in a way that perpetuates harm? What is required to excavate our own pasts and histories to understand the healing, reparative and restorative work that is required of us individually and collectively so that we can no longer perpetuate this harm to ourselves, each other and other living beings?

My experience attending the Walls to Bridges facilitation training, which took place at Grand Valley Institution for Women in the Summer of 2014 was the first time the

walls I had built in my heart explicitly became visible to me. This was also the first time that I learned to understand that the feeling of coming back to life that I experienced in our circle with the support of teachings by Anishinaabe Elder Gale Cyr, was directly connected to dismantling those walls within ourselves, as work that is integral to being able to dismantle the walls between us. This was a feeling that I remember holding in my heart; it was a feeling that I came to recognize as aliveness, and a feeling brought me to tears, in part, because it took me a long time to understand that it was a feeling I did not know, or could barely remember. It was a feeling that prompted as much unsettledness, discomfort and disbelief as it did hope. That was the same summer that I learned the disease that required my Mother to receive an emergency heart transplant ten years earlier, was going to kill her soon. There were no more treatments and very little doctors could do to extend her life at this point. Amyloidosis is a disease that causes protein to accumulate and collect somewhere in the body. For my mother, it had collected in her heart which meant that soon her heart would stiffen and slowly stop. The aggressive sedimentation of protein, as I remember doctors describing, on any major organ will, usually, eventually cause the disease to be fatal. Sometimes I wonder what it means to understand that my Mother died because of a disease that turned her heart to stone.

But what happens to our understandings of stone when placed within their broader ecologies? In many ways there is cultural significance granted to stones as a marker of death and remembrance. For instance, the symbolic and practical function of a tombstone or monument, which is about documenting and remembering life long after it is gone. Rocks and stones have a history of being used as weapons, or form of assault, or as a

method of legalized death. But rocks also have a legacy as being used as forms of unarmed resistance to governing authority, and when LaRocque provocatively makes visible that the stones in settlers' possession are not natural, but stolen, she also suggests that the presence of stones in settler hearts are also not inevitable or permanent.

Rock as ecological phenomena are symbolic of long-term metamorphosis and transformation through processes of extreme heat or pressure, weathering, erosion, and sedimentation which can occur in varied cycles based on geographic and other conditions. Andy Fyon, the former director of the Ministry of Northern Development and Mines Ontario Geological Survey, in recounting similarities he notices between his own scientific understandings and teachings shared by an Anishinabe friend, writes that both interpretations understand that it was rock formations that were the first land masses to emerge from the waters of Earth. The teachings of 'Grandfather Rock' are,

[B]ased on the understanding that the rocks are grandfathers — animate beings with memories and stories to share with those who are able to hear ancestral voices. The legend speaks to the respect held for rocks. One version I heard in northwestern Canada goes something like this: In the beginning, everything existed only in spirit form. These spirits moved around hoping to find a place where they could stay and show themselves. When they reached the sun they knew it was too hot. Finally they came upon Earth, but it was covered with water and there were no life forms. Suddenly, a great burning rock broke the surface of the water and it began to dry out the land. This rock is called Grandfather Rock because it is the oldest of all the rocks. Rocks must be respected because of this.<sup>263</sup>

He goes on to explain that in his geological understanding,

A fiery Earth was born and then cooled to form a solid black surface. Most of that early land was not exposed. It was covered by an ocean that formed from an enormous violent rainstorm which lasted for millions of years. [...] The Earth changed from a fiery body to become a water planet. Small black volcanic islands, born of fire, poked out above ocean — the beginning of dry land. [...] After millions of years, something very special happened. Bacteria appeared. These bacteria ate sunlight and created oxygen, and then life on Earth was changed forever. The record of these early bacteria is preserved in rocks as fossils called stromatolites. Younger examples of the bacteria

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<sup>263</sup> I have independently verified that Andy Fyon was the author of this piece and the recipient of these teachings.



and stromatolites occur in rocks near Thunder Bay. Geologists consider this early life to be the ancestors of every living thing on Earth...our great-great-great-great-great-great-great-grandmothers and grandfathers. (Fyon, 2015)

These different, but complimentary understandings could perhaps be said to add meaning, or at the very least shed light on the weight and transformational potential in LaRocque's words. Holding the truths of these different stories teaches us that the very first rocks that emerged from water are what became the land and made life possible, and are ancestors and therefore record keepers of life on Earth. Given the geographical specificity of these teachings, I am prompted to ask what it means to remove these rocks and stones from their homes with the intention to harm life and without a sense of balance and reciprocity? I am also prompted to consider a very different image of Tina's ancestors carrying her body to the bed of the Red River. This tells me that even in the most extreme and tragic expressions of white settler violence, the life all around us is teaching us something different. When Tina's body was returned home, as her Aunt Thelma Favel asserted, Tina could no longer be silenced because, "her cries are being heard everywhere" and because "she is going to do something." Following Loretta Saunders,<sup>264</sup> Tina's death instigated renewed pressure for an Inquiry into Missing and Murdered Indigenous Women and Girls, and I think that this attests to the message Tina's Aunt shared. Tina's spirit and life-force could not be stopped and remains a continuing force in

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<sup>264</sup> Loretta Saunders was murdered by Blake Legette and Victoria Henneberry in February 2015 and her body was found on the median of the Trans-Canada Highway, west of Salisbury N.B., approximately two weeks after she was last seen. Her case gained national media attention and renewed interest into the crisis of missing and murdered Indigenous women and girls. Her family has argued that her 'white-passing' privilege, (i.e. having light skin, blond hair and blue eyes, and being a university student writing a thesis on missing and murdered Indigenous women), was part of what prompted police action and brought the issue to the national stage. They said that in the initial stages Saunders was advertised as a missing white woman and the family was always given access to police, however this changed once they learned that Saunders was Inuk (Tutton, 2017).

ending this violence.<sup>265</sup> For Tina, like the seven high school students who died in Thunder Bay between 2000 and 2011<sup>266</sup> and the many Indigenous adults and youth across Turtle Island whose bodies have been found dead in rivers and waterways, the river shows us both the disposability of Indigenous life and the land and water within settler society. However, foregrounding the ‘Grandfather Rock’ teaching tells us that when their bodies are found and returned home they rise out of the water with the love of their families and communities. Like the rock that emerged from the oceans, their return defies the terms, imaginaries and foreclosures of anything but decolonial justice, and holds the renewed possibilities for land and life.

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<sup>265</sup> There have been many critiques made of the Inquiry, but this does not over shadow the importance of bringing the crisis of missing and murdered Indigenous women and girls to the national stage. See for example, Palmater (2017).

<sup>266</sup> In her book, *Seven Fallen Feathers: Racism, Death, and the Hard Truths in a Northern City* (2017) Tanya Talaga weaves the stories of the youth, Jordan Wabasse, Kyle Morrisseau, Curran Strang, Robyn Harper, Paul Panacheese, and Reggie Bushie who died over a period of eleven years in Thunder Bay. Five out of seven of their bodies were found in or near rivers (Perkel, 2016). Interestingly, my family eventually learned that my Mother’s new heart, which gave her over ten additional years of life, came from a woman in Thunder Bay.

