

The Recognition of Indigenous Rights during the Red Power Movement

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Canada

Abstract

The joint tenure of Prime Minister Pierre Elliot Trudeau and Minister of Indian Affairs Jean Chrétien, from 1968 to 1974, was a tumultuous time where significant changes were made in the struggle for Indigenous rights. Within the broader political climate of the time and the strength of the Red Power movement, the James Bay court injunction (Kanatewat case) and the Nisga'a (Calder) case directly contributed to the federal government's acknowledgement of the existence of Indigenous rights and to the modern claims process of 1973. In examining the practical consequences of the modern claims process, it becomes apparent that the claims process is the newest in a long history of colonial dispossession. The overarching intent of the racial Canadian state has been, and now remains, capitalist, specifically in support of capitalist accumulation through the seizure and development of Indigenous lands and resources, and through the assimilation of the 'Indian' into capitalism.

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Chapter 1

Introduction

Canada is a relatively new nation branded as a liberal democracy and perceived as just and tolerant. The story of its ‘founding,’ or its ‘foundational myth,’ is built on the rhetoric of hard work, newly arrived settlers and taming a wild and unforgiving landscape. This storied history of the nation erases the existence of the original inhabitants of the land, giving sole custody to the newly arrived settlers who ‘discovered’ and ‘built’ the land and thus the nation. The true story of Canada’s ‘founding’ is of the colonial dispossession of Indigenous peoples and the illegal and unconstitutional seizure of their land (Stasiulis and Jhappan 1995) for the purposes of capitalist accumulation. For the British and French empires, the colonial doctrines of discovery and founding served to legally justify the theft of Indigenous lands through the appropriation of the title of the land to Western explorers in the name of their Crown and government. Both empires, at the time of Canada’s ‘discovery,’ were seeking to expand in order to accommodate their ongoing pursuit of wealth. Indigenous peoples, in occupying the desired lands, presented an obstacle to the progression of this capitalist expansion. In order to acquire new territories, the colonialists proceeded to subjugate the will of the Indigenous peoples to their directives and commands through coercion, violence and deceit (Green 2003).

Upon acquiring the new territory, to be known as Canada, the European settlers commenced in exploiting the resources, landscape and people in pursuit of capitalist gain. This exploitation was capitalist primitive accumulation—as will be addressed in Chapter 2—and underpinned the colonial experience of Indigenous peoples in Canada.

Throughout history, the priorities of the illegitimate settler state (Green 2001) have been to protect its claim to the land as the original founders in order to secure access to economic resources across the land and expand the reach of capitalism—originally merchant capitalism. The intent of primitive accumulation, with the support of colonialism and upheld by racism was to consume the non-capitalist spaces in order to feed capitalism.

Canada has come to be viewed as a liberal democracy, as a nation enshrining individual rights and freedoms; however, the establishment of democracy has been guided by principles and acts of colonialism. In a liberal democracy, the same state structures should govern the entire population, and although Canada espouses values of equality, the nation's very organization marginalizes those perceived as different, or non-white, serving to create 'others,' such as Indigenous peoples, through everyday processes and through state-constructed policies like the *Indian Act*. The *Indian Act*, first enacted in 1876, is used by the Crown to govern Indigenous peoples, granting control of and authority over Indian reserve lands to the Government of Canada. The *Indian Act* deals with the whole life of a people, imposing identity and political status. In Canada, "citizenship does not provide automatic membership in the nation's community" (Bannerji 2000: 66) but rather citizenship and participation are subject to race and class exclusion. For the nation, liberal democracy is only an ideology to disguise structural inequality.

As I will show throughout my thesis, the Canadian state seeks to conceal its colonialist past and its continuing capitalist priorities. As such, it has instituted measures to ensure the perpetual exclusion of Indigenous peoples. The state and its agents have

perpetrated violence on Indigenous peoples in a myriad of ways, including direct violence at the hands of the Royal Canadian Mounted Police (RCMP)¹, the theft of thousands of Indigenous children (through the Residential school system and Sixties Scoop, see Chapter 2) and the indirect violence of starvation and poverty. For the ruling elite, the original inhabitants pose a threat to the authority and legitimacy of the Canadian state. They are viewed by the state as both an opportunity and an obstacle for capitalist expansion.

In Canada, there is a long history of strength and resistance of Indigenous nations to the colonial state. Over the decades and centuries, there have been many uprisings in the Indigenous population to fight what Howard Adams has called the ‘European pirates’ (1999). To be sure, “being born an Indian is being born into politics,” as Taiaiake Alfred (1995) has succinctly said. Along with the continual dispossession and marginalization of Indigenous peoples, there has been an equal and parallel history of resistance. This thesis looks at one of the many Indigenous uprisings in Canadian history: the late 1960s and early 1970s during the turbulent reign of Prime Minister Pierre Elliot Trudeau and Minister of Indian Affairs and Northern Development (previously DIAND and currently INAC), Jean Chrétien. The Indigenous political movement of this era, often referred to as the Red Power movement, helped to bring about significant changes in the actions and mindset of the state. These changes bear significance in today’s struggle for Indigenous rights and sovereignty.

The Red Power movement that rose to prominence in the late 1960s is significant for many reasons. The height of the movement transpired during the brief tenure of

¹ For instance, during one of the final Red Power demonstrations September 30, 1974 on Parliament Hill, the Riot Squad was deployed for the first time, resulting in many injuries (Windsor Star 1974).

Prime Minister Pierre Trudeau *and* Minister of Indian Affairs Jean Chrétien² which is a fleeting period of history, from 1968 to 1974, but is representative of the on-going colonial and capitalist intent of the state in relation to its treatment of Indigenous peoples. The confrontations between the state and Indigenous activists at this time had the potential to disrupt the capitalist order of the nation and threaten the security of the state. The Red Power movement demonstrated class and racial consciousness, had national and international solidarity, was followed closely by the media, and was built on the tremendous hope and activism of the 1960s. By contrast, the short tenure of Jean Chrétien as Minister of the Department of Indian and Northern Affairs was one of the most tumultuous of all Cabinet ministers in this department. As a protégé of Trudeau's, Chrétien's stance echoed his mentor in espousing equality and a 'just society.' Chrétien's term began with the release of the highly controversial 'White Paper' in 1969, which outlined the firm stance of the government in rejecting Indigenous rights and promoting assimilation. After much struggle, the government was forced to reconsider its position on the special status of Indigenous peoples, which subsequently changed the terrain for Indigenous activism.

Throughout history and until the early 1970s, the Canadian state remained rigid in its assertion that Indigenous peoples did not have special rights or status. However, as Canadians began to see the inhumane living conditions of Indigenous peoples across the nation, and started to view these conditions as a consequence of their dispossession, the political climate in Canada proceeded to change. The incredible optimism of Trudeaumania was juxtaposed with the state violence perpetrated on Indigenous peoples. As demonstrations continued, the Canadian populace became more aware of the obstinate

² Jean Chrétien later became Prime Minister of Canada.

refusal of the federal government to recognize Indigenous rights. At the same time, the state was facing incredible challenges across the country in securing access to land and resources for capitalist expansion or primitive accumulation. A solution needed to be found quickly or else valuable development contracts, such as the Mackenzie Valley Pipeline, would be lost—in many cases lost to the United States. The government needed to change its policies and practices to support the expansion of capitalism across the land and to avoid the risk of international scorn for human rights violations against Indigenous peoples. The changes that resulted from these critical circumstances are remarkable not only in their reflection of the history of Indigenous-state relationships but also in their implications for the future of Indigenous activism.

During the Trudeau/Chrétien era, as with much of Canadian history, the state needed to settle Indigenous land disputes and escalating conflicts in order to support expanding development, investment and resource extraction. The Trudeau/Chrétien government was anxiously seeking a means and precedence for the swift resolution of land claims. The court system—specifically the ‘white’ settler court system—led to the state’s solution to this critical situation: the modern claims process. This significant change was spurred on by the mounting pressure from the Red Power movement and the growing public awareness of Indigenous issues. This situation presented a unique opportunity for change, or a “political opportunity structure” as discussed in Chapter 3. Two key court cases contributed to the eventual change in the relationship of the Trudeau/Chrétien government to Indigenous peoples, to the gradual recognition of Indigenous rights, and to the land claims process. Following these important changes, many treaties were signed with Indigenous peoples across Canada. For better or worse,

the Red Power movement helped to transform land and treaty negotiations and changed how post-Chrétien ministers dealt with Indigenous rights issues (Couture 1998).

It is the principal argument of this thesis that the activism of the Red Power movement and, subsequently, the struggle of Indigenous peoples in two court cases, directly contributed to the state's acknowledgement of the existence of Indigenous rights. Following these changes from the Trudeau/Chrétien era, more and more Indigenous land and rights disputes were resolved within the court system, which had become a large part of the state's answer to the Indian problem (Couture 1998). This thesis will closely examine how this change came about; specifically, I will look to the Nisga'a case and the James Bay court injunction, which together facilitated this federal recognition of Indigenous rights and this precedence for the settlement of Indigenous land claims.

To begin my thesis, I will provide an overview of the context of the Indigenous-state relationship, ranging from contact and settlement to liberalism and neo-conservatism (Chapter 2). This will help to situate the Red Power movement within a historical framework of Indigenous-settler relations. Having established the setting for Indigenous issues in Canada, my analysis will then move on to the Red Power movement, summarizing the key components of the movement including its scope, objectives, key events and leadership (Chapter 3). Next, my thesis will turn to the Nisga'a or *Calder* case and the James Bay court injunction or the *Kanatewat* case (Chapter 4). In particular, I will look at the significance of these cases in leading up to the creation of a claims process and for forcing the Trudeau/Chrétien government to change its stance on the existence of Indigenous rights. These cases, in conjunction with the broader context of the Red Power movement, prompted an important change for the struggle for Indigenous

rights. Thereafter, the majority of the battle for land and rights would be fought on a case by case basis within the white colonial system (Couture, 1998).

My thesis will provide a glimpse into an often-overlooked aspect of the Trudeau era. While considerable academic literature exists on Trudeauism, there is little analysis of this era in conjunction with the Indigenous movement in Canada. The study of Trudeauism is most often on multiculturalism, the *Charter of Rights and Freedoms* and liberalism in general or isolated to the *White Paper*. Similarly, the majority of academic work on Red Power is centred on the movement in the United States or the American Indian Movement (AIM). While AIM played a significant role in the movement north of the border, a more focused analysis of the Canadian movement (The Montreal Gazette May 2, 1974), within the greater national and historical context, will provide additional insights into the current Indigenous-state relationship in Canada. Of the small body of literature that exists on Trudeauism and Red Power, the central tenet is often the *White Paper*. Within my thesis, the *White Paper* is merely one piece of a changing dialogue between the state and Indigenous peoples. The Trudeau/Chrétien era is a significant piece of Indigenous history, just as the struggle of the Red Power movement is a prominent piece of Canadian history. The changes that occurred as a result of this era have had deep and lasting impacts for the Canadian state and Indigenous peoples. Understanding this time period can help to illuminate the modern struggle of Indigenous resistance in Canada.

Because of the theoretical nature of the thesis, my primary research methods will be based on critical review and engagement with the debates around Indigeneity and settler colonialism as well as more specific literature on the Canadian state. An academic

literature review and a media scan will provide data on what the politicians, activists and the populace were saying and on significant events during this era. The media scan consisted of a key word search of an online archival news custom search site, using variations of the following terms: Native, Indian, First Nations, protest, First Nation, protest, demonstration, Native power, resistance, violence, occupation, blockage, Aboriginal, Métis, Inuit, Eskimo, Chrétien, Trudeau, Indian and Northern Affairs, Indian Affairs, White Paper, American Indian Movement and Native Indian Brotherhood. The archival news search was most often limited to the years between 1965 and 1980 in order to gain a broad perspective on the era between 1968 and 1974. The search engine included a large collection of historical archives including major magazines, other news archives, legal archives and major newspapers, such as The New York Times, Financial Post, The Montreal Gazette, The Sun, The Ottawa Citizen, and The Saskatoon Star-Phoenix. From the results of the literature scan and the archival medial review, an emphasis will be placed on writings and speeches by the key players, such as Trudeau, Chrétien and Red Power leaders such as Harold Cardinal and Howard Adams.

In this thesis, I look at the responses of the Trudeau/Chrétien government to the Red Power movement and consider them as a part of the wider Indigenous-state relationship where colonialism is upheld and capitalist accumulation is prioritized. Within an understanding of capitalist and racist underpinnings of colonialism, I will examine the change in the position of the Trudeau/Chrétien government in regards to Indigenous rights. To be clear, this analysis will not attempt to provide a comprehensive review of the Trudeau/Chrétien government but rather endeavour to use this significant

era for the discussion of Red Power, along with broader issues of colonialism and capitalism in Canada.

Given the importance of the history of Indigenous-Canadian relations to this enquiry, I intend to provide a framework from contact to the present time, moving through Trudeauism to Conservatism. The significance of the Trudeau/Chrétien era to the overall timeline of Indigenous relations will become clearer within such a framework. A focus on Indigenous scholarship—particularly of activists from the Red Power movement—will help to draw out the details of the era and the movement. The writings of Howard Adams, Harold Cardinal, Billy Diamond and Frank Calder will add to the critical analysis of the state and to the description of the movement. Finally, a broad media scan of Canadian newspapers using a key word search will help to highlight key issues and will contextualize my analysis, filling in the remaining gaps of the portrait of Indigenous issues in Canada during this time.

Though a great deal of academic work has been produced on the colonial and/or capitalist relationship of settler states and Indigenous peoples, very little has been linked to Indigenous movements within Canada. Similarly, although considerable writing has been done on the 1960s, there is an absence of writing on the Canadian Indigenous movement of this timeframe. This thesis provides a glimpse into the hypocrisy of the Trudeau/Chrétien government in espousing values of equality and of a ‘just society’ while simultaneously working to uphold colonialism in state relations with Indigenous peoples. Such analysis is instructive of today’s contradictions within the nation: Canada is seen as a just and tolerant society yet non-whites, especially Indigenous peoples, continue to experience extreme exclusion and marginalization within the nation.

In this thesis, the phrase ‘Indigenous peoples’ is used whenever possible in lieu of other terms, such as the expression ‘Aboriginal peoples,’ which is a government idiom in Canada³ or ‘Indian,’ which is a legal construction within the *Indian Act*. Using ‘Indigenous peoples’ emphasizes the recognition of the shared and/or similar struggles of Indigenous peoples worldwide as well as the diversity between different populations (Smith 1999). Occasionally, the term ‘Native’ will be used, as was the common parlance of the time in the late 1960s and early 1970s. Of course, where information exists, differentiations will be made between the different communities or nations of Indigenous peoples within Canada.

Chapter 2

A History of Indigenous-State Relations

Canada: “the best place in the world for non-Aboriginal men to live.”

(Green 1995: 99)

In all societies around the world, relations of oppression are constructed through complex intersections of race, gender⁴ and class. In each case, these intersecting oppressions have become inextricably linked to the development of the modern nation (Goldberg 2002). For Canada, the development of the nation has rested primarily upon

³ “Aboriginal” is also a legal term that came into common usage with the entrenchment of “Aboriginal rights” in Section 35 of the 1982 *Constitution*.

⁴ The topic area and the findings uncovered within this research did not lend to an understanding of gender within the Red Power era. Given the paucity of information on Red Power, this is not surprising. A comprehensive examination of the interplay of gender falls outside the scope of this thesis; however, it is recommended that this crucial factor be critically analyzed further in subsequent research.

the oppression and exclusion of the original inhabitants of the land. In a story that begins with the colonial forces of European empires and ends with twenty-first century Conservatism, the mainstay throughout has been the state's commitment to the extermination or assimilation of the 'Indian.' From the first sustained European contact through the fur trade across the Riel Rebellion and throughout treaty negotiations, Indigenous peoples have been seen as a commercial opportunity at best and a military challenge at worst (Abele and Stasiulis 1989).

While this thesis is specific to Canada, to the Red Power movement and the Trudeau/Chrétien era, it presents a valuable opportunity to look at the interplay of race and capital within the nation and within nation-building itself, under a framework of colonialism. For Indigenous peoples, the experience of colonialism is one of the few unifying characteristics of Indigenous populations around the world (Alfred and Corntassel 2005: 614). The processes of colonialism themselves are fairly consistent overall, most often including the use of policies of assimilation and the destruction of identity, community and culture. The creation of race is essential to the ideologies underpinning colonialism. These intersections, along with the creation of the modern nation and its relationship to racism, will be further explored within this chapter, providing a broad overview of colonialism within the Indigenous experience in Canada.

The idea of the "racial state" (Goldberg 2002) is particularly significant for such an analysis of Canadian history. In Canada, the experience of Indigenous peoples has been heavily intertwined in the building of a relatively new nation. As Goldberg (2002) aptly points out, the modern nation is more than entangled with race and racism. In fact, racism and the modern state are "co-articulations" (Goldberg 2002: 4) of each other,

where race is integral to the emergence of the modern nation-state, marking and ordering the state. Within this chapter, the history and on-going experience of Indigenous peoples will be shown to epitomize Goldberg's notion of the racial state. The Canadian state—in ideology, experience, processes, culture and policy—has a symbiotic relationship with the racism perpetrated upon Indigenous peoples.

