

REALIZING RECONCILIATION: ANALYZING RESOURCE REVENUE SHARING
AGREEMENTS AND INDIGENOUS-SETTLER RELATIONS IN ONTARIO'S MINING
INDUSTRY

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Abstract

In 2018, the Government of Ontario and the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council announced that they had entered into three resource revenue sharing agreements. These new agreements were publicly celebrated as an example of reconciliation with First Nations in Ontario. This dissertation critically studies the development of these new agreements, from their conceptual origins in reconciliation to how they reshape Indigenous-settler relations in Ontario.

Relying on settler colonial studies, governmentality, and Mills' legality tree as theoretical frameworks, and through archival research, textual analysis and the principles of Indigenous research methodologies, this dissertation paints a complex picture of reconciliation, resource revenue sharing and settler colonialism in Ontario. I begin by theorizing the lifeworld of liberalism, noting how Christian creationism influenced liberal philosophy, settler colonialism, and reconciliation discourses. I argue that Christian theology is anthropocentric, which is reflected by how state actors use reconciliation discourses, and that this contrasts with Indigenous worldviews. Despite the narrower conception of reconciliation, I contend that reconciliation, as a political rationality, was heavily influenced by Indigenous peoples seeking to remake their relationship with the state in the 1990s. I explicate that resource revenue sharing emerged as a new governmental concept for repairing Indigenous-settler relations.

Next, I trace the development of reconciliation as a new political rationality in Ontario. I then examine the decade and a half long story of how resource revenue sharing went from a divisive concept to one that was widely accepted by a diverse assemblage of Indigenous, state, extractive and market actors in Ontario, and how it was developed into a reconciliatory technology. With humility, I also consider how these new agreements can affect Indigenous-settler relations in Ontario. I reason that while reconciliation produces concessions for Indigenous peoples from settlers, it may still leave in place asymmetrical power relations, as settlers seek to govern Indigenous peoples in accordance with their own settler colonial interests regarding resource extraction.

However, rather than concluding that reconciliation is an ideology that only shields settler colonial relations, I argue that since reconciliation has a concessionary logic, reconciliation discourses have the potential to affect the actions of settler actors, even if it does not end settler colonialism. This is further explored by how the Progressive Conservative government eschewed reconciliation to de-Indigenize resource revenue sharing, and how there are fierce discursive struggles to define reconciliation and influence the scope of its concessions.

Finally, I assert that reconciliation produces messy alliances, technologies and outcomes, and that future scholarship requires a careful and contextual analysis of reconciliation.

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List of Acronyms

AFN	Assembly of First Nations
CBC	Canadian Broadcasting Corporation
CMIF	Canadian Mineral Industry Federation
COO	Chiefs of Ontario
DIAND	Department of Indian Affairs and Northern Development
FPIC	Free, Prior and Informed Consent
FOI	Freedom of Information
IBA	Impact and Benefit Agreement
IRSSA	Indian Residential Schools Settlement Agreement
IIPAC	Ipperwash Inquiry Priorities and Action Committee
KI	Kitchenuhmaykoosib Inninuwug First Nation
MLI	Macdonald-Laurier Institute
MPP	Member of Provincial Parliament
MAC	Mining Association of Canada
NIB	National Indian Brotherhood
NDP	New Democratic Party
NAN	Nishnawbe Aski Nation
NORDS	Northern Ontario Resource Development Support
NPA	Northern Prospectors Association
OCC	Ontario Chamber of Commerce
OMICC	Ontario Mineral Industry Cluster Council
OMA	Ontario Mining Association
OPA	Ontario Prospectors Association
PTO	Political Territorial Organization
PPDA	Porcupine Prospectors and Developers Association
PMO	Prime Minister's Office
PCO	Privy Council Office
PDAC	Prospectors & Developers Association
RCAP	Royal Commission on Aboriginal Peoples
TRC	Truth and Reconciliation Commission
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Chapter 1: Reconciliation in Ontario

Introduction

In May 2018, the Liberal government, under the leadership of Premier Kathleen Wynne, announced that it had entered into three resource revenue sharing agreements with First Nations represented by the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council. These agreements meant that the provincial government would share 45% of its annual revenue from forestry stumpage, 40% of the annual mining tax and royalties from operational mines, and 45% from future mines located in the areas covered within these agreements (Government of Ontario, 2018). When these agreements were announced, they were immediately portrayed as progressive legal agreements and were celebrated by the Liberal government as representing reconciliation and improved relations with Indigenous peoples in Ontario. This was perhaps unsurprising since the Liberals had increasingly committed itself to reconciliation after the release of the Truth and Reconciliation Commission's (TRC) final report in 2015. In 2016, the Liberal government released *The Journey Together*, a response to the TRC's final report that contained an action plan for what the Liberal government would do to advance "reconciliation" and improve relationships with Indigenous peoples. This included creating resource revenue sharing agreements to address the socio-economic issues facing Indigenous communities while strengthening Indigenous-Ontarian relations. The announcement of these three new resource revenue sharing agreements, however, were the last major legal and policy reform by the Liberal government which would be based on reconciliation and the improvement of Indigenous-Ontarian relations. After fifteen years as the governing party, in June 2018, the Liberals were voted out of office, losing official party status within Ontario's Legislative Assembly.

The new Progressive Conservative government under its newly minted populist leader Douglas Ford Jr. quickly made their stance known about their interest in improving Indigenous-Ontarian relations for reconciliation. In the Speech from the Throne opening the 42nd Parliament, nowhere did it acknowledge Indigenous peoples' presence in Ontario's history. Additionally, the discourse of reconciliation and repairing Indigenous-settler relations was completely missing, a criticism brought up by the several New Democrats who had just formed the Official Opposition (Legislative Assembly of Ontario, 2018b). The Official Opposition was also critical of how Member of Provincial Parliament (MPP) Greg Rickford would serve as a dual Minister for both the Ministry of Energy, Northern Development and Mines and the rebranded Ministry of Indigenous Affairs (Legislative Assembly of Ontario, 2018b). The new Progressive Conservative government clearly signalled that reconciliation was not part of their government mandate and that they had little interest in producing strong, working relationships with Indigenous peoples across Ontario. Rather, Indigenous relations were reduced to being affairs that were to be managed by the new part-time Minister. The new government's refusal to make any public commitment to reconciliation also meant that they would take law and policy in a different direction from the previous government. Resource revenue sharing, which was a distinct legal agreement closely associated with reconciliation and improved Indigenous-settler relations, was expanded to all "northern communities". Resource revenue sharing was no longer connected with reconciliation nor were resource revenue sharing agreements legal and financial arrangements exclusively reserved for Indigenous peoples for the purpose of improving relations.

The point of making this comparison between two different governments is not to say that the Liberals were good for embracing reconciliation and creating resource revenue sharing agreements and that the Progressive Conservatives are bad for scrubbing reconciliation from

their vocabulary. This Manichean binary is too simplistic and does not allow a deeper analysis of reconciliation and settler colonialism. Rather, the purpose of drawing out these two contrasting approaches to how different state actors govern Indigenous relations in Ontario is meant to show that reconciliation discourses have the potential to necessitate the creation of laws, policies, tools, technologies, techniques and strategies that can intervene into Indigenous-settler relations. The Liberal government's commitment towards reconciliation meant that unlike the Progressive Conservative government they were compelled to produce governmental interventions, such as resource revenue sharing agreements, which should theoretically have a positive impact for Indigenous peoples. However, this does not necessarily mean that these governmental interventions based on reconciliation are "positive" in the sense that they are always "good", or that they demonstrate that settler colonial governance is over. Instead, the relationship between settler colonial governance and reconciliation is a lot more complex as governmental interventions based on reconciliation can produce a series of intentional and unforeseen positive and negative effects for Indigenous peoples, some of which may reify settler colonialism. Due to the complexities of reconciliation, my dissertation seeks to produce a nuanced analysis of how many types of actors engage with reconciliation and the relationship between reconciliation and settler colonialism by carefully analyzing the development of resource revenue sharing agreements in Ontario. Additionally, the goal of my doctoral project is to contribute to the wider settler colonial studies literature on reconciliation, which I will provide a brief overview of in the following section.

Literature Review

According to the literature in settler colonial studies, the rise of reconciliation discourses has produced several problematic effects. One of the most troubling effects is how reconciliation

reshapes how the general population understands settler colonialism as a series of past events rather than a social structure which is based on the elimination of Indigenous peoples (Coulthard, 2014: p. 125-126; Wolfe, 2006: p. 390). The notion of “reconciliation” is derived from a theological concept found in Catholicism (and other Christian denominations, like Anglicanism), which denotes restoring a harmonious relationship between a sinner and the Church (Garneau, 2016: p. 32-33; Jung, 2018: p. 259; Wylie, 2017: p. 608). By using this word to discuss the future of Indigenous-settler relations, it implies that there was once an era in which Indigenous peoples and settlers lived in a state of equanimity which was disrupted and that there is now a desire to restore this past idyllic relationship (Garneau, 2016: p. 30). This disruption of supposedly harmonious Indigenous-settler relationships is often attributed to the residential school system rather than the fact that the settler state enacted numerous genocidal policies over many generations which sought to either eliminate or assimilate Indigenous peoples (Dorrell, 2009: p. 34-36; Lightfoot, 2015: p. 33). “Reconciliation” is thus assumed to be a historic break in which settler colonialism is believed to be over and that it will allow Indigenous peoples and settlers to be able to return to an era of peace and harmony. A secondary issue which arises is that by proposing that reconciliation will herald in a new era of peaceful and equal relations between Indigenous peoples and settlers, the current harmful actions of the settler state may be dismissed or overlooked (Coulthard, 2014: p. 121). Thus, the settler colonial studies literature shows that the discourse of reconciliation may result in most settler Canadians misinterpreting settler colonialism as a series of past events that are over and ignoring the reality that settler colonialism is an ongoing social structure which continues to negatively impact and harm Indigenous peoples.

Besides arguing that reconciliation discourses may limit our collective recognition that settler colonialism continues to disenfranchise Indigenous peoples, this scholarship also discusses how reconciliation may demand that Indigenous peoples relinquish their struggle for self-determination and sovereignty. This is because reconciliation has become equated with Indigenous peoples both healing from their colonial trauma and forgiving the settler state. In her work, Million (2013) describes how in the latter half of the twentieth century, when Indigenous peoples across North America were both debating about and partaking in self-determination and anti-colonial efforts (and gaining global attention in the process), Indigenous peoples' experiences under settler colonialism were increasingly being pathologized through psychological concepts, like anomie, Post-traumatic Stress Disorder, and historical trauma (p. 83-94). The mobilization of trauma, both within Canada and on the international stage, resulted in support, funding, and various efforts to promote healing within Indigenous communities (Million, 2013: p. 95-101). It is within this moment that health becomes articulated as a human right and that economic development (i.e., resource extraction within Indigenous territories) is tied to health and healing (Million, 2013: p. 100-101). Additionally, "Healing from trauma begins to be narrated as a prerequisite for self-determination", which would require Indigenous peoples to heal from past colonization while supporting current capitalist development (Million, 2013: p. 105-106). Ironically, this means that Indigenous peoples were encouraged to heal through supporting further capitalist and settler colonial activities on their respective territories. Healing within Indigenous communities in Canada was also instructed to occur through the adaptation to the "basic realities" of capitalism, as advocated by academics, conceptualized through healing strategies and supported by the federal government, and which simultaneously became discursively linked to reconciliation (Million, 2013: p. 115-120). As such, the "healing

that is supported by reconciliation is adaptation to basic realities”, which requires accepting and participating in capitalist accumulation and also involves reconciliation with the state (Million, 2013: p. 144). Thus, the pathologization of Indigenous anti-colonialism in the twentieth century has prompted healing interventions and calls for reconciliation, both of which are oriented towards encouraging Indigenous peoples to endorse and embrace capitalist development as part of their philosophical and political project of self-determination.

Consequently, this can lead to troubling outcomes for Indigenous peoples. The discursive linking of reconciliation with healing means that reconciliation operates as a “pacifying discourse” since the anger and resentment held by Indigenous peoples, which has historically generated Indigenous resistance and serious responses from the state, is problematized instead of the state’s colonial policies (Alfred, 2009a: p. 182; Coulthard, 2014: p. 120). In fact, reconciliation through healing can lead to either expectations from the state or necessitate further state interventions. In terms of expectations, through issuing an official apology and calling for reconciliation, the state may expect Indigenous peoples to heal and to conform to notions of “good citizenship” by withdrawing their efforts for self-determination and claims of sovereignty (Wakeham, 2012: 5-6), thereby furthering a project of assimilation. Additionally, Indigenous anti-colonial actions in an age of reconciliation can be medicalized as trauma, which becomes a site of healing and management, and may even legitimate further policing and interventions by state authorities (Million, 2013: p. 149-150). Thus, since the state has apologized and since reconciliation is discursively associated with healing, the onus is placed on Indigenous peoples to heal by relieving themselves of any feelings of anger or resentment to forgive the settler state, with the hopes that this normalizes settler colonial governance. Reconciliation may therefore pre-emptively disarm, if not delegitimize, continued Indigenous resistance and resurgent practices

which challenge the state's claim to sovereignty. Between the expectations for Indigenous peoples to heal alongside the legitimacy of state interventions in response to Indigenous resurgence, there is serious validity to the argument that reconciliation is a pacifying discourse.

These is also the possibility of devastating, biopolitical consequences that can materialize through reconciliation. As mentioned above, health and healing are now intrinsically tied to capitalist development and reconciliation with the state, which is construed as a process that must occur prior to Indigenous self-determination. Million (2013) elaborates on this argument, by stating that “Canada can point to the therapeutic reconciliation that it has put in place as progress for Indigenous nations within its borders” (p. 158). This begs the question – what are the biopolitical implications if reconciliation with the state and inclusion within extractive economies are both repudiated by Indigenous peoples? Canada's shift toward neoliberal economics in the twentieth century has resulted in the devolution of responsibilities for health and welfare services, as local governments and communities are now responsible for ensuring the health and welfare of their own populations (Million, 2013: p. 101). Under neoliberalism, the devolution of services to Indigenous peoples as “self-government” and the promotion of personal well-being has also meant that poor health within Indigenous communities is often attributed to Indigenous peoples themselves, rather than to the reality of structural violence under settler colonialism and neoliberal governance (Altamirano-Jiménez, 2013: p. 78; Million, 2013: p. 133-134; Murdocca, 2010: p. 396; Slowley, 2008: p. xv). Therefore, Canada's neoliberal turn has meant that Indigenous peoples and individuals have been assigned personal responsibility for their own health and welfare, and that blame for poor health outcomes has been decontextualized from larger intersecting structures of settler colonialism and neoliberalism. The devolution of responsibility for personal health that has occurred under neoliberalism seems to intertwine with

healing. As stated by Fullenwieder (2018), the logic of healing “shifts responsibility for historical violence onto the Indigenous individual, community, and population” (p. 430). Thus, under neoliberalism and through the logic of healing, it is the responsibility of the Indigenous person or community to decide to partake in healing and reconciliation with the state. An Indigenous person’s refusal to participate in the state-led process of reconciliation is viewed as pathological and allowed to “let die” as a “victim”, whereas the Indigenous individual who chooses to heal is considered a “survivor” (Fullenwieder, 2018: p. 431-432). The neoliberal discourses of personal and communal responsibility over health, combined with how healing occurs through reconciliation, means that the rejection of reconciliation is a choice in which the biopolitical consequences can be expected and delegated to the person, and not wider structures.