## References

- Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford University Press.
- Agathangelou, A. M. (2004). *The Global Political Economy of Sex: Desire, Violence and Insecurity in Mediterranean Nation States*. New York: Palgrave Macmillan.
- (2013). Neoliberal Geopolitical Order and Value: Queerness and a speculative economy and anti-Blackness as terror. *International Feminist Journal of Politics* 15(4): 453-476.
- (2014). Fanon on Decolonization and Revolution: Bodies and Dialectics. *Globalizations* 13(1): 110-125.
- (2015, May 6). *Shackled Democratically? Global Raciality, Terror, and the Black Body*. World Issues Forum. Fairhaven College. [Video file]. Retrieved from, from <https://vimeo.com/127271823>
- (2017). From the Colonial to Feminist IR: Feminist IR Studies, The Wider FSS/GPE Research Agenda, and the Questions of Value, Valuation, Security, and Violence. *Politics & Gender* 13(4): 739-746.
- Agathangelou, A. M. & Killian, K. D. (Eds.). (2016a). *Time, Temporality and Violence in International Relations: (De)fatalizing the present, forging radical alternatives*. London: Routledge.
- (2016b). International relations as a vulnerable space: A conversation with Fanon and Hartman about temporality and violence. In A. M. Agathangelou & K. D. Killian (Eds.), *Time, Temporality and Violence in International Relations:*

- (De)fatalizing the present, forging radical alternatives* (pp. 23-42). London:  
Routledge.
- Agathangelou, A. M. & Ling, L. H. M. (1997). Postcolonial dissidence within  
Dissident IR: Transforming master narratives of sovereignty in Greco-Turkish  
Cyprus. *Studies in Political Economy*, 54, 7-38.
- (2004). The House of IR: From Family Power Politics to the Poisies of Worldism.  
*International Studies Review* 6(4): 21-49.
- (2009). *Transforming World Politics: From Empire to Multiple Worlds*. New York:  
Routledge.
- Alexander, J. M. (2005). *Pedagogies of Crossing: Meditations on Feminism, Sexual  
Politics, Memory, and the Sacred*. Durham: Duke University Press.
- Alexander, M. J. & Mohanty, C. T. (Eds.). (1997). *Genealogies, Colonial Legacies,  
Democratic Futures*. New York: Routledge.
- Allen, P. G. (1998). *Off the Reservation: Reflections on Boundary-Busting Border  
Crossing Loose Canons*. Boston: Beacon.
- Altamirano-Jiménez, I. (2013). The State Is Not a Savior: Indigenous Law, Gender and  
the Neoliberal State in Oaxaca. In J. Green (Ed), *Making Space for Indigenous  
Feminism, 2<sup>nd</sup> Edition* (pp. 215-233). Halifax: Fernwood.
- Amoore, L. (2007). Vigilant Visualities: The Watchful Politics of the War on Terror  
*Security Dialogue* 38(2): 215-232.
- Anaya, S. J. (1996). *Indigenous Peoples in International Law*. New York: Oxford.
- Anghie, A. (1996). Francisco de Vitoria and the Colonial Origins of International Law.

- Socio & Legal Studies* 5(3): 321-336.
- (2005). *Imperialism, Sovereignty and the Making of International Law*.  
Cambridge: Cambridge University Press.
- Anzaldúa, G. (1987). *Borderlands/La Frontera: the new mestiza*. San Francisco:  
Spinsters / Aunt Lute Book Company.
- (2015). In A. Keating (Ed.), *Light in the Dark/Luz en Lo Oscuro: Rewriting  
Identity, Spirituality, Reality*. Durham: Duke University Press.
- Armitage, D. (2004). John Locke, Carolina, and the *Two Treaties of Government*.  
*Political Theory* 32: 602-627.
- Arneil, B. (1996). The Wild Indian's Vension: Locke's Theory of Property and English  
Colonialism in America. *Political Studies XLIV*: 60-74.
- Athabasca Chipewyan First Nation and the Tar Sands. (2012, May 4). Shell Case and  
Claim Update. Retrieved from, <https://acfnchallenge.wordpress.com/page/11/>
- Bannerji, H. (2000). *The Dark Side of the Nation: Essays on Multiculturalism,  
Nationalism, and Gender*. Toronto: Canadian Scholars Press.
- Beier, J. M. (2002). Beyond hegemonic state(ment)s of nature: Indigenous knowledge  
and non-state possibilities in international relations. In G. Chowdhry and  
S. Nair (Eds.), *Power, Postcolonialism and International Relations: Reading  
race, gender and class* (pp. 82-114). London: Routledge.
- (2005). *International Relations in Uncommon Places: Indigeneity, Cosmology, and  
the Limits of International Theory*. New York: Palgrave Macmillan.
- (2007). Grave Misgivings: Allegory, Catharsis, Composition. *Security*

- Dialogue* 38(2): 233-250.
- (Ed.). (2009). *Indigenous Diplomacies*. New York: Palgrave: Macmillan.
- Benaway, G. (2016.) *Passage*. Neyaashiinigmiing: Kagedonce Press.
- Bhandar, B. (2015, 30 November). *Law, Rights, and Recognition: Racial Value and Human Life*. Series 1.2: Conditions are now in Transition: The Local, The Border. MFA Fine Art & MFA Curating Lecture Series. Goldsmiths College. [Video file]. Retrieved from, <https://www.youtube.com/watch?v=6p2ixXXLFrc>
- Biemann, U. (2002). Performing the Border. *Rethinking Marxism* 14(1): 29-47.
- Boissoneau, D. & Sewell, C. (Spring 2018). The Way We Speak: Conversations on Reproductive Justice. *The Peak*. 57(3). Retrieved from, <http://peakmag.net/reproductive-justice/the-way-we-speak/>
- Borrows, J. (2017). Canada's Colonial Constitution. In J. Borrows and M. Coyle (Eds.), *The Right Relationship: Reimagining the Implementation of Historical Treaties* (pp. 175-199). Toronto: University of Toronto Press.
- Brettschneider, C. (2007). The Rights of the Guilty: Punishment and Political Legitimacy. *Political Theory* 35(2): 175-199.
- Brown M. & Schept, J. (2016). New abolition, criminology and a critical carceral studies. *Punishment & Society* 19(4): 440-462.
- Brown v. West*, 1846, 1 E& A.
- Buller, M., Audette, M., Eyolfson, B., & Robinson, Qajaq. (2017). *Our Women and Girls*

- are Sacred. Interim Report: The National Inquiry into Missing and Murdered Women and Girls*. Retrieved from, <http://www.mmiwg-ffada.ca/wp-content/uploads/2018/03/ni-mmiwg-interim-report.pdf>
- Butler, C. & Dubinski, K. (2017, July 26). Chippewas of the Thames vow to continue pipeline fight. *CBC News*. Retrieved from, <https://www.cbc.ca/news/canada/london/chippewa-thames-supreme-court-line-9-pipeline-decision-1.4222090>
- Byrd, J. A. (2011). *The Transit of Empire: Indigenous Critiques of Colonialism*. Minneapolis: University of Minnesota Press.
- (2016). Still Waiting for the “Post” to Arrive: Elizabeth Cook-Lynn and the Imponderables of American Indian Postcoloniality. *Wicazo Sa Review* 31(1): 75-89.
- Byrd, J. A. & Rothberg, M. (2011). Between Subalternity and Indigeneity: Critical Categories for Postcolonial Studies. *Interventions* 13(1): 1-12.
- Caibaiosai, V. (2012, March 22). *Reconnecting to Water Ways, Healing Great Lake Communities*. Urgent Storytelling: A Workshop Discussion. Downstream: Reimagining Water. Emily Carr University of Art and Design. [Audio podcast]. Retrieved from, <https://soundcloud.com/rita-wong-1/urgent-storytelling-1>
- Calderon, D. (2017). Speaking back to Manifest Destinies: a land education-based approach to critical curriculum inquiry. In K. McCoy, E. Tuck, & M. McKenzie (Eds.), *Land Education: Rethinking pedagogies of place from Indigenous, Postcolonial, and decolonizing perspectives* (pp. 24-36). London: Routledge.
- Campbell, D. (1998). *Writing Security: United States Foreign Policy and the Politics of*

*Identity*. Minneapolis: University of Minnesota Press.

Carter, S. (2008). Aboriginal People of Canada and the British Empire. In P. Buckner (Ed.), *Canada and the British Empire* (pp. 200-219). Oxford: Oxford University Press.