COLONIALISM & CAPITALISM

As will be shown, although Canada is a settler colonialist nation, this label does not adequately capture Canada's complex history. Even the label 'colonialist' itself is more complex than often suggested. Edward Said (1994: 4) has said that colonialism is "the implanting of settlements on distant territory," but it is also more than this. The project of colonialism is all-encompassing. In the words of Michael Stevenson, colonialism is 'total war' (1992: 28). The purpose of colonialism is to "lay waste a people and destroy their culture in order to undermine the integrity of their existence and appropriate their riches" (Stevenson 1992: 28). The practices of colonialism seek not only to physically destroy a people, but also to devastate them economically and spiritually (Stevenson 1992). Within the analysis of Indigenous-state history (Chapter 2), it becomes clear that colonialism is also intent on assimilation and bringing Indigenous peoples into the capitalist system. In seeking the destruction of Indigenous peoples, colonialism is all-encompassing and is total war. It is the complete eradication of a people as they exist (Stevenson 1992).

In order to understand Stevenson's idea of 'total war,' one must look to the historical progression of colonialism. In Canada, as elsewhere, colonialism has created a

self-generating system where each successive generation seamlessly perpetuates the practices and processes of colonialism without being conscious of them. The total war in Canada began in what is known as the Old World and expanded into the New World. The total war was, and is, dependent upon ideologies and is reflective of the complexities of the intersecting oppressions of race and class.

The driving force of colonialism has been, and remains to be, the pursuit of capital through merchant economies and later capitalism. For Canada, European explorers (Basque, English and French mostly) came in search of resources like timber, fur and fish (RCAP 1996). Upon arriving in North America in the fourteenth and fifteenth centuries,⁵ the European invaders began claiming the land and resources as their own. Capitalism had evolved from feudalism in Europe, and in order to continue to grow, European empires needed access to more resources through external markets (Luxemburg 1996). North America provided an ideal opportunity for the growth and expansion of capitalism.

When capitalism came into being, there were coercive forces at work, which can be explained by Karl Marx's concept of primitive accumulation. For Marx, primitive accumulation links colonialism to capitalism. It is with primitive accumulation that colonial-like practices, such as conquest and enslavement, give rise to the capitalist mode of production.⁶ For Rosa Luxemburg this was not confined to a stage in the development of capitalism. As this thesis will demonstrate, the practices of primitive accumulation continue today in Canada. Luxemburg expanded on Marx's idea, developing a more thorough understanding of these coercive forces of accumulation. For both Marx and

⁵ After the Norse visitors one thousand years ago, which had little impact on the original inhabitants of the land, other European visitors did not begin arriving until the 1340s (RCAP 1996).

⁶ Marx, Karl in Chapters 26 through 32 of *Capital, Volume I*.

Luxemburg, capitalism depends on, not simple reproduction but on expanded reproduction. In order for capitalism to continue, it must have access to non-capitalist organizations (or countries), which can provide commodity outlets and inputs such as raw materials and labour power. Luxemburg used this idea to view imperialism as the political and military struggle over these non-capitalist areas necessary for capitalist accumulation (Luxemburg 1951).⁷ In this thesis, it becomes clear that the settler colonial and later Canadian state continues to prioritize primitive accumulation, with the acquisition and destruction of Indigenous lands and resources. In this sense, capitalism is not only dependent on non-capitalist societies, like traditional Indigenous nations, but “it lives from their ruin...it needs to swallow them up before capital accumulation can proceed” (Luxemburg in Frolich 1994:167).

Within Canada’s history, one can see the process of primitive accumulation in the often-violent transformation of non-capitalist forms of life into capitalist ones (Coulthard 2010). Initially, the land now known as Canada presented an opportunity for primitive accumulation for European empires. The primary purpose of the European presence in Canada was capitalist and more specifically, initially tied to resource extraction through the fur trade (Mackey 2002: 25). Gradually, as the fur trade expanded, settler colonialism came to serve capitalism through primitive accumulation. In gaining control of the new land and in oppressing and marginalizing its original inhabitants, the European empires secured their access to the land, resources and labour power. The profit from the colony

⁷ According to Luxemburg and in contrast to the tenets of Leninism, imperialism is not the final stage of capitalist development but is present at the earliest beginnings of capitalism and continues non-stop into the present. It is through imperialism that the continuous and progressive disintegration of non-capitalist spaces can continue to feed the accumulation of capital (Luxemburg 1951: 416,417).

was considerable because it was stolen and because it further accumulated from the privilege of the colonizer and the exploitation of the colonized (Green 1995).

FUR TRADE

From the onset of the European invasion, the fur trade structured the relationship between Indigenous peoples and Europeans. Initially, Indigenous peoples had an upper hand on the Europeans. Relations were established in a context where Indigenous peoples had a larger population size and superior knowledge of the land.⁸ Despite the mutual respect of many early encounters, European ambitions for North America began to drive Europeans to claim Indigenous lands as their own (RCAP 1996; Trigger 1985; Van Kirk 1980; Coates 1993). In areas rich with coveted resources, relations between Europeans and Indigenous peoples became tainted by the dominance of the Europeans and the forced labour of the Indigenous peoples (Carter 1999).

As the sheer volume of the demand for furs grew, the trade expanded to include many Indigenous nations, not only the Algonquian and Iroquoian nations. By the turn of the seventeenth century, Europeans were staying for extended periods of time, coming into more sustained contact with Indigenous peoples, and searching for new land and resources for the ever-increasing fur trade (RCAP 1996). For almost two hundred years, beginning with the founding of the Hudson Bay Company (HBC) in 1670, the fur trade dominated the western development of Canada. The English-founded HBC soon faced tremendous competition from French traders, who ventured west in their trading with the

⁸ After the arrival of the Europeans, the Indigenous population began dying in substantial numbers from the imported diseases. This meant that by the latter part of the 1700s, the two populations were approximately equal (RCAP 1996).

Indigenous peoples. However, in 1759, the French colonial fur trade was eradicated by the British conquest of Quebec (Van Kirk 1983: 1-2).

As the fur trade began to diminish, the desire for expansion and development increased. Settlers were anxious to clear forests and establish farms. From this development, the 'Indian' was no longer an essential component of primitive accumulation—no longer needed for resources, land or labour power. Within the move to an agriculturally-driven nation, the Indian was seen as only an obstacle (Miller 2000).

Similarly, the 'Indian' wife was set aside as the fur trade gave way to agricultural settlement. In the beginning stages of the fur trade, Indian wives of European settler men were very common, but as European women began to arrive, existing racial tensions sharply increased and intermarriage became less common. Initially, given the absence of European women in the Canadian west and the tremendous benefit in having an Indigenous woman as a partner, Indigenous women played an important role in fur trade society (Stasiulis and Jhappan in Stasiulis and Yuval-Davis 1995). An Indian wife served as a cultural liaison between the traders and her kin. Given her essential role in 'Indian' society, the bond between an Indigenous woman and a fur trader became not only a private affair but helped to advance trade relations with her tribe (Van Kirk 1983: 4-5). With the arrival of European women, racism escalated in a society where 'white' women saw Indigenous women as morally and racially inferior and as competition for 'white' husbands (Van Kirk 1983).

Colonialism is upheld by sexism and racism but it is also reinforced and sustained by other ideologies. In Canada, ideology was/is necessary to justify the theft of Indigenous lands and the oppression of the original inhabitants. In turn, the reification of

colonial ideologies pushes forward colonial policies, embedding themselves within the everyday commonplace mainstream culture (Said 1994: 12). Ideology is invoked to justify political processes; it is the “medium through which consciousness and meaningfulness operate (Therborn 1980:2). Ideologies may include beliefs, ideals and concepts that become ingrained in the consciousness of a people (Mujahid 2001). Colonial policies of the British and then Euro-descended state have been propped up by various ideologies over the decades.

The theft of the land from Canada’s original inhabitants was justified by an ideology: the doctrine of discovery. Explorers of European states believed that the discovery of new lands entitled them the right to take the land on behalf of their Crown where any land that had not yet been claimed by Christian states could be seized (Knopf 2008). Therefore, upon discovering Canada, the explorers could easily dismiss the land’s inhabitants if they were not Christian and/or related to a Christian state. The entire world was thought to be the property of God so the fallacy of discovery was enough to merit the criteria of European ownership.

In conjunction with the doctrine of divine right, the Europeans believed that they were the only true human mode of existence, which were capable of civilization. This racist belief held that this difference was biological or inherent and could not be changed; it was naturalist racism (Goldberg 2002; Chapter 5). Within this racist ideology, all other cultures were seen as barbarous and aberrant. Later missionaries, explorers and soldiers began to turn toward historicist racism (Goldberg 2002, Chapter 5), seeing that it was their duty to tame the Indigenous peoples who were believed to be ‘savages.’ It was their

responsibility to introduce 'civilization' to them (Purich 1986: 15) and save them from their barbaric ways.

During the late eighteenth and nineteenth centuries, the idea of progress became intertwined with existing ideologies of superiority. By the nineteenth century, Europeans and Euro-descended settlers began to believe that only certain 'races' were capable of progress and civilization (Stocking 1968: 35-6). In Canada, this manifested as the near-universal belief amongst Euro-descended settlers that the Indigenous peoples, as they existed, were inevitably disappearing and would not survive the march of progress (Francis 1992: 53). The belief that Indigenous peoples were "doomed to be culturally assimilated or perish as a superior European civilization spread" was widely held for nearly three centuries, and did not end until around the 1960s (Trigger 1986: 3).

Given their believed-inevitable extinction, Indigenous peoples were regarded as irrelevant to the Canadian state and to European-descended Canadians. Subsequently, this fostered a "Darwinistic paternalism" (Haycook 1974: 1) and intense racialization where, knowing that the 'Indian' was doomed to assimilation, the European settler state set about making the death of the 'primitive' as easy as possible. Feeding this paternalism was the view of the Indian as a 'noble savage,' as a being of nature with cunning and dignity yet ignorant and lazy. Dominant society became determined to "raise the savage Indian" to levels of "salvation and civilization" (Haycook 1974: 1) and assimilate him/her into mainstream society. Such racial historicist ideologies drove the colonial state to quicken the pace of assimilation for Indigenous peoples.

In outlining the colonial history and the lead up to the birth of the Canadian nation, one can clearly see that the central conceptual invention is the use of the creation

of race in othering Indigenous peoples and solidifying a racial hierarchy of European and 'Indian' within the 'New World.' Race and racialization serves modernity, refining its social relations and creating a concept of cohesive identity for the new nation (Goldberg 1993). As the nature of the relationship between European settlers and Indigenous peoples became less focused on the fur trade and more centred around supplanting European 'civilization' in the New World, the racialized power of the 'white' colonial settler increased through racially othering and excluding the 'Indian' from the building of the nation and from the climb of modernity. As history progresses, this chapter will demonstrate that the Canadian modern state was served by racial thinking and racist policies that created and legitimized the racial hierarchy.

CULTURAL ASSIMILATION

In the late 1800s, the state became more intent on the assimilation of the 'Indian.' To this effect, the Indian residential school system came to be seen as a prominent solution in bringing Indigenous peoples into the dominant (white) society and into the capitalist fold. Residential schools were widely used as a means of social engineering to "disassociate the Indian child from the deleterious home influences to which he would otherwise be subjected" in the words of the then Department of Indian Affairs (DIA, 1889 as cited in Miller 2000: 264). With this system, Indigenous children were forcibly removed from their families and communities and fiercely denigrated, Christianized and abused. The abrupt separation from family and community, along with the violent suppression of heritage and identity, has had generational impacts upon Indigenous peoples, their communities, identities and overall well-being. The multiple losses,

deprivation and brutality of this system denied Indigenous peoples the very basic human right of passing on traditions, maintaining their identity and parenting their children (Kirmayer, Brass and Tait 2000). The Indian residential school system was one of the most damaging and destructive assimilation strategies in the history of Canadian Indigenous-state relations (Tait 2003).

Perhaps second to the residential school system, as the most damaging colonial practice, is what is now referred to as the ‘Sixties Scoop.’ In furthering the state’s agenda of forced assimilation, and decades after the height of the residential school system, Canadian society engaged in another experiment of social engineering. The Sixties Scoop quite literally stole Indigenous children from their families, believing that they were better off in the care of the Euro-descended state and its agents of child welfare. From the 1960s until the early 1980s, child welfare services removed thousands of Indigenous children, placing them into long-term foster care or adoptions by ‘white’ families (Blackstock, Troche and Bennett 2004). Prior to 1960, Indigenous children made up only one per cent of children in care; however, by the late 1960s, they accounted for 30 to 40 per cent of children in care⁹ (Bourassa 2010). The justification for this change rested on the assertion that Indigenous parents were neglectful of their children, given the stark poverty in which they lived. There was no acknowledgement that the poverty experienced by Indigenous peoples was a direct consequence of the colonial policies and practices enacted by the Canadian state, along with the racist ideologies that accompanied them (Blackstock, Troche and Bennett 2004). Rather the impoverished conditions of Indigenous peoples and children were attributed to racial causes and linked

⁹ For instance, in Manitoba alone between 1971 and 1980, there were over 3,400 Indigenous children removed from their homes (Bourassa 2010).

to the 'savage' or 'primitive' nature of the 'Indian,' serving to uphold ideologies of racial difference and inferiority.

These two instances, Residential schools and the Sixties Scoop, stretching across nearly two centuries, are representative of the state's policies in supporting historicist racism. In these cases, the Indian is seen as capable of evolutionary progress or of being "whitened" (Goldberg 2002: 77), which serves as justification for the brutal policies enacted by the Canadian state (and church) against Indigenous peoples, yet in their 'best interests.' Historicist racism tends to be more paternalistic than naturalist racism; however, it is not to be understood that it is therefore less vicious or cruel, as evidenced in these two occasions. These policies of assimilation rule by historicist design and become the dominant practice of the Canadian modern state in its treatment of Indigenous peoples.

Indian policy has played a significant role in the attempted destruction of Indigenous culture and the expression of identity. In 1885, an amendment to the *Indian Act* prohibited potlatches, and thereafter religious expressions and ceremonies like Sun Dance and give away ceremonies were also banned. For Indigenous peoples, there was a deep connection between ceremonial life and political, economic and social well-being of the societies (Katherine Patinas as cited in Carter 1999: 164). In recognizing this deep connection, the federal state continually attempted to ban all cultural events and expressions that could strengthen the Indigenous nations. Together with other policies on identity and status, the prohibitions on cultural expressions contributed to a comprehensive racist colonial policy that targeted identity and gender relations, land ownership, mobility rights and autonomy.

LEGAL CONTROL

The control of Indigenous peoples in Canada has been maintained largely through the creation of colonial laws that repress and exclude Indigenous peoples, and appropriate their land and resources. These laws are always upheld by the threat, if not the act, of direct military violence. Colonial laws, such as the *Indian Act*, are more than pieces of legislation; they are discourses of classification and regulation. As Bonita Lawrence has said, they form a “conceptual framework...govern[ing] how we think” (2004: 25).

Canadian ‘Indian’ policies feed into the broader collection of colonial ideologies and discourses, serving capitalism and primitive accumulation by racializing, marginalizing and excluding Indigenous peoples. Only through the destruction of the ‘Indian’ can the Euro-descended state finally claim all resources, land and entitlement. The intent of Indian policy throughout the development of Canada has been for the destruction of the Indian: in identity, culture, family, gender roles, spirituality, economic well-being, self-governance structures and claims (and access) to the land and resources. Colonial policy, as an integral part of this ‘total war’ on Indigenous peoples, sought to accomplish much of this destruction.

Identity

While Indian policy in Canada has been rife with bars on exercising fundamental civil, political and cultural rights, perhaps the most staggering instance of colonial control has been of Indigenous identity itself. The *Indian Act* controls every aspect of the lives of Indigenous peoples, including the very definition of who is and is not an ‘Indian.’ For

Indigenous peoples, identity has been constantly negotiated within a context of colonial domination and control. In 1876, the *Indian Act* restricted the identification of Indian status within eastern Canada to those already living on recognized reserves or belonging to recognized Indian bands (Gilbert 1996: 15). All others became nonexistent as Indians, losing their identity and community. In western Canada, according to Bonita Lawrence, non-status Indigenous peoples were controlled through an arbitrary designation of a new category of Indigenous peoples: then as ‘Half-breeds’ and now as ‘Métis.’ (2004: 83-4). This new identity severed the connection of Métis to First Nations enshrined rights, necessitating the Métis begin again, fighting for their Indigenous rights to the land and to access to the land.

The state-imposed definitions of Indigenous identity have been consistently gendered. Among the first definitions of Indianness, was the 1850 legislation using gendered terms and stipulating that Indian status depended either on Indian descent or marriage to a male Indian (Wallis and Kwok 2008: 62). Until 1985, the *Indian Act* discriminated against Indigenous women by stripping them and their descendants of their Indian status upon marriage to a man of non-status. Consequently, the basic understanding of who is Indian is highly shaped by gender. The crucial determinant in deciding who is able to stay in Indigenous communities and who has been labeled as mixed-blood has been gender (Lawrence 2004). In this way, the gender discrimination inherent throughout the *Indian Act* has shaped conceptions of Indigenous identity and has had severe practical implications on the lives of Indigenous women.