It is no wonder that the literature within settler colonial studies theorize reconciliation as being a new phase in settler colonialism, as reconciliation may legitimate the dispossession and elimination of Indigenous peoples from their lands by suppressing Indigenous resistance, often through the logic of healing (Alfred, 2009b: p. 44; Coulthard, 2014: p. 6; Fullenwieder, 2018: p. 424; King, 2012: p. 102; Million, 2013: p. 134; Palmater, 2014: p. 32). Additionally, reconciliation forecloses the possibility of long-term structural changes, like land restitution or constitutional reform, in favour of a “therapeutic national catharsis” that is more interested in supporting Indigenous healing and affective forms of reparations (Coulthard, 2014: p. 122; Million, 2013: p. 134). These minimal, short-term affective reparations may be supported due to how reconciliation can produce ideological effects, as reconciliation calls upon Indigenous peoples harmed by centuries of settler colonialism to forget the past and now embrace “a resolution which is acceptable to and non-disruptive for the state and society”, which leads to enveloping Indigenous populations within a settler society as “subjects of imperial rule”,

securing settler dominance, and legitimating the structure of settler colonialism (Alfred, 2005: p. 129-130; Alfred, 2009b: p. 49-50; Barker, 2009: p. 333; Coulthard, 2014: p. 31; Manuel & Derrickson, 2017: p. 202; Tully, 2008: p. 261-265). Thus, calls for reconciliation dually expect Indigenous peoples to abandon resurgent practices against the settler state and to resign themselves to the reinscribed status quo within settler colonialism. Due to its ideological effects and potential to disempower Indigenous peoples, reconciliation is placed in opposition to Indigenous resurgence and decolonization, political projects which seek to empower Indigenous practices, demand a more radical re-envisioning of Indigenous-settler relations, and are unconcerned with settler futurity (Cornthassel, 2012: p. 93-94; Manuel & Derrickson, 2017: p. 275; Simpson, 2008: p. 75-84; Tuck & Yang, 2012: p. 35). The settler colonial studies literature has therefore made a strong case against reconciliation, noting that unlike Indigenous resurgence or decolonization, reconciliation lacks the transformative potential to end settler colonial relations and can instead ideologically legitimate a settler colonial structure in Canada.

However, it may be mistaken to assume that reconciliation can only benefit settlers and their interests. Recent literature within the domain of critical Indigenous studies has sought to represent diverse Indigenous interpretations of reconciliation that account for the nuance and complexity of reconciling with settlers. This literature has involved many Indigenous scholars theorizing what reconciliation means and how Indigenous peoples can engage with it, the relationship between Indigenous resurgence, decolonization and reconciliation, and the complexities and realities of self-determination in relation to resource extraction and reconciliation. For instance, Stark (2023) takes up Coulthard's analysis of the state-centric process of reconciliation and the colonial politics of recognition to remind readers that his recommendation that Indigenous peoples "turn away" from the state is not a permanent position,

but is a strategic shift meant to enable decolonization and the resurgence of Indigenous lifeways (p. 5-7). Rather than outwardly and wholly rejecting engagement with settlers, there is an acknowledgement that Indigenous engagement with the settler state requires “caution, scepticism, and self-reflection” that is guided by Indigenous thought and practices (Stark, 2023: p. 6). Thus, this literature makes space to understand, respect and acknowledge a variety of Indigenous perspectives on how to strategically engage with settlers, which can range from turning away from the state to cautiously partaking in reconciliation with settlers.

In fact, numerous authors within critical Indigenous studies have explored reconciliation, from its discursive limitations, its relationship to Indigenous languages and political thought, and its strategic value in potentially reshaping Indigenous-settler relations. For example, some scholars note that while Western notions of reconciliation focus on repairing relationships between peoples, Indigenous views on reconciliation also include a strong desire for environmental justice and reconciliation with the earth (Borrows, 2018: p. 50; D. McGregor, 2018: p. 223-224). This articulation of reconciliation within the Indigenous studies literature is important to highlight as it shows that reconciliation is not necessarily a straightforward term or one that is easily compatible with Indigenous worldviews, although, it does have the malleability to incorporate Indigenous worldviews. For instance, Craft (2023) cautions that English words with the suffix “re”, like “reconciliation” and “resurgence”, do not have an Indigenous etymology and do not necessarily serve Indigenous interests (p. 105). This is because “re” words mean “to go back or backwards”, which has led to Indigenous identities, cultures, political and legal expressions being anchored to a pre-colonial past, as seen with how the Supreme Court of Canada uses “reconciliation” to determine that only pre-colonial practices are constitutionally protected through Section 35 rights within the *Constitution Act, 1982* (Craft, 2023: p. 96-97).

Despite the discursive limits and problematic ramifications of reconciliation, many Indigenous scholars have attempted to shape what reconciliation can mean in relation to Indigenous language and thought. To give one example, Ladner (2018) argues that reconciliation should resonate, be understood and ultimately operationalized in accordance with Indigenous political thought (p. 245). In rejecting settler-centred reconciliation, Ladner (2018) relies on Cree philosophy and stories to conceptualize a transformative, Indigenous-inspired reconciliation (p. 246-256). Thus, the Indigenous studies literature has 1) observed the theoretical and discursive limitations of settler notions of reconciliation and 2) has rejected settler notions of reconciliation by expanding reconciliation discourses to include Indigenous worldviews and political thought.

The malleability of reconciliation along with its potential to hold Indigenous worldviews is significant for some scholars within critical Indigenous studies, albeit for a diverse set of reasons. For Borrows and Tully (2018), reconciliation with settlers can work in tandem with Indigenous resurgence to produce transformative changes and end unjust relationships between Indigenous peoples and settlers (p. 5). They give the example of how resurgent Indigenous Studies programs have been adopted at universities through reconciliation efforts with settlers, and that these programs, led by Indigenous scholars, have transformed curricula and teaching (Borrows & Tully, 2018: p. 5). They therefore advocate for “resurgence *and* reconciliation” in which transformative reconciliation is “empowered by robust practices of resurgence” while continuing to reject non-transformative reconciliation (Borrows & Tully, 2018: p. 5, emphasis in original). Thus, engaging with reconciliation in relation to Indigenous resurgent thought and practices can lead to necessary changes within Indigenous-settler relations, such as by making institutional space for Indigenous peoples and knowledges within universities. From this optimistic perspective shared by scholars like Borrows and Tully, engaging with reconciliation

has the futuristic potential to produce new and possibly long-lasting effects that can eventually unravel and end unjust relationships between settlers and Indigenous peoples.

For other scholars within critical Indigenous studies, there is a strategic purpose for partaking in reconciliation, one which is meant to challenge and delimit settler colonial power while advancing Indigenous interests and self-determination in the present colonial moment. According to these scholars, there is a liminality within settler colonialism and settler uses of reconciliation that can be “opportunities” for political action (Snelgrove & Wildcat, 2023: p. 158). Within their theorization of the reserve system, Belcourt (2023) sees the reserve as a “liminal space”, one which the settler state imposed onto Indigenous peoples to make the settler colonization of land possible, but which is also a space that allows for Indigenous “conspiracy” and the possibility to imagine and strategize for a “utopian” world (p. 232-233). Belcourt’s theorizing of the reserve as a liminal space would seemingly apply to reconciliation as well. For instance, Snelgrove and Wildcat (2023) assert that reconciliation is “a unique *moment of colonial reconfiguration*” but curiously, it can also be a moment that “signals openings that are strategically significant” (p. 158; emphasis in original). They further explain that the Canadian state attempts to reconcile its self-image with settler colonialism by acknowledging the injustice to Indigenous peoples, but that ultimately, the state remains committed to asserting its claims of colonial sovereignty over Indigenous lands and promoting resource extraction (Snelgrove & Wildcat, 2023: p. 158). However, it is in this moment of reconfiguration that there are “openings and opportunities that can be taken advantage of through strategic political action” (Snelgrove & Wildcat, 2023: p. 158). Thus, the liminality of reconciliation can lead to openings that allow for Indigenous political action to advance Indigenous interests.

The critical Indigenous studies literature has documented moments in which the liminality of reconciliation has challenged state action or even induced the state to act differently and in compliance with Indigenous demands. For example, Snelgrove and Wildcat (2023) explain how the Maskwacîs Cree were able to generate their strategic capacity and take advantage of the state's commitment to reconciliation to negotiate an education agreement with the federal government in which the Maskwacîs Cree had autonomy over and funding for their education system (p. 165-168). This example demonstrates how the state's project of reconciliation can be tactically engaged with by Indigenous peoples, which can result in both Indigenous resurgence and self-determination being exercised. Additionally, the literature has also observed how this can occur within the context of resource extraction. Oftentimes, state and corporate actors declare that their extractive projects, such as pipelines, are in the "national interest", leading to Indigenous communities which suffer from the environmental repercussions of these projects being "unimagined" (Scott, 2013: p. 101). The literature has documented how Indigenous peoples strategize through reconciliation or its preconditions, such as the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its provision that "Free, Prior and Informed Consent" (FPIC), to reverse their unimagining, hold the state accountable and practice Indigenous law and self-determination (Borrows, 2019: p. 33; Mainville, 2020: p. 104; Morales, 2019: p. 71-72; Nicol, 2017: p. 808-809). For example, the Heiltsuk Nation in British Columbia have called for the Canadian state and extractive corporations to work with them to create and adhere to "reconciliation protocols", fund a marine response centre, and make space for Heiltsuk jurisdiction after they were environmentally and economically harmed by an oil spill (Curran, Kung & Slett, 2020: p. 227). Thus, reconciliation

can provide a strategic opportunity for Indigenous peoples to assert jurisdiction and self-determination in relation to extractive activities.

However, it is crucial to recognize that while reconciliation can result in Indigenous peoples tactically interacting with settlers to protect their interests, practice resurgence and maintain their self-determination, the reality of choosing to reconcile with settlers is not always easy, straightforward or even desired. Furthermore, Indigenous decisions to embrace or reject reconciliation must be contextualized. This is especially true when analyzing the developments in Indigenous-settler relations within extractive economies. As succinctly explained by Atleo (2021), “The dominance of neoliberal capitalism, settler colonialism, and rampant resource extraction in Canada truly places Indigenous communities between the proverbial rock and a hard place” since the resulting high rates of poverty, loss of traditional subsistence practices and pressure for economic development has left Indigenous leaders with few choices for their communities (p. 362). That being said, Atleo (2021) contends that in the face of these forces, Indigenous leaders continue to exercise resistance and agency in their decision-making, which can either take the form of a negative reaction to settler colonialism or an affirmative action taken under the “context of *Indigenous political, legal, and economic orders*” (p. 362-364; emphasis in original). Ultimately, whichever action is chosen (i.e., embracing reconciliation and resource extraction or rejecting reconciliation with settlers), must be seen as self-determination. Therefore, how Indigenous peoples navigate settler colonialism may vary from place to place, but what unites these different approaches and strategies is the desire and self-determination “to preserve and perpetuate their political and economic autonomy” (Atleo, 2021: p. 365). As such, reconciling with settlers to gain wealth from resource extraction may be fundamentally different from the “everyday practices that renew and activate Indigenous kinship relations” that are

situated against capitalist exploitation, but both may be illustrative of resurgence, self-determination and sovereignty (Atleo, 2021: p. 365-367; Daigle, 2018: p. 167-168). Thus, this the Indigenous studies literature calls attention to the myriad number of ways that Indigenous peoples can interpret and respond to reconciliation with settlers, without necessarily imposing a template for how agency and self-determination are supposed to be performed. Instead, it recognizes the complexity of reconciling and acknowledges that resistance to settler colonialism can happen through either the participation in or the disavowal of reconciliation with the settler state. Therefore, while the critiques of reconciliation within settler colonial studies are useful in drawing out how reconciliation can lead to harmful effects for Indigenous peoples, the critical Indigenous studies literature attempts to outline how Indigenous agency is exercised in relation to present-day projects of reconciliation.

Project Significance and Research Questions

The above literature has influenced me to be very critical of reconciliation and its effects on Indigenous-settler relations. This dissertation contributes to this wider scholarly discussion of settler colonialism and reconciliation in Canada. However, despite being deeply inspired by this scholarship, I cannot help but notice that there are notable limitations with how this literature studies and theorizes reconciliation. First, most of the literature has either studied reconciliation at the national level or has examined how the federal government governs through reconciliation (for examples, see: Craft, 2019; Crosby & Monaghan, 2016; Patzer, 2019; Scott, 2013; Simpson, 2017). However, with some exceptions (for example, see: Ariss & Cutfeet, 2011), little research has examined how reconciliation is governed at other scales of governance, such as the provincial, municipal, and local levels. Consequently, if reconciliation is only studied at the

national or federal level, new legal arrangements, governmental interventions, and projects based on reconciliation at other levels of governance will remain understudied.

Second, the literature can be very state-centric, focusing on how the Canadian state (i.e., the actors, institutions, and apparatuses) conceives and governs reconciliation according to its interests. For example, Jung (2018) argues that reconciliation discourses are used by the state to push for economic growth amongst Indigenous peoples, which largely translates into the interpellation of Indigenous peoples as workers within extractive industries (p. 254). This top-down approach to studying reconciliation is important, as it demonstrates how the state relies on reconciliation discourses to try to fold Indigenous peoples into settler capitalism and to ideologically cement harmful settler colonial relations. However, this also means that less attention has been given to how Indigenous, extractive, and other types of non-state actors and organizations are also interested in operationalizing reconciliation and developing techniques and strategies to govern through these discourses in accordance with their own interests and goals. I therefore seek to contribute to the growing body of literature which has touched on how Indigenous peoples also invoke reconciliation in their attempt to curtail the settler state's power. My concern is that if we primarily study how the state engages with reconciliation, then we may only end up creating a partial analysis of how reconciliation operates. Moreover, if we gloss over how non-state actors engage with reconciliation, we may inadvertently privilege the settler state's interpretation and use of reconciliation. Focusing on how the settler state leverages reconciliation discourses may also risk portraying Indigenous peoples as passive actors responding to state-centric reconciliation discourses, rather than as actors who use their agency to creatively deploy reconciliation discourses to advance their own interests, including self-determination, as powerfully shown within the critical Indigenous studies literature.