CBC Indigenous. (2018, February 22). The jury has reached a verdict in the second degree murder trial of Raymond Cormier, charged with killing 15-year-old Tina Fontaine. [Facebook Live Stream]. Retrieved from,

<https://www.facebook.com/CBC.caIndigenous/videos/1973437012683715/>

----- (2018, June 29). Q & A: Indigenous Incarceration Rates. [Facebook Live Stream]. Retrieved from,

<https://www.facebook.com/CBC.caIndigenous/videos/2141835185843896>

Celebrate the Thames. (1999). *Thames Topics: Booklets 1-8*. Urban League of London. Retrieved from,

<http://thamesriver.on.ca/wpcontent/uploads/Publications/ThamesTopics.pdf>

Chamberlin, J. E. (2009). Homeland and Frontier. In D. Maybury-Lewis, T. Macdonald, & B. Maybury-Lewis (Eds.), *Manifest Destinies and Indigenous Peoples* (pp. 171-202). Cambridge: Harvard. University Press.

Chartrand, R. (2017, June 8). Coyote School: Opening Reception. Curator's Statement. McMaster Museum of Art. McMaster University. Hamilton, Ontario.

Cheechoo, J. (2008). Ooshkahneekwayweuk, Living What I Love Most. In L. B. Simpson (Ed.), *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations* (pp. 139-147). Winnipeg: ARP Books.



- Chippewas of the Thames First Nation. (2018). Our History. Retrieved from,  
<http://www.cottfn.com/chief-council/our-history/#1483992443696-0002f4c9-8f9b>
- Chowdhry, G. & Nair, S. (Eds.). (2002). *Power, Postcolonialism and International Relations: Reading race, gender and class*. New York: Routledge.
- Christian, D. & Wong, R. (Eds.). (2017). *downstream: reimagining water*. Waterloo: Wilfred Laurier University Press.
- Clare, S. (2013). Geopower: The Politics of Life and Land in Frantz Fanon's Writing. *Diacritics* 41(4): 60-80.
- Cooper, F. & L. A. Stoler. (Eds.). (1997). *Tensions of Empire: Colonial Cultures in a Bourgeois World*. Berkeley: University of California Press.
- Coulthard, G. S. (2007). Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada. *Contemporary Political Theory* 6: 437-460.
- (2014). *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press.
- Cox, A. M. (2015, October 17). *Shapeshifting and a Black Girl Sense of Space*. Transformation Marathon 2015. Serpentine Sackler Gallery. [Video file]. Retrieved from <https://www.youtube.com/watch?v=d3PzYOjrSqq>
- Crawford, N. C. (2007). The Long Peace Among Iroquois Nations. In K. Raaflaub (Ed.), *War and Peace in the Ancient World* (pp. 348-368). Oxford: Blackwell.
- Crosby, A. & Monaghan, J. (2012). Settler Governmentality in Canada and the Algonquins of Barriere Lake. *Security Dialogue* 43(5): 421-438.
- (2018). *Policing Indigenous Movements: Dissent and the Security State*. Halifax:

Fernwood.

Cummins, B. D. & Steckley, J. L. (2003). *Aboriginal Policing in Canada: A Canadian Perspective*. Toronto: Prentice Hall.

Cummings, M. (2018, May 7). Anthropologist Aimee Cox wins Malkiel Scholarship for work on ‘slow death.’ *YaleNews*. Retrieved from <https://news.yale.edu/2018/05/07/anthropologist-aimee-cox-wins-malkiel-scholarship-work-slow-death>

D’Andrea, A. (2018, March 26). Can the River Spirit be a Person in the Eye of the Law? International Water Law Project Blog. [Blog post]. Retrieved from, <https://www.internationalwaterlaw.org/blog/2018/03/26/can-the-river-spirit-be-a-person-in-the-eye-of-the-law/>

Daschuk, J. (2013). *Clearing the Plains: Disease, the politics of starvation and the loss of Aboriginal life*. Regina: University of Regina Press.

Davis, A. Y. (2003). *Are Prisons Obsolete?* New York: Seven Stories Press.

----- (2005). *Abolition Democracy: Beyond Empire, Prisons, and Torture*. New York: Seven Stories Press.

----- (2012). *The Meaning of Freedom: And Other Difficult Dialogues*. San Francisco: City Lights Books.

Dauphine, E., & C. Masters, C. (Eds.). (2007). *The Logics of Biopower and The War on Terror: Living, Dying, Surviving*. New York: Palgrave Macmillan.

Dennis, D. (2013). *Peace Pipe Dreams: The truth about lies about Indians*. Madeira Park: Douglas & McIntyre.

De Souza, M. (2016, February 4). Scientists trace cancer-linked pollutant to oil sands

- stockpiles. *Canada's National Observer*. Retrieved from,  
<https://www.nationalobserver.com/2016/02/04/news/scientists-trace-cancer-linked-pollutant-oil-sands-stockpiles>
- Der Derian, J. (1998). The Scriptures of Security. *Mershon International Studies Review* 42(1): 117-122.
- DeVries, L. (2011). *Conflict in Caledonia: Aboriginal Land Rights and the Rule of Law*. Vancouver: University of British Columbia Press.
- Deer, S. (2015). *The Beginning and the End of Rape*. Minnesota: University of Minnesota Press.
- Dewey, M. & Spione, J. (Directors), Hunka, F. P. & Bull, F. W. (Writers), Fox, J. (Director & Writer). (2017). *Awake: A Dream for Standing Rock*. Smoke Signals and International WOW Productions [Motion picture]. Retrieved from,  
<https://www.netflix.com/ca/title/80184376>
- Dhillon, J. K. (2012). Indigenous girls and the violence of settler-colonial policing. *Decolonization, Indigeneity, Education, & Society* 4(2): 1-31.
- Dilts, A. (2012). To Kill a Thief: Punishment, Proportionality, and Criminal Subjectivity in Locke's *Second Treatise*. *Political Theory* 40(1): 58-83.
- Doe d. Sheldon v. Ramsay et al*, 1852, 9 U.C.O.B.
- Doe Ex. Dem. Jackson v. Wilkes*, 1835, U.C.Q.B. (O.S.).
- Ebert, M. (2017). Being and Indigenous Woman is a “High-Risk” Lifestyle. In J. Green (Ed.), *Making Space for Indigenous Feminism, 2<sup>nd</sup> Edition* (pp. 61-102). Halifax: Fernwood.

- Edkins, J. (2003). *Trauma and the Memory of Politics*. Cambridge: Cambridge University Press.
- Edkins, J., Pin-Fat, V., & Shapiro, J. M. (Eds.) (2004). *Sovereign Lives: Power in Global Politics*. New York: Routledge.
- Enloe, C. (1990). *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. Berkeley: University of California Press.
- (2004). *The Curious Feminist: Searching for women in a new age of empire*. Berkeley: University of California Press.
- (2007). *Globalization and Militarism: Feminists Make the Link*. Lanham, MD: Rowman & Littlefield.
- Epstein, A. B. (2015, January 13). The Colonialism of the Present: An Interview with Glen Coulthard. *Jacobin*. Retrieved from, <https://www.jacobinmag.com/2015/01/Indigenous-left-glen-coulthard-interview/>
- Evans, L. (2005). Playing Global Cop: U.S. Militarism and the Prison Industrial Complex, in J. Sudbury (Ed.), *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* (pp. 215-227). New York: Routledge.
- Fanon, F. (1967). *Black Skin, White Masks*. Boston: Grove Press.
- Farr, J. (2008). Locke, Natural Law, and New World Slavery. *Political Theory* 36(4): 495-522.
- Feagan v. McLean*, 1869, 29 U.C.R.
- Foran, J. E. (2011). Interrogating “Militarized” Images and Disrupting Sovereign Narratives in the Case of Omar Khadr. In J. M. Beier (Ed.), *The Militarization of*