Enfranchisement

Enfranchisement has been another instrument of control over Indigenous peoples used by the Canadian colonial state. Enfranchisement, for Indigenous peoples, required choosing Canadian identity over one's Aboriginal identity and relinquishing any claims to Indigenous rights (treaty rights, land, hunting, etc). In order to be granted the right to vote, an Indigenous person had to reject his Aboriginal identity and accept the superiority of the British colonial, later Canadian, subject.¹⁰ Such denial of identity implicitly involved the rejection of one's community, the autonomy of the community and the values embedded in its membership (Johnson 2005). Enfranchisement also imposed gendered divisions through exclusions for women. The possibility of enfranchisement under the 1857 *Act for the Gradual Civilization of the Indian Tribes in the Canadas* applied to men exclusively, leaving the women without a choice. The wives and children of Indigenous men who opted for (or were forced into) enfranchisement were automatically stripped of their Aboriginal identities. Of course, for the women there were no provisions for land in return for the loss of identity (Lawrence 2004: 32). Gender and identity played a key role in Canada's colonial policies from the very beginning of Indian policy.

Treaties

Along with legislative changes, treaties played an instrumental role in the post-fur trade society and specifically outside of British Columbia, Quebec, the Northwest Territories and the Yukon—which remained treaty-free. Treaty-making effectively dispossessed Indigenous peoples of their lands, while upholding the façade of choice and

¹⁰ During times when the right to vote was not explicitly denied to Indigenous peoples, the requirement of property ownership and the nature of the reserve system meant that the majority of Indigenous peoples were unable to vote (Moss and Gardner-O'Toole 1991).

of best interests. Treaties were accompanied by promises and representations that the state was working for the best interests of the Indigenous nations. However, the process was tainted by coercion, as indicated by the presence of the Crown's military and police, and the language used was ambiguous at best, and sweetened with symbolic presentations of security, peace and well-being for all time. The language of treaties was marked by symbolic representations of peace, mutuality, security and well-being for all time. Assurances were made of continued Aboriginal autonomy, along with promises of various gifts from the Crown. Many Indigenous peoples had concerns over the government's motives and sincerity (Green 1995). The negotiations were often not entered into by choice. Most often the choice presented was this or nothing.

Reserves

To use the parlance of the times, and a phrase that would persist, the 'Indian problem' was not entirely resolved by treaty-making. Once 'Indian' lands had been appropriated, there still remained the question of what to do with the 'Indians' themselves. Here the reserve system, which was often a principal component of the treaties, played a significant role in gaining control of Indigenous peoples. The setting aside of reserve lands was included in treaty agreements. For the state, reserves were sites of re-socialization, which was a prerequisite for future citizenship in Canada (Satzewich and Liidakis 2010)

For Assiniboine Chief Dan Kennedy, the "Indian reserve was a veritable concentration camp" (1972: 87). The use of the 'pass system' in Canada, as in South Africa, operated to separate Indigenous peoples from 'white people' and to carefully

monitor any contact between the two populations (Patinas 1994). The pass system required that any Indigenous peoples living on reserves had to obtain a pass from an Indian Agent in order to leave the reserve. This limited the mobility and economic options for Indigenous peoples (Carter 1999). The reserve system was a perfect instrument for colonialism in controlling and marginalizing Indigenous peoples.

Scrip

The Métis presented a challenge to the Canadian state, in that many were not impacted by treaties or the reserve system. Métis, a distinct peoples¹¹ who emerged from relations of Indian women and European men during the times of early settlement, were not ‘managed’ by treaty negotiation. Because they did not have a special status or long-term benefits like their First Nations brothers and sisters, they were instead handled by unilateral government action and Orders-in-Council. The state’s solution to the Métis problem was the introduction of ‘scrip’ in 1874, forcing Métis to choose between becoming ‘Indian’ or ‘white.’ The choice meant receiving either a specified amount of land or its equivalent in cash (Dickason and McNab 2009). Each Métis head of the family could apply for scrip on behalf of his or her children (Devine 2004: 216). If a family chose the treaty option of land, they would no longer be Métis but would become status Indian. If they chose the cash, they would no longer be Aboriginal (Métis or First Nations) at all (Dickason and McNab 2009). In the words of Prime Minister Macdonald, the “impulsive half breeds...must be kept down by a strong hand until they are swamped by the influx of settlers” (Bakan 1991:7). Through the scrip process, Métis lands were

¹¹ The word “peoples” as opposed to “people” is consistently used throughout this thesis to refer to Indigenous peoples, including Métis peoples. Peoples are distinct polities on their own merit and guaranteed self-determination under international law. (Churchill 2002: 65-6).

appropriated and their identity was threatened.

UPRISINGS

Indigenous peoples have an inherent right to resist colonial rule. Having arrived thousands of years prior to the Europeans, and having created a complex society in what is now known as Canada, the many Indigenous nations of the land are entitled to self-determination. As a part of their right to self-determination, Indigenous peoples have the right to resist foreign occupation and other such domination and oppression (De Shutter 2010: 687). This is, perhaps, the most significant difference between the rights of minorities in Canada and the rights of Indigenous peoples. All non-Aboriginal peoples are foreign occupiers of a land taken from its original inhabitants centuries ago. As such, Indigenous peoples have justly exercised their right, under international law, to protest and resist settler and Euro-descended occupation.

Along with the colonial injustices inflicted upon Indigenous peoples, there has been an equal and parallel force of resistance from the colonized. The late 1800s saw two Métis uprisings, and the late 1960s began the Red Power movement, which spurred Indigenous resistance and culminated in the militancy of the 1990s.¹² Quite contrary to the expectations of the European settlers of the vanishing race of the ‘Indian,’ Indigenous nations have continued unabated in their determination for survival, rights and recognition.

¹² It is often asserted that the 1990s represented the birth—or re-birth?—of the militant ‘Indian.’ Such depiction is often seen within media representations of Indigenous resistance. In contrast to this fairly recent stereotype, this chapter puts forth that Indigenous protest activity continued to rise following the 1969 White Paper and has naturally increased through the seventies, eighties and into today. For more information on the portrayal of the Indian as militant, see Taiaiake Alfred on this topic.

In the time of Confederation, in the late 1800s, the annexing of Rupert's Land¹³ spurred on the rise of the first Métis resistance in the newly created Dominion of Canada. Local residents, both Indigenous and non-Indigenous peoples, objected to the annexing of the land; however, Ottawa used the Métis as scapegoats, targeting them and making it appear as though they were the main agitators. With the annexing, there had been an arbitrary seizure of land imposed on the populace, which included Métis and settlers. The subsequent resistance movement organized to form a provisional government in 1870, demanding a guarantee from Ottawa for the protection of their rights before administrative control over the North West was constitutionally transferred to Ottawa (Adams, 1989). Ottawa became worried about the power of the provisional government, which was on close terms with the United States. The federal government began making generous promises of self-government to the resistance; yet all the while, Ottawa and London were secretly organizing a military expedition to overcome the resistance. A battle ensued with what was known as the Red River Resistance and when it was over, the Métis were landless and homeless (Adams 1989).

The building of the national railway across Canada was a priority of the first government of the Dominion of Canada. It was completed in 1885, which is the same year as the second Métis uprising, the Northwest Rebellion. At this time, the Cree, Blackfoot, Blood, Peigan and Saulteaux were near starvation by the near-extinction of the buffalo. The Métis had grown desperate, concerned that their rights would never be recognized. The 1885 rebellion was the culmination of despair of the Métis, First Nations and white settlers who were impoverished and angry with the generous land

¹³ With the Hudson Bay Charter of 1670, the King of England gave nearly half of the land of what is now Canada to the Hudson Bay Company. At the time of Confederation, this land was then annexed to the new Dominion of Canada (Carter 1999).

grants given to the Canadian Pacific Railway (Adams 1989). The 1885 rebellion ended with severe consequences for those involved. With the hanging of Métis leader, Louis Riel, and the defeat at Batoche, half a century's struggle for Métis recognition was ended (Foster in Dickason and McNab 2009: 282).

In both instances, the 1870 and 1885, the new government of Canada underestimated the commitment of Indigenous peoples to maintaining their land and to resisting the imposition of a new government and its priorities of change and development. In the first case, the Métis decidedly chose the devil they knew over the one they did not: they were familiar with the rule of the Hudson Bay Company but not with the government of the new Dominion. Most felt that HBC was fairly innocuous in its powerlessness and felt it was the preferred choice over a new state power (Sprague 1988: 36-37). Shortly after the defeat of the first uprising, in 1885, it became clear that the Métis had been correct. The new government of Canada demonstrated no concern for the well-being of Indigenous peoples or acknowledgement of their ownership of the land, when it sought to create a railway across the country. As a result of the 1885 Rebellion, the *Indian Act* was changed to include very extreme measures for suppressing Indigenous resistance¹⁴ as well as prohibitive restrictions on expressions of identity and culture. Colonial acts of direct and indirect violence led many Métis to shed their Indigenous identity for the safety and well-being of their families. Here, the capitalist drive for primitive accumulation of land and resources could not be halted by Indigenous resistance, which—for a time—diminished.

There was an explosion of social protest in the 1960s. Awareness of the plight of

¹⁴ For instance, all Plains bands were classified as “loyal” or “disloyal” and there was widespread persecution of members of bands labelled as “disloyal” (Lawrence 2004: 244).

Indigenous peoples had been growing in Canada since the Great Depression of the 1930s. Although the disaster of the Depression left all unprepared, triggering the expansion of the welfare state (Thobani 2007), the marginalized position of Indigenous peoples meant that they were particularly hard-hit (Wotherspoon and Satzewich 2000). On the heels of this were the aftereffects of World War II, where nations had begun actively distancing themselves from racist policies (for example, in regards to immigration) that could have been suggestive of Nazi Germany (Burton 2003: 75; Thobani 2007). The climate of activism circling the globe, and the sense of hope in Canada under the Liberal government, facilitated the rise of an Indigenous movement in the late 1960s, the Red Power movement.

Public awareness and discomfort with the living conditions of Indigenous peoples had been growing and necessitated a response from the state (Palmer 2009). Subsequently, the government began investigations into the conditions of Indigenous peoples, such as the *Hawthorn Report* (1966), which further helped to bring Indigenous issues to the forefront of the Canadian mind (Dickason and McNab 2009). The *Hawthorn Report* advocated that Indigenous peoples be regarded as ‘citizens plus’ since they “once occupied and used a country to which others came to gain enormous wealth in which the Indians have shared little” (Hawthorn 1967 vol 2). Contrary to the findings of the report, the government drafted its own policy paper, the *Statement of the Government of Canada on Indian Policy*, later to be known as the ‘White Paper,’ and instead promoted assimilation under the guise of Liberal-style equality.¹⁵ In the mind of the Liberal government, special status should not and did not exist for any group, including

¹⁵ For a more in-depth critique of Canadian liberalism and its failings for minorities and Indigenous peoples, see Thobani 2007.

Indigenous peoples, but rather all individuals should be the same under the law and in practice (Dickason and McNab 2009). Liberalism espoused progress and developed within a well-mannered racism camouflaged by good intentions. For Indigenous peoples, the “racially mediated meliorism and commitment to a moral progressivism” (Golberg 2002: 70) translated into policies of forced assimilation and disregarded Indigenous autonomy.

There was a tremendous backlash to the 1969 *White Paper* and unprecedented levels of political development for Indigenous peoples and of activism with non-Native organizations in fighting government policy. Because of the White Paper’s emphasis on the termination of the special rights of Indigenous peoples, Aboriginal organizations soon became increasingly concentrated on issues of citizenship (Wotherspoon and Satzewich 2000).

Throughout the late 1960s and early 1970s, the period with which this thesis is primarily concerned, the Red Power movement gained considerable strength. It garnered support from the non-Aboriginal community and from the American Indian Movement (AIM) and attracted the attention of the media, the Royal Canadian Mounted Police (RCMP) and the government. An archival scan of available newspapers of the era¹⁶ revealed that the methods used by the Red Power movement included the occupation of government offices, particularly offices of Indian Affairs and Indian Agents, though occasionally of unceded Indian land (parks, etc.); marches, rallies and demonstrations on Parliament Hill and elsewhere; and blockades, most notably on the International Bridge.

¹⁶ The archival search looked at Canadian newspapers throughout the 1960s and 1970s, using a key word search with variations of the following terms: Native, Indian, First Nation, protest, demonstration, Native power, resistance, violence, occupation, blockade, Aboriginal, Métis, Inuit, Eskimo, Chrétien, Trudeau, Indian and Northern Affairs, White Paper, American Indian Movement, Native Indian Brotherhood.

The issues uniting the resistance movement were around education, economic opportunities, land claims, crossing the United State/Canadian border and self-determination (See Chapter 3 for more information on the Red Power movement).

Upon recognizing the strength of the Red Power movement and the backlash to their proposed White Paper, the government of Prime Minister Pierre Trudeau and Minister of Indian and Northern Affairs Jean Chrétien soon drew back from their ideas of assimilation outlined in the policy paper. The government became more willing to negotiate comprehensive land claim agreements (Abele 1997) and significant gains were made for the movement. By the mid-1970s, the political environment in which Indigenous peoples found themselves had been radically changed and, as this thesis asserts, the battle for Indigenous rights had been transferred into a new legal system (See Chapters three and four for more detail). Indigenous organizations had developed a strong presence in Ottawa and were becoming skilled lobbyists (James 1990).

By the 1990s, many changes that had been implemented in response to the Red Power movement had failed to produce lasting results.¹⁷ For example, the federal government had developed a policy for resolving special claims, yet very few had been settled. This fueled rising discontent amongst Indigenous peoples who saw their land being appropriated for capitalist development without their input or consent. The rising dissent led to the development of stand offs across the country, like Oka (Dickason and McNab 2009) and Stony Point.

In 1990 the Mohawks from Kanasatake set up a road block to stop the nearby town of Oka from expanding a golf course onto Mohawk territory. For seventy-eight

¹⁷ Other such examples include the UN Declaration of Human Rights, which was an effort arising out of the 1970s and had not yet been completed.

days the Mohawk nation faced off with the Quebec Provincial Police and later the RCMP. The confrontation involved the death of one police officer (Grand Council of the Crees 2011).

Shortly after, in 1995, the Stony Point Nation and the Ontario Provincial Police faced off over the occupation of Stony Point land. In 1942, the federal government had taken land from the Stony Point Reserve under the *War Measures Act* for use as a military training camp. The land was meant to be returned following the war but never was. After a two day standoff, the confrontation ended with the shooting death of a First Nations man by the police (Ipperwash Inquiry Final Report 2007).

The struggles of Indigenous peoples did not go unnoticed within the state. The Oka crisis led the Conservative government of Brian Mulroney to instigate the Royal Commission of Aboriginal Peoples (1991 – 1996). The confrontation in Stony Point brought negotiators back to the table, from fear of a similar violent conflict, for the Nisga'a treaty (a decades-long battle further discussed in Chapter 4), finally ratifying it in 2000 (Dickason and McNab 2009).

For centuries, Indigenous peoples have exercised their right to protest occupation and oppression. In standing up for their rights to land, resources, access, identity, cultural expression and general well-being, the resistance also stood against colonialism, racism and capitalism. Indigenous resistance, in its various forms, has offered a vision of how things might have been—a vision that “stands in diametrical opposition to the totality of what might be termed ‘Eurocentric business as usual’” (Churchill 2002: 370). It is only through this resistance—this vision—that change can occur. As Chief Seattle said in 1854: “Tribe follows tribe, and nation follows nation, like the waves of the sea. Your

time of decay may be distance, but it will surely come... We will see” (quoted in Churchill 2002: 398).

STATUTORY and CONSTITUTIONAL CHANGE

As discussed, the changing climate from the Depression and World War II impacted the Indigenous-state relationship, and thereafter, several important changes occurred. As a result of Indigenous efforts and of mounting public concern, Parliament established a joint committee in 1946 of the Senate and the House of Commons to consider revisions to the *Indian Act*. The committee heard from Indigenous peoples, missionaries, schoolteachers and federal government administrations on the marginal status of Indigenous peoples (INAC 2003). In 1951, the *Indian Act* was revised yet it did not differ significantly from the previous legislation. Primarily, the laws banning potlatches and other ceremonies were rescinded (INAC 2003). Many of the overall changes of the act were incredibly damaging for Indigenous women. In lieu of the previous act's reference to “Indian blood” as the primary determinant of heritage and status, the male line of descent was now emphasized. There was also a series of very complicated and detailed requirements for maintaining Indian status, along with the forced enfranchisement of any women who married non-Indian men (Pfefferle 2007: 3). In practical terms the changes meant that the loss of status for an Indigenous woman and her offspring would mean the loss of band membership, the loss of a place to live, lost access to any treaty monies or band assets and lost property held on the reserve (Wallis and Kwok 2008: 63). The amendments severed Indigenous women from their men and

their communities and were a brutal blow to the integrity of Indigenous nations, many of which had traditionally been matrilineal (Anderson 2000: 66-68).

Following the Red Power movement of the sixties and seventies, extensive lobbying in Canada and Britain by Indigenous peoples forced the Canadian federal government to entrench Aboriginal and treaty rights in the *Constitution Act* of 1982. Following this change, the primary struggle between Indigenous peoples and the state became of the definition of these Constitutional rights¹⁸ (Wotherspoon and Satzewich 2000). Additionally, by enshrining three Aboriginal identities in Constitution, the state effectively divided Indigenous peoples into arbitrary groups, ignoring the traditional nations that had existed and forcing First Nations, Métis and Inuit into competition for finite government resources (Lawrence 2004). Furthermore, having been influenced by the Liberal/liberal conception of Indigenous issues, the rights recognized in the Constitution did not arise from the historical fact of having “been here first” but rather the “taxonomic assessment” of Aboriginal identity. In other words, thinking about Aboriginal identity as “a peoples” has become less about a political, social and historical entity, and nearly exclusively about discerning the biological identity based upon criteria set forth by the state (for example, blood quantum). This confuses the justification on which Aboriginal rights are based, leaving its application open to interpretation and, often, forcing the courts to make this decision (Pfefferle 2007).