Settler colonial studies has also shown that reconciliation discourses can produce harmful, ideological and pacifying effects for Indigenous peoples while limiting how settlers understand settler colonialism. However, as theorized within the Indigenous studies literature, there are many nuances, complexities and messiness of reconciliation that are worth acknowledging and studying. As such, a socio-legal approach is warranted to study the relationship between law, settler colonial power and reconciliation, and to capture the messy and uneasy alliances between actors, the creation of new governmental interventions at other levels of governance, and the changes within Indigenous-settler relations that occur through reconciliation. My doctoral project aspires to study reconciliation in action and to document the messiness of reconciliation by analyzing the hybridized notions of reconciliation, the unconventional partnerships, and how power within settler colonialism is affected through new technologies intended to materialize reconciliation in Ontario's mining industry.

To study the messiness of reconciliation, it is important to shift our attention to how reconciliation is being conceived and governed by a wide network of Indigenous, state, extractive and market actors, agencies, institutions, and organizations in Ontario. By examining this assemblage, and not just the state, it will be possible to produce a clearer picture of how settler colonial governance within Ontario is being exercised in the present-day. This will result in an analysis of how settler colonial governance is affected and modified as a diverse array of Indigenous, state, extractive and market actors use, reproduce, alter, manipulate, or discredit reconciliation discourses to secure their particular set of political, social, economic and environmental interests. Additionally, the goal of this dissertation is to unravel how different and competing actors within Ontario may come together to craft governmental solutions relating to reconciliation and resource extraction, like resource revenue sharing agreements, along with the

multiplicity of effects that occurs through this attempt to produce reconciliation within Ontario's mining sector. This has involved employing governmentality and Mills' legality tree as additional theoretical frameworks to study reconciliation and settler colonialism. To empirically ground my study of reconciliation, I have chosen to examine resource revenue sharing agreements by looking at how they were created, how they became associated with reconciliation and how resource revenue sharing and reconciliation discourses are deeply embedded within Canadian liberal constitutionalism.

To further guide my dissertation, I will answer a series of interrelated research questions:

1. How have the roots (i.e. creation stories) within liberal constitutionalism structured and conditioned a political community in Canada, its institutions and its laws? How might an analysis of Canadian liberal constitutionalism genealogically explain our settler colonial present? How has Canadian liberal constitutionalism imagined and constrained the contents within reconciliation discourses?
2. How did "reconciliation" become the dominant political rationality in Ontario in regard to Indigenous-settler relations? How have new governmental technologies, such as resource revenue sharing agreements, emerged or been sanctioned through this political rationality? How did an assemblage of different Indigenous, state, extractive and market actors come together to mutually support the creation of resource revenue sharing agreements as a governmental intervention into Indigenous-settler relations within Ontario's mining industry?
3. How does the mobilization of reconciliation discourses affect power within settler colonialism? Does reconciliation have the potential to change Indigenous-settler relations?

Chapter Overview

In Chapter 2: Researching Reconciliation in Ontario's Mining Industry, I will provide an overview of how I plan to carefully study the relationship between settler colonialism and reconciliation. I outline how I will use a combination of three theoretical frameworks (settler colonial studies, governmentality and Mills' legality tree¹) to conduct a history of our settler colonial present, analyze the contents of reconciliation discourses and unpack how Indigenous, state and extractive actors govern resource extraction and reconciliation in Ontario. I also discuss the research methods I employed to gather data, which mainly consisted of conducting archival research to gather hundreds of texts, followed by coding these texts and a textual analysis. In the following chapters, I will use these theoretical frameworks to analyze these texts to account for how reconciliation became a hegemonic series of discourses and how the implicit anthropocentrism within these discourses shapes governmental interventions into Indigenous-settler relations, how competing Indigenous, state and extractive actors came together to govern resource extraction and reconciliation, and to empirically question the extent that technologies of reconciliation, such as resource revenue sharing, can alter or reform Indigenous-settler relations.

In Chapter 3: The Roots of Reconciliation, I borrow Mills' conceptual framework of the legality tree to explore Canadian liberal constitutionalism. I have been heavily influenced by the argument that all law is storied and so the purpose of this chapter is to dispel the myth that Canadian law is secular, rational, objective, and superior in comparison to Indigenous law. In

¹ I was inspired by Anishinaabe scholar Aaron Mills' "rooted constitutionalism", a theoretical framework which uses a tree as a metaphor for legality, to study a liberal constitutional order in Canada. However, Mills' (2019) theoretical framework is geared towards understanding Indigenous legalities, such as Anishinaabe constitutionalism, which he suggests are rooted in the earth compared to liberal constitutional orders (p. 14-15). Since I am not studying any rooted Indigenous constitutional orders but will still use his theoretical framework to account for how liberal creation stories influence liberal law, it seems to be more appropriate to rename it "Mills' legality tree" for the purpose of this dissertation.

challenging these ethnocentric ideas of Canadian law, I begin by recounting how liberal thinkers, like John Locke, regularly invoked Christian creation stories to dually conceptualize humans as above nature and to justify settler colonialism across the Americas. I then examine how a political community organized around the Crown in right of Canada also relies on Christian mysticism to purport that the Crown is always “honourable” despite the fact that the Crown has historically been dishonourable by enacting genocidal violence towards Indigenous peoples through its colonial governments. After discussing the Crown’s two bodies and noting this tension between the Crown’s claim of being honourable and the history of its dishonourable actions, I turn my attention towards how different state institutions have attempted to use the honour of the Crown and reconciliation to try to reshape the legal relationship between the Crown and Indigenous peoples, albeit with very limited results. Finally, I study the discourse of “reconciliation” and its theological origins, especially how this word is emblematic of the anthropocentrism found within Christian creation stories, before considering what implications this could have for law and policy. This chapter therefore traces how Canadian law is storied while also providing a history of our settler colonial present. It also lays the groundwork for later understanding how the Crown’s two bodies feature in the interactions and negotiations with Indigenous peoples and how resource revenue sharing has its origins in this anthropocentric notion of reconciliation.

In Chapter 4: The Rise of Reconciliation, I produce a closer account of the emergence of reconciliation in Canada and then Ontario. While the previous chapter lays out how reconciliation has been appropriated from Christian theology and how this reflects a longstanding pattern within liberal constitutionalism, it does not explain why reconciliation became a hegemonic series of discourses starting in the 1990s. Thus, this chapter expands on the

previous chapter by unravelling the specific historical context which led reconciliation to becoming a normative political goal. It uses a governmentality framework to assess how the political rationality of assimilation was challenged by Indigenous actors, communities and organizations across Canada, resulting in its abandonment and the subsequent adoption of reconciliation as a new political rationality to govern Indigenous-settler relations. Moreover, this chapter will present a nuanced analysis by stipulating how reconciliation discourses were not universally adopted across Canada, before examining how the so-called “Ippeewash Crisis”, a new Liberal government and other constitutional and legal factors led to reconciliation becoming a political rationality in Ontario around 2007. Through this chapter, I argue that it is through crises in settler colonial governance, especially regarding the Crown’s flimsy assertion of sovereignty, which led to an eventual adoption of reconciliation as a political rationality, first amongst the federal government and then amongst the provincial government.

In Chapter 5: The Tensions in Translating Reconciliation into Reality, I turn my attention to how resource revenue sharing was a governmental technology that corresponded with the adoption of reconciliation as a dominant political rationality. I closely study where the idea of resource revenue sharing came from, tracing it back to the recommendations found in the Royal Commission on Aboriginal Peoples (RCAP) and how those recommendations were inspired by Indigenous peoples testifying at RCAP’s public hearings. Thus, I argue that this governmental technology not only has its origins in reconciliation, but that it was Indigenous leaders and community members who were largely responsible for it becoming a recommendation in RCAP’s final report, especially as some extractive actors would voice their dissent about this type of technology. This chapter also looks at one of the first attempts to install resource revenue sharing in Ontario in 2004 through a Private Member’s Bill (which was prior to reconciliation

becoming a dominant political rationality at the provincial level). While Chiefs from most First Nation communities supported the concept in principle, the intersecting conceptions of “uncertainty” amongst extractive industries and some First Nations led to the bill never being put to a vote in the legislature. This chapter shows the difficulties in translating reconciliation into a political reality in Ontario through the failure to implement a governmental technology that reflects this new political rationality.

In Chapter 6: Reconciling on Resource Revenue Sharing, I shed light on how a myriad of diverse, if not competing, Indigenous, state, and extractive actors, groups, institutions, and organizations ultimately formed a loose assemblage to govern resource extraction in Ontario and advocate for the creation of government resource revenue sharing. This will entail a methodical study of how the relationships between Indigenous and extractive actors and organizations became closer over time, with both Indigenous and extractive actors concluding that the provincial government should be sharing its resource revenues with First Nations. This chapter also looks at how Ontario’s mining sector was problematized by extractive and market actors as being too slow and cumbersome for resource extraction to occur, especially due to the confusion regarding the Crown’s duty to consult, and how this would make Ontario less attractive for investments and would result in economic decline and job loss (a concern held by state actors). I will therefore explore how the different interests and goals held by each set of actors eventually aligned over time, leading to a coalition of actors promoting the sharing of government revenues and taxes with First Nations as a governmental solution. This will require a careful study of how these interests were diffused, such as when Indigenous-led organizations would release a publication quoting libertarian thinktanks to argue for revenue sharing, along with an analysis of the moments when this assemblage of Indigenous, state and extractive actors would come

together, like at a mining convention or at a Standing Committee. Lastly, this chapter unveils when resource revenue sharing was finally reassociated with reconciliation, and how the discursive link made between reconciliation and resource revenue sharing helped to legitimize these agreements as evidence of a “new relationship” between the Crown and Indigenous peoples in Ontario.

In Chapter 7: A New Relationship? I attempt to theorize the relationship between reconciliation discourses and power within settler colonialism by analyzing the purpose, contents and the information gathered through Freedom of Information (FOI) requests about these new resource revenue sharing agreements. This includes studying how the agreements contain requirements on how the funds must be used according to five categories, mandate an annual auditing process, and place restrictions that limit how First Nations can use their monies. While the previous two chapters examine why resource revenue sharing was believed to solve the problems and promote the interests of many different Indigenous, state, extractive and market actors, communities, organizations, and institutions, this chapter hypothesizes how the signing of these resource revenue sharing agreements can affect Indigenous-settler relations. I argue that while resource revenue sharing may lead to a recognition of Indigenous constitutional orders and a new source of revenue for First Nations, it appears that an old settler colonial relationship between the Crown and First Nations remains in place. This may be especially true as these agreements reflect an anthropocentric version of reconciliation and aim for the full interpellation of Indigenous peoples into liberal subjects. This leads to a discussion of how reconciliation may produce concessions for Indigenous peoples from state actors committed to this political rationality, but it does not necessarily transform Indigenous-settler relations, nor does it mean

that settlers are no longer attempting to structure the field of possible actions that Indigenous peoples can make within this relationship.

In Chapter 8: Mr. Ford Goes to Queen's Park, I analyze what happens to Indigenous-Crown relations when the Progressive Conservatives form government in 2018 and take over the state's executive and legislative functions. I compare and contrast how the previous Liberal government widely adopted reconciliation and how this shaped their resource extraction plans and policies, while the Progressive Conservative government refrained from using this word (mainly because they did not believe in its narrative) in order to make cuts to Indigenous funding and to expand resource revenue sharing to non-Indigenous northern communities. This builds from my previous chapter's analysis that reconciliation is not a vacuous discourse, as its usage predetermines how settler state actors intervene into Indigenous-settler relations and what concessions they are willing to provide to Indigenous peoples. I also discuss how once the New Democrats became the Official Opposition, they continuously used the word "reconciliation" in parliamentary debates to both question the new Progressive Conservative government's commitment to reconciling and working with Indigenous peoples and to try to prevent policy changes and funding cuts that negatively impact Indigenous communities. This chapter also observes how it was only with the discovery of unmarked graves at former residential schools in 2021 that the Progressive Conservative government began to iterate "reconciliation" discourses. This was later narrowed down to "economic reconciliation" to signal that the Progressive Conservative government was only interested in producing economic goals for Indigenous peoples in Ontario. By looking at how reconciliation was aspired to by the Liberals, initially ignored by the Progressive Conservatives and strategically used by New Democrats, this chapter will try to better theorize the relationship between settler colonial governance and reconciliation.

Finally, Chapter 9: Concluding Thoughts on Reconciliation, Revenue Sharing and Resource Extraction, provides some concluding thoughts on the relationship between settler colonialism and reconciliation. This final chapter makes the case that while reconciliation can yield transformative changes that benefit Indigenous peoples, its conceptual origins rooted in Christian theology consequently means that reconciliation is limited to producing solidarity amongst Indigenous peoples and settlers so that lands and resources can continue to be accessed. Reconciliation, therefore, is about security, as the goal is to ensure stability and certainty for settlers whose livelihood is tied to extracting resources within Ontario. This may explain why governments in Ontario, both Liberal and Progressive Conservative, eventually (if not reluctantly) adopt the guise of “reconciliation” and make concessions to Indigenous peoples, such as by sharing government revenues, as both sets of state actors want to make Ontario an attractive and stable mining jurisdiction which can bring in national and global investments.

However, after conducting this research and seeing how Indigenous peoples had worked tirelessly over decades to influence what reconciliation should mean and how reconciliation should be made real, including by proposing the idea of resource revenue sharing, I cannot simply conclude that reconciliation only functions to ideologically sustain settler colonialism. The reality appears to be much more complex. The starting point of reconciliation is anthropocentric, but it now involves a web of Indigenous, state, extractive, and market actors trying to impose their vision of what reconciliation means, especially as that can predetermine the types of concessions that Indigenous peoples can obtain under reconciliation. These concessions also do not end settler colonial relations, especially as settlers still desire to use these concessions to softly encourage Indigenous peoples to participate in extractive industries. However, they are illustrative of how reconciliation can produce new technologies of

government for Indigenous peoples while also leading to messy and unpredictable effects which will alter the dynamic between Indigenous peoples and settlers. Reconciliation will likely remain a dominant political rationality in Ontario for the foreseeable future, and more scholarly attention must be given towards studying it. This includes uncovering how its meanings are negotiated or hybridized, analyzing the technologies that are produced in relation to how “reconciliation” is defined, and examining how these technologies can lead to both intentional and unforeseen effects. By studying the messiness of reconciliation, I argue that this can lead to a nuanced understanding of how reconciliation changes Indigenous-settler relations, without concluding that settler colonialism is over.

Chapter 2: Researching Reconciliation in Ontario's Mining Industry

Introduction

A socio-legal approach to studying reconciliation in action required multiple theoretical perspectives and research methods. In this chapter, I begin by discussing how I relied on settler colonial studies, governmentality studies, and Mills' legality tree to study reconciliation and resource revenue sharing in Ontario. I also outline why I decided to weave together these diverse theoretical perspectives, and how doing so allowed for a more holistic analysis of reconciliation, resource revenue sharing, and settler colonialism in Ontario. Following an overview of these theoretical frameworks, I move onto a discussion of the research methodologies and methods I used to conduct this research. I mainly relied on archival research and textual analysis to investigate reconciliation and resource revenue sharing between the 1990s to the late 2010s. With humility, I also tried to incorporate the principles found within the Indigenous research methods and methodologies literature to prevent wrong and harmful assumptions being made about Indigenous peoples when interpreting the data gathered through archival research. Together, these theoretical frameworks and research methods made it possible to account for the origins of reconciliation in Ontario, the development of resource revenue sharing agreements, and the relationship between settler colonialism and reconciliation discourses.