- Childhood: Thinking Beyond the Global South* (pp. 195-216). New York: Palgrave Macmillan.
- Foster, R. (2015). *Mapping European Empire: Tabulae imperii Europaei*. New York: Routledge.
- Foucault, M. (1995). *Discipline and Punish: The Birth of the Prison*, (A. Sheridan, Trans.). New York: Vintage Books.
- (2003). *Society Must Be Defended: Lectures at the Collège de France, 1975-76*, (D. Macey, Trans). New York: Picador.
- Fyon, A. (2015, December 1). Talking Earth – First Nations Teaching and Science. *Wawatay News*. Retrieved from <http://www.wawataynews.ca/home/talking-earth-%E2%80%93-first-nation-teachings-and-science>
- Gehl, L. (2013). Indigenous knowledge, symbolic literacy and the 1764 Treat at Niagara. In M. S. Smith (Ed.), *Transforming the Academy: Indigenous Education, Knowledges and Relations* (pp. 23-36). Edmonton: University of Alberta.
- Gilmore, R. W. (2007). *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: University of California Press.
- (2008). Forgotten Places and the Seeds of Grassroots Planning. In C. R. Hale (Ed.), *Engaging Contradictions: Theory, Politics, and Methods of Activist Scholarship* (pp. 31-61). Berkeley, CA: University of California Press.
- Girard, P. (2008). British Justice, English Law, and Canadian Legal Culture. In P. Buckner (Ed.), *Canada and the British Empire* (pp. 259-278). Oxford: Oxford University Press.

- Government of Canada. (1869, June 22). An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act. 31<sup>st</sup> Victoria, Chapter 42. Historical Legislation. Retrieved from, [https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/a69c6\\_1100100010205\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/a69c6_1100100010205_eng.pdf)
- (2018, February 14). Government of Canada to create Recognition and Implementation of Rights Framework. *Office of the Prime Minister*. Retrieved from, <https://pm.gc.ca/eng/news/2018/02/14/government-canada-create-recognition-and-implementation-rights-framework>
- Grande, S. (2004). *Red Pedagogy: Native American social and political thought*. Oxford: Rowman & Littlefield Publishers.
- Green, J. (2006). From *Stonechild* to Social Cohesion: Anti-Racist Challenges for Saskatchewan. *Canadian Journal of Political Science* 39(3): 507-527.
- Green, J. (Ed.) (2017). Taking More Account of Indigenous Feminism: An Introduction. *Making Space for Indigenous Feminism, 2<sup>nd</sup> Edition*. Halifax: Fernwood.
- Grovogui, S. N. (2001). Come to Africa: A Hermeneutics of Race in International Theory. *Alternatives* 26: 425-448.
- Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73. Retrieved from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>
- Hansen, T. B. & Stepputat, F. (Eds.). (2005). *Sovereign Bodies: Citizens, Migrants, and States in the Postcolonial World*. Princeton: Princeton University Press.

- Harring, S. L. (1998). *White Man's Law: Native People in nineteenth Century Canadian Jurisprudence*. Toronto: University of Toronto Press.
- Harrington, J. (2014). Canada was never Terra Nullius. International Law: Doctrine, Practice, Theory. Retrieved from: <http://craigforcese.squarespace.com/public-international-law-blog/2014/6/30/canada-was-never-terra-nullius.html>
- Hixon, W. (2013). *American Settler Colonialism: A History*. New York: Palgrave Macmillan.
- Hobbes, T. (1985)[1651]. *Leviathan*. London: Penguin.
- Hsueh, V. (2006). Cultivating and Challenging the Common: Lockean Property, Indigenous Traditionalisms, and the Problem of Exclusion. *Contemporary Political Theory* 5: 193-214.
- Hunt, K. (2008). Disciplining Women, Disciplining Women's Rights. In J. Leatherman (Ed.), *Discipline and Punishment in Global Politics: Illusions of Control* (pp. 41-64). New York: Palgrave Macmillan.
- Hunt, S. [TheSarahHunt]. (2015, December 7). What does 'justice' look like within a govt-led inquiry when violence against us continues to be a daily reality? #MMIWG2S [Tweet]. Retrieved from, <https://twitter.com/thesarahhunt/status/674037137059090433>.
- Hussain, N. (2003). *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. Ann Arbor: University of Michigan Press.
- Ibhawoh, B. (2013). Cultural Negotiations and Colonial Treaty-Making in Upper Canada and British West Africa 1840-1900. *Ife Journal of History* 6(1): 1-25. Retrieved

from: <http://www.humanities.mcmaster.ca/~ibhawoh/documents/Ibhawoh-TREATY-2013.pdf>

Inayatullah, N. (Ed.) (2011). *Autobiographical International Relations: I, IR*. London: Routledge.

Inda, J. X. (Ed.) (2005). *Anthropologies of Modernity: Foucault, Governmentality, and Life Politics*. Wiley-Blackwell.

Indigenous and Northern Affairs Canada. (2017). First Nations in Canada. *Government of Canada*. Retrieved from <http://www.aadnc-aandc.gc.ca/eng/1307460755710/1307460872523>

Isin, E. (2002). *Being Political: Genealogies of Citizenship*. Minneapolis: University of Minnesota Press.

Jaremko, D. (2017, December 18). 10 Major Canadian oil and gas projects proceeding in 2018. *JWN*. Retrieved from, <http://www.jwnenergy.com/article/2017/12/10-major-canadian-oil-and-gas-projects-proceeding-2018/>

Jervis, R. (1970). *The Logic of Images in International Relations*. Princeton, New Jersey: Princeton University Press.

----- (1976). *Perception and Misperception in International Relations*. Princeton, New Jersey: Princeton University Press.

Jobin, S. (2013). *Acimostakewin: Using Stories to Understand Cree Economies*. IGOV Indigenous Speaker Series. University of Victoria. [Video file]. Retrieved from, <https://www.youtube.com/watch?v=2XVmcRkNEOE&t=981s>

Jurgutis, J. (Autumn 2017). Rooting Down and Wading Deep: Some reflections on



- healing and transformation. *The Peak*. 57(1). Retrieved from,  
<http://peakmag.net/honouring-legacies/rooting-down-wading-deep-some-reflections-on-healing-and-transformation/>
- Kalpagam, U. (2011). Colonial governmentality and the ‘economy.’ *Economy and Society* 29(3): 418-438.
- Keal, P. (2002). *European Conquest and the Rights of Indigenous People*. Cambridge: Cambridge University Press.
- Kent, M. (2018, March 22). Canadian teen tells UN ‘warrior up’ to protect water. *CBC News*. Retrieved from, <https://www.cbc.ca/news/canada/autumn-peltier-un-water-activist-united-nations-1.4584871>
- Keohane, R. O. (1984). *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press.
- Khatib, I. (2018). Reproductive Justice and the Prison-Industrial Complex: A Mini Zine. *Kohl: a Journal for Body and Gender Research* 4(1): 1-10.
- Kilibarda, K. (2014). From #Occupy to #IdleNoMore: Rethinking Space, Settler Consciousness and Erasures within the 99%. In D. Pritchard & F. Pakes (Eds.), *Riot, Unrest and Protest on the Global Stage* (pp. 301-321). London: Palgrave Macmillan.
- King, H. & Pasternak, S. (2018, June 5). *Canada’s Emerging Indigenous Rights Framework: A Critical Analysis*. Yellowhead Institute. Retrieved from, <https://yellowheadinstitute.org/wp-content/uploads/2018/06/yi-rights-report-june-2018-final-5.4.pdf>