Perhaps one of the most significant developments of recent times has been the 1985 change to the *Indian Act*. Since 1869, the Canadian state imposed a patriarchal

¹⁸ There have been four constitutional conferences (1983, 1984, 1985 and 1987) between Aboriginal leaders and federal and provincial authorities to clarify this broad recognition (Wotherspoon and Satzewich, 2000). However, since the failed Meech Lake Accord of 1987, Aboriginal rights at the Constitutional level have been stalled.

structure upon Indigenous peoples through the *Indian Act*. Until 1985, the Act defined status patrilineally, meaning that an ‘Indian’ woman who married a non-Indian man would lose her Indian status. Additionally, a non-Indian woman marrying an Indian man gained Indian status. Indigenous women have long struggled against this gendered form of colonial oppression which “disenfranchised them from the life of their nations” (Lawrence and Anderson 2005:1). After failing in Canada, one Indigenous woman (Sandra Lovelace) brought this issue to the United Nations, stating her loss of Indian status was in violation of the International Covenant on Civil and Political Rights. In 1981, the UN ruled in favour of Lovelace, forcing Canada to change the *Indian Act* in 1985 (Lawrence 2004).

The 1985 changes to the *Indian Act* are commonly referred to as ‘Bill C-31’ and they address three fundamental aspects: eliminating discriminatory elements from the registration criteria for the Act; giving Indigenous peoples the option of controlling their own membership; and restoring Indian status to those who lost it under the previous legislation (INAC 2007).

Unfortunately, Bill C-31 brought forth a new set of discriminatory consequences. In addressing how Indian status would be passed on, the state chose not to bring women up to the level of men, but rather to bring men down to the level of the discriminated-against women. This was done through the addition of a complex set of requirements that must be met in order to pass Indian status onto one’s children and one’s grandchildren. To qualify for Indian status, subsequent generations will need to have either both parents as status Indians or one parent a status Indian whose parents were both status Indians (Congress of Aboriginal Peoples 1998). In time, this change in legislation

will eradicate the (status) Indian. The ramifications of Bill C-31 have yet to be felt within the Indigenous community; however, awareness is growing of the issue.

In the late twentieth century, dramatic changes were occurring in the jurisdictional framework for land resources and development in the far north. In 1993, the comprehensive Nunavut land claim settlement was signed by federal, territorial and Inuit leaders. By 1999, the new territory of Nunavut was formed. The struggle for this process began much earlier with a proposal for the division of the Northwest Territories (NWT) appearing in 1962 and again in 1973. The final Agreement includes forty-one articles establishing clear rules of ownership and control over the land and resources. In exchange for surrendering Aboriginal title to the land to the Crown, the Inuit of Nunavut received a variety of rights and benefits including title to 350,000 sq km of land and representational and economic rights including a share of royalties from oil, gas and minerals (Haley 1995). In 2006, Nunavut Tunngavik Incorporated, representing Inuit beneficiaries under the Agreement, initiated legal proceedings against the federal government for non-implementation of many of these obligations under the Agreement (Hurley 2009).

In 2003, a gain was made for Métis when the Supreme Court affirmed Métis rights in the *Constitution* in the Powley ruling (*R. v. Powley [2003] 2 S.C.R. 207, 2003 SCC 43*). Steve and Roddy Powley were acquitted by the court of unlawfully hunting a moose without a hunting license on the grounds of their Métis status. The judge found that members of the Métis community have an Aboriginal right to hunt for food without justification by hunting legislation (Supreme Court of Canada 2003). Despite this ruling,

many Métis have been subsequently arrested for the same offence: hunting without a license, despite their enshrined Aboriginal rights.

CONSERVATISM

While the impact of Liberalism has been significant for Indigenous issues and activism, the effect of rising Conservatism has been immediate in Canada. Whereas the liberal ideology failed to recognize the special rights or status of Indigenous peoples, lumping them in with all other minority groups, the conservative ideology takes a hard stance on the assimilation of Indigenous peoples into the capitalist system.¹⁹

Conservatives, such as Tom Flanagan, Frances Widdowson and Albert Howard, contend that Aboriginal communities cannot be viable economic entities because they are isolated from global markets and have serious deficits in human and intellectual capacity. In their mind, Indigenous culture, tradition and wisdom have no place in the ‘modern’ world. Their antiquated cultural features account for undisciplined work habits and a general inability to function in a ‘highly developed society’ like Canada (Salee 2010: 318). The Conservative conception of Indigenous peoples fits perfectly with Goldberg’s description of historicism where racial rule is seen as the outcome of history or of historically produced superiority (2002).

Under the Conservative government of Prime Minister Harper, Indigenous issues have seen many setbacks. In 2007, the federal government refused to sign the United Nations *Declaration on the Rights of Indigenous Peoples*, claiming it was in conflict with the *Charter of Rights and Freedoms*. According to human rights groups and Indigenous

¹⁹ See the work of Francis Widdowson, Tom Flanagan or Calvin Helin.

activists, the government was trying to maintain control over Indigenous resources and lands (CBC 2007).

Shortly after opting out of the UN Declaration, the government issued an official apology to Indigenous peoples for the Indian residential school system. In 2008, Prime Minister Harper apologized for what he called a “sad chapter in [Canada’s] history” (CBC, 2008). For the Conservative government, the abuses suffered at residential schools were a consequence of a very brief and isolated time in Canada’s history. In the apology, the theft of land, cultural genocide and marginalization of Indigenous peoples ceased to exist (Mackey forthcoming). Perhaps not surprisingly, less than two years after issuing the apology, the Conservative government ceased funding for the very organizations created to support the process of healing for Indian residential school survivors.

Under the Conservative Harper state, Indigenous resistance has seen ups and downs. Quite often, the gains achieved come with stipulations that either protect capitalism or impede Indigenous autonomy, leaving the act of government as mere symbolism without positive material impact. On Friday, November 12, 2010, the Harper government finally signed the *United Nations Declaration on Indigenous Rights*. Having felt the backlash since their initial refusal sign, the state decided it was better to sign on with conditions, then to reject the declaration in its entirety (Globe and Mail 2010). One can only assume that the stipulations accompanying Canada’s signing of the document will serve to protect colonialism, racism and the capitalist system.

CONCLUSION

Given the centuries-long colonial experience of Indigenous peoples, it is not surprising to find that the overall well-being of First Nations, Inuit and Métis remains poor. The socio-economic demographics of the population continually indicate poor performance in typical areas of evaluation: education outcomes, health and well-being, life expectancy, suicides rates and unemployment. Additionally, according to Taiaiake Alfred, the mounting effects of dispossession have created a near total psychological, physical and financial dependency on the state. This crisis of dependency has meant Indigenous peoples have become reliant on the very people and institutions that caused their oppression and exclusion. Because opportunities for living a self-sufficient, healthy and autonomous life have been incredibly strained and limited for Indigenous peoples for a number of centuries, the result has been increasing state dependency. There has been a direct causal relationship between the loss of land, community, culture and identity, and the psychological, economic, social and physical existence of the colonized peoples. For Indigenous peoples, this connection between the practices of colonialism and the very real impact of dependency and discord cannot be overlooked (Alfred 2009). The impact of colonialism—of the ‘total war’—is absolute.

At this junction of the discussion, a clear sketch of Indigenous-state relations has emerged. Throughout the relationship between Indigenous peoples and the Canadian, and prior to that the European colonial, state, the frank assessment of those in power has been that Indigenous peoples and societies would either inevitably disappear or that they should be forced to disappear (Abele 1997). The ultimate goal of Canadian Indian policy, from the beginning of the Dominion until today’s era of neo-Conservatism, has been for “the extinction of the Indian as Indian” (Harper 1945: 127) for the protection of

the colonial system and in pursuit of the expansion of capitalism. Though small gains have been made by Indigenous peoples, particularly in the mid-1900s until today, it remains clear that not much has changed. Indigenous peoples continue to be marginalized and are still largely dispossessed of lands they have inhabited from time immemorial. While capitalist accumulation may no longer require the explicit dispossession of Indigenous communities from their land and resources, it does still demand that they be available for exploitation and capitalist development (Coulthard 2010). This leaves Indigenous peoples silenced, marginalized, racialized and excluded from the nation, while contemporary Canada remains “firmly squatted on Aboriginal lands and cannot survive without them” (Green 1995).

The overarching theme of this chapter is undoubtedly the systematic racism and continued marginalization of Indigenous peoples through practices of colonialism within a colonial and then modern state, and for purposes of capitalist accumulation. However, just as significant as the process of colonialism, is the incredible and continued strength of Indigenous peoples in resisting and struggling against these forces. Indigenous identities, cultures and communities have survived centuries of forced assimilation and, at times, attempted extermination. Despite the best efforts of the European-descended state, Indigenous cultures and identities have not become extinct, as predicted in the times of settlement, but have instead experienced a recent resurgence in pride and power. This duality of emphasis, upon the state’s efforts at eradication and the peoples’ successes in survival, will be a recurring theme throughout the duration of this thesis.

It was the indirect intent of this chapter to provide an exercise in decolonization, which is the undoing of colonization. The process of decolonization has obvious

relevance to Indigenous nations, whose land, resources, identity and very existence have suffered at the hands of colonialism. However, in the opinion of many scholars, such as Ania Loomba, colonization impacts the colonizers as well. The acts and processes of colonialism degrade the colonizers themselves. In this way, it is only through decolonization that such degradation and suffering can be addressed (Brown and Nock 2006).

The first step of decolonization is deconstruction. In other words, it is the understanding of the historical colonial process, as outlined throughout this history of Indigenous-state relations (Green 1995). However, as Linda Tuhiwai Smith notes, “Decolonization cannot be limited to deconstructing the dominant story and revealing underlying texts, for none of that helps people improve their current conditions or prevents them from dying” (1999: ii). In moving from the broader theory of colonialism, and the very consistent colonial portrait outlined in this historical overview, one must not overlook the significance of the specific contexts of the political issues described. In other words, it is often easier to concentrate on the overall dispossession of Indigenous peoples than to examine and support Indigenous peoples’ specific claims to self-determination, land and resources. These more detailed nuances have material consequences for both the European-descended state and the Indigenous population (Alfred 2005). It is to these nuances that this discussion will turn in the remaining chapters. The following chapters will look at the political movement of Red Power in the late 1960s and 1970s, followed by an analysis of the liberal government of Trudeau and Chrétien and their responses to Red Power. Finally, conclusions will be drawn on

significant events from the Trudeau/Chrétien era that significantly impacted the struggle of Indigenous resistance.

Chapter 3

Red Power

The colonization of Indigenous peoples has sparked a great deal of unrest and protest over the years. Social movements, revolutions and insurgencies have occurred worldwide in protest of the theft of Indigenous land, the appropriation of their resources, the forced assimilation of the peoples and the subsequent poor quality of life. The push for varying degrees of self-determination has united many of these Indigenous movements within a struggle against colonialism's total war. Given the breadth of these movements, there can be little doubt of the significance in studying Indigenous resistance, yet there is less certainty regarding the tools for such analysis. Currently there are conflicting tenets within social movement theory. For many reasons, this chapter focuses on the political process approach in its analysis of the Canadian Red Power movement of the 1960s and 1970s.

This chapter will provide a brief overview of three primary approaches to social movement theory, including the justification for using the political process approach. I will then apply the selected approach to Red Power to provide a glimpse into the social movement specifically its mobilizing structures, political opportunity structures and framing. Finally, the chapter will include additional information, such as the leadership, tactics and key issues for Red Power, in order to complete the portrait of the movement.

The intent of this chapter is not to create an all-encompassing view of the Red Power movement—as none currently exists—but rather to produce a broad overview of the movement and demonstrate its importance to an understanding of Indigenous activism. As this thesis asserts, the era of Red Power has decisively changed the terrain

for Indigenous activism. Key occurrences within this era led to changes within the political realm of the state and necessitated subsequent modifications in the 'activist'. Such changes will be the topic of the subsequent chapter.

It is important to note that, given the paucity of information on the Canadian Red Power movement, many of the details included in this chapter have been obtained from an archival newspaper search. Unless otherwise stated, the conclusions pertaining to Red Power within this chapter were acquired from the results of a broad media scan of available newspapers of the time.²⁰

SOCIAL MOVEMENT THEORIES

The political process approach is a valuable tool for the study of popular contention. This approach, while not universally accepted, has become the dominant model of many social movement theorists. Other commonly mentioned theories include resource mobilization and new social movement. These two approaches led to the development of the political process approach (Ayres 1998).

The resource mobilization theory emerged in the 1970s. Within this approach, the primary determinant of whether a movement is formed and whether it succeeds is the level of available resources. These resources can originate outside the mobilizing groups, often from within the affluent middle classes. The emphasis within this theory is on the involvement of individuals and organizations outside of the movement. A movement is

²⁰ The archival search looked at Canadian (and some American) newspapers throughout the 1960s and 1970s, using a key word search with variations of the following terms: Native, Indian, First Nation, protest, demonstration, Native power, resistance, violence, occupation, blockade, Aboriginal, Métis, Inuit, Eskimo, Chrétien, Trudeau, Indian and Northern Affairs, White Paper, American Indian Movement, Native Indian Brotherhood.

believed to arise in response to the guidance of dominant affluent individuals and professional organizations. While valuable, this theory does not adequately represent changes that occurred in social movements since the 1970s. For instance, many scholars thought it did not account for the cultural aspect of new movements or the methods and ideologies of new movements. These theorists developed new social movement theory (Ayres 1998).

New social movement theory asserts that movements arise in protest of a society based on priorities of material consumption. This approach accounts for the level of detachment that certain movements have from established political institutions and interest groups. Some scholars take issue with this assertion, believing instead that these movements are merely engaging in counter culture activities. The criticism of new social movement theory led, in turn, to a closer look at the political context around movements and to the political process approach (Ayres 1998).

The political process approach focuses on changes in the political environment as the central factor in social movements. According to this approach, a movement will begin, grow and succeed in a context where it is most likely to have an impact on the political establishment. For instance, a destabilized political context may present a unique opportunity to groups that are often powerless. In order for a movement to mobilize, there must be political opportunity (Ayres 1998).

The political process approach is a useful theory for the analysis of the Red Power movement because, as this chapter will demonstrate, the political context in Canada highly impacted the movement. While many refer to the 1969 *White Paper* as the cause

of the Red Power movement, the political process approach will provide a clearer analysis of the wider context in which Indigenous activists found themselves.

INDIGENOUS ACTIVISM

In Canada, there is a prolonged history of Indigenous resistance to the racist state. Aside from the two rebellions of the late 1880s, there were also numerous protests and demonstrations in past centuries. For instance, in British Columbia the Tsilhqot'in nation protested the developing and settling of their land in 1864 (Muckle 1998) and decades later, First Nations peoples prevented miners and police from entering their territory to go to the Yukon for the gold rush (Abel and Coates 2001). Five years before the Northwest Rebellion of 1885, many Cree nations formed an alliance to decide how to best press for changes to Indian policy²¹ (Dyck 2011). In the early twentieth century, the League of Indians of Canada organized many rallies with attendance over one thousand (York 1989: 246). Throughout the country, there has been a foundation of resistance against colonial forces spanning centuries.

Across the narratives of Indigenous resistance, there remains an element of commonality in the struggle for self-determination.²² The Red Power movement of Canada maintains this commonality and builds upon it with a sense of shared identity and common goals. This commonality has built a sense of community, which is one of the reasons this thesis asserts that the Red Power movement was indeed a movement.

²¹ The alliance became overshadowed and overtaken by the Rebellion. Following the 1885 Rebellion, such political alliances became extremely difficult within the government clampdown on Native autonomy (Dyck 2011).

²² Of course prior to the 1970s there was no discussion of 'self-determination' within the Indigenous movements or within the discussion of Indigenous rights; however, it is undeniable that the struggles of the Indigenous peoples were indicative of self-determination.

Social movements²³ can be broadly defined as “mobilized networks of groups which, based on a collective identity, participate in collective action to bring about social change” (Rucht and Neidhardt 2002: 20). According to the archival media scan, the Indigenous movement of the sixties and seventies was highly mobilized under a collective ‘Native’ identity, with the hope of changing the social, economic and political conditions of life, and collectively engaged in varying forms of protest. The Red Power movement could be termed a social movement.

A social movement exists when single episodes of collective action are seen as a part of a larger and longer-lasting action (Della Porta and Diani 2006). Within the Red Power movement, there were several individual protest actions within various First Nations, and within the Métis and Inuit communities; however, the frames, political opportunity structures and mobilizing structures brought these actions together to form a coherent and fairly unified movement. Within the ‘Native’ identity, there was a sense of collective belonging, mobilization to support social change and a shared sense of well-being, shared past, present and future.²⁴

POLITICAL PROCESS APPROACH TO RED POWER

The key components of the political process approach most often include mobilizing structures, political opportunity structures and framing. In order to provide a

²³ While some scholars differentiate between social and political movements, this thesis opts to use the definition of social movement that does not distinguish between a social and political movement. Therefore, while the thesis refers to Red Power as a social movement, this does not insinuate a lack of political nature.