Theoretical Frameworks

To conduct this research, it was necessary to use a combination of theoretical perspectives, frameworks and concepts. I primarily drew from settler colonial studies, governmentality studies and liberal constitutionalism. The reason for turning to these distinct if not irreconcilable theoretical perspectives is due to how each one provided a unique insight into how reconciliation is understood and governed by many Indigenous, state and extractive actors

in Ontario's mining industry. Thus, I will begin this section by providing a vast overview of how the structure of settler colonialism has been theorized by numerous scholars working under the umbrella of settler colonial studies. Next, I will discuss how governmentality enhanced my research project as it addressed the theoretical limitations within a structuralist theory of settler colonialism. I will also go over how governmentality provided other conceptual tools that can allow for a nuanced analysis of power within settler colonialism. Finally, I will explain how Mills' legality tree helped to destabilize ethnocentric notions that Canadian law is "neutral", "objective" and therefore "superior" to Indigenous law. I will also outline how this theoretical framework provided context into how Canadian liberal constitutionalism operates, including how it shapes and limits the contents within reconciliation discourses. By layering these different theoretical frameworks, I was able to produce a critical and nuanced analysis of settler colonialism, reconciliation, resource revenue sharing and their effects.

Settler Colonial Studies

The literature on settler colonialism encompasses numerous theoretical perspectives. However, there appears to be an underlying premise that scholars theorizing settler colonialism tend to agree on. Settler colonialism is a racial structure based on the "logic of elimination" in which settlers strive to violently eliminate Indigenous peoples and dissolve Indigenous societies to access Indigenous territories, which settlers then use first to build a white settler society for themselves and second to declare their sovereignty (Coulthard, 2014: p. 125; Razack, 2002: p. 1; Tuck & Yang, 2012: p. 5; Wolfe, 2006: p. 388). Settler colonialism is also categorically different from other forms of colonialism. Whereas colonialism is exercised by an expanding external metropole in which a multitude of "colonial sojourners" (which can include government administrators, missionaries and military personnel) attempt to reproduce the subordination of

the local Indigenous populace, settler colonialism denotes the fact that colonizers have decided to permanently settle on Indigenous lands and now desire to erase colonized subjectivities rather than reproduce colonial rule based on racial difference (Veracini, 2010: p. 6; Veracini, 2016: p. 3). Scholars working under this vast theoretical domain focus our attention on how settler colonialism operates through the racialized logic of elimination as white settlers attempt to both erect settler societies and naturalize their sovereignty by exacting violence towards Indigenous peoples.

Central to this theorization of settler colonialism is how the white settler state and its laws have been instrumental for manifesting the logic of elimination by sanctioning violence against Indigenous peoples. Palmater (2014) discusses how historically a range of state-sanctioned practices and laws were relied on by European settlers to perpetrate the genocide of Indigenous peoples across Canada (p. 32). According to Palmater (2014), this included strategies which encouraged the “legalized murder” of Indigenous peoples, such as when Governor Cornwallis promised financial rewards or “scalping bounties” for every Mi’kmaw person killed in Nova Scotia, to strategies which sought the physical and cultural destruction of Indigenous peoples, such as legislating that attendance at residential schools be mandatory for Indigenous children (p. 32-33). Settler colonial theory therefore highlights how the white settler state has historically enacted laws which directly sanctioned violence towards Indigenous peoples, or at the very least permitted private settlers to violently displace Indigenous peoples from their lands.

The manifestation of state violence towards Indigenous peoples through law can be partially understood through Marx’s analysis of primitive accumulation. According to Marx (2008), primitive accumulation was a violent historical process enacted through law in which feudal peasants were divorced from both their communal lands and their means of subsistence in

order to be remade into wage-labourers within capitalism (p. 364-369). In his analysis of settler colonialism in Canada, Coulthard (2014) draws from Marx's thesis of primitive accumulation to argue that several "colonial-like state practices" were used to violently strip Indigenous peoples from their relationship with the land in order to ensure capitalist expansion through resource exploitation (p. 7-13). For scholars theorizing the relationship between capitalism and settler colonialism, the state plays a key role in securing the necessary conditions for capitalist accumulation by using law to police and control the activities of Indigenous peoples. In Canada, numerous scholars have analyzed how the *Indian Act* was instituted by the Canadian state in the nineteenth century to first shrink the Indigenous population by determining who had "status", with Indigenous peoples who had status being subject to excessive control and criminalization in order to encourage assimilation (Alfred, 2009b: p. 46; Coulthard, 2014: p. 125; Monchalin, 2016: p. 110-111; Palmater, 2014: p. 34-35). The underlying objective of the *Indian Act* was to reduce the Canadian state's financial and legal obligations to Indigenous peoples, access Indigenous territories for European settlement and to push Indigenous peoples "up the cattle chute of capitalism" (Alfred, 2009b: p. 46; King, 2012: p. 117; Palmater, 2014: p. 37). Under settler colonialism, the white settler state drives the violent process of primitive accumulation by using law to try to subjugate, assimilate and eliminate Indigenous peoples.

This, however, is just one aspect of settler colonialism. As succinctly put by Wolfe (2006), it is best to remember that settler colonialism is "a structure not an event" (p. 388). Scholars theorizing settler colonialism in Canada tend to concur with his articulation, noting how settlers continue to employ several shifting strategies to try to maintain a racial power structure which disenfranchises Indigenous peoples (Simpson, 2017: p. 45-46; Coulthard, 2014: p. 125). For example, Coulthard (2014) argues that while the means through which the settler state has

sought to eliminate Indigenous peoples has changed over two centuries, from overt violence to legislative elimination through the *Indian Act* to asymmetrical “negotiations” of land surrenders, the ends remain the same, which is accessing Indigenous territories for the purposes of state formation, settlement and capitalist development (p. 125). By theorizing settler colonialism as a racial structure, scholars force us to recognize how the settler state may alter its strategies in order to continue to advance its goal of dispossessing² Indigenous peoples.

There is also an ideological component which attempts to legitimate and reinforce settler colonialism as a structure of domination. In present-day Canada, efforts to maintain settler colonialism involve “winning over the hearts and minds of peoples who have previously been geographically enveloped by imperial forces” by assaulting Indigenous peoples on social, cultural and intellectual levels (Barker, 2009: p. 326). Alfred (2009b) further warns that if Indigenous peoples legitimize this colonial structure, it will undermine Indigenous resistance to state efforts to colonize Indigenous territories (p. 51). For some scholars, the legitimization of this social structure through the settler state’s calls for reconciliation may produce ideological effects which may work to subvert Indigenous anticolonial resistance and naturalize settler colonial

² As argued by R. Nichols (2020), words like “dispossession” and “dispossessing” can be “potentially contradictory and self-defeating” (p. 6). Indigenous peoples may claim to be the original owners who were “dispossessed” (i.e., their land was stolen), while also putting forth the argument that the land cannot be “possessed” in the first place by being divided into private property (R. Nichols, 2020: p. 6). This tension has led to settlers proclaiming to be the “true owners of these lands” and denouncing Indigenous claims that the land (i.e., their possession) was stolen in Anglosphere countries (R. Nichols, 2020: p. 6). In Canada, this is perhaps captured by how former Governor General David Johnston referred to Indigenous peoples as “immigrants” from thousands of years ago (“GG’s comment”, 2017), thereby implying that they did not always “possess” the land. This prompted backlash, with Governor General Johnston later stating that he “misspoke” and that Indigenous peoples were “the original peoples of this land” (“GG’s comment”, 2017). Framing settler colonialism as the “dispossession” of Indigenous peoples is not necessarily wrong, but it does have the potential to inadvertently reify the settler colonial position that Indigenous peoples did not always properly “possess” the land akin to private property relations and that Indigenous land cannot be stolen. To rectify this issue, R. Nichols (2020) suggests that “‘dispossession’ may be coherently reconstructed to refer to a process in which new proprietary relations are generated but under structural conditions that demand their simultaneous negation. In effect, the dispossessed come to ‘have’ something they cannot use, except by alienating it to another.” (p. 8). In other words, the dispossessed are retroactively construed as the “original owners” (R. Nichols, 2020: p. 8). When I use words like “dispossession” to discuss settler colonialism, I am doing so in relation to this process articulated by R. Nichols.

governance. According to Coulthard (2014), state-sanctioned approaches to reconciliation ideologically fabricates the notion that the harms of settler colonialism are in the past, thereby letting the present structure of colonial rule to remain unscathed and unchallenged (p. 22). Thus, not only does the state continue to advance colonial and capitalist interests by dispossessing Indigenous peoples from their lands, but the state then attempts to legitimize this structure in the present by calling for reconciliation between Indigenous peoples and settler Canadians.

Besides being able to help unveil the influence of state power on Indigenous-settler relations, another reason why theorizing settler colonialism is important for my doctoral project is due to how it can better account for race and gender. As explained by Coulthard (2014), the reproduction of settler colonial relations cannot be explained solely through Marx's account of capitalism and primitive accumulation, since the dispossession of Indigenous peoples under settler capitalism occurs in relation to patriarchy, white supremacy and state power (p. 8). Settler colonialism therefore interlocks with other structures of oppression. In terms of white supremacy, several scholars have noted how racism often rationalizes the dispossession of Indigenous peoples. For instance, early European settlers often racialized Indigenous peoples as being "inferior" and "uncivilized" for being non-Christian and for not cultivating the land in accordance to Eurocentric notions of land use, which led to these settlers turning to natural law to justify using violence to appropriate Indigenous territories (Blomley, 2003: p. 128; Monchalin, 2016: p. 68; Razack, 2002: p. 3; Tully, 1993: p. 149). While this demonstrates how racialization informed early settler colonial attitudes and actions, other scholars have observed how racism is still deeply engrained in state institutions, such as when courts deride or dismiss Indigenous claimants for presenting evidence which does not fit within Western epistemologies and how this leads to violations of Indigenous sovereignty (Ariss & Cutfeet, 2012: p. 30-31; Valverde, 2012:

p. 12-13). Theorizing settler colonialism thus involves both observing and calling attention to how racism factors into settler attempts to dispossess Indigenous peoples from their territories. Throughout my dissertation, I point out how discourses, logics or rationalities uttered or expressed by state or extractive actors are reflective of a hierarchical social structure based on and sustained by racism.

In regard to gender, many feminist scholars working within settler colonial studies have argued that patriarchy, racism and settler colonialism intersect, and that Indigenous women and girls are doubly marginalized. Several scholars have theorized that female Indigenous bodies under settler colonialism have historically been constructed in relation to land and reproduction, both of which are viewed by settler men as being violable in order to maintain settler colonial dominance (Bourgeois, 2018: p. 69; Leonard, 2018: p. 110; Razack, 2016: p. 293; Simpson, 2016: p. 16). Gendered and sexual violence towards Indigenous women by white settler men has been normalized over centuries. In her analysis of the murder of Cindy Gladue in 2011, Razack (2016) coins the term “gendered disposability” to refer to the fact that while both Indigenous men and women are subject to violent dispossession by settlers, Indigenous women and girls are more likely to encounter “colonial forces of waste disposal” in circumstances involving sexual violence (p. 300). Feminist theorizations of settler colonialism show that racism and patriarchy intersect, and how the fostering of racist and sexist attitudes through these interlocking structures of oppression ultimately harm Indigenous women and girls. When it is possible, my doctoral project turns to feminist theorizations of settler colonialism to produce an intersectional analysis which studies the gendered and racialized effects that occur as state and extractive actors try to govern through reconciliation.

I. Theoretical Limitations of Settler Colonial Studies

The literature on settler colonial studies has been very insightful in showing how the logic of elimination operates, how law and state violence have been used to establish and maintain settler colonial relations, and how the state now uses reconciliation to ideologically legitimate settler colonialism in the present-day. However, there are notable theoretical limitations that need to be acknowledged and unpacked since they may hinder a nuanced analysis of the relationship between reconciliation and settler colonialism. Moreover, by accounting for these theoretical limitations, it will be possible to explain why I will also use a governmentality approach to study settler colonial relations, reconciliation, and resource revenue sharing in the following section.

The first theoretical limitation is that there is sometimes an underlying presumption within the settler colonial studies literature that “the state” is an all-powerful entity which is purposefully using reconciliation to maintain asymmetrical power relations between settlers and Indigenous peoples (Manuel & Derrickson, 2017: p. 200-203; Simpson, 2017: p. 49-50). I do not deny that the state has historically produced unequal power relations between settlers and Indigenous peoples; the settler colonial studies literature has made it abundantly clear that state institutions have been responsible for perpetrating genocidal violence towards Indigenous peoples for the purposes of procuring the conditions for capitalism in Canada. However, I am worried that this theorization unintentionally homogenizes different agencies and institutions with unique mandates as being part of a highly coordinated, efficient and unified state. For instance, the state-appointed commissioners of the Royal Commission on Aboriginal Peoples (RCAP) were mandated to propose a vision of renewed relationships and reconciliation between Indigenous peoples and settler Canadians, which led to numerous interviews and testimonies from Indigenous peoples (Turner, 2012: p. 102). The RCAP report, released in 1996, ultimately

concluded that reconciliation requires a firm recognition that Indigenous peoples have always exercised self-government, which is protected in Section 35 of the *Constitution Act, 1982* (Turner, 2012: p. 103). In contrast, the Supreme Court had to provide clarity to constitutionally protected yet vaguely defined Aboriginal rights in Section 35 of the *Constitution Act, 1982* (Patzer, 2019: p. 217-218). The institutional responsibility to provide instruction surrounding the application of Aboriginal rights may explain why the Supreme Court in 1996 developed a jurisprudential doctrine which stipulates that delimiting Aboriginal rights in order to balance Indigenous interests with the broader interests of Canadians can be interpreted as “reconciliation” (Craft, 2019: p. 79; McNeil, 2003: p. 8-9; Stanton, 2017: p. 25-30). Thus, these two state institutions had very different mandates, which resulted in two starkly different views as to what reconciliation means for how Section 35 should be interpreted. By seeing how these two institutions disagreed about how constitutional law should be applied in the same year, it demonstrates that “the state” may be more of a “mythicized abstraction” which has never had the unity or functionality that it is imagined as possessing (Foucault, 2004: p. 109).