- King, T. (2003). *The Truth About Stories*. Toronto: House of Anansi Press.
- Krasner, S. D. (Ed.) (1983). *International Regimes*. Ithaca, NY: Cornell University Press.
- Leatherman, J. (Ed.) (2008). *Discipline and Punishment in Global Politics: Illusions of Control*. New York: Palgrave Macmillan.
- LaRocque, E. (2013)[1992]. My Hometown: Northern Canada, South Africa. In J. Green (Ed.), *Making Space for Indigenous Feminism*, 2<sup>nd</sup> Edition (pp. 63-68). Halifax: Fernwood.
- Lawrence, B. (2004). “Real” Indians and Others: Mixed-Blood Urban Native Peoples And Indigenous Nationhood. Lincoln: University of Nebraska Press.
- (2012). *Fractured Homeland: Federal Recognition and Algonquin Identity in Ontario*. Vancouver: UBC Press.
- LeBaron, G. (2011). *Neoliberalism and the Governance of Unfree Labour: A Feminist Political Economy Account* (Unpublished Doctoral Dissertation). York University, Toronto, Canada.
- (2015). Unfree Labour Beyond Binaries: Hierarchy, Insecurity, and Labour Market Restructuring. *International Feminist Journal of Politics* 17(1): 1-19.
- LeBaron, G. & Roberts, A. (2010). Toward a Feminist Political Economy of Capitalism And Carcerality Signs: *Journal of Women in Culture & Society* 36(1): 19-44.
- Lee, E. V. (2016, November 30). In Defence of the Wastelands: A Survival Guide. *Guts Magazine*. Retrieved from, <http://gutsmagazine.ca/wastelands/>
- Ling, L. H. M. (2002). Cultural chauvinism and the liberal international order: “West

- versus Rest” in Asia’s financial crisis. In G. Chowdhry and S. Nair (Eds.), *Power, Postcolonialism and International Relations: Reading race, gender and class* (pp. 115-141). London: Routledge.
- Little et al. v. Keating*, 1840, 6 U.C.Q.B. (O.S.).
- Locke, J. (1980)[1690]. *Second Treatise of Government*. (C. B. Macpherson, Trans.). Indianapolis: Hackett.
- Lorde, A. (2007). *Sister Outsider: Essays & Speeches by Audre Lorde*. Berkeley: Crossing Press.
- Loyd, J. M., Michelson, M. & Burrridge, A. (Eds.). (2012). *Beyond Walls and Cages: Prisons, Borders, and Global Crises*. Athens: University of Georgia Press.
- Lumsden, S. (2016). Reproductive Justice, Sovereignty, and Incarceration: Prison Abolition Politics and California Indians. *American Indian Culture and Research Journal* 40(1): 33-46.
- (2016, November 13). *Land is not a Commodity: How the Commodification of Land Enables the Prison Industrial Complex*. Paper presented at the National Women’s Studies Association Annual Convention, Montreal, Canada.
- Macdonald, T. (2009). Introduction. In D. Maybury-Lewis, T. Macdonald, & B. Maybury-Lewis (Eds.), *Manifest Destinies and Indigenous Peoples* (pp. 1-20). Cambridge: Harvard University Press.
- Mackey, E. (2016). *Unsettled Expectations: Uncertainty, Land, and Settler Decolonization*. Halifax: Fernwood.
- MacKinnon, C. (2016). Dozens of Aboriginal women pick up phone to complain about

- Quebec police abuse. *CBC News*. Retrieved from,  
<http://www.cbc.ca/news/canada/montreal/val-dor-police-abuse-hotline-1.3577963>
- Malone, K. G. (2018, June 24). Nearly half of Canada's incarcerated youth are Indigenous, according to statistics Canada. *CBC News*. Retrieved from,  
<https://www.cbc.ca/news/canada/manitoba/youth-incarcerated-indigenous-half-1.4720019>
- Manuel, A. (2017, January 18). Until Canada gives indigenous people their land back, there can never be reconciliation. *Rabble*. [Blog post]. Retrieved from:  
<http://rabble.ca/blogs/bloggers/views-expressed/2017/01/until-canada-gives-indigenous-people-their-land-back-there-ca>
- Maracle, L. (2012, March 22). *False Creeks, Real Transformations*. Urgent Storytelling: A Workshop Discussion. Downstream: Reimagining Water. Emily Carr University of Art and Design. [Audio podcast]. Retrieved from,  
<https://soundcloud.com/rita-wong-1/urgent-storytelling-1>
- (2017). Water. In D. Christian and R. Wong (Eds.), *downstream: reimagining Water* (pp. 33-38). Waterloo: Wilfred Laurier University Press.
- Marks, M. P. (2004). *The Prison as Metaphor: Re-Imagining International Relations*. New York: Peter Lang.
- Marshall, V. (2018, April 9). Overturning aqua nullius – An Aboriginal perspective on personhood. International Water Law Project. [Blog post]. Retrieved from,  
<https://www.internationalwaterlaw.org/blog/2018/04/09/overturning-aqua-nullius-an-aboriginal-perspective-on-personhood/>

- Martin-Hill, D. (2013). *Dismantling the white man's Indian*. TEDx McMaster U. [Video file]. Retrieved from, <https://www.youtube.com/watch?v=f0DsMrTshcA>
- (23 March 2017). *The Scream: Decolonizing the Colonizer*. Wilson Institute for Canadian History. McMaster University, Hamilton, Canada.
- Mathias, C. J. & Yabsley, G. R. (1991). Conspiracy of Legislation: The Suppression of Indian Rights in Canada. *BC Studies* 89: 34-47.
- Matsunaga, J. (2016). Two faces of transitional justice: Theorizing incommensurability of transitional justice and decolonization in Canada. *Decolonization: Indigeneity, Education & Society* 5(1): 24-44.
- Maynard, R. (2017). *Policing Black Lives: State Violence in Canada from Slavery to the Present*. Halifax: Fernwood.
- Mbembe, A. (2001). *On the Postcolony*. Berkley: University of California Press.
- McBride, K. (2007). *Punishment and Political Order*. Ann Arbor: University of Michigan Press.
- McCalla, D. (2008). Economy and Empire: Britain and Canadian Development, 1783 1970. In P. Buckner (Ed.), *Canada and the British Empire* (pp. 240-258). Oxford: Oxford University Press.
- McCallum, M. J. L. (2014). *Indigenous Women, Work, and History, 1940-1980*. Winnipeg: University of Manitoba Press.
- McCoy, K., Tuck, E. & McKenzie, M. (Eds.) (2017). *Land Education: Rethinking pedagogies of place from Indigenous, postcolonial, and decolonizing perspectives*. London: Routledge.

- McKittrick, K. & Woods C. A. (Eds.). (2007). No one knows the mysteries at the bottom of the ocean. In: *Black Geographies and the Politics of Place*. Toronto: Between the Lines.
- McMahon, R. (Host). (2016, March 1). *Red Man Laughing - Reflections on Reconciliation: Christi Belcourt*. [Audio podcast]. Retrieved from, <https://www.redmanlaughing.com/listen/2016/3/red-man-laughing-reflections-on-reconciliation-christi-belcourt>
- Miller, J. R. (1989). *Skyscrapers Hide the Heavens: A History of Indian/White Relations in Canada*. Toronto: University of Toronto Press.
- Milloy, J. S. (1988). The Early Indian Acts: Developmental Strategy and Constitutional Change. In A. L. Getty & A. S. Lussier (Eds.), *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies* (pp. 56-64). Vancouver: UBC Press.
- (1999). *A National Crime: The Canadian Government and the Residential School System, 1879-1986*. Winnipeg: The University of Manitoba Press.
- Minsky, A. (2017, November 30). Fact Check: Did Justin Trudeau break his word by approving the pipeline? *Global News*. Retrieved from, <http://globalnews.ca/news/3097871/fact-check-justin-trudeau-break-promise-approving-pipelines/>
- Monaghan, J. (2013). Settler Governmentality and Racializing Surveillance in Canada's North-West. *Canadian Journal of Sociology* 38(4): 487-508.
- Monchalin, L. (2016a). *The Colonial Problem: An Indigenous Perspective on Crime and*