²⁴ Associating the Red Power movement with a distinctive collective identity implies no assumptions about the homogeneity of the members sharing that identity. There is a shared collective identity to the extent that the individuals feel part of a collective.

thorough analysis of Red Power, each of these components will be examined for the movement.

Mobilizing structures transmit ideas and coordinate actions to bring participants into the movement (Kuumba 2001: 75). For Indigenous communities, Native organizations served as communication centres. These organizations often produced and disseminated their own Native newspaper, which would have served as an ideal mobilizing structure for the Red Power movement. For instance, the Native Brotherhood of British Columbia produced one of the first Indigenous newspapers in Canada, the *Native Voice*. Other organizations, such as the Federation (formerly Union) of Saskatchewan Indians followed suit with their own publications. However, following the 1969 *White Paper*, there was a surge in Native newspapers as Indigenous peoples began to see the national scope of their struggles and began identifying with their communities. The *New Breed*, *Agenutamagen*, *Brotherhood Report/Native Press*, *Kinatuinamot Ilengajuk*, and other newspapers followed in the wake of the *White Paper* (Avison and Meadows 2000). These mobilizing structures would have efficiently communicated the ideas of the Red Power movement, simultaneously attracting members to demonstrations and protest activities.

The leadership of the Red Power movement served to further mobilize the movement. For instance, two such leaders, Walter Deeter and Harold Cardinal, traveled widely, sending telegrams to organizations and speaking to Indigenous peoples in an attempt to unify the Indigenous movement and bring forward new members (CBC 2010).

The political opportunity structure captures the broader context that facilitates the growth of the social movement (Tarrow 1983; 1998; Kitschelt 1986; Kriesi 1995; 2004).

Among the factors contributing to the relative openness or closure of the institutionalized political system are:

- the stability or instability of the elite alignments that usually uphold a polity,
- the presence or absence of elite allies, and
- the state's capacity for repression (McAdams 1996: 27).

In Canada, during the time leading up to the rise of the Red Power movement, there were several political opportunity structures to push forward the success of the movement.

The Red Power movement followed the rights revolution of the 1960s. The rights revolution was not limited to Canada but had spread throughout most industrialized nations (Ignatieff 2000). Throughout the 1960s, there was an explosion of international protest, much of which was centred on Indigenous issues. In South and Central America, Indigenous resistance occurred with student, worker, women's and guerrilla movements. In Ecuador, the Shuar nation was influential in developing other Indigenous organizations in the area. In 1971, the Indigenous Regional Council of Cauca was formed in Columbia from ten communities. Two Aymaran organizations were formed in Bolivia: the Mink'a and the Movimiento Tupac Katari. The main focus of these Indigenous movements was to recover stolen lands. Just like in Canada, the Indigenous movements organized occupations, protests and road blockades around the world (Hill 2009: 58).

The culture of revolution, or global rights movement, meant that societies were more contentious and harder to control (Ignatieff 2000). The discourse and the tremendous activism of the rights revolution served to limit the power of the state. It became a destabilizing force and an opportunity for the movements to effect change. In Canada, the rise of the Red Power movement followed right on the heels of Quebec's

Quiet Revolution , a period of intense change in the province that ended in the October Crisis of 1970 triggered by the kidnappings of government officials by the Front de liberation du Quebec (FLQ) (Ignatieff 2000). Not only did Red Power occur within the wider global rights revolution, but it coincided with a tremendously contentious time for Canada. This was a unique opportunity for Indigenous activists and leaders to be heard within the worldwide struggle for rights.

Along with the climate of resistance and contention, there was also mounting public awareness and discomfort with the living conditions of Indigenous peoples in Canada. This discomfort served to push forward the Red Power movement and pressure the Canadian state to respond accordingly (Palmer 2009). Government investigations into the conditions of Indigenous peoples, such as the *Hawthorn Report*²⁵ of the 1960s further helped to bring Indigenous issues to the forefront of the Canadian mind. The *Hawthorn Report* outlined not only the dire conditions of Indigenous peoples but also recommended that Indigenous peoples be regarded as “charter members of the Canadian community” and as “Citizens plus” (Hawthorn 1966). ‘Citizens plus’ would become a key phrase within the Red Power movement; the ‘plus’ recognized the additional rights or benefits outlined in treaties, which the report said needed to be worked into future political processes. Additionally, the ‘plus’ signified that Indigenous peoples “once occupied and used a country to which others came to gain enormous wealth in which the Indians have shared little” (Hawthorn 1966).

In the beginning of the era in question, the Trudeau/Chrétien era, Parliament was divided on the ‘Indian problem’ and uncertain how to deal best with the skyrocketing

²⁵ Between 1946-48 and 1959-61 there were also special parliamentary inquiries into the administration of Indian Affairs (Dyck 2011) that directly and indirectly (through the creation of Native organizations) facilitated the increased awareness of Indigenous peoples’ social, economic and physical well-being.

costs of the Department of Indian Affairs and Northern Development (DIAND) or how to manage rising Indigenous contention. Shortly after coming into power in 1968, Trudeau's government began seeking out solutions. In Chrétien's words, "We are looking for a way in which the Indian can participate fully in Canadian life, know Canada and take advantage of Canadian law" (The Montreal Gazette October 5, 1968). The federal government began extensive consultations with Indigenous peoples under the auspices of seeking out an agreeable solution (New York Times October 28, 1968). Unfortunately, as discussed in Chapter 2, the government then released the 1969 *White Paper*, which did not incorporate any of the input the government had received from the Indigenous populations. Instead, the paper was reflective of the unconscious racist intent of the state in protecting capitalism and controlling the 'Indian' with paternalistic and assimilationist policies.

The *White Paper* outlined the planned policy changes of the government and was released by Chrétien on June 25, 1969. The *White Paper* proposed the elimination of the *Indian Act*, the Ministry of Indian Affairs and Indian status (Couture 1998). In failing to understand the nature of difference for Indigenous peoples, both Trudeau and Chrétien sought to eliminate this difference and bring Indigenous peoples into mainstream Canada and into the capitalist system. The principle supported was disguised as equality but was, in effect, one of sameness. The crux of Trudeau's 'just society' was to make all people in Canada the same, and therefore, equal. This did not differ greatly from Thomas Babington Macaulay's interpretation of assimilation, promoting the creation of an "Indian in blood and colour but English in tastes, in opinions, in morals and in intellect" (Macaulay 1835). This Liberal myth of equality, for Indigenous peoples, meant the

erasure of the recognition of treaties and territorial claims as well as their status as ‘plus’ citizens for having been the original inhabitants of the land, for providing the land on which Canada has been built and, of course, for the damage inflicted upon them by colonialism (Cardinal 1977). With the *White Paper*, the Canadian state proposed to strip away the distinction between Indians and non-Indians, “unilaterally legislating Indians into extinction” (Turner 2006: 12). This position was offered in seemingly good will—as civil racism—as though it was the ideal solution to a dismal situation in Canada (Turner 2006).

The *White Paper* is representative not only of the priorities of the Trudeau/Chrétien government, but of the role of the state—colonial British or settler Canadian—in prioritizing capitalist expansion and bringing Indigenous peoples into the market system. In truth, the ‘Indian problem’ is a challenge to the view of Canada as a ‘frontier’ and as open for business. While this is a simplification of centuries of conflict, it is nonetheless consistent with the ‘frames’ of the many Indigenous resistance movements and with the events and objectives of the Red Power movement as uncovered within the archival media scan.

In reaction to the *White Paper*, and instead of working with the government to implement the policy, Indigenous peoples engaged in an unprecedented number of protests (Wilkes 2006). This, for many scholars, marked the beginning of a new era of Indigenous political mobilization (Wilkes 2006: 252). The paper was met by a strong backlash from Indigenous peoples (The Montreal Gazette November 17, 1969) and their leadership (The Montreal Gazette July 12, 1969). Not all Indigenous leaders agreed on how to best proceed (The Montreal Gazette March 24, 1970) with some groups saying

they would seek international support to resist the proposed policy, while others, like the “Alberta Indians,” said they would resist with force and evict federal officials from their reserves if the policy was implemented (The Montreal Gazette July 12, 1969). Chrétien maintained that if only the Natives properly understood the policy, they would embrace it (The Quebec Chronicle Telegraph July 12, 1969; The Montreal Gazette July 10, 1969).

It is within this greater context that the Red Power movement came to be: the broader environment of international activism and the spread of the rights movement, domestic pressure from public awareness of the plight of Indigenous peoples, the spread of Indigenous newspapers, organizations and leaders. All of these factors, in conjunction with the *White Paper*, facilitated the rise and success of the movement. According to the political process approach, these would be the key components that helped to destabilize the climate and open the way for the Indigenous social movement. With these mobilizing and political opportunity structures, Red Power had a unique opportunity to be heard in a nation that often refused to listen to Indigenous dissent.

FRAMING

In addition to the political opportunity and mobilizing structures, the frames used by a social movement are important in the analysis of the movement. Throughout its existence, the Red Power movement maintained a fairly consistent ‘collective construct’ or ‘frame’ (Rucht and Neidhardt 2002). A frame is a “conscious strategic effort...to fashion a shared understanding of the world...that legitimates and motivates collective action” (McAdam, McCarthy and Zald 1996: 6). The frame had a high degree of what Rucht and Neidhardt refer to as consistency and validity (2002) given that the goals and

objectives and the perception of the problem(s) have been congruent across time and have resonated with members.

According to a review of the literature and an archival scan of available newspapers of the sixties and seventies, the Red Power movement constructed meaning within a broader frame of the impact of colonization, specifically of the loss of land, loss of treaties and continued marginalization within a colonial Canada. The dire conditions of poverty experienced by many Indigenous peoples were seen as directly related to a framework of colonialism within Canada. With little variation, the articulated goals of the movement were consistent with what could be viewed as a ‘master frame’ (Benford and Snow 2000) that unified all factions (all Indigenous nations, identities and Canadian geographies) within the broader Indigenous movement. According to the archival search and literature review, the master frame or the overarching objectives of Indigenous peoples were the renegotiation of treaties, improved social and economic conditions (The Montreal Gazette July 20, 1970), eradication or amendment of the *Indian Act*, investigation into structural injustice (for example, police brutality against Indigenous peoples; The Quebec Chronicle Telegraph September 3, 1969) and varying elements of self-determination (The Montreal Gazette February 19, 1968). These objectives were commonly articulated across the vast geography within Canada, throughout numerous protest activities and across hundreds of (traditional) Indigenous nations.

As one of the spokespersons for Red Power, Harold Cardinal, has said, “What the Indian wants is really quite simple. He wants the chance to develop the resources available to him on his own homeland...Our people want the right to set their own goals, determine their own priorities, create and stimulate their own opportunities and

development” (Cardinal 1969: 171). The findings of the media scan reveal that this summary of the movement’s objectives, or frame, is fairly consistent across various Indigenous nations and protest activities.

The frame is just one piece of the analysis of a social movement. Along with the mobilizing and political opportunity structures, it can provide a valuable glimpse into Red Power. However, along with the information gathered from the political process approach, it may be useful to delve deeper into the movement and contribute to a more thorough understanding of Red Power.

Howard Adams, another spokesperson for Red Power, has said that “the history of Indian, Métis and Inuit liberation movements during the 1960s and 70s remains hidden from the public (1999).” He asserts that “although there has been an explosion of publications...on the Métis and Indians...none includes a discussion of the Native peoples’ struggles during that important period.” For Adams, it is the “ruling establishment [that] has hidden this history...to silence our people and deny us a sense of power and heritage” (1999). The literature scan for this thesis supports Howard’s attestation. Then, and now, there is very little written on the Canadian Red Power movement as a collective. The archival media scan, however, revealed much in terms of the key issues, events and leaders of Red Power. To follow is a summary of these findings, in the interests of lending to a more in-depth understanding of the movement.

LEADERSHIP

Two of the leaders from the Red Power movement have already been mentioned: Dr. Howard Adams and Harold Cardinal. These men are most often mentioned within

any discussion of Red Power; however, there were others who had a significant impact on the movement, such as George Manuel and Kahn-Tineta Horn. It is likely that given the national scope of the movement, there would have been many local or regional Indigenous leaders and key spokespersons across Canada. In lieu of a comprehensive listing of these individuals, this chapter instead provides a mere glance into the leadership, naming those most often mentioned.

Harold Cardinal was notably one of the most, if not the most, famous Indigenous leader of his time. According to *Maclean's* in the fall of 1969, Cardinal was already “the most powerful Indian leader in Canada” (Haycock 1974: 79-80). In response to Trudeau and Chrétien’s *White Paper*, and Trudeau’s 1968 campaign slogan “The Just Society,” Harold Cardinal wrote *The Unjust Society* (1969). Cardinal was also the principal author of the Indian Association of Alberta’s response to the *White Paper*, called *Citizen’s Plus* and also known as the *Red Paper*. Both of these works rejected Canada’s assimilationist stance on Indigenous peoples, instead calling for radical changes in Indigenous rights, education, social programs and economic development. Cardinal coined the phrase summarizing the government approach as “the only good Indian is a non-Indian.” In 1968, at only 23 years of age, Cardinal was elected as the President of the Indian Association of Alberta. A frequent spokesperson for Red Power, Cardinal served nine terms as the President of the Indian Association and was a key part of the development of the National Indian Brotherhood (Pue 2006).

Dr. Howard Adams was a Métis activist, author and scholar. Adams was the President of the Métis Society of Saskatchewan and the founder of *New Breed Magazine* (GDI 2006). Adams helped found the Saskatchewan Native Action Committee (SNAC)

in 1968, which put forward a candidate for the Meadow Lake constituency, Carole Lavalee. Lavalee received only 600 votes but was the first person of Native ancestry to run in a federal election. She was only 21 at the time. Aside from his role within SNAC, Adams was a visible spokesperson for the wider Red Power movement, becoming involved in many grassroots battles and inspiring Indigenous resistance through his written and spoken words. “We do not ask. We do not resolve. We demand!” (Adams in Simmons 2002).

George Manuel was the president of the North American Indian Brotherhood of British Columbia beginning in 1959. Throughout his life, Manuel worked for his community and for the well-being of Indigenous peoples across the world. He was instrumental in the creation of the *Universal Declaration of the Rights of Indigenous Peoples*. Manuel is most often remembered for his book *Fourth World: An Indian Reality* (Manuel and Posluns 1974; Union of BC Indian Chiefs 2011). George Manuel spent years trying to reform government policies so that Indigenous communities could decide for themselves how to live. In 1970, following the release of the *White Paper*, Manuel became frustrated and re-organized his strategy. He sought and won the Presidency of the National Indian Brotherhood²⁶ and set about to defeat Trudeau’s *White Paper*. For Manuel, “Canada was dead set on wiping out Indians once and for all.” He began touring the country and the world, giving speeches, meetings, interviews and strategy sessions on how to fight Canada’s assimilation policy. Manuel was resolute: “if

²⁶ The National Indian Brotherhood was incorporated on September 29, 1970 is now currently the Assembly of First Nations (AFN) (AFN 2004). Two other major Aboriginal organizations also arose from this time: the Eskimo Brotherhood (now Inuit Tapiriit Kanatami) and the Métis Council of Canada (later the Métis National Council) also initiated formal organization in the 1960s and began receiving government funding in the early 1970s (Ramos 2006).

we didn't fight then, Trudeau would have destroyed all the Indian people in Canada” (Ryser 2011).

The leadership of Red Power was not restricted to men. Women such as Kahn-Tineta Horn received international acclaim for their part in leading Red Power. Horn had been a model and actress and became an international spokesperson for the Red Power cause. In particular, the Mohawk activist and leader fought against violations of the *Jay Treaty* that denied Indigenous rights to cross the US-Canadian border. During the Trudeau/Chrétien era, Kahn-Tineta Horn worked diligently on this issue, traveling to England to publicize her campaign against Canada's treatment of Indigenous peoples. In May of 1969, Horn requested a visit with then-British Prime Minister Harold Wilson and the Queen of England. She wanted to persuade them to stop the Canadian government from making Indigenous peoples pay customs duty when crossing the Canada-US border. Neither the Queen nor the Prime Minister would see Horn (The Phoenix May 20, 1969; Quebec Chronicle-Telegraph May 20, 1969), the self-declared still Indian Princess of Canada.²⁷ The *Jay Treaty* was a key issue of the Red Power movement and remains a contentious issue today.

ISSUES & TACTICS

The 'frame' used within Indigenous resistance movements over past decades has been fairly consistent, as such, the key issues of the movement have been unified. As this section will demonstrate, the issues and tactics of the Red Power movement of the late

²⁷ Kahn-Tineta Horn refused to accept her dismissal by the National Indian Council as Indian Princess of Canada. The Council withdrew Horn's title in June 1964 for various reasons including alleged improper conduct in verbally attacking council directors (Saskatoon Star-Phoenix June 16, 1964; The Windsor Star June 6, 1964).

sixties and early seventies are strikingly similar to Indigenous activism today. Most commonly the issues were—and are—related to the *Jay Treaty*, land rights and resource exploitation. The tactics used can sometimes be connected to the issues at hand. For instance, bridge blockades were—and are—used in protest of violations of the *Jay Treaty*. Occupations were also commonly used throughout Red Power. Smaller protests and demonstrations often occurred to bring attention and change to issues of Indigenous social and economic well-being, along with varying elements of self-determination.