Another reason for why this reductive theorization of the state must be eschewed is due to how it may not be able to explain why the state may change how it engages with Indigenous peoples. At times, the literature describes the state with a “pessimistic functionalism”, in which there is an implicit assumption that the state simply functions to protect a powerful group or class, without considering how control for the state’s mechanisms is contested over by agents with markedly different backgrounds (Bourdieu, 2014: p. 5-6). It is important to note that not only do many agencies and institutions make up “the state” and are often in disagreement with each other about law and policy, but that the state is subject to change over time as different actors within it may compete to take hold of its executive, legislative and judicial authority. In

turn, this may affect how legislation, policies and judicial decisions regarding Indigenous-settler reconciliation are determined. For example, when the Conservative party had the capacity to govern through the state, Prime Minister Stephen Harper's government voted against the United Nations adopting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 claiming that its provision of Free, Prior and Informed Consent (FPIC) would act as an "Indigenous veto" before minimally endorsing it as an "aspirational document" in 2010 (Nicol, 2017: p. 800-801; Patzer, 2019: p. 226-227). In contradistinction, the Liberals under Justin Trudeau expressed a keenness to support the implementation of UNDRIP and FPIC in order to differentiate themselves as being more progressive on Indigenous issues and thus more electable (Patzer, 2019: p. 229). Through this example, we see that within the span of ten years, "the state" switched its position on UNDRIP and FPIC, mainly due to different actors with contrasting views winning the ability to control of the state's executive and legislative functions. Therefore, it is not only useful to take into consideration the fact that the state is comprised of multiple agencies and institutions which may exist in tension with each other over law and policy, but that the power dynamics within these apparatuses may determine how reconciliation is discursively constructed and governed.

An overfocus on how the state sustains settler colonialism has led to another theoretical limitation. That is, the settler colonial studies literature has not given sufficient attention to how non-state settler actors and organizations also engage in governance, including how they may operationalize reconciliation and develop techniques and strategies to govern through these discourses. This is not to say that no research has been conducted on non-state and transnational actors, as some scholars have unveiled how structural issues and power imbalances between extractive firms and Indigenous communities may affect how FPIC is administered and what

type of Indigenous consent is attained (Imai, 2016: p. 10-12; Szablowski, 2010: p. 125).

However, there has not been much research conducted which involves assessing how extractive actors and firms may reiterate or alter discourses of reconciliation to try to generate widespread consent for their projects along with what governmental effects this produces. It seems that when the literature does examine these non-state settler actors and organizations, it is mostly in relation to how extractive firms may resort to different legal strategies, such as court injunctions or Impact Benefit Agreements, to silence or criminalize Indigenous dissent, especially when consent for an extractive project is at risk of being revoked by an Indigenous community (Ariss & Cutfeet, 2011: p. 2; Manuel & Derrickson, 2017: p. 219; Scott, 2020: p. 275-276).

Although the settler colonial studies literature has been helpful in documenting how extractive firms continue to rely on the state's legal arsenal to safeguard their expensive extractive projects, there appears to be two interrelated shortcomings to these types of analyses. First, this means that how non-state settler actors and organizations govern reconciliation efforts has been widely overlooked, as most scholarship focuses on state-controlled reconciliation projects and their effects. Second, by only studying when extractive firms use the state's legal tools to ensure that Indigenous communities cannot withdraw their consent to a project, this means that the extra-legal strategies, techniques and programmes developed by extractive actors and organizations and rationalized through the language of reconciliation will also be understudied. While it is important to shed light on how the state reinforces settler colonial relations through law and power, it appears that this has come at the cost of studying how non-state settler actors and organizations are deeply implicated in trying to maintain asymmetrical relations between Indigenous peoples and settlers for their own interests.

Another theoretical limitation of settler colonial studies is that it may unintentionally not give adequate space to recount how Indigenous actors and organizations also engage with reconciliation in order to reshape Indigenous-settler relations in accordance with their own interests. Most of the literature in settler colonial studies has argued that reconciliation can be a “pacifying discourse” as the resentment held by Indigenous peoples, and which has historically generated Indigenous resistance and serious responses from the state, is problematized instead of the state’s policies (Alfred, 2009a: p. 182; Coulthard, 2014: p. 120). While reconciliation can definitely produce ideological effects which undermine Indigenous activism against settler colonialism, it may be inaccurate to argue that settlers exercise totalizing control over Indigenous peoples which is then legitimated through reconciliation discourses. A small but growing portion of the literature within settler colonial studies has recognized that Indigenous actors, nations, organizations, and communities may be willing to construct and invoke alternative discourses on reconciliation in order to influence Indigenous-settler relations. For example, the Heiltsuk Nation in British Columbia have called for the Canadian state and extractive corporations to work with them to create and adhere to “reconciliation protocols” after they were affected by an oil spill (Curran, Kung & Slett, 2020: p. 227). However, the literature on settler colonial studies has largely focused on how reconciliation is a settler state-centric project and that reconciliation discourses are used to cement settler power over Indigenous peoples. In doing so, it risks minimizing or erasing the agency of Indigenous peoples who may strategically engage with reconciliation to challenge settler colonial power.

The final theoretical limitation of a structuralist account of settler colonialism is that while this theoretical perspective has been helpful to underscore how settlers continuously rely on law and state violence to produce and maintain dominant positions within this structure, this

theoretical framework can be tautological. As explained by Valverde (2003), structuralist theories within socio-legal studies have been crucial in exposing the supposed liberal neutrality of law by showing how law protects a dominant group's interests, however, their discussions about causation are questionable if not repetitive given that they automatically assume that any "improvement" is simply "old oppression in more modern dress" (p. 11-12). While settler colonial studies have unveiled how settlers hide behind the state and law to undermine Indigenous constitutional orders and to reproduce the conditions of capitalism, this theorization might prove to be reductive in that it risks glossing over small but significant details about how modern political power operates through reconciliation. As such, a structuralist theory of settler colonialism may conclude that Indigenous peoples were "tricked" into signing a resource revenue sharing agreement for reconciliation, and that these agreements simply reflect old settler interests in accessing Indigenous lands and resources for capitalist expansion. As I hope to demonstrate in this dissertation, there is more complexity to these agreements, from how they were created to their outcomes, and that these agreements cannot be elucidated through a structuralist theory of settler colonialism alone.

Governmentality Studies

To overcome the theoretical limitations found within a structuralist theory of settler colonialism, my doctoral project will incorporate governmentality, a theoretical tool first developed by Michel Foucault and since expanded on by many theorists working within the field of governmentality studies. The first reason why governmentality enhances my analysis of settler colonialism, reconciliation and resource revenue sharing is that it reconceptualizes "the state" and reframes its importance. After noting how "the population" could be made knowable through observing and measuring phenomena within it, Foucault (2004) proclaims that there has been a

“governmentalization of the state” which has allowed for the state’s transformation and survival (p. 108-109). That is, in order to ensure the state’s survival, a sovereign needed technical knowledges about the wealth and health of its population, especially in contrast to opposing and competitive states, and thus instruments such as statistics were devised and utilized to describe the reality of the state itself (Foucault, 2004: p. 274-277). In other words, political power may still be exercised by executives and bureaucracies associated with the organs of the state, but it has been the “governmentalization of the state” whereby the state’s apparatuses sought to know and manage populations by affiliating with a diverse network of groups and forces which has allowed “the state” to transform, survive and govern (Foucault, 2004: p. 108-109; Lemke, 2016: p. 39-40; Miller & Rose, 2008: p. 26; Rose, O’Malley & Valverde, 2006: p. 7). Foucault’s analysis of the governmentalization of the state highlights that “the state” is not an impenetrable monolith or a Hobbesian leviathan, as previously characterized by structuralist theories.

In fact, a governmentality perspective contends that state actors are now permanently entangled in relationships with non-state experts who seek to intervene and adjust relations between the population and different types of phenomena (Li, 2007: p. 1). For instance, Rose and Valverde (1998) argue that there has been a governmentalization of the law, since not only do legal regulations, practices, deliberations and techniques need to be justified through knowledge claims produced by disciplines such as psychiatry, criminology or medicine, but that law has become welded to normalizing, disciplinary and biopolitical objectives of reshaping conduct for desirable ends (p. 543). The centuries-long marriage between the sovereign and a diverse set of non-state experts thereby reveals that power is still exercised by the state and through law but for the purposes of managing conduct at the level of the population.

A governmentality framework therefore begins by decentring the state in favour of studying how modern political power is exercised through a loose association of state authorities and non-state experts who seek to govern conduct to procure calculated ends (Miller & Rose, 2008: p. 26). An important concept in governmentality studies is the “assemblage”, which connotes the idea that government is not bound to “the state” nor enclosed within a particular apparatus, but that there is a delicate affiliation between agents and agencies who believe that their goals or problems are linked and that their ends can be achieved by joining forces to govern (Brady, 2016: p. 15; Li, 2007: p. 2; Miller & Rose, 2008: p. 34). Decentring the state therefore means recognizing how a network of state and non-state actors are involved in governing the present. In terms of my doctoral research, I endeavored to identify how Indigenous, extractive and other non-state actors also exercise governance and how an assemblage of diverse Indigenous, state and extractive actors and organizations formed to govern Indigenous-settler relations and “reconciliation” in Ontario.

Appreciating that there is a multiplicity of state and non-state authorities who are engaged in governing, however, is only the first step to using a governmentality framework. According to governmentality scholars, “government” is broadly concerned with the welfare and improvement of a population, and government aims to rationally shape human conduct through calculated means in order to achieve specific ends (Dean, 2010: p. 18; Li, 2007: p. 1). Governmentality scholars further explain that this desire to “improve” a population by managing the “conduct of conduct” through educating desires and configuring habits occurs in relation to and after a “problematization”, a process in which the conduct of individuals or collectives becomes reinterpreted as problematic and thus needing to be governed and fixed (Dean, 2010: p. 38; Lemke, 2016: p. 81-82; Li, 2007: p. 1; Miller and Rose, 2008: p. 14). This leads to “experts”

claiming to have some authority over the problematic conduct by producing formalized knowledge about it and by attempting to address this problematic conduct by proposing corrective governmental interventions that govern a population or the aggregates within it (Li, 2007: p. 1; Miller & Rose, 2008: p. 15). Governmental power is therefore obsessed with identifying problematized conduct within a population and is then exercised by a loose assemblage of state authorities and non-state experts who believe that through coming together, they can achieve their goals, secure their interests and solve their problems.

In studying how an assemblage of authorities may coalesce to govern problematized conduct, governmentality scholars are principally interested in documenting the rationalities of governing. As explained by Li (2007), the desire to improve (sub)populations first requires a distinct governmental rationality (p. 2). Similarly, Miller and Rose (2008) discuss how problems do not present themselves but are rendered thinkable and that rationalities are “styles of thinking, ways of rendering reality thinkable in such a way that it was amenable to calculation and programming” (p. 15-16). A governmentality analysis therefore requires a mapping out of how different authorities may problematize conduct through a distinct political rationality within a wider discursive field. According to Miller and Rose (2008), a unique political rationality can be detected through regularities or patterns in political discourse (p. 58). Moreover, the distinctiveness of a political rationality can be deciphered through its three elements. As described by Miller and Rose (2008), political rationalities are 1) “morally coloured” in that they assign powers and divide up duties for different authorities and are rationalized through vague ideals or principles of government, such as “freedom”, “equality” or “justice” 2) are differentially articulated in relation to the nature of the objects governed, for example “society” or “the nation” along with the persons being governed, such as “legal subjects” or “elements of

the population to be managed” and 3) have a distinctive idiom which renders reality thinkable through language (p. 58-59). Analyzing how problems arise through the language found in political rationalities is necessary within a governmentality framework.

Through governmentality, it is then possible to study how political rationalities are transformed into programmes of government. As explained by Miller and Rose (2008), the translation of political rationalities into programmes of government occurs when a whole set of authorities not only problematize “the real” as failing to meet expectations of “the ideal”, but also represent “the real” as being programmable in that it can be diagnosed and subject to calculation and intervention (p. 61-63). While Miller and Rose (2008) are particularly interested in how individuals from fields like the social sciences claim to have professional expertise and in turn produce knowledge to make the world thinkable and thus intervenable (p. 62), Valverde (2003) argues that Foucault-inspired analyses should also consider how what she calls “non-scientific knowledges” circulate and are used by both state and non-state actors to govern (p. 2-3). Thus, through governmentality, it is important to highlight how authorities create programmes of government by producing knowledge about how “the real” operates along with how it can be acted and improved upon. However, in my governmentality framework, I move beyond an analysis which narrowly links expertise with individuals producing professionalized or scientific knowledges through disciplines found in the social sciences. I study how multiple Indigenous, state, extractive and market actors claim to have authority on translating reconciliation into practice and how they may rely on Indigenous knowledges or Western knowledges, or a hybridity of these knowledges, to construct competing programmes of government³.

³ I think that it is important to recall the fact that disciplines in the social sciences have historically discredited Indigenous knowledges and experiences. For instance, an evolutionary perspective of social organization which dominated the social sciences in the nineteenth century was often used by the Canadian judiciary to determine that

Analyzing how political rationalities are translated into programmes of government will subsequently allow for a better account of how specific technologies are created in relation to these programmes. “Technologies” can refer to “the actual mechanisms which authorities of various sorts have sought to shape, normalize and instrumentalize the conduct, thought, decisions and aspirations of others in order to achieve the objectives they consider desirable” (Miller & Rose, 2008: p. 32). A technology of government can therefore be any device or technique which seeks to govern a group and make a political rationality realizable. Thus, it can include “great technologies” such as Bentham’s panopticon to mundane techniques and tools such as interviews, case records, brochures and manuals along with other techniques of notation, computation and calculation such as statistics (Miller & Rose, 2008: p. 32; Rose, O’Malley & Valverde, 2006: p. 10). They can also include technologies which produce governable spaces and technologies which produce governable subjects (Brady, 2016: p. 11). What can be classified as a technology of government is nearly endless. As such, using a governmentality framework may shed light on how new technologies of government are deployed in order to govern problematized conduct in relation to a particular political rationality.