- Injustice in Canada*. Toronto: University of Toronto Press.
- (2016b). The Failed Foreign System of Criminal Justice and the Problem with Canada. In D. Long and O. Dickason (Eds.), *Visions of the Heart: Issues Involving Aboriginal Peoples in Canada* (pp. 351-373). Toronto: Oxford University Press.
- (2016c) Understanding Violence Affecting Aboriginal People through an Aboriginal Lens. In P. O'Reilly and T. Fleming (Eds.), *Violence in Canada* (pp. 105-122). Whitby, ON: de Sitter Press.
- Morgensen, S. L. (2011). *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonization*. Minneapolis: University of Minnesota Press.
- (2013). The Biopolitics of Settler Colonialism: Right Here, Right Now. *Settler Colonial Studies* 1(1): 52-76.
- Mosby, I. (2013). Administering Colonial Science: Nutritional Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952. *Social History* 46(91): 145-172.
- Mortimer-Sandilands, C. & Erickson, B. (Eds.). (2010). *Queer Ecologies: Sex, Nature, Politics, Desire*. Bloomington: Indiana University Press.
- Murray, D. (2002). *Colonial Justice: Justice, Morality, and Crime in the Niagara District, 1791-1849*. Toronto: University of Toronto Press.
- Muthu, S. (Ed.). (2014). *Empire and Modern Political Thought*. Cambridge: Cambridge University Press.
- Natural Resources Canada. (2016). Key Facts on Canada's Natural Resources. Retrieved from, <http://www.nrcan.gc.ca/sites/www.nrcan>.

gc.ca/files/files/pdf/10\_key\_facts\_nrcan\_2016-access\_e.pdf

Nason, D. (2016). Carceral Power and Indigenous Feminist Resurgence in D'Arcy McNickle's *The Surrounded* and Janet Campbell Hale's "Claire." *American Indian Culture and Research Journal* 40(1): 141-160.

Nichols, R. L. (2005). Realizing the Social Contract: The Case of Colonialism and Indigenous Peoples. *Contemporary Political Theory* 4: 42-62.

----- (2009). National Expansion and Native Peoples of the United States and Canada. In D. Maybury-Lewis, T. Macdonald, & B. Maybury-Lewis (Eds.), *Manifest Destinies and Indigenous Peoples* (pp. 145-169). Cambridge: Harvard University Press.

----- (2014). The Colonialism of Incarceration. *Radical Philosophy Review* 17(2): 435-455.

Niro, S. (2015). *Niagara*. Public viewing and Artists talk. Art Gallery of Hamilton, Canada. October 17, 2017.

No More Silence. (2016, August). Violence No More at Ground Zero: It Starts With Us. Retrieved from, <http://nomoresilence-nomoresilence.blogspot.com/>

Northwest Mounted Police. (1878). Annual Report of the Northwest Mounted Police. *Opening the West*. Appendix D.

Office of the Correctional Investigator. (2016, March). Federally Sentenced Women. Retrieved from, <http://www.oci-bec.gc.ca/cnt/priorities-priorites/women-femmes-eng.aspx>

O'Keeke, D. (2009, September 28). Harper in denial at G20: Canada has 'no history of



- colonialism. *Rabble*. Retrieved from, <http://rabble.ca/blogs/bloggers/derrick/2009/09/harper-denial-g20-canada-has-no-history-colonialism>
- Ong, A. (2006). *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty*. Durham: Duke University Press.
- Palmater, P. (2016). Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry. *Canadian Journal of Women and the Law* 28(2): 253-284.
- (2017, May 15). Inquiry into murdered and missing Indigenous women and girls fatally flawed. *The Lawyer's Daily*. Retrieved from <https://www.thelawyersdaily.ca/articles/3139/inquiry-into-murdered-and-missing-indigenous-women-and-girls-fatally-flawed-pamela-palmater>
- (2017, July 24). The Liberals' plans for Indigenous reconciliation are just beads and trinkets. *McLean's Magazine*. Retrieved from, <https://www.macleans.ca/opinion/the-liberals-plans-for-indigenous-reconciliation-are-just-beads-and-trinkets/>
- (2018, February 15). Truth and Reconciliation in Canada: If It Feels Good, It's Not Reconciliation. The 2018 Woodrow Lloyd Lecture. University of Regina, Canada. [Video file]. Retrieved from, <https://www.youtube.com/watch?v=89s3l2mYGWg>
- (2018a, May 15). True test of reconciliation: Respect the Indigenous right to say No. *Canadian Dimension* 52(1). Retrieved from,

- <https://canadiandimension.com/articles/view/true-test-of-reconciliation-respect-the-indigenous-right-to-say-no>
- (2018b, February 27). Foster care system one of the paths to murdered and missing Indigenous women. *CBC*. Retrieved from, <https://www.cbc.ca/news/indigenous/opinion-foster-care-system-path-to-mmiwg-1.4552407>
- (2018c, February 22). Raymond Cormier verdict. *CTV News*. [Facebook]. Retrieved from, <https://www.facebook.com/CTVNewsChannel/videos/1701026643291993/>
- Pasternak, S. (2017). *Grounded Authority: The Algonquins of Barriere Lake*. Minneapolis: University of Minnesota Press.
- Patel, S. (2016). Complicating the Tale of “Two Indians”: Mapping ‘South Asian Complicity in White Settler Colonialism Along the Axis of Caste and Anti-Blackness. *Theory & Event* 19(4).
- Patel, Moussa, & Upadhyay (2015). Complicities, Connections, & Struggles: Critical Transnational Feminist Analysis of Settler Colonialism. *feral feminisms* 4: 5-19.
- Perkel, C. (2016, June 28). Inquest into aboriginal youth deaths in Thunder Bay: 3 accidents, 4 undetermined. *Global News*. Retrieved from <https://globalnews.ca/news/2791378/inquest-into-aboriginal-youth-deaths-in-thunder-bay-3-accidents-4-undetermined/>
- Persram, N. (Ed.). (2006). *Postcolonialism and Political Theory*. Lanham: Lexington.
- Pitawanakwat, B. (2008). In L. B. Simpson (Ed.), *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations* (pp. 161-173).

Winnipeg: ARP Books.

Polacca, M. (2012, March 22). *Water: The First Foundation of Life*. Urgent Storytelling:

A Workshop Discussion. Downstream: Reimagining Water. Emily Carr

University of Art and Design. [Audio Podcast]. Retrieved from,

<https://soundcloud.com/rita-wong-1/urgent-storytelling-1>

Poundstone, W. (1992). *Prisoner's Dilemma*. New York: Doubleday.

Povinelli, E. (2011). The Governance of the Prior. *Interventions* 13(1): 13-30.

Price, S. (2015, December 30). A legacy of shame: Canadian mining companies leave

behind decades of violence in Guatemala. *IC Magazine*. [https://canada-](https://canada-haiti.ca/content/legacy-shame-canadian-mining-companies-leave-behind-decades-violence-guatemala)

[haiti.ca/content/legacy-shame-canadian-mining-companies-leave-behind-decades-](https://canada-haiti.ca/content/legacy-shame-canadian-mining-companies-leave-behind-decades-violence-guatemala)

[violence-guatemala](https://canada-haiti.ca/content/legacy-shame-canadian-mining-companies-leave-behind-decades-violence-guatemala)

Province of Canada. (1857). An Act for the Gradual Civilization of the Indian

Tribes of the Canadas. Christian Aboriginal Infrastructure Developments.

Retrieved from, <http://caid.ca/GraCivAct1857.pdf>

Puar, J. K. & Rai, A. S. (2002). Monster, Terrorist, Fag: The War on Terrorism and the

Production of Docile Patriots. *Social Text* 20(3 72): 149-175.

Public Safety Canada. (2014). *Corrections and Conditional Release Statistical Overview:*

*2014 Annual Report*. Retrieved from,

[https://s3.amazonaws.com/s3.documentcloud.org/documents/2110762/ps-sp-](https://s3.amazonaws.com/s3.documentcloud.org/documents/2110762/ps-sp-1483284-v1-corrections-and-conditional.pdf)

[1483284-v1-corrections-and-conditional.pdf](https://s3.amazonaws.com/s3.documentcloud.org/documents/2110762/ps-sp-1483284-v1-corrections-and-conditional.pdf)

R.S.C. 1985, App. II, No. 1.