Jay Treaty

A consistently volatile issue for the Indigenous social movement has been Indigenous rights in crossing the border between Canada and the United States. Under the *Jay Treaty* of 1794, Indians on the border between Canada the U.S. are entitled to free access between the countries but in 1956 the Supreme Court ruled against the rights of the treaty, saying that the payment of duty applied to everyone including Indians. Prior to traveling to England, Kahn-Tineta Horn led the Mohawks in a blockade of the Cornwall bridge in 1968 when Canadian officials demanded Mohawks pay tolls to use the bridge and pay customs on goods brought back from the US. The Mohawk protesters were arrested but later acquitted. The incident inspired Indigenous peoples to take a closer look at protests (Deloria Jr. 2003; 4-5). Since then, and until now, a series of protests have been held on the International Bridge not only by local Mohawk people but by members of the Indigenous social movement across North America. The 1968 bridge blockade included Mohawks in the area on the Canadian side, along with people from five other Indigenous nations of the Iroquois Confederacy (The Lewiston Daily Sun

December 19, 1968). The blockade was called a “massive Indian Power demonstration” (New York Times December 19, 1968). Kahn-Tineta Horn herself declared that “the Indians [were] taking [her] lead and becoming more militant” (The Phoenix May 20, 1969).

Occupations

Throughout the early 1970s occupations become an almost commonplace means of protest and a sign to some of the increasing militancy of the Indigenous social movement in Canada. Several offices of the Department of Indian and Northern Affairs (DIAND) were occupied across Canada. However, this tactic was used to claim other spaces, including schools, in the demand for quality education and self-determination of education. Other occupations occurred on what was viewed as stolen Native land (Cardinal 1977). For example, in the 1970s, the Ojibwa Warrior Society with the support of a few members of the American Indian Movement (AIM) numbering approximately 150 people took over the Anicinabe Park in Kenora saying the Ojibway property was illegally sold by the federal government to the Town of Kenora. They blocked the road entering the Park and, drawing on a varied supply of weapons including baseball bats, rifles and Molotov cocktails, they occupied the Park. Initial demands of the return of the Park grew to mirror the wider ‘master frame’ of broader Indigenous movement, including demands for improved education standards and fair and just treatment in negotiations and in living free of discrimination. It took government officials one month of occupation and ten days of negotiation to reach an agreement (Nelson 1978).

War for Energy

Since World War II, there were massive changes in industrialization and in energy demands, occurring alongside new technologies in locating and extracting resources. These developments impacted the colonialization process, entering a new phase of the 'Indian War for Energy.' (Hill 2009). Nowhere within the Trudeau/Chrétien era was the war for energy clearer and the capitalist priorities of the state evident, than in the management of the Mackenzie Valley pipeline.

Throughout the 1970s, the Mackenzie Valley pipeline was called "the biggest project in the history of free enterprise" (CBC 2011). Intended to connect the Beaufort Sea with markets in southern Canada and the United States, the pipeline would transport natural gas through the Northwest Territories and tie into gas pipelines in northern Alberta. The pipeline was to be facilitated by the Mackenzie Valley highway, a \$100 million road project, which the federal government was rushing, in order to accommodate the pipeline timeline (CBC 2011). Because of the potential impact on the Indigenous peoples living in and around the development site for the pipeline, this project became a key object of protest for the social movement.

Cabinet approval was given in 1972 to accelerate the highway project. Both the highway and the pipeline were contested by the many Indigenous communities whose lives would be negatively affected and who had not been adequately consulted. In the 1970s, Trudeau appointed Judge Thomas Berger to examine the impact of the pipeline on those who live there. Berger's report entitled, "Northern Frontier, Northern Homeland," recommended the project be postponed ten years. The report was heralded by some as

'Canada's Native Charter of Rights' (CBC 2011). It outlined in no uncertain terms that the view of Canada's north as ripe for development, as a 'frontier,' stood in conflict with the many people who lived in the north and saw it as a 'homeland.' According to Berger, the Mackenzie Valley projects should have been about Aboriginal rights and the question of who should have access to northern resources. For the first time, Berger forced people in the southern metropolis to listen to the Indigenous voices of the north (Timpson 2002). Decades later, in April 2011, the issue of the Mackenzie Valley pipeline is nearly resolved. Negotiations with the Dehcho First Nations were ninety per cent done and are expected to be finalized following the May 2011 federal election (Mathisen 2011).

In the early 1970s, the Mackenzie Valley projects galvanized Native groups in the area in strong opposition to the exploitation of their land. In the planning of this project, the government underestimated the backlash from the Indigenous movement. Subsequently a court injunction was issued freezing all land titles in the Mackenzie Valley as a part of the land claims battle (The Ottawa Citizen April 6, 1973). Given the tremendous potential for development in the north, land claims within the Northwest Territories and the Yukon were volatile issues, adding fuel to the Canada-wide Indigenous movement and sparking considerable resistance from Native groups in the area.

During this era, a similar energy battle was being waged in northern Quebec over hydroelectric power generation. In 1971, the provincial government and the James Bay Cree faced off over a massive hydroelectric project. The project would build a series of dams, dikes and power stations, diverting major rivers for massive amounts of energy and heavily impacting the lives of the Inuit and Cree of the area (CBC 1971). In 1973, the

project was temporarily halted by a court injunction and the Indigenous resistance movement had achieved a tremendous success (Timpson 2002). The injunction was almost immediately overturned in the appeal. Following the temporary court injunction, the Quebec government and its corporations began a sweeping media campaign to convince citizens that this stoppage of work was costing the people Quebec up to \$500,000 a day. In truth, the work did not cease and was still going on days after the injunction, in direct defiance of the law. The day after the court injunction, the corporation entered two appeals to the Quebec Court of Appeals. The case was heard less than a week later. The three judges, Tremblay, Turgeon and Casey, were openly hostile to Indigenous rights, saying it was irrelevant to the case. On the second day, the Appeal Court ruled and the court injunction was overturned (Richardson and LaDuke 1991). This case will be discussed in greater detail in Chapter 4, along with the implications of the court injunction in reaffirming Indigenous rights.

Nisga'a Land Claim

Perhaps the most significant issue of the Trudeau/Chrétien era was the Nisga'a's (then Nishga) land claim, which heated up in the late 1960s. The Nisga'a campaign began much earlier; in the 1890s, they started to fight for government recognition of their land rights. In 1906 the chief of the Capilano Band went to England to place a land claims petition before King Edward VII. Following the rejection of their claim in 1927 (Dyck 2011), the Nisga'a were not defeated and later continued to insist that their rights to the land had never been extinguished (Foster, Raven and Webber 2007).

Under the leadership of the President of the Nishga Tribal Council Frank Calder, and with the legal services of Thomas Berger, the Nisga'a nation requested legal recognition from British Columbia and then of the Supreme Court of Canada of native rights to over 4000 square miles of land (Foster, Raven and Webber 2007). As will be discussed further in Chapter 4, the Nisga'a land claim came to have a significant impact on Indigenous rights and activism across Canada. In Calder's words "[this] was the case that brought in negotiations all over the world" (Foster, Raven and Webber 2007: 46).

RESULTS

In 1973, the Supreme Court of Canada (*Calder v. British Columbia - Attorney General* S.C.R. 313, 1973 4 W.W.W. 1) did not rule in favour of the Nisga'a nation: the vote was three-to-three with one judge refusing to rule. However, the decision was significant since three Supreme Court judges ruled that the notion of "Aboriginal title" existed in Canadian law. This was still seen as an important change for the Indigenous rights movement. As discussed in Chapter 4, the court case served to force Minister Chrétien to reconsider his previously firm stance that Aboriginal rights, including land and treaty rights, did not exist in Canada. Subsequently, an office of native land claims was created the following year (Couture 1998). This change in how the DIAND—and Trudeau—viewed the rights of Indigenous peoples has come to be seen by many as a tremendous success. Trudeau and Chrétien could no longer deny the claims of Indigenous resistance. Although 1973 neared the end of Chrétien's era within the Ministry, it nonetheless created a lasting transformation that would affect how the next minister, Judd Buchanan, managed the 'Indian problem.'

With the Calder case, and following years of Red Power action, the political landscape was slowly changing for Indigenous rights. The same year as the Calder case verdict, a court injunction was achieved for the James Bay Cree in Quebec who had been fighting the hydroelectric development (*Kanatewat et al. v James Bay Development Corp. et. al. [1973] 1 S.C.R. 48*). The court injunction was heavily supported by the federal government who, as mentioned previously, were seeking a precedent for settling such disputes. The injunction reaffirmed the rights of the Indigenous peoples and suspended the development of the area for one year, stipulating a final agreement must be reached by that time (*The Montreal Gazette* November 16, 1974). With this new development in Quebec and with the affirmation of Indigenous rights through the Nisga'a case, the colonial architecture began to change. A new era of Indigenous-state relations began, and as will be demonstrated in the next chapter, this new era did not change the actual realities of the racist state in its relationship with Indigenous peoples.

Chapter 4

The Nisga'a and James Bay Cases

During the highly contentious Red Power era, two events galvanized the state around Indigenous rights like none other: the James Bay court injunction (*Kanatewat* case) and the Nisga'a nation court case (often referred to as the *Calder* case). These two events sparked the Trudeau/Chrétien government into acknowledging the rights of Indigenous peoples, changing the processes by which the state managed Indigenous rights and land claims. This change was buoyed by the political climate of Canada at the time and the pressure from the building Red Power movement. The change was instigated in part by two persistent individuals at opposite ends of the country: Frank Calder in British Columbia and Billy Diamond in Quebec.

Though Calder and Diamond may not have considered themselves as key members of the Red Power movement, history may. Both individuals led their nations in successful battles against the colonial state of Canada. They bridged the divide between grassroots activism and Indigenous activism in the legal system. The issues on which they fought were intertwined with the issues at the heart of the Red Power movement: Indigenous rights and land claims. However, both chose the court room as their battlefield for their causes. Both struggles likely benefitted from the political opportunity structures at the time and from the strength of the Red Power movement.

Frank Arthur Calder was influential in pushing forward the Nisga'a nation claim for their unceded territory. He was the first status Indian to attend the University of British Columbia and the first to be appointed Minister of the Crown of the province. Frank Calder was elected to the legislature in 1949, a position he maintained for 26 years

(Beavon, Voyageur and Newhouse 2005). In Quebec, Albert ('Billy') Diamond was a key leader in the fight of the Cree and Inuit against the hydroelectric power development in the James Bay area. Billy Diamond was the Chief of his nation, Waskaganish, by the age of 21. Diamond was Regional Chief in 1972 and then Grand Chief in 1974 and served until 1984 (CTV 2010). Together the Nisga'a case and the James Bay court injunction, with Calder and Diamond at opposite ends of the country, would change the political landscape for Indigenous activism, rights and land claims.

The success of the Nisga'a nation and the James Bay Cree and Inuit in their claims can be partially attributed to the context of the time. As discussed in detail in Chapter 3, the Red Power movement followed on the heels of the global rights revolution of the 1960s. There had been an explosion of protest and dissent around the world that included Canada. This wider context of activism served as one of many political opportunity structures of the late 1960s and early 1970s. This culture of revolution meant that societies had become more difficult for the state to control and contain (Palmer 2009). It was an opportunity for many around the world to effect change. Additionally, in Canada, the Red Power movement followed Quebec's Quiet Revolution. This was a time of incredible change in the province, which gave rise to a powerful separatist movement and culminated in the 1970 October Crisis with Front de Libération du Québec (FLQ). It was within this broader framework that the state was considering the claims of the James Bay Cree and Inuit, and of the Nisga'a nation.

The provincial/federal relationship was very unsettled at the time. The federal government espoused offloading their responsibilities for Indigenous peoples to the provincial governments. Yet all provinces seemed to be in opposition to the idea, given

their limited resources (The Montreal Gazette August 6, 1969).²⁸ British Columbia was particularly against the idea, being openly hostile to the concept of Indigenous rights. In Quebec, the growth of the separatist movement represented a significant threat to Canadian sovereignty and a growing risk being managed by the provincial and federal governments.

The revolutionary movement, through the FLQ, was actively and violently seeking an independent and socialist Quebec. The demands of the FLQ reached a pinnacle in October 1970 when they kidnapped a British diplomat and a provincial minister. After Quebec requested assistance from the federal government, Prime Minister Trudeau promptly enacted the *War Measures Act*, suspending civil rights. In response, the FLQ assassinated the provincial minister. The crisis continued until December when the British diplomat was finally released in exchange for safe travel for the captors to Cuba. The issues of Quebec sovereignty and the very real threat presented to national security would have been in the forefront of the minds of Canadians and specifically of Prime Minister Trudeau as he followed the events of the James Bay Cree/Inuit and the Nisga'a nation (Tetley 2007).

While the government was grappling with the threat of revolution, they were also forced to recognize the growing danger presented by the rising dissent of Indigenous peoples. This both complicated and supported the need for a federal response to Indigenous protest. On one hand, the federal government was reluctant to intervene in provincial matters, particularly in Quebec where the sovereignty movement was growing.

²⁸ Source: archival media scan that looked at Canadian (and some American) newspapers throughout the 1960s and 1970s, using a key word search with variations of the following terms: Native, Indian, First Nation, protest, demonstration, Native power, resistance, violence, occupation, blockade, Aboriginal, Métis, Inuit, Eskimo, Chrétien, Trudeau, Indian and Northern Affairs, White Paper, American Indian Movement, Native Indian Brotherhood.

On the other hand, the state was gradually realizing that the issues of Indigenous rights were not—as it had anticipated—the responsibility of the provinces. It was through the Calder and the James Bay Cree (and Inuit) cases that the Liberal Trudeau/Chrétien government came to understand that Indigenous rights existed under the law and that the federal government needed to respond to the Red Power movement.

THE CASES

In 1965, Frank Calder approached Thomas Berger, a young Vancouver lawyer, to represent the Nisga'a nation in a suit against the government of British Columbia (Foster, Webber and Raven 2007). Two years later the Nisga'a nation, under Calder's leadership and Berger's legal advice, brought an action against the province, seeking a declaration that Aboriginal title to specified lands in British Columbia had never been lawfully extinguished. What came to be known as the *Calder* case spent five days at trial, five days in the Court of Appeal, and five days in the Supreme Court of Canada (Foster, Webber and Raven 2007: 44, see chapter 3). On January 31, 1973 the Supreme Court of Canada handed down their decision on the Nisga'a nation case where three of seven judges affirmed that the First Nation were 'prima facie' the owners of the lands since time immemorial. Proof of this possession was in itself proof of ownership under common law (Asch 1997: 251).

While Frank Calder and Thomas Berger were planning their case against the British Columbia government, Billy Diamond and the Cree of Northern Quebec were initiating action against the government of Quebec. In April 1971, the James Bay region development was announced, much to the dismay of the Indigenous peoples on the lands

that would be affected by the megaproject. The Cree of the area had neither been consulted nor informed of this decision (Feit 1995). At the time, the Cree consisted of eight communities and bands with no regional integration. When they heard about the massive hydroelectric project that would destroy their way of life, they began to organize. In May 1972, court proceedings were initiated in the Supreme Court of Quebec, beginning the longest injunction hearing in history (Diamond 1985).

The same year that the Supreme Court of Canada passed its ruling on the Calder case, the Supreme Court of Quebec ruled in favour of the Cree and Inuit of Northern Quebec, temporarily halting the hydroelectric project in James Bay. Both were significant victories, yet neither was a complete success. The Nisga'a nation lost their case on a technicality. Yet despite this, three of the seven judges in the ruling had confirmed the existence of the nation's right to the land, which had a tremendous impact on Indigenous rights across Canada. For the James Bay Cree and Inuit, the court injunction was a success for the Indigenous peoples of northern Quebec, yet it was fleeting. One week later the court injunction was overturned at the Quebec Court of Appeals. Notwithstanding these setbacks, both the Nisga'a and the James Bay Cree and Inuit went on to develop long term agreements with the provinces. Both cases sent shockwaves to the federal government, which was finally forced to acknowledge the existence of Indigenous rights.

Nisga'a

For the Nisga'a, their case was not about a land "claim" but rather it was another step in their continued assertion of their right to their land (Foster, Webber and Raven

2007). Their case can be traced back to the 1880s when they resisted the first surveying party to the Nass Valley. Since then, the nation has been lobbying the governments of Canada and England to resolve their claim. In 1927, the Canadian Parliament enacted an amendment to the *Indian Act* making it illegal for anyone without government consent to solicit money or receive payment from an Indian to pursue any claim on behalf of the tribe or band. This effectively ceased the actions that were building in Indigenous nations. The amendment was not repealed until 1951 and by this time, the attitude of the Canadian state had been firmly entrenched against the idea of Indigenous rights and continued to remain unreceptive to Indigenous land claims (Foster, Webber and Raven 2007, 129). In the 1950s, the Nisga'a again resumed organizing for their claim even though the Canadian state was firmly against the possibility. The attitude of government and its agencies was very clearly demonstrated in the Trudeau/Chrétien *White Paper* of 1969 that espoused assimilation for the 'Indian' and adamantly denied any such Indigenous right.