The final benefit to using a governmentality theoretical perspective is that it forces us to examine the moments in which governmental power fails or produces unintentional effects. In

Indigenous claimants did not meet a Eurocentric threshold of social organization and thus did not have sovereignty (Bell & Asch, 1997: p. 63-64). Moreover, this Eurocentric belief that scientific knowledge derived from experts is supreme continues to impact decisions made by the judiciary regarding Indigenous sovereignties. In the case involving the Kitchenuhmaykoosib Inninuwug First Nation (or “KI” for short) and a junior mining company seeking to explore for minerals on KI’s territory, the judge derided KI’s knowledge of harm to their land for not fitting within a Western scientific paradigm of harm (Ariss & Cutfeet, 2011: p. 30-31). To privilege “professional” or scientific knowledges and ignore Indigenous knowledges or to believe that authority and expertise can only be claimed by individuals in the social sciences therefore risks reproducing these racist assumptions that Indigenous knowledges are invalid and lack authority, which is why I believe my governmentality framework needs to be updated and decolonized rather than simply transposed from the English governmentality literature. In my methodology section, I will explain how I aimed to decolonize my research process by turning to the literature on Indigenous research methods and methodologies.

his account of power, Foucault (1982) states that, “the exercise of power consists in guiding the possibility of conduct and putting in order the possible outcome” and that, “to govern, in this sense, is to structure the possible field of action of others” (p. 789-790). Foucault’s use of the words, “possibility” and “possible” is instructive in that it indicates that government will not always be successful in changing or producing the desired conduct and that it has the potential to fail. This is for a few reasons. Governmental power is not absolute nor totalizing as it cannot fully annihilate the agency of its subjects and as such the exercise of power may result in unforeseen effects and resistances to government (Li, 2007: p. 3). Political rationalities are also always in the process of modifying themselves in relation to new problems or solutions while trying to retain a certain style of thinking and the same types of technologies (Rose, O’Malley & Valverde, 2006: p. 21-22). Government is therefore eternally destined for failure, resulting in a reflexive attempt to modify itself. In fact, the failure to govern subjects or “improve” a population through governmental programmes and technologies may even open up a rationality to political challenge by critics, leading to new rationalities being articulated and new technologies being proposed (Li, 2007: p. 4-5; Rose, O’Malley & Valverde, 2006: p. 13). Even when a rationality has achieved eminence, the formation of an assemblage of state and non-state actors and organizations who may initially believe that their interests in governing conduct align may end up collapsing for various reasons (Miller & Rose, 2008: p. 70-71). This theoretical perspective means that it is crucial to not just examine how governmental power manages conduct, but how it may also face limitations in governing the conduct of its targets. For my own doctoral research, this means that not only do I study how settler colonial governance operates in Ontario, but how it may produce unintended effects which lead to critiques of reconciliation, how new technologies emerge in relation to this political rationality and how they affect both the

exercise of power and Indigenous-settler relations, and how an assemblage of Indigenous, state and extractive actors and organizations can fall apart due to several unforeseen reasons.

Governmentality has therefore been helpful in building on my theorization of settler colonialism. What I mean is that many scholars in settler colonial studies see elimination, assimilation and reconciliation as having the same agenda under settler colonialism, which is the dispossession of Indigenous peoples from their lands and the reproduction of asymmetrical power relations between settlers and Indigenous peoples (Alfred, 2009b: p. 44; Coulthard, 2014: p. 6; Jung, 2018: p. 254; King, 2012: p. 102; Palmater, 2014: p. 32). Although this may be true, I worry that this perspective might not carefully unpack the specificities of reconciliation in relation to settler colonialism. It may not be able to account for the historical moments when Canada's policies based on a political rationality of assimilation were challenged or the problematizations which led to a shift to reconciliation as the dominant political rationality in the late twentieth century. In addition, this perspective may not be able to see how new technologies of government, such as resource revenue sharing agreements in Ontario, are specifically designed and later expanded because of reconciliation being called for by an assemblage of actors and organizations (and as I will contend, this technology would not have been created under a previous political rationality). Thus, previous theorizations of settler colonialism may be correct, but they may struggle to show how settler colonial governance is unstable and might produce effects which challenge its rationalities, resulting in its reformation and a deployment of new technologies, techniques and tactics of governance.

It is my contention that settler colonialism in Canada should be slightly retheorized to incorporate a governmentality perspective on power. By understanding power within settler colonialism through a governmentality lens, it does not necessarily mean that I think that "the

state” or law is now unimportant. This would be incorrect since state authorities have legally sanctioned, if not directly participated in, numerous forms of violence towards Indigenous peoples over several centuries. What I hope to accomplish by utilizing a governmentality perspective is to uncover how the conduct of Indigenous peoples had been historically problematized, how this led to assimilation as a dominant political rationality, how an assemblage of state and non-state actors formed and the technologies of power that were proposed to govern Indigenous peoples. Furthermore, through this theoretical framework, I plan to account for how the limits of governmental power led to crises in settler colonialism, and how these crises resulted in the abandonment of assimilation in favour of reconciliation as a new political rationality starting in the 1990s. This can lead to a nuanced analysis of how governmental power within settler colonialism has been reformed through the failure of assimilation and the rise of reconciliation, and how new crises in settler colonial governance often precede the deployment of reconciliatory discourses and technologies.

Mills’ Legality Tree

Although governmentality is helpful in showing that a loose assemblage of state and non-state actors exercise governance and that this may lead to multiple and sometimes contradictory effects, this theoretical framework also has its limitations. It may be able to explain how reconciliation became a dominant political rationality, but it might not be as interested in tracing back the epistemological, cosmological and ontological origins of this political rationality. It may compel us to see how Indigenous, state and extractive actors formed an assemblage to govern through reconciliation and to record the moments when this assemblage breaks down, but it may not fully contextualize why different actors initially join, withdraw from or outwardly refrain from participating in this assemblage. It is for these reasons why I believe that to better study

reconciliation in Ontario and its multiplicity of effects, I must turn to a growing body of work known as “rooted constitutionalism”.

Rooted constitutionalism should be attributed to Anishinaabe scholar Aaron Mills, who uses a “legality tree” as a model within his dissertation and in other works to compare the fundamental differences between rooted Anishinaabe legalities and liberal legalities. By using a tree as a metaphor, Mills (2019) helps us to better comprehend legality as being similar to a tree in that it has several roots, a stable trunk, numerous branches and many, many leaves (p. 14). According to Mills (2016), the roots are a society’s lifeworld and consist of creation stories which tell us “what a person is, what a community is, and what freedom looks like” (p. 862). These roots lead up to the trunk, which can be equated as the constitutional order that “organizes and manifests these understandings as political community” (Mills, 2016: p. 862). The branches are the legal traditions which stem out from this political community and embodies the processes and institutions which create, sustain and unmake law (Mills, 2016: p. 862). The final element of a tree is its leaves, which in this model are the laws of a society (Mills, 2016: p. 862-863). Through a tree model of legality, it is possible to draw a connection from law back to a lifeworld and its creation stories. At the same time, this model emphasizes that while each part of a tree conditions the following part, it does not overdetermine what these parts end up looking like (Mills, 2016: p. 862-863).

The reason I have chosen to use this theoretical framework, despite not being able to compare an Anishinaabe constitutional order with a Canadian liberal constitutional order⁴, is due

⁴ I had originally stated in my dissertation proposal that I would use this theoretical framework to account for how Indigenous law, specifically Anishinaabe constitutional orders, interprets and responds to settler calls for reconciliation. My plan was to provide an overview of how an Anishinaabe constitutional order, such as the Grand Council Treaty #3 (or a First Nation community residing in Treaty #3) views reconciliation or constructs its own legal discourses of reconciliation, and how this can be connected back to its lifeworld (if I was fortunate enough to

to how Mills' legality tree produces a destabilizing effect when discussing Canadian law. There is often an ethnocentric presumption that liberal constitutionalism is "neutral" in that it tells no stories about itself, which somehow makes it more "objective" and "rational" and therefore "superior" to Indigenous constitutionalism (Mills, 2019: p. 56; Mills, 2016: p. 852-853). As Mills (2019) points out, liberal concepts of freedom, personhood, autonomy and community are rooted in a liberal creation story of the world, which he traces to the Enlightenment era when humans were narrowly imbued with personhood, and that it was through being conceived as "persons" they could rationally and autonomously exercise self-rule (p. 56-58). The ethnocentric legacy of how liberalism is conceived as "neutral" is that the stories that have influenced liberal constitutional orders are conveniently ignored. In taking up this theoretical lens, I wanted to challenge this ethnocentrism by producing a rigorous self-examination into our Canadian liberal constitutional order, which meant meticulously deciphering and showing how the roots, trunk, branches and leaves on a liberal legality tree descend from Christian theology. For instance, liberal philosopher John Locke grounds his argument of making private property and using natural law to defend one's private property by paraphrasing biblical scripture in his *Two Treatises of Government*. To give another example, the word "reconciliation" is a theological term found in both Catholicism and Anglicanism, and is concerned with repairing human relationships. Thus, I can use this theoretical framework to produce a history of our settler colonial present by tracing how the theological stories within Canadian liberalism continue to

hear and learn Anishinaabe stories). I would have then compared how an Anishinaabe constitutional order conceptualizes and engages with reconciliation in contrast to how a Canadian liberal constitutional order conceives and governs through reconciliation. However, I was unable to form respectful research relationships, which meant that I would not be able to learn about Anishinaabe law and reconciliation. Despite the fact that I was no longer going to be able to include Anishinaabe law within my doctoral project, I still wanted to perform an analysis using Mills' legality tree to study Canadian liberal constitutionalism and to uncover the stories which rationalize settler colonialism, private property, law, and violence.

shape and condition how Canadian institutions and law attempts to govern Indigenous-settler relations through reconciliation.

Methodology

Archival Research, Textual Analysis and Coding

My doctoral project began by compiling an exhaustive collection of publicly available texts authored by different Indigenous, state and extractive actors, agencies, institutions and organizations relating to “reconciliation”, “Indigenous relations” and “resource revenue sharing” in Ontario. My intention to collect, organize and review a large number of texts by various authors aligned with a traditional governmentality approach to studying the effects of modern political power, which eschews grand texts within political philosophy in favour of uncovering the “minor texts of political thinkers, polemicists, programmers, and administrators” through archival research methods (Rose, O’Malley & Valverde, 2006: p. 5). These “minor texts” that I collected ended up consisting of parliamentary transcripts, committee transcripts, reports, speeches, press releases, policy briefs, policy papers, annual reports, plans, maps, academic studies, discussion papers, frameworks, letters, memos, emails, newsletters, PowerPoints, infographics, posters, news articles, webpages, court rulings, protocols, information packages, toolkits and guides. I ended up collecting hundreds of texts authored by numerous Indigenous, state, extractive and market actors, groups, institutions and organizations (how these categories were created and how this large volume of texts was organized will be explained below).

Most of the texts were readily available over the internet through digital archives. It was amazing how many texts were uploaded to each organization’s own website where it was possible to download any document or webpage that pertained to “resource revenue sharing”,

“reconciliation” or “Indigenous relations”. It was truly surprising that an organization, like the Prospectors & Developers Association of Canada, which lobbies federal and provincial governments to create policy changes that would benefit their members, was not more secretive (although this does not mean that this organization was fully transparent either, just that they publicly provided information and were never obliged to). The most amount of difficulty was trying to find a webpage that no longer existed, which could fortunately be rectified by using a tool known as the Wayback Machine, a digital archive of the internet that can pull up previous versions of a webpage. Besides scouring the digital archives of various organizations, I also filed Freedom of Information (FOI) requests with the provincial government under the *Freedom of Information and Protection of Privacy Act*, in which I eventually received several types of texts, such as decision notes or communications. Thus, archival research and a textual analysis were easy to complete as I was able to access texts and gather data from various sources.

Besides the ease and utility of this method, there are other reasons for using a textual analysis to organize and examine the texts gathered through archival research. As succinctly put by Fairclough (2003), “texts have causal effects upon, and contribute to changes in, people (beliefs, attitudes, etc.), actions, social relations, and the material world” (p. 8). While such a statement about texts and their potential to induce effects seem obvious, it is worth emphasizing that a textual analysis will be able to account for the formation of an assemblage of actors interested in intervening in Indigenous-settler relations. As discussed above, assemblages are made up by a loose set of actors who come to believe that their interests, goals or problems can be addressed by uniting to exercise governance. By collecting a large number of texts, and then organizing them by authorship and year, it was possible to create an intertextual web which can help pinpoint the moments when Indigenous-settler reconciliation was framed as a normative

political goal and the emergence of an assemblage of actors, groups, organizations and institutions working together to govern towards it. This textual analysis will simultaneously reveal the reconciliatory origins for governmental technologies, such as resource revenue sharing agreements, that are proposed and developed to foster improved Indigenous-settler relations.

The final benefit of using a textual analysis as a methodology is that it can help combine a macro-analysis of settler colonialism with a micro-analysis of the effects of reconciliation. As stated by Fairclough (2003), critically analyzing discourses through texts can allow for an examination into continuity and change at the more abstract and structural level while also being concerned with what happens in particular texts (p. 3). In fact, a textual analysis can show how large bodies of texts affect power relations, with some proponents of this methodology going so far as to suggest that a relationship between structural ideologies and discourses can be unveiled through a textual analysis (Fairclough, 2003: p. 9; van Dijk, 2006: p. 124). Thus, a textual analysis may be beneficial in first unpacking the relationship between settler colonialism and discourses on reconciliation. Furthermore, it will be possible to evaluate if a pattern from a growing body of texts relating to reconciliation may ideologically sustain settler colonial governance, a key argument made within the settler colonial studies literature. At the same time, this methodology can help highlight the specificities of each particular text by noting when any linguistic shifts occur in how reconciliation is discursively portrayed, the governmental technologies which are proposed and recommended and the multiple and contradictory effects of these interventions. A textual analysis will allow me to carefully study settler colonialism while using a governmentality approach.

I. Qualitative Research Software and Coding

Since I had collected hundreds of documents spanning decades and equating to thousands of pages, I decided to purchase a license for NVivo, a software that could help me organize these documents and conduct qualitative research. I began organizing the data by dividing up this large volume of texts according to the type of author which had published the data. While my project is interested in looking at how Indigenous, state and extractive actors had come together to articulate resource revenue sharing and reconciliation, these three categories on their own were not necessarily helpful. Thus, I further subdivided the documents within NVivo according to the exact organizational author. For instance, I had an umbrella category for “Indigenous Organizations”, and under it, I had created different folders for Indigenous-led organizations. The organizations I collected documents from included the Anishinabek Nation, the Assembly of First Nations, the Chiefs of Ontario, Grand Council Treaty #3, Indigenous Corporate Training Inc., Matawa Tribal council, the National Indigenous Economic Strategy, Temagami First Nation and the Yellowhead Institute. For extractive actors, I labelled the category “Mining Associations” and then followed the same process. This led to a collection of texts by the Mining Association of Canada, the Ontario Mining Association, the Ontario Prospectors Association and the Prospectors & Developers Association of Canada.

For “the state”, I divided the documents according to whether they were authored either by the federal or provincial government, so I had one category titled “Government of Canada” and the other “Government of Ontario”⁵. Since I was mainly focused on how state actors at the provincial level govern Indigenous-settler relations, I compiled hundreds of texts over two decades, most of which were parliamentary or Standing Committee transcripts. Due to the large

⁵ The Government of Canada folder was not too expansive and because I am more concerned with the story of how resource revenue sharing agreements were developed in Ontario, I did not end up housing too many documents under this folder. What I collected was supplementary to learning about what was happening within Ontario.

volume of parliamentary and committee transcripts I had collected, I further divided them according to parliamentary session. For example, I had a folder labelled “41st Parliament” and a subfolder called “1st Session”, where I would store all the parliamentary transcripts for that session. Under each session, I created different folders for the committee transcripts, like “Standing Committee on Finance and Economic Affairs”. For all other texts that were not parliamentary or committee transcripts, I simply kept them under the main Government of Ontario folder.