Rai, S. (2002). *Gender and the Political Economy of Development*. Malden, MA: Polity.

- Razack, S. H. (Ed.). (2002). *Race, Space, and the Law: Unmapping a White Settler Society*. Toronto: Between the Lines.
- (2004). *Dark Threats and White Knights: The Somalia Affair, Peacekeeping and the New Imperialism*. Toronto: University of Toronto Press.
- (2008). *Casting Out: The Eviction of Muslims from Western Law and Politics*. (Toronto: University of Toronto Press).
- (2015). *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody*. Toronto: University of Toronto Press.
- Reconciliation Canada. (2015). *Reconciliation Canada Impact Report*. Retrieved from, [http://reconciliationcanada.ca/staging/wp-content/uploads/2016/02/ImpactReport\\_20151.pdf](http://reconciliationcanada.ca/staging/wp-content/uploads/2016/02/ImpactReport_20151.pdf)
- Regina v. Baby*, 1854, U.C.Q.B.
- Rhymes, D. (2008). *From the Iron House: Imprisonment in First Nations Writing*. Waterloo: Wilfred Laurier University Press.
- Roberts, D. (1997). *Killing the Black Body: Race, Reproduction and the Meaning of Liberty*. (New York: Pantheon).
- Ross, L. (2016). Settler Colonialism and the legislating of criminality. *American Indian Culture and Research Journal* 40(1): 1-18.
- Rosser, E. (2015). Urgency praxis, sexual violence and feminist knowledge production in Guatemalan truth-telling. Doctoral Dissertation. York University.
- Rowe, A. C. & Tuck, E. (2016). *Settler Colonialism and Cultural Studies: Ongoing*

- Settlement, Cultural Production, and Resistance. *Cultural Studies-Critical Methodologies* 17(1): 3-13.
- Royal Commission on Aboriginal Peoples. (1996). *Looking Forward, Looking Back, Volume 1. Report of the Royal Commission on Aboriginal Peoples*. Government of Canada. Library and Archives Canada. Retrieved from, <https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx>
- Rygiel, K. (2008). Citizenship as Government: Disciplining Populations Post-9/11. In J. Leatherman (Ed.) *Discipline and Punishment in Global Politics* pp. 85-110. New York: Palgrave Macmillan.
- Said, E. (1993). *Culture and Imperialism*. New York: Alfred A. Knopf.
- Sajed, A. (2013). *Postcolonial Encounters in International Relations: The Politics of Transgression in the Maghreb*. New York: Routledge.
- Sapers, H. (June 2015). *Annual Report of the Office of the Correctional Investigator 2014-2015*. Office of the Correctional Investigator:  
<http://www.ocibec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx#s8>
- Schmalz, P. (1991). *The Ojibwa of Southern Ontario*. Toronto: University of Toronto Press.
- Scott, D. (1995). Colonial Governmentality. *Social Text* 43: 191-220.
- Shanahan, D. (1994). The Manotoulin Treaties, 1836-1862: The Indian Department and Indian Destiny. *Ontario History*, 86(1): 13-31.
- Shapiro, M. J. (2004). "The Nation-State and Violence": Wim Wenders contra Imperial

- Sovereignty. In J. Edkins, V. Pin-Fat, and M. J. Shapiro (Eds.), *Sovereign Lives: Power in Global Politics* (pp. 101-124). New York: Routledge.
- Shaw, K. (2002). Indigeneity and the International. *Millennium: Journal of International Studies* 31(1): 55-81.
- (2008). *Indigeneity and Political Theory: Sovereignty and the Limits of the Political*. London: Routledge.
- Shilliam, R. (2011). Decolonizing the Grounds of Ethical Inquiry: A Dialogue Between Kant, Foucault and Glissant. *Millennium: Journal of International Studies*, 39(3): 649-665.
- (2018, 14 June 2018). Interview- Robbie Shilliam. *E-International Relations*. Retrieved from, <https://www.e-ir.info/2018/06/14/interview-robbie-shilliam/>
- Shingler, B. (2016). 37 cases of alleged police abuse in Val-d'Or handed over to Crown. *CBC News*. Retrieved from, <http://www.cbc.ca/news/canada/montreal/val-dor-abuse-surete-du-quebec-montreal-police-1.3849786>
- Simpson, A. (2008). Subjects of Sovereignty: Indigeneity, The Revenue Rule, and Juridics of Failed Consent. *Law and Contemporary Problems* 71: 191-216.
- (2014). *Mohawk Interruptus: Political Life Across the Borders of Settler States*. Durham: Duke University Press.
- (2017). The ruse of consent and the anatomy of refusal: cases from indigenous North America and Australia. *Postcolonial Studies* 20(1): 18-33.
- Simpson, L. B. (Ed.) (2008a). *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations*. Winnipeg: ARP Books.
- (2008b). Our Elder Brothers: The Lifeblood of Resurgence. In L. B.

- Simpson (Ed.), *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations* (pp. 73-87). Winnipeg: ARP Books.
- (2008c). Nogojiwanong: The Place at the Foot of the Rapids. In L. B. Simpson (Ed.), *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations* (pp. 205-212). Winnipeg: ARP Books.
- Simpson, L. (2011). *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence*. Winnipeg: ARP Books.
- (2014). Land as pedagogy: Nishnaabeg intelligence and rebellious transformation. *Decolonization: Indigeneity, Education & Society* 3(3): 1-25.
- (2016, March 5). Land and Reconciliation: Having the Right Conversations. *Electric{+/-}City*. Retrieved from, <http://www.electriccitymagazine.ca/2016/01/land-reconciliation/>
- (2016, November 4). Leanne Betasamosake Simpson draws story from the land. Unreserved. *CBC Radio*. Retrieved from, <https://www.cbc.ca/radio/unreserved/the-complicated-politics-of-identity-1.3833746/leanne-betasamosake-simpson-draws-story-from-the-land-1.3835164>
- (2016). Indigenous Resurgence and Co-resistance. *Critical Ethnic Studies* 2(2): 19-34.
- (2017). *As We have Always Done*. Minneapolis: University of Minnesota Press.
- Sinclair, N. (2018, March 19). What reconciliation feels like to people locked in a bathroom for a century. *CBC News*. Retrieved from, <http://www.cbc.ca/news/indigenous/opinion-reconciliation-beyond94-1.4578359>

- Sinclair, M. (2015). Beyond 94: Where is Canada at with reconciliation? *CBC News*.  
Retrieved from, <http://www.cbc.ca/news/indigenous/beyond-94-truth-and-reconciliation-1.4574765>
- Sinclair, M., Littlechild, W. & Wilson, M. (2015). What we have learned: Principles of truth and reconciliation. Retrieved from, [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Principles\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Principles_2015_05_31_web_o.pdf)
- Seth, S. (2013). *Postcolonial Theory and International Relations: A Critical Introduction*. New York: Routledge.
- Smart, A. (2018, March 10). Thousands march to protest Canada pipeline expansion project. *CTV News*. Retrieved from, <https://www.ctvnews.ca/canada/thousands-march-to-protest-canada-pipeline-expansion-project-1.3837566>
- Smith, A. (2005). *Conquest: Sexual Violence and American Indian Genocide*. Durham: Duke University Press.
- Smith, K. (2009). *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877-1927*. Edmonton: AU Press.
- Smith, L. T. (1999). *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books.
- Snyder, G. H. (1971). “Prisoner’s Dilemma” and “Chicken” Models in International Politics. *International Studies Quarterly* 15(1): 66-103.
- Solnit, R. (2005). *A Field Guide to Getting Lost*. London: Penguin Books.
- Stacey, M. (2018, June). Londoners join Kinder Morgan pipeline protest. *London Free*