In British Columbia, the government not only denied the existence of Indigenous rights, but it was openly hostile to the idea. The province had never recognized Indigenous land rights and nearly the entire province remained treaty-free. In their claim, the Nisga'a nation was confronting a century of provincial obstinacy without any chance of federal support (McNeil 2001). The people of the Nisga'a nation transformed their long-standing demand for recognition into a campaign to have their land question referred to the courts. The British, Canadian and provincial governments had consistently refused to acknowledge Aboriginal title. The Nisga'a had been campaigning for a century. They had sent delegations to Victoria and to Ottawa to protest what was

happening to their lands and their way of life (Foster, Webber and Raven 2007, 61). Finally, they turned to the court system to force a decision on their Aboriginal title to the land. The *Calder* case was another step in the continued protest of the Nisga'a people in their assertion of their right to the lands they had never ceased to occupy and defend (Foster, Webber and Raven 2007). For the court, this meant determining whether Aboriginal title existed in the first place, whether the Nisga'a title had been lawfully extinguished, and whether the Court had jurisdiction to grant such a declaration since the Nisga'a had not obtained permission to sue the Crown (a requirement at the time in British Columbia) (Foster, Webber and Raven 2007).

The Nisga'a case lost in trial and at the Court of Appeal, however, was then appealed to the Supreme Court of Canada. The Nisga'a sued the government of British Columbia in the Supreme Court of Canada for a declaration that their Aboriginal title had never been lawfully extinguished (*Calder v. the Attorney General of British Columbia S.C.R. 313, 1973 4 W.W.W. 1*). The appellants were Frank Calder and other representatives acting on behalf of themselves and of the Nisga'a Tribal Council, the Gitlakdamix Indian Band, the Canyon City Indian Band, the Greenville Indian Band and the Kincolith Indian Band. The nations were seeking a declaration "that the aboriginal title, otherwise known as the Indian title, of the Plaintiffs to their ancient tribal territory...has never been lawfully extinguished" (*Calder v. Attorney General of British Columbia 1973*).

Frank Calder and the chief of the four bands in the Nass Valley, along with elders, went to Ottawa for the hearing at the Supreme Court. They believed in their case and were confident that their interests were now in the hands of the highest tribunal in the

land. Thomas Berger argued the Nisga'a's case throughout the hearing, which took four days. The seven judges of the court (Justices Martland, Judson, Ritchie, Hall, Spence, Pigeon and Laskin) were considering Aboriginal title for the first time in a hundred years. They reserved their decision and did not rule for thirteen months (Berger 2002). In the end, the ruling was that the case was not properly before the court because the Nisga'a had not sought permission to sue the Crown; therefore, the Nisga'a lost on a technicality. Of the seven judges who heard the case, six considered the issues at hand and three were in favour of the Nisga'a's claim to the land. Justices Hall, Spence and Laskin maintained that the Nisga'a had an Aboriginal title that was not dependent on treaty or legislation but instead from the fact that the Indigenous nation had occupied the lands in question since time immemorial. For the three judges, this occupation established a pre-existing right of possession, which continues until or unless the sovereign clearly extinguishes it. Despite the outcome of the case, in the ruling of three of the judges, they confirmed that the Nisga'a nation had a right to the land that had never been extinguished (DuVé 2004).

With the opinions of three judges, the court recognized that the Nisga'a's Aboriginal title dated back to the *Royal Proclamation* and had never been legally extinguished. The decision catapulted the question of Aboriginal title into the political arena. The newly re-elected Liberal government had to reconsider its stance on Aboriginal rights. In Parliament, the Progressive Conservatives and the New Democrats were insisting the federal government recognize its obligation to resolve Aboriginal claims (Berger 2002). Within the changing political climate of the time, and with the mounting pressure from opposition parties, the federal government was forced to

reconsider its position on Indigenous rights in light of the Calder decision (Wood, Fels and Krygier 2010: 130).

On August 8, 1973, Jean Chrétien announced that the federal government intended to settle Aboriginal land claims in all parts of Canada where no treaties had yet been made. The government was forced to publicly acknowledge the principle that there needed to be compensation for the loss of Indigenous land. This statement was particularly pertinent in British Columbia, Quebec, the Yukon and the Northwest Territories where extensive claims were outstanding. This recognition was instrumental in changing the processes guiding the relationship of Indigenous peoples to the state and fundamentally altering the landscape of the struggle for Indigenous rights (Berger 2002).

James Bay

Upon hearing about the James Bay hydroelectric power development, the Cree, and later the Inuit, of Northern Quebec united to oppose the development and protect their land and their way of life. Like the Nisga'a of British Columbia, the Cree of northern Quebec had occupied the lands in question since time immemorial. When the James Bay development began in 1971, the Cree were heavily dependent upon hunting, fishing, trapping and harvesting for their livelihood. The Indigenous nations turned to the federal government after being refused by the Quebec government. The Cree requested assistance from the Minister of Indian Affairs and Northern Development to intervene as the trustee of Indian people (Diamond 1985). As the development project was an initiative of Hydro-Quebec, which was a Crown corporation, the province was in a unique position of monitoring itself. The federal government would have been the next

recourse for the Quebec Cree and Inuit. In the words of Cree Chief Mathew Coon Come, “When you have the largest project of the century in your backyard, and no environmental assessment...not one person monitoring the impact, there is an obvious failure of federal responsibility” (Boyce and LaDuke 1991: xii).

The federal government was reluctant to take action. The federal Liberal government under Trudeau was politically allied with the Quebec Liberal government against a growing separatist sentiment in the province. Given the volatile situation, Ottawa did not want to intervene in Quebec’s provincial affairs (Feit 1995) but publicly expressed its desire for negotiation and settlement for the James Bay conflict.²⁹

The Quebec hydroelectric development was billed as the “project of the century” according to then-Quebec premier Robert Bourassa. It now ranks among the world’s largest hydroelectric developments (Hornig 1999). Bourassa had high hopes for the development, intending that it become the key to the province’s success and to its political and economic stability. It was meant to unite the province and become a source of pride for the people (Peters 1999). In truth, the massive project was about capitalist expansion. In this case, the James Bay development amassed wealth not only for the developer but also for the government supporting it. Hydro-Quebec, the provincial utility, has become a central means for the provincial government to make money. A large portion of the energy produced is sold to utilities in the United States as a cheap alternative to coal and nuclear generation. Currently, the utility’s assets total \$69 billion and the 2009 dividend payable to the sole shareholder, the Quebec government, was \$2.2 billion (Hydro Quebec 2010). The intent of the hydroelectric development project of the

²⁹ Source: Archival media scan.

1970s was to expand primitive accumulation and specifically increase the wealth of the state of Quebec (Richardson and LaDuke 1991).

The provincial government vastly underestimated the level of dissent to the development. Indeed, the 5,000 to 6,000 Cree in the area were entirely disregarded by the province and by Hydro-Quebec as incidental (Diamond 1985). The Cree and Inuit of northern Quebec had not ceded the land in question. The land had been a part of a transfer by the federal government to Quebec under *The Quebec Boundaries Extension Act, 1912*. However, the Act necessitated that the province obtain surrender of Indigenous interests prior to any development (Peters 1999). In the case of the James Bay hydroelectric development, it was obvious to all, including the federal government, that there had been no consultation with the Indigenous peoples of the area.³⁰

In 1972, having exhausted all other avenues, the Cree and Inuit of Northern Quebec decided to take the provincial government to court. In May, proceedings were initiated in the Supreme Court of Quebec, beginning what would be the longest injunction hearing in Canadian history. The hearing lasted almost three months with over 150 witnesses (Diamond 1985). Throughout the hearing, there were many communications challenges between the Cree/Inuit witnesses and the lawyers. One witness, when asked to place his hand on the Bible and whether he would tell the whole truth, told the translator that he did not know whether he could tell the truth since he can tell only what he knows. Even so, the witnesses succeeded in giving a remarkable account of their lives. The Inuit and Cree hunters spoke of what would be an epic journey—the equivalent of walking from one side of Europe to the other in the middle of winter. Their stories successfully detailed the interdependencies of the land and their

³⁰ Archival media scan.

livelihood. The Indigenous peoples of northern Quebec became the first in Canadian history to argue that the integrity of their environment was essential to the continuation of their way of life (Richardson and LaDuke 1991).

Presiding over the hearing was Justice Malouf, whose deliberations lasted nearly five months and concluded with a 170-page ruling on November 15, 1973 (Diamond 1985). Justice Malouf ordered Hydro-Quebec, the James Bay Energy Corporation and the James Bay Development Corporation to immediately cease, desist and refrain from carrying out the development in the traditional lands of the Cree and Inuit. The wide-reaching impact of this decision meant that other developments could no longer proceed in areas that were still subject to outstanding claims of Aboriginal rights, lest they risk being shut down. Unfortunately, the impact of this judgment was overshadowed when, one week later, the Quebec Court of Appeal suspended the injunction (Diamond 1985: 271).

ANALYSIS

The James Bay Cree/Inuit case and the *Calder* case invigorated Indigenous peoples across Canada. They organized to pressure governments to recognize Aboriginal title and rights to the land. Be it in British Columbia or in Quebec, Indigenous peoples demanded that they be allowed to continue their way of life: to fish, hunt and live on their lands. At a minimum, they were requesting they be consulted prior to development on their lands. In both cases, this was a long and difficult battle, ending with elements of success. The Nisga'a nation's court ruling and the James Bay court injunction resulted in

the state's acknowledgement of Indigenous rights and in the subsequent establishment of a claims process (Asch 1997).

In the period leading up to the James Bay court injunction and the Nisga'a ruling, the Red Power movement was organizing against Trudeau and Chrétien's *White Paper* and continuing to rally around issues related to the *Jay Treaty* and border crossings, the Mackenzie Valley Pipeline and broader issues of rights and socio-economic well-being. These issues, as discussed in Chapter 3, were most often linked to what would now be referred to as 'self-determination' for Indigenous peoples. Throughout the late 1960s and 1970s, protest activities were centred on achieving varying levels of self-determination for the exploited and often disregarded Indigenous nations of Canada.

Prior to the Nisga'a case and the James Bay case, the bulk of the work in resolving Indigenous issues was centered within political agreements and processes. Indeed, there had been very little formal treaty-making. This was partially because the *Indian Act* amendment had made it illegal to raise funds or be paid for Indian claims. However, treaty-making did not become revived until the 1970s after these two cases. The new land claims process was prompted by these court cases (Asch 1997) and, in part, by the mounting persuasion of the Red Power movement. As evidenced in Chapter 3, the Canadian state had been seeking a means to resolve Indigenous rights and land claims. The government was being faced with ever-rising Indigenous dissent and had categorically failed in their *White Paper* attempt at assimilating the 'Indian.'

With the James Bay court injunction and the Nisga'a ruling, the federal government made a sharp reversal of its previous stance on Indigenous rights: "In non-treaty areas of the Eskimo and Indian, we [the federal government] are saying perhaps we

shouldn't be holding your land because the King in 1763 said we shouldn't take your land without the Indians first signing on the dotted line" (The Calgary Herald 1973). This was an abrupt change from the stance taken in the state's proposals within the *Indian Act*.

Following the state's reversal on Indigenous rights, there began a new era of Indigenous-state relations, one that was heavily mitigated by the new claims process. In 1973 the federal government established a claims process for the negotiation and settlement of Indigenous title and land claims. Prior to the existence of this process, the government held that claims were not susceptible to easy or simple categorization. In their view, claims represented a nearly impossible array of concepts that neither the court system nor the government could adequately address. This meant that before the existence of this new process, claims could not be recognized (Sawchuk 2011). It was from the actions of the Nisga'a nation and the Cree and Inuit of Northern Quebec that the current method of dealing with Indigenous claims emerged.

The modern claims process sets general guidelines for the negotiation and settlement of claims (Sawchuk 2011). It divides claims into two broad categories: comprehensive and specific. Comprehensive claims are based on the assertion of continuing title to land and resources (INAC 2009b) and specific claims are made against Canada, alleging that the government has not honoured existing treaties, agreements or responsibilities. Most of the outstanding claims across Canada are specific claims. Between 1973 and 2009, thirteen comprehensive agreements had been negotiated and signed. In contrast, 1,185 specific claims had been received by Indian and Northern Affairs Canada (INAC) by 2003, of which only 251 had been settled (Pertusati 1997).

According to the 1973 claims process, all claims accepted for negotiation should be settled in such a way that the claim cannot arise again in the future. For the government, this element of certainty is the most important feature of the settlement. Through the process undefined Aboriginal rights and benefits must be exchanged for concrete and finite rights and benefits (Sawchuk 2011; DuVé 2004). The certainty within these new agreements provides extra security for the development of Indigenous lands and resources, protecting primitive accumulation. The government's intent with this new process was similar to its objectives in treaties past: minimize concessions to Indigenous peoples and guarantee a level of financial security for land development and resource extraction (Wood, Fels and Krygier 2010, 130).

Certainty is achieved through these agreements by the “extinguishment” or “surrender” clause whereby Aboriginal title and/or rights outside of the agreement are effectively nullified. Extinguishment is merely the latest in centuries of state mechanisms for dispossessing Indigenous peoples of their rights, their land and their resources. Typically extinguishment clauses state that Aboriginal parties agree to ‘cede, release and surrender to Her Majesty in Right of Canada...all their Aboriginal claims, rights, titles and interest, if any, in and to lands and water’ (Asch 1997: 211). Such extinguishment is often offered in return for specific benefits; for example, hunting rights, monetary payments and/or a fixed amount of land. For the Canadian state, Indigenous ownership of a *fixed* portion of land in exchange for the surrender of *undefined* Aboriginal title to all land is considered a fair exchange. This dispossession, through extinguishment and surrender, has played a significant role in the prioritization of capital and the march of primitive accumulation. It is through this clause that

Indigenous peoples become “free...rightless, proletarians, sellers of labour power, human commodities” (Kulchyski 2005: 274) and, importantly, their land becomes available to the highest bidder for development and use. In the view of the state, and in the words of Kulchyski, “capital accumulation...does not take place in a climate of uncertainty” (Kulchyski 2005: 90). Achieving this “certainty” has become the justification for the state’s continued use of extinguishment clauses within modern treaty agreements.

The state—be it Canadian settler or British colonial—has consistently worked to deny Aboriginal rights and to support the colonial theft of land and resources for on-going capitalist expansion. The new land claims process—or more accurately, *modern* claims process since most agreements involve more than just land rights—is the newest in a long history of colonial dispossession. The official Canadian position has become “no surrender and extinguishment, then no land claim [and] no treaty” (Epstein in Alfredson and Stavropoulou 2003). Although certain advances have been made to limit the use of extinguishment or surrender clauses in Canada—for example, in 1986 federal policy changed to allow Indigenous peoples to retain some lands rights over specified areas—the practice continues widely. When Indigenous peoples sign a comprehensive land claim agreement, the price they pay is nearly always the extinguishment of their territorial rights over traditional lands not covered by the agreement. Two of the first “modern treaties” both included some element of extinguishment: the James Bay and Northern Quebec Agreement and the Nisga’a Final Agreement Act (Gilbert 2006).

In 1975, the Cree and Inuit of Northern Quebec signed the first modern treaty under the new claims process. This original Agreement was signed under heavy duress; given that dams were already being built on Indigenous lands for the project, the only

choice the Cree and Inuit had was either to sign the Agreement and get some money or to hold out and become completely swallowed up. Since signing the original Agreement, the Indigenous peoples have struggled to get the governments with which they signed to honour their obligations. Gradually all involved came to realize that neither government had any idea how to enact this huge, cumbersome Agreement. The Cree went to court repeatedly to force the government to honour their signatures but many parts of the Agreement were continually disregarded. Ten years after signing, the Cree presented a list of 65 promises that had not been addressed or fulfilled to the governments (Richardson and LaDuke 1991).

The 1975 *James Bay and Northern Quebec Agreement* was followed by several other land claim settlement agreements such as the Nisga'a *Final Agreement Act* of 2000, which concluded negotiations that began in 1890. In return for the ownership of over 2,019 square kilometers of land, the Nisga'a had to make certain concessions for recognition of their rights to the land. Under the agreement, the Nisga'a were not guaranteed that the land would not be alienated in the future. Further, while the Nisga'a nation was granted some powers and authorities, ultimately they remained subject to the laws and jurisdictions of federal and provincial authorities. Most importantly, the Nisga'a agreed to a clause surrendering all rights not recognized within the final Act. This "surrender" clause effectively extinguishes future Indigenous rights, as of yet undefined. In many ways, calling it a surrender clause as opposed to an extinguishment clause is more insidious given the implication that these rights are being voluntarily ceded. As indicated earlier, the Canadian practice demonstrates that such agreements will not be made without these extinguishment or now surrender clauses (Gilbert 2006).

Although some element of self-governance may be included within the agreement, any Indigenous authority is inherently dominated by federal and provincial authorities. Further—as this thesis indicates—the very struggle for Indigenous rights now occurs within the realm of the colonial system, in which the Canadian authorities are both party and judge to the treaties. This is in fundamental contrast to the principle of equality under which such agreements are intended to occur (Gilbert 2006).