When I was starting to collect the documents for this research, I also realized that these three categories did not always capture other actors and organizations who were writing about reconciliation or revenue sharing. As a result, I created additional categories within NVivo. This included “News Articles”, since many different media organizations would discuss reconciliation and resource revenue sharing. I also had the “Ontario Superior Court of Justice” since the *Restoule v. Canada* held some degree of influence on the conversation regarding resource revenue sharing. Finally, I created a category called “Other Organizations”, since there were many non-state actors and organizations who were also writing about resource revenue sharing or reconciliation. These other non-state organizations were pro-business thinktanks and lobbying groups that regularly partner with or advise some of the Indigenous, state, and extractive actors and organizations, so including their publications would enhance my governmentality analysis of how a large network of diverse actors came together to govern reconciliation in Ontario. Throughout my dissertation, when discussing these non-state actors in the abstract, they will be referred to as “market actors” since they are primarily concerned with changing law and policy to make Ontario’s economy more attractive for mining companies and investors. These market actors and organizations included thinktanks, associations and lobbying groups such as the Atlas

Network, the Canadian Council for Aboriginal Business, the Fraser Institute, the MacDonald Laurier Institute, Northern Policy Institute, the Ontario Chamber of Commerce, the Public Policy Forum and the Charrette.

Once the documents were divided according to each organization or institution, I then made sure to title each document as accurately as I could. For each document, I indicated what year it was published. I would then pull an entire year's worth of documents (e.g., 2014), organize it by date and then code it in order. For documents that did not have exact publication dates, such as a mining association's annual report, I would code those documents towards the end of the year. My goal was to try to trace how discourses on reconciliation and resource revenue sharing may have changed over the years, and not just amongst one set of actors, but through their interactions with one another. Thus, by coding through each year, I could not only code a specific text by a certain actor, but I could also make notes on if there were any relationships between these texts. Oftentimes, I found that there was a connection, either later in the year or in the following years. For instance, a libertarian thinktank's publication would be cited by an Indigenous organization to petition the provincial government to introduce resource revenue sharing agreements. This type of chronological ordering also made it possible to see when different Indigenous, state, and extractive actors may have interacted, such as at a Standing Committee hearing at Queen's Park or a mining convention in Toronto, and what they said at these events. This could then be followed up to see if this impacted how any of these actors' conceptualized reconciliation or resource revenue sharing. I was therefore able to trace the specific relations between texts while also putting together a larger analysis which examined how these texts may reproduce structural relations within settler colonialism.

Although I aimed for accuracy in coding, there were times when I realized that I missed a document or would discover one for a year I had previously coded. In fact, I ended up conducting a secondary data collection, which led to many more documents being included in NVivo. Many of these newly discovered documents were published before the year I was currently coding and unfortunately, NVivo was not built to map discourses over time so there was no easy technological solution. Thankfully, throughout the coding process, I had been taking notes using NVivo's "memo" feature, wherein I would have a different memo that would pertain to a different set of actors. Each memo would record what I had found in different documents in chronological order and would point out the connections I observed between actors and organizations. Rather than coding these "new" documents, I would either write about them in an already existing memo if they were at all relevant or I would create a new memo to record my thoughts and observations about them. This ensured that my coding would not get out of order, while taking note of the discourses within these earlier documents. I would then state within these memos if there were linguistic or discursive differences between these earlier documents and the documents I had already coded.

In regard to how I coded, I ended up using a "blended approach", which uses a combination of "deductive coding" and "inductive coding" (Graebner, Martin & Roundy, 2012: p. 281; Linneberg and Korsgaard, 2019: p. 264). Deductive coding entails using codes found through my literature review, whereas inductive coding involves producing codes as I went through the documents and found patterns (Linneberg and Korsgaard, 2019: p. 263-264). The reason I used a blended approach to coding was due to the fact that there ended up being many discourses that I did not account for through just my literature review. I did start with deductive coding, as the literature held many key ideas about reconciliation, such as reconciliation is

“healing” or that settler colonialism was “history”, that were noticeable in these texts. However, there were also ideas and discourses not covered in my literature review, especially in relation to resource revenue sharing agreements, such as how these agreements represent the original spirit and intent of the numbered treaties in Ontario. This led to a variety of new codes meant to capture the ideas expressed within these texts. Thus, I ended up using both deductive and inductive approaches to coding to highlight discursive patterns within and between these texts.

Indigenous Research Methodologies and Methods

I originally proposed to conduct research by forming a respectful research relationship with a First Nation that had signed a resource revenue sharing agreement with the provincial government. However, due to larger external factors, my research project had to change. Prior to abandoning my original research project, I had become familiar with the literature on Indigenous research methods and methodologies. It was through reading this literature that I became aware that “research is implicated in the worst excesses of colonialism” because non-Indigenous researchers have historically engaged in unethical practices and made incorrect assumptions (L. McGregor, 2018: p. 129-130; Tuhiwai Smith, 2012: p. 1). As a non-Indigenous researcher, I became very concerned of the potential to make incorrect assumptions about Indigenous peoples while writing about reconciliation and the development of resource revenue sharing agreements. In this subsection, I wish to highlight some of the ways I tried to incorporate the Indigenous research methods and methodologies literature to prevent incorrect assumptions being made.

The first problem I encountered was how to respectfully and accurately incorporate Indigenous perspectives throughout the research process, especially at the writing stage. Not accounting for Indigenous perspectives risks portraying Indigenous peoples as passive background actors, only able to react to the laws, policies or actions of the provincial

government or the mining industry. My preliminary research showed that this would not be accurate, as Indigenous peoples sought to influence reconciliation and resource extraction by invoking the treaties and calling for resource revenue sharing. It would be a harmful and damaging misconception to represent Indigenous peoples as lacking agency, since it was Indigenous communities and organizations that kept the pressure on the provincial government for at least two decades to create resource revenue sharing agreements. Thus, I did not want to misrepresent Indigenous perspectives on reconciliation and resource extraction but excluding them would minimize how Indigenous peoples influenced the creation and development of resource revenue sharing agreements.

To avoid misrepresenting Indigenous peoples in this dissertation, I was extra cognizant in my writing by not making any assumptions. In order to ensure that I do not make inaccurate assumptions, I cited from Indigenous-authored texts. These texts have been authored and publicly released by various First Nation communities and Indigenous political organizations (such as a press release or bi-annual magazine) and capture an Indigenous person's views on reconciliation, resource extraction and revenue sharing. These Indigenous-authored publications usually include direct quotes from the leaders of their respective communities and organizations. Where it is helpful, I provided direct quotes from these texts to accurately reproduce these views. Besides using these Indigenous-authored texts, I also turned to parliamentary transcripts which often have Indigenous leaders and community members testifying at Standing Committees to hold the government accountable in regard to the treaties, reconciliation and legislation surrounding resource extraction. Thus, I used multiple quotes from these parliamentary transcripts to extrapolate how Indigenous actors view reconciliation and revenue sharing at these government committees. Ideally, this will prevent any wrongful assumptions from being made

while also allowing for space to write about how some Indigenous actors and organizations have contributed to the governance of reconciliation.

I will also stipulate here that using these quotes does not necessarily mean that there is a unified Indigenous voice on reconciliation or resource extraction. There are diverse and competing ideas on these topics within Indigenous communities, with community members sometimes holding diametrically opposing views regarding an extractive project with the band council. For instance, Scott (2020) has observed how companies often have “gag orders” within their Impact Benefit Agreements in order to compel band councils to voice support for a project and to try to prevent their community members from engaging in direct action against the project (p. 276). Since I have not been able to speak with either a community leader or member, I want to emphasize that these direct quotes and my analysis do not reflect a wider community’s view about reconciliation, resource extraction or revenue sharing. At most, these quotes capture what a representative of either the community or organization have stated on the record about these topics, and it is unknown if this is indicative of what the larger community feels. Thus, I quote the person (e.g., “Chief Day of the Chiefs of Ontario stated that...”) and not the community or organization (e.g., “Rainy River First Nation argued that...”) to further avoid any possibility of misrepresentation. I do acknowledge that this may be difficult to do at times if an Indigenous-authored text, like an annual report, does not include a specific author; nevertheless, when it is possible, I cite the person.

Conclusion

The combination of these theoretical frameworks and research methods will make it possible to produce a detailed empirical story about settler colonialism, reconciliation, and resource revenue sharing in Ontario. In the next chapter, I will turn to Mills’ legality tree to

produce a theoretical study of Canadian liberalism and settler colonialism. Producing this theoretical interpretation of Canadian liberal legality will help to present a history of our settler colonial present and will assist in explicating the preliberal origins of reconciliation. Afterwards, I will move towards using a blend of settler colonial theory and a governmentality perspective to contextualize settler colonialism and reconciliation in Ontario. After conducting a history of our settler colonial present in Ontario, I will use archival research and a textual analysis in conjunction with governmentality, settler colonial studies and my assessment of Canadian liberal legality to trace the development of resource revenue sharing and how it was connected with reconciliation. Since governmentality is concerned with the limits and unpredictable effects of governmental power, I will also study the tensions in translating reconciliation and resource revenue sharing into reality over two and a half decades. Next, my research will focus on the outcomes of resource revenue sharing agreements for participating First Nations. Lastly, I will theorize the relationship between settler colonialism and reconciliation by turning towards settler colonial studies, governmentality and my analysis of Canadian liberal legality. Throughout this dissertation, I have endeavored to apply the principles found within the Indigenous research methods and methodologies literature in order to accurately portray how Indigenous peoples exercised agency in pushing for the implementation of resource revenue sharing between First Nations and the provincial government.

Chapter 3: The Roots of Reconciliation

Introduction

The present chapter will attempt to produce a larger historical contextualization of reconciliation by positioning it within Canadian liberal constitutionalism. This should ideally provide a more holistic overview of the epistemological, cosmological and ontological origins of reconciliation, along with the aspects of Canadian constitutionalism that shape reconciliation discourses and are in turn impacted by it (such as “the Crown”). Conducting this analysis will also provide firmer ground to use a governmentality framework in the following chapters to understand and assess the rise of reconciliation as a new and dominant political rationality, along with the governmental technologies, techniques, tactics, laws, strategies and programmes meant to materialize reconciliation in Ontario’s mining industry. In fact, by exploring Canadian liberal constitutionalism and by theorizing the origins of reconciliation, it will be possible to better understand the desires and strategies which led to the development of resource revenue sharing agreements in Ontario, and how liberal notions of reconciliation may shape the scope and contents of these agreements. In turn, this analysis will allow for a deeper theorization of the relationship between settler colonialism, as a structure premised on dispossessing Indigenous peoples, and reconciliation, as a dominant political rationality, in later chapters.

To accomplish the analysis for this chapter, I will turn to Anishinaabe legal scholar Aaron Mills’ theoretical framework. I have been deeply inspired by Mills’ model of the “legality tree” in which he conceptualizes legality as a tree made up of several roots, a stable trunk, multiple branches and hundreds of leaves. According to Mills (2016), the roots are a society’s lifeworld and consist of creation stories which tell us, “what a person is, what a community is, and what freedom looks like” (p. 862). These roots lead up to the trunk, which can be equated as the

constitutional order that “organizes and manifests these understandings as political community” (Mills, 2016: p. 862). The branches are the legal traditions which stem out from this political community and embodies the processes and institutions which create, sustain and unmake law (Mills, 2016: p. 862). The final element of a tree is its leaves, which in this model are the laws of a society (Mills, 2016: p. 862-863). Through a tree model of legality, it is possible to draw a connection from law back to a lifeworld and its creation stories. At the same time, this model emphasizes that while each part of a tree conditions the following part, it does not overdetermine what these parts end up looking like (Mills, 2016: p. 862-863). Mills’ legality tree can permit a more holistic analysis of how reconciliation as a political rationality is derived from the roots, trunk and branches of a Canadian legality tree.

I believe that Mills’ analysis of Canadian liberal legality is insightful, especially as it shows how present Canadian law is derived from liberal worldviews. His discussion of Canadian legality begins with the roots of liberalism and how it has its epistemological, cosmological and ontological origins in the Enlightenment era. For instance, Mills (2019) highlights how in liberal creationism, only humans are ascribed with personhood whose autonomy is inviolable, which is reflected in liberal legality through this idea that humans can exercise domination over nature (p. 57). This assessment challenges the “naturalness”, “objectivity” and “superiority” of liberalism, showing that liberal legality forms out of liberal conceptions of the world and often contrasts with Anishinaabe worldviews, especially since Anishinaabe constitutional orders view non-humans as persons and value interdependence between all persons (Mills, 2019: p. 78-79; Mills, 2016: p. 863-864). Although Mills analysis and subsequent comparison of a Canadian liberal constitutional order with Anishinaabe constitutional orders shows why these distinct legalities cannot be reconciled, my only contention with his thought-provoking work is that his overview

of a Canadian legality tree starts with an analysis of liberalism in the Enlightenment period. This may fail to capture the existence of pre-Enlightenment and theological roots, along with how these roots have helped to condition a Canadian political community organized around the mystified Crown, its institutions and its current laws and policies regarding “reconciliation”. In this chapter, I plan on expanding the scope of his analysis to include a study of how Christian theology (from its stories to its mystical concepts) has structured and continues to be relied upon within Canadian liberal constitutionalism, and how this affects settler colonial governance.

To give just one example for why it is fruitful to investigate the preliberal roots of Canadian constitutionalism, it may be useful to briefly consider the “honour of the Crown” doctrine before studying it more concretely elsewhere in this chapter. Valverde (2015) observes how this relatively new constitutional principle does not emerge from any modern positive law, but instead has its origins in mystical, illiberal, and medieval notions of honour (p. 127). She further notes how modern, black-letter law often works against the interests of Indigenous peoples, however, the Crown’s desire to uphold “self-imposed honourable duties associated with medieval sovereignty” has the potential to produce beneficial outcomes for Indigenous peoples impacted by the realities of colonialism (Valverde, 2015: p. 133). The “honour of the Crown” doctrine is meant to theoretically compel present-day representatives of the Crown to act “honourably” towards Indigenous peoples by repurposing premodern notions of “honourableness”. Thus, this doctrine cannot be fully appreciated and understood if the preliberal roots of the Canadian legality tree, which are concerned with “honourableness” and other pre-Enlightenment concepts and values, are ignored. As such, it is important to go beyond the Enlightenment period to “dig up” the preliberal and theological roots which still condition other aspects of the Canadian legality tree.