- Press*. Retrieved from, <https://www.ctvnews.ca/canada/thousands-march-to-protest-canada-pipeline-expansion-project-1.3837566>
- Starblanket, G. (2017). Being Indigenous Feminists: Resurgences against contemporary patriarchy.” In J. Green (Ed), *Making Space for Indigenous Feminism*, 2<sup>nd</sup> Edition. (21-41). Halifax: Fernwood.
- Stasiulis, D. K. & Bakan, A. B. (2005). *Negotiating Citizenship: Migrant Women in Canada and the Global System*. Toronto: University of Toronto Press.
- Stasiulis, D. & Yuval-Davis, N. (Eds.). (1995). *Unsettling Settler Societies: Gender, Race, Ethnicity, and Class*. London: Sage.
- Statutes of Canada. (1869). An Act for the gradual enfranchisement of Indians. 32-33 Victoria, chapter 42.
- Statutes of the Province of Canada. (1850a). An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada. 13-14 Victoria, chapter 74.
- (1850b). An Act where the Protection of Indians in Upper Canada imposition and the property occupied or enjoyed by them from trespass and injury. 13-14 Victoria, chapter 42.
- (1857). An Act to encourage the gradual civilization for the Indians in this Province, and to amend the laws respecting Indians. 20 Victoria, chapter 26.
- Stein, A. A. (1990). *Why Nations Cooperate: Circumstance and Choice in International Relations*. Ithaca, NY: Cornell University Press.
- Stephanson, A. (2009). An American Story? Second Thoughts on Manifest Destiny. In D. Maybury-Lewis, T. Macdonald, & B. Maybury-Lewis (Eds.), *Manifest Destinies and Indigenous Peoples* (pp. 21-49). Cambridge: Harvard University

Press.

Stewart-Harawira, M. (2005). *The New Imperial Order: Indigenous Responses to Globalization*. London: Zed Books.

Stoler, A. L. (1995). *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*. Durham: Duke University Press.

----- (2002). *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule*. Berkeley: University of California Press.

----- (2009). *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*. Princeton: Princeton University Press.

----- (2016). *Duress: Imperial Durabilities in Our Times*. Durham: Duke University Press.

Sudbury, J (Oparah, C.). (Ed.). (2005). *Global Lockdown: Race, Gender, and the Prison Industrial Complex*. New York: Routledge.

----- (2008). Rethinking Global Justice: Black Women Resist the Transnational Prison Industrial Complex. *Souls* 10(4): 344-360.

TallBear, K. (2015). Dossier: Theorizing Queer Inhumanisms: An Indigenous Reflection on Working Beyond the Human/Not Human. *GLQ: A Journal of Gay and Lesbian Studies* 21(2-3): 230-235.

Tasker, J. P. (2016, February 16). Confusion reigns over number of missing, murdered indigenous women. *CBC News*. Retrieved from,  
<http://www.cbc.ca/news/politics/mmiw-4000-hajdu-1.3450237>

The Sentencing Project. (December 2015). Trends in U.S. Corrections. Retrieved from,

- <http://www.sentencingproject.org/publications/trends-in-u-s-corrections/>
- Thobani, S. (2007). *Exalted Subjects: Studies in the Making of Race and Nation in Canada*. Toronto: University of Toronto Press.
- Teitel, R. G. (2000). *Transitional Justice*. Oxford: Oxford University Press.
- (2003). Transitional Justice Genealogy. *Harvard Human Rights Journal* 16(1), 69  
94.
- Tobias, J. L. (1988). Protection, Civilization, Assimilation: An Outline History of  
Canada's Indian Policy. In A. L. Getty & A. S. Lussier (Eds.), *As Long as the Sun  
Shines and Water Flows: A Reader in Canadian Native Studies* (pp. 39-55).  
Vancouver: UBC Press.
- Truth and Reconciliation Commission of Canada. (2015). Our Mandate. Retrieved from,  
<http://www.trc.ca/websites/trcinstitution/index.php?p=7>.
- (2015). The Survivors Speak: A Report of the Truth and Reconciliation  
Commission of Canada. Retrieved from, [http://www.trc.ca/websites/  
trcinstitution/File/2015/Findings/Survivors\\_Speak\\_2015\\_05\\_30\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Survivors_Speak_2015_05_30_web_o.pdf)
- (2015). Truth and Reconciliation Commission of Canada: Calls to Action.  
Retrieved from, [http://www.trc.ca/ websites/trcinstitution/File/2015/  
Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf)
- Tsilhqot'in Nation v. British Columbia, 2014 SCC, [2014] 2 S.C.R. 256. Retrieved from,  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>
- Tuck, E. and McKenzie, M. (2015), *Place in Research: Theory, Methodology, and  
Methods*. London: Routledge.

- Tuck, E. & Yang, K. W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society* 1(1): 1-40.
- Tully, J. (1993). *An Approach to Political Philosophy: Locke in Contexts*. Cambridge: Cambridge University Press.
- Tutton, M. (2017, October 30). Family says at MMIW hearings that a ‘white-passing’ appearance alters police reaction. CTV News. Retrieved from <https://www.ctvnews.ca/canada/family-says-at-mmiw-hearings-that-a-white-passing-appearance-alters-police-reaction-1.3655730>
- Two Row Wampum Renewal Campaign. (n. d.) Two Row History. Retrieved from, <http://honorthetworow.org/learn-more/history/>
- Veene, S. (2002). Understanding Treaty 6: An Indigenous Perspective. In M. Asch (Ed.), *Aboriginal Treaty Rights in Canada: Essays on law, Equality, and Respect for Difference* (pp. 173-207). Vancouver: UBC Press.
- Vitalis, R. (2000). The Graceful and Generous Liberal Gesture: Making Racism Invisible In American International Relations. *Millennium: Journal of International Studies* 29(2): 331-356.
- Walker, R. B. J. (1993). *Inside/Outside: International Relations as Political Theory*. (Cambridge: Cambridge University Press).
- (1997). The Subject of Security. In K. Krause & M. C. Williams (Eds.), *Critical Security Studies: Concepts and Cases* (pp. 61-82). Minneapolis: University of Minnesota Press.
- Walls to Bridges. (2016). Our Values. Retrieved from, <http://wallstobridges.ca/ourvalues/>

- Wacquant, L. (2008). *Urban Outcasts: A Comparative Sociology of Advanced Marginality*. Cambridge: Polity Press.
- Watts, V. (2013). Indigenous place-thought & agency amongst humans and non-humans (First Woman and Sky Woman go on a European world tour!). *Decolonization: Indigeneity, Education & Society* 1(1): 20-34.
- Weaver, J. (2003). *The Great Land Rush and the Making of the Modern World, 1650-1900*. Montreal: McGill-Queens University Press.
- Wherry, A. (2016, January 20). Justin Trudeau distances himself from Harper at World Economic Forum. *CBC News*. Retrieved from, <http://www.cbc.ca/news/politics/justin-trudeau-arrives-davos-world-economic-forum-1.3411041>
- Whitworth, S. (2004). Men, Militarism, and UN Peacekeeping: A Gendered Analysis. Boulder, CO: Lynne Reinner.
- Williams, A. (Director). (2015). *The Pass System* [DVD]. Toronto, Canada: V Tape.
- Williams, B. (2018). “That we may live”: Pesticides, plantations, and environmental racism in the Unites States South. *Environment and Planning E: Nature and Space* 0(0): 1-25.
- Wohlberg, M. (2015, January 12). Groundbreaking study makes first links between oilsands and cancer in Fort Chipewyan. *Northern Journal*. Retrieved from, <https://norj.ca/2015/01/groundbreaking-study-makes-first-links-between-oilsands-and-cancer-in-fort-chipewyan/>
- Wong, R. (2013). ethical waters: reflections on the Healing Walk in the Tar Sands *Feminist Review* 103: 133-139.

Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research* 8(4): 387-409.

Yellowhead Institute. (2018). *An Overview*. Special Report: Canada's Emerging Indigenous Rights Framework. Retrieved from,  
<https://yellowheadinstitute.org/rightsframework/>

Yuval-Davis, N. and Anthias, F. (Eds.). (1989). *Woman, Nation, State*. New York: Palgrave Macmillan.