Although the fight of the Red Power movement and the successes of the Nisga'a and James Bay Cree and Inuit brought about monumental changes in the landscape of the Indigenous-state relationship, such changes do not appear to have been for the better. A review by Simons and Pai (2008) of all comprehensive claims and many specific claims under the modern process found that the benefits to using this process were largely capitalist. In having a clear definition of Aboriginal rights and title to land and resources, a “better business environment” was created (2008: 94). Additionally, having a cash component of comprehensive claims settlements were seen as benefit to First Nations in providing them with “an opportunity to diversify their investment options” (2008: 94). For specific claims settlements, cash compensation provided Indigenous peoples with the “capacity to buy land from the... governments or from the open market for their social and economic well-being” (2008: 95). From this review and analysis of the Canadian claims process, it becomes clear that the only “benefit” is for capitalism in increasing Indigenous peoples participation in capitalist practices. Therefore, in the view of the state, the modern claims process has the added advantage of bringing once-non-capitalist communities further into the colonial capitalist fold. The claims process itself serves colonialism and the expansion of capitalism.

Ultimately the modern treaty process requires Indigenous peoples extinguish some of their rights and conform to Canadian politics, customs, laws and traditions. As Paul Nadasdy has suggested, even “to engage in the process of negotiating a land claim agreement, First Nations people must translate their complex reciprocal relationship with the land into the equally complex but very different language of ‘property’” (2002: 248). Another negative impact for Indigenous peoples of engaging in this power-laden process of translation is in the reorientation of meaning. For instance, a reorientation of a struggle that was once deeply informed by the land and embedded with complex meaning is transformed into a struggle that is largely for the land and understood in capitalist terms of monetary value. The long term impact of the modern claims process is as of yet unknown; however, a preliminary analysis of its direct consequences suggests that it will serve to bring Indigenous peoples further into the fold of capitalism and the market-based society, serving the interests of the racial state.

The rise of the modern claims process changed the terrain for the struggle for Indigenous rights moving it farther into the colonial and capitalist system. No longer is this a fight of bridge blockades, occupations, protests and marches; but rather the fight must now incorporate and be focused within the colonial state’s legal system using the state’s language and the state’s tools. Regardless of whether extinguishment or surrender clauses remain a part of treaty settlements, their continued popularity amongst Canadian governments serves as evidence of the permanency of their intent to colonize and assimilate the ‘Indian.’ The modern claims settlement process stipulates that if Indigenous nations want to address their rights and title, this must now occur only through a process outlined, managed and judged by the colonizer. The success of

Indigenous claims nearly always results in what could be called ‘capitalist advantages’, such as cash settlements, which serve to further acclimatized Indigenous nations to ‘western’ ideals and to capitalist priorities. Although the Nisga’a and James Bay cases led to the state’s recognition of Indigenous rights, this success was then funneled into a process that further advanced primitive accumulation and further dispossessed Indigenous peoples. The modern claims process is one of many attempts by the state to respond to the ‘Indian problem’ with assimilation and to securely support capitalist expansion through primitive accumulation of Indigenous spaces.

Chapter 5

Conclusion

Throughout this thesis, I have tried to demonstrate that two seemingly inconsequential cases—both technically legal failures—worked within the greater Canadian context of the strength of the Red Power movement to bring about a concrete change to the nature of the Indigenous-state relationship. The *Calder* case (January, 1973) and the James Bay court injunction (November, 1973) were successful in the eyes of the Indigenous nations bringing them forward, yet failures according to the rule of the law. The Nisga'a nation case failed on a technicality and the James Bay case was swiftly overturned. Yet despite these apparent setbacks, and given the climate of the country at the time, their success was in forcing the federal government to finally acknowledge the existence of Indigenous rights.

Following the success brought forward by these two cases, the struggle for Indigenous rights became firmly relocated within the modern claims process, which was designed and administered by the colonial/racist state. This change serves assimilation and capitalism. It forces Indigenous peoples into conforming to the practices, values and customs of the Canadian state. Any modern claims—specific or comprehensive—levied against the federal or provincial governments are judged by the defendant (the state) and argued in the 'language' of the state. In stark contrast to the conceptual underpinnings of the original treaty process, what once was an agreement between sovereign nations is now guided by practices of coercion within a relationship of racial inequality. Now Indigenous peoples pursuing the settlement of claims are faced with the arduous task of proving their case against the colonizer *to* the colonizer within the colonizer's 'house,'

and of fighting the push for extinguishment or surrender, while also coping with the reality that ‘success’ within the modern claims process is interpreted within a narrow understanding and under a capitalist framework. In other words, the ‘reward’ for successfully (re)negotiating a claim is nearly always monetary. This places serious constraints on the Indigenous understanding of land and resources, assigning a financial value to something that is invaluable. The claims process now serves to bring Indigenous peoples further into the capitalist system.

One cannot fully comprehend the significance of this change without placing it within the greater story of Canadian history. Currently Canada is most often considered a liberal democracy or in Trudeau’s terms a ‘just society.’ In juxtaposing the sustained myth of Canada’s equality with the colonial history and current experience of Indigenous peoples, the prolonged priorities of the state become clear. Throughout Chapter 2, the history of the Indigenous-state relationship demonstrated time and again that the overarching objective of the racist (modern or colonial) state was the exclusion and marginalization of Indigenous peoples and the dispossession of their lands and resources, in the service of colonialism and for capitalist expansion. The structure of Canada’s industrial economy has always been based on the exploitation of raw materials and resources from the ‘frontier.’ In order for Canada to prosper it needs to support primitive accumulation through policies based on capital-intensive, resource-extractive industries (Richardson and LaDuke 1991). Throughout history, the ‘Indian’ has presented an obstacle to capitalism and an opportunity to primitive accumulation.

During the initial waves of colonial settlement of what is now known as Canada, Indigenous peoples became key players within trade and commerce. Following this era,

marked the transition between mercantile and industrial capitalism (approximately 1860-1914) where Indigenous peoples and specifically Native labour, became superfluous to the development of the new nation (Abele and Stasiulis 1989; Satzewich and Wotherspoon 2000; Lutz 2008; Chapter 2). With increasing European settlement and the transition away from the fur trade, Indigenous peoples became heavily racialized within the building of the new nation. They were no longer viewed as an essential component of the nation but rather were gradually seen as obstacles to securing and exploiting the land. The priorities of the colonial state and, later, of the Canadian state have centred around the expansion of the capitalist market. In this way, Indigenous peoples represent a stumbling block to the state in its pursuit of capitalist accumulation.

The relationship between Indigenous peoples and the state—British colonial and later settler Canadian—has been colonial, or characterized by domination within a hierarchical racial relationship intent on the dispossession of Indigenous peoples from their land and from their autonomy, and justified by racialization. The state's longstanding commitment within the Indigenous-state relationship has been to maintain, by any means, ongoing access to the land and its resources. Related to this commitment has been the long-term goal of the state in indoctrinating Indigenous peoples to principles of capitalism: private property and possessive individualism. Indigenous lands and peoples are opportunities for the state, in that they are (or had been?) non-capitalist/pre-capitalist societies to be offered to capitalism within the process of primitive accumulation. It is only through the swallowing up of non-capitalist spaces that capitalism can continue to survive. The intention of the British colonial and Canadian

states has been to assimilate the 'Indian' to capitalism and consume their land and resources (see Chapter 2 for more information).

Colonialism has been the ally to capitalism, serving its interests of expansion and accumulation. In pursuit of land and profit, European colonists came to what is now North America to usurp existing Indigenous ways of life and supplant non-capitalist spaces with capitalist ones, exploiting land and resources for the profit of the settler state(s). In *The Principles of Political Economy* John Stuart Mill wrote, "colonization, in the present state of the world, is the best affair of business, in which the capital of an old and wealthy country can engage" (1888: 934). This is equally true of colonial settler states. As 'external' colonialism gave way to 'internal' colonialism, the priorities and practices of the colonial state remained the same. Indigenous peoples continued to experience dispossession and marginalization within a territory they had occupied since 'time immemorial.' The theft of Indigenous lands by the Europeans settlers and by the Canadian state was upheld by myths such as 'terra nullius' and by racist ideologies.

Colonialism continued to serve the building of the new nation, in the interests of capitalism and using colonial tools such as racism. Race is a key structuring technology of the modern state (Goldberg 2009). Race becomes the dominant ideology, or the 'political theology' (Goldberg 2009: 351) serving to justify the actions of the state. Race is an elastic concept, malleable enough for continued use throughout the changing nature of state relations. As Goldberg outlines, there are two types of racism: naturalism and historicism. Throughout the history of Canada, and as outlined in Chapter 2, naturalism predominated, which is the belief in an inherent racial inferiority. Naturalism is most common from the 17th to the 19th centuries and in coercive states. In Canada, one can see

the progression of racism from naturalism to historicism, where militaristic state actions evolved to paternalistic motivations underpinned by assimilation policies such as the Residential School system and the Sixties Scoop, where the ‘Indian’ needed to be ‘rescued’ and ‘civilized.’ In Canada, the tendency towards historicism and assimilation emerged in the 1880s when Indigenous peoples were considered racially inferior and the by-product of their customs, climate and habits (Goldberg 2002). In Canadian colonialism two sides of racism, historicist and naturalist, emerged attempting to justify racist oppression, including the destruction of land and resources, attempted genocide and attempted cultural genocide and stolen children—all in the name of supposed good intentions Chapter 2).

Colonialism continues today. The state continues to prioritize capital and its subsequent dispossession and marginalization of Indigenous peoples. In Chapter 3, the analysis of the Red Power movement demonstrated that the key contentions for the movement had remained relatively unchanged since the time of settlement. The state continues to promote the expansion of capitalism through the unsanctioned acquisition and development of Indigenous lands and resources, such as in the ‘Indian War for Energy’ (Hill 2009) over the Mackenzie Valley Pipeline and the James Bay hydroelectric project. Primitive accumulation continues unabated, swallowing up non-capitalist societies and reallocating their means of sustenance as mere dollars and cents. Racist and assimilation policies continued, as clearly articulated in the *White Paper* of Prime Minister Trudeau and Minister Chrétien. The policies of the Canadian state and the British colonial state are evidence that, as with all modern states, Canada is a racist state. Its development has been premised on the dispossession and exclusion of Indigenous

peoples. Racism has served colonialism in solidifying race and class hierarchies for the purposes of expanded capitalism's reach.

Within this historical overview, it becomes apparent that the Canadian state, where Indigenous issues are concerned, is not built upon justice and equality but rather on a set of hierarchical relations. The state's intent in dispossessing Indigenous peoples from their land, resources and participation in the nation has not changed significantly since the time of contact and settlement. The *White Paper* Liberalism of Trudeau's time denied the existence of Indigenous rights, espousing forced assimilation under the guise of equality and of a 'just society.' Within this Liberal view, Indigenous peoples were regarded as merely one of many other ethnic minorities within the country. This liberal/Liberal conception is polite racism, erasing the history of colonialism and the special status of Indigenous peoples as the original keepers of the land now known as Canada. In this regard, the 'Indian question' was viewed as a problem to be solved with modernization and development (Goldberg 2002). Assimilation was again the solution posed. Recognizing this, the Red Power movement gained strength and resistance to the *White Paper* was fierce (Chapter 3). Resistance to the *White Paper* was merely one instance in a long history of Indigenous opposition to state domination.

This thesis built upon the overall history of Indigenous peoples, providing a more detailed snapshot of the resistance of the Indigenous movement of the late 1960s and early 1970s in the tumultuous Trudeau/Chrétien era. It was during this time that political opportunity and mobilizing structures, such as the climate of global activism, the rise of the rights movement, and the spread of Indigenous newspapers, facilitated the rise of Red Power and contributed to its influence on the Canadian state. The issues at hand for Red

Power varied little from those of historical Indigenous resistance movements and rebellions. Notably, Indigenous peoples were fighting for self-determination and for their land and resources. In other words, Indigenous resistance is most often a fight against colonialism in the pursuit of capitalism.

With the increasing pressure on the federal government to resolve the ‘Indian question’ of Indigenous rights to the land and the rising dissent of the Indigenous Red Power movement, the state was forced to reconsider their once-firm position that Indigenous rights did not exist as separate from Canadian rights. The struggle of the Nisga’a nation in British Columbia and of the James Bay Cree and Inuit in Quebec brought the federal government to publicly alter its colonial stance of forced assimilation into the gradual recognition of Indigenous rights. This change was not without consequence and the much of the struggle of Indigenous activism was funneled into the modern claims process.

In 1973, the federal policy on Aboriginal title was reversed with the development of the comprehensive claims process. This process set forth general guidelines for the negotiation and settlement of ‘specific’ and ‘comprehensive’ claims. As outlined in Chapter 4, there are few, if any, advantages of this new process for Indigenous peoples. In essence, this new process serves as a means of establishing certainty to provide security for land development and resource extraction. In exchange for undefined Aboriginal rights, Indigenous peoples receive finite and specific entitlements through ‘extinguishment’ or ‘surrender’ clauses. The settlement of these agreements ‘reward’ Indigenous peoples with monetary payments, bringing them further into the capitalist fold and in line with western ideologies, customs and practices. Furthermore, the modern

claims process is designed and managed by the colonial state, making it both defendant and judge. This new process was a more efficient means for the state to resolve outstanding claims and provide additional support and protection for capitalist development. The claims process is a tool for primitive accumulation.

Alternates to the modern claims process have been proposed throughout the years. In 1985 the *Report of the Task Force to Review Comprehensive Claims Policy*, or the Coolican Report, submitted various options to the use of extinguishment clause. One year later, the government document *Comprehensive Land Claims Policy* adopted the spirit of the Coolican Report so that now the federal government may require only limited rather than total extinguishment within settlements. As expected, this very limited change has not been met with the approval of Indigenous peoples (Asch 1997). In lieu of minor adjustments to the process, the fundamental ideologies underpinning the claims process must be addressed. The claims process is predicated on the federal government's understanding of Aboriginal rights and title, which has been accepted without question by the legal system. It is based on the assumption that the Canadian state holds underlying title to all of Canada (Asch 1997). For this reason, the Canadian government thinks of Aboriginal title as 'uncertain' despite the fact that all of Canada is certainly Indigenous lands from time immemorial.

Prior to the development of the modern claims process, before 1973, the Canadian federal government refused to recognize Indigenous land rights. It was only after the Nisga'a and James Bay cases, and under the pressure of the Red Power movement, that the state began to consider recognizing the rights of Indigenous peoples to their traditional land. The reluctance of the Canadian governments to acknowledge and

legitimize a claims process has been a persistent reminder of the colonial and racially defined relationship that has marked Aboriginal-state relations in Canada (Pertusati 1997). The experience of Indigenous peoples in Canada has been a constant a struggle to survive deliberate attempts that seek to destroy Indigenous ways of life and Indigenous resistance to the invasion and dominance of the 'European pirates' (Adams 1999). The current situation, and the practical implications of the modern claims process, of Indigenous peoples is heavily connected to the historical realities of colonialization, dispossession and marginalization suffered by Indigenous nations. Similarly, the Indigenous resistance that exists today and the strength of the Red Power movement, were predicated upon the determination and fortitude of past battles for Indigenous rights and self-determination.

In the centuries since contact and settlement, numerous attempts have been made by the settler colonial and Canadian states to appropriate the lands and resources of Indigenous peoples; however, the strength and perseverance of Indigenous resistance has been sustained. Throughout the Riel Rebellion, the Red Power movement, and now within numerous legal battles, many Indigenous nations continue to fight the all-consuming, unrelenting primitive accumulation in its march for capitalism. As Lenin has said, "[capitalism] strives to seize the largest possible amount of land of all kinds in all places, and by every means, taking into account potential sources of raw materials and fearing being left behind in the fierce struggle for the last remnants of independent territory" (1917: 233). Canada has demonstrated through its historical actions and through contemporary tools like the modern claims process, that it fears being left behind in the war of capitalism. It is in this way that Canada's success has been predicated on

seeking the ruin of Indigenous peoples. The strength of the colonial state and the birth of the nation were based on the appropriation of Indigenous land, resources and autonomy.

The main objectives of the colonial settler project have been to dispossess and exclude Indigenous peoples (Abdo and Yuval-Davis 1995) in the conquest of capitalist expansion and accumulation. In Canada, 'Indian' policy has demonstrated the state's commitment to these objectives, striving to secure land and resources and to racialize, marginalize and moreover, assimilate the Indian into the capitalist system.

As with colonialism, racism is also a tool of capitalism and of the state. Where colonialism served to consume non-capitalist spaces, racism served to justify the consumption. The state advances assimilation policies, not merely because it subscribes to the racist beliefs that the 'Indian' must be saved from himself/herself, and not only because it further believes that only through participation in the capitalist market can such self-development occur, but more importantly, the state seeks to bring Indigenous peoples into the fold of capitalism and individualism in order to advance the market system and the accumulation of lands, resources and capital in the interests of greed.

Upon further analysis (see Chapter 4), the modern claims process provides another opportunity to bring Indigenous peoples into the capitalist system. While the process provides a venue for the resolution of claims and it adds security for land developers, the new process also necessitates that Indigenous peoples surrender or extinguish many of their rights, that they use and adapt to the language of the state within a procedure developed and judged by the colonial/racist modern state. Furthermore, in reducing the concept of Indigenous land to financial valuations, the claims process begins to reshape how Indigenous peoples think of the land and their relationship to the land. In

many ways, the modern claims process has come farther than any state attempts in dispossessing Indigenous peoples and in integrating them into the market economy.

As racism serves colonialism, which is in service of capitalism, so too does the modern claims process serve the racial state of Canada. Colonialism's total war has not yet achieved its destruction of Indigenous peoples as they exist. Yet despite the gains made by the Red Power movement, the outcome of the modern claims process serves to bring the total war one step closer to its success.

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