The goal of this chapter is to complement Mills' original analysis by carefully studying some aspects of the Canadian legality tree. Since this can be a gargantuan task, I have decided to selectively analyze elements that make up a Canadian legality tree⁶. In the first section, I will begin by documenting some of the hidden preliberal and theological roots of the Canadian constitutional order that are pertinent for understanding the attitudes, beliefs and legal arguments that rationalize settler colonialism. This will examine how Christian creation stories filter into the arguments put forth by liberal philosophers, like John Locke, who were trying to produce a legal justification for settler colonialism in the Americas. Following this assessment, I will consider how other theological concepts affected the formation of a settler political community around the mystified and always honourable Crown in Canada, and how biblically inspired liberal creation stories led to state actors and institutions acting dishonourably in an effort to legally expropriate Indigenous territories for the Crown. After analyzing the mystification of the Crown through the repurposing of Christian theology, I will try to discern how this precedes the constitutional principle of the "honour of the Crown" and the emergence of state-led discourses of reconciliation. This section will study how state institutions, operating under the authority of the Crown, currently attempt to manifest the Crown's honour through calls for reconciliation and reforms to law and policy, and why they often fail. Finally, I will turn my attention to the leaves of a Canadian legality tree, focusing on how contents of state-led discourses of reconciliation are drawn from the theological roots of Canadian constitutionalism and why this may not address the underlying conflicts between Indigenous and Canadian constitutional orders.

⁶ Aaron Mills' (2019) dissertation has a very in-depth discussion of a liberal legality tree. With humility, I acknowledge that I would not be able to write or reproduce such a thoughtful analysis of liberalism. Thus, I have elected to contribute to this scholarly discussion by just noting how the preliberal and theological roots of Canadian legality can structure the constitutional order, the branches and the leaves of reconciliation.

The Pre-Enlightenment Roots of Canadian Constitutionalism

In trying to understand how a Canadian constitutional order results in the colonizing of Indigenous peoples and Indigenous constitutional orders, it may be helpful to begin with studying the preliberal and theological roots of a Canadian legality tree. As noted above, this is in contrast to Mills (2019), who begins his characterization of a Canadian legality tree with liberal creation stories from the Age of Enlightenment. For instance, Mills (2019) rightly notes how during the Enlightenment, the concept of self-rule arose and became associated with “rationality” and in turn “personhood”, with only humans being conceived as persons who can rationally enter into orderly and lawful political communities (p. 56-57). Consequently, non-persons (such as animals, plants and other earthly agents) outside of liberal political communities became associated with disorder and lawlessness (Mills, 2019: p. 57). Although I generally agree with Mills regarding how personhood is narrowly conceived under liberalism, it seems that the conception of nature being made up of non-persons, along with their problematic implications, actually predate the Enlightenment period⁷. By exploring the preliberal and theological creation stories that continue to shape settler notions of personhood, it may be possible to have a deeper

⁷ It is worth mentioning that not only was personhood tied to humans under liberalism, but that prior to the Enlightenment period, personhood became exclusively tied to Europeans through the enslavement of Africans during the transatlantic slave trade and the colonization of the Americas. As stated by Hartman (1997), “In the economy of racial slavery, the enjoyment of property was predicated on the figurative capacities of blackness – the ability to be an object or animal or not-quite-human or guilty agent” (p. 36). Thus, enslaved Africans were dehumanized through the transatlantic slave trade and rendered as moveable private property for Europeans who were colonizing the Americas. The institution of slavery was further justified in the American colonies through taxonomies which linked the “reasonable person” to whiteness while dismissing the humanity of enslaved Africans (Dayan, 2011: p. 123). Throughout this process, law was instrumental in denying legal personhood to enslaved Africans during the European colonization of the Americas. For instance, Dayan (2011) observes the parallels between animals and enslaved persons, such as how the concept of the “chattel” under law was applied to both animals and slaves (p. 124-125). Additionally, the denial of rights found within liberal constitutional orders also led to the denial of legal personhood of enslaved Africans. In his analysis of slavery, Patterson (1982) argues that “Alienated from all ‘rights’ or claims of birth, [the slave] ceased to belong in his own right to any legitimate social order” (p. 5). Patterson (1982) also asserts that, “Because the slave had no socially recognized existence outside of his master, he became a social nonperson” (p. 5). Unfortunately, a full discussion of how slavery denied the legal personhood of enslaved Africans is beyond the scope of my dissertation. However, it is still important to recognize this fact, as it shows that “personhood” was intrinsically tied to whiteness during the colonization of the Americas.

understanding of the attitudes that legitimate violence towards Indigenous peoples under settler colonialism, which is often rationalized through law. In addition, and as it will be later discussed, documenting the preliberal and theological roots of Canadian constitutionalism will shed light on how present-day efforts at Indigenous-settler reconciliation are humancentric and thus limited.

There is one other reason for unpacking the preliberal and theological roots of Canadian constitutionalism. One of the central tenets advocated during the Enlightenment era was secularism, which advocated for the separation of church and state⁸. Starting an analysis of Canadian constitutionalism in the Enlightenment era may inadvertently and unconsciously reproduce this idea that individuals and the liberal state became totally rational and secular, with mystical thinking based in Christian theology no longer playing a role in the creation and administration of settler colonial laws and institutions. Within the context of Canadian constitutionalism, this is a myth. For example, renowned Anishinaabe scholar John Borrows (2010) points out how the Canadian constitution summons the divine within its preamble by stating that Canada was “founded upon principles that recognize the supremacy of God” (p. 24-25; *Constitution Act, 1982*, Part I). Furthermore, establishing “the supremacy of God” was often a justification for legally sanctioned state violence towards Indigenous peoples. The most prominent example is the residential school system, instituted by the Canadian state and run by the churches with the goal to violently “civilize” Indigenous children into Euro-Canadian

⁸ It seems that the Enlightenment era philosopher John Locke, whose ideas will be discussed more fully in this chapter, argued in his *Letter Concerning Toleration* for religious toleration and the separation of the spiritual from the temporal, an idea that gets taken up in the American Revolution by Thomas Jefferson who insists upon “a wall of separation between church and State” (Feldman, 1997: p. 151-152). In Canada, this Enlightenment era idea was also believed in, albeit for different reasons. Apparently, Sir John A. MacDonald himself was a “political Christian” who rationally but reluctantly concluded that there must be a separation between church and state due to circumstances in Ireland (Preece, 1984: p. 485). The Supreme Court of Canada has also created a doctrine of “state neutrality” in which the state should not favour nor hinder any religious beliefs, which seems to reflect this idea that liberal democracies must try to be secular, although this is harder to do in practice (Moon and Berger, 2016: p. 2-5). Nevertheless, there seems to be an underlying myth that since the Enlightenment era, there was a rational decision by the architects of modern liberal democracies to separate church from state.

culture, which included practicing a denomination of Christianity. The fact that religious authorities operated state institutions should provoke a sense of ambivalence towards this Enlightenment era myth that there was ever a separation of church and state. Through studying the preliberal and theological roots of Canadian constitutionalism, it will be possible to challenge this myth of rationality and secularism in order to expose how old nonrational Christian ideas are firmly entrenched within a Canadian liberal constitutional order. In turn, this can help to produce a rigorous history of the present, by tracing how these religious ideas were repurposed by the state through law to govern Indigenous-settler relations in Canada.

To illustrate that there are unacknowledged Christian theological roots within Canadian constitutionalism, it may be useful to start with the writings of John Locke, one of the most prominent English philosophers during the Enlightenment period writing about liberalism. Starting with the works of John Locke might be peculiar, as there were many other notable political philosophers writing about law and the role of government prior to and during the Enlightenment period who were also invoking elements of Christian theology in their works. For example, Thomas Hobbes, who could best be considered as Locke's immediate predecessor despite having differing views on the role of government⁹, sought to align his political philosophy with Christianity by radically reinterpreting biblical scripture throughout his seminal work, *Leviathan or the Matter, Forme and Power of a Commonwealth, Ecclesiastical and Civil*

⁹ Both Hobbes and Locke believed that there was a "state of nature" in which humans would wage war against each other unless entering into a political society (Monchalín, 2016: p. 65). As "evidence" of this political theory, they both wrongly claimed that Indigenous peoples in the Americas lived in a state of nature (Monchalín, 2016: p. 65). Hobbes therefore seems to have exerted a degree of influence over Locke's writing. However, Hobbes, who believed that individuals concerned with liberty led to the English Civil War between the King and the English Parliament, concluded that there must be an absolute monarch who can ensure sovereignty and thus peace (Collins, 2007: p. 11; Stauffer, 2018: p. 16-17). This notion is rejected by Locke, who writes about how defending a free and tolerant society requires the people's ability to judge if their governors are governing for the public good, and to remove them if they were not (Tully, 1993: p. 318-319).

(Stauffer, 2018, 84-85). Furthermore, Locke often wrote in response to the ideas of other political philosophers in his time who were also summoning the Christian faith to make arguments about the nature of good governance. For instance, in *Two Treatises of Government*, Locke attacks his contemporary Robert Filmer's defence of the divine right of kings, an idea which draws from Genesis 1:28 to argue that Adam along with his successors are monarchs with absolute kingly power over the earth, by referencing Psalm 115:16 which proclaims that the earth was given to "Mankind in common" and that the divine right of kings doctrine was invalid (Lucci, 2021: p. 82). Christian theology seemed to have preoccupied the thoughts of many political philosophers writing in the Enlightenment era, ultimately shaping their views on the state, law and society. However, it seems that the writings of John Locke were exceptionally popular, especially amongst English colonists in the Americas, compared to other political philosophers. As observed by Tully (1993), Locke's arguments were regularly relied upon and reiterated by colonists to violently settle onto Indigenous lands across the Americas (p. 166-169). Thus, it is crucial to unpack Locke's political philosophy, and the theological conceptions of the world that form the basis of it, in order to see how it rationalized and supported settler colonial attitudes and violence throughout the Americas.

In *Two Treatises of Government*, published in 1689, Locke develops a theory of labour, property rights and sovereignty, which justified English colonial projects across the Americas while simultaneously delegitimizing Indigenous political societies. Part of Locke's inspiration for his writings seem to stem from the fact that he was heavily involved with and financially invested in a number of English colonial enterprises¹⁰. Given how Locke greatly benefitted from

¹⁰ Some examples of John Locke having a stake in and benefitting from English colonialism includes him being a landgrave in the proprietary government of Carolina, investing in the slave-trading Royal African Company, investing in different crops in America and the Caribbean, along with supporting many other colonial activities across the globe (Arneil, 1996: p. 139; Tully, 1993: p. 140-141).

English colonialism, both monetarily and in terms of his reputation and status, it is no wonder that he wrote in defence of it. If the earth was given to “mankind in common” (to use Locke’s words), Locke essentially sought to establish a criterion in which one could claim to have exclusive ownership and possession over something, while denying this right to others, as that criterion would also defend English interests in land acquisition (Arneil, 1996: p. 136). For Locke, this meant defining the process in which private property was attained under natural law while explaining both why Indigenous peoples did not have a legitimate stake over their territories and why Indigenous lands can be expropriated, even by resorting to violent means, which he does so in *Two Treatises of Government*.

Locke begins his argument by characterizing Indigenous peoples living in America as being in a “state of nature”. According to Locke, a “state of nature” is an earlier period of time in which humans are free and equal but dangerous in their freedom, thus necessitating the need for government (Henderson, 2000: p. 17-18). In his writing, Locke presupposes that Indigenous peoples in America exist within this so-called “state of nature” (unlike the inhabitants of Europe or Asia), since Indigenous peoples do not have the same institutions that are markers of a European political society that surpassed the state of nature, such as an institutionalized legal system to resolve disputes over property (Henderson, 2000: p. 18; Tully, 1993: p. 151-152). By portraying Indigenous peoples as existing within a state of nature in *Two Treatises of Government*, Locke is able to further his argument for English colonialism. That is, he delegitimizes Indigenous constitutional orders and laws, and puts forth the argument that within the state of nature, there is only “individual self-government” in which individuals act on their self-interests within the confines of natural law, which all persons can somehow intuitively deduce (Tully, 1993: p. 141-142). Consequently, the very real Indigenous constitutional orders

along with their laws, are simply written off both by Locke and his colonial admirers as being non-existent within the state of nature.

In ignoring the historical and legal reality of Indigenous peoples across the Americas by postulating that Indigenous peoples live in a state of nature wherein natural law and naked self-interest are at play, Locke is able to make a defence of and a rationalization for further English colonialism. If there is no political society nor law to regulate property, appropriation without consent can occur within the boundaries of natural law (Arneil, 1996: p. 135-136; Tully, 1993: p. 145-146). To answer how one can appropriate land without having to garner consent from Indigenous peoples, Locke endeavours to explain his labour theory of property. According to Locke (1986), “Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property” (p. 20). Labour, or agrarian cultivation¹¹, is therefore the basis for claims to private property within the state of nature and under natural law (Arneil, 1996: p. 137). Consequently, mixing one’s labour with the land to make property results in the violent expropriation of Indigenous territories. While Locke does not directly call for violence towards Indigenous peoples, he produces a reasoning in which the violent defence of property is justified under natural law. Locke articulates that private property is a possession tied to self-ownership and freedom from interference from others, and that within the state of nature and under natural law, the right to self-defence can be exercised against “aggressors” who threaten property, and thus one’s self-preservation (Lucci, 2022: p. 139-140; Tully, 1993: p. 143). An “unavoidable

¹¹ It is worth mentioning at this point that Locke, along with the colonists he inspired, had to engage in serious mental gymnastics to support this narrative that Indigenous lands were “uncultivated” because there was no agriculture and could therefore be appropriated into private property. This will be addressed later in this section, but for now it is important to acknowledge that Indigenous agriculture was real, so this dichotomy that the English had agriculture and Indigenous peoples did not have agriculture is utterly false.

implication” of Locke’s belief in the state of nature and his interpretation of natural law, private property and self-defence is that Indigenous peoples resisting against the land being turned into private property are constructed as “aggressors” who have violated natural law, and that this legitimates a “just war” (Seliger, 2020: p. 114-115). Unsurprisingly, colonists influenced by Locke’s writings would enact violence towards Indigenous peoples resisting English colonialism (Tully, 1993: p. 154). If America is in a state of nature, English colonial violence was thus rendered permissible in order to lay claims to private property under natural law.

Since English political philosophers during the Enlightenment era regularly employed biblical scriptures and Christian theology to argue for how governance should be exercised, it might not be surprising that Locke’s arguments for accumulating private property through agrarian cultivation were wholly derived from and influenced by Christianity. In fact, the entirety of his argument, from the state of nature to the division of land into private property, seems to be inspired by Christian creationism. For example, the state of nature has been criticized by political theorists for being ahistorical with no anthropological basis, in that there has never been a period in history when European individuals just came together to rationally surrender their freedoms to create governments and produce some degree of order (Arneil, 1996: p. 21; Dunn, 1969: p. 97). Although it is important to note that there is no historical reality for the state of nature, what is more significant is where Locke got this idea that the state of nature is real. As succinctly put by Dunn (1969), “It is that state in which men are set by God” (p. 97); thus, the state of nature may not have any empirical validity, however, its realness comes from Locke’s belief that the state of nature was a historical fact (Lucci, 2022: p. 138) and his reimagining of Christian creation stories. For instance, Locke mentions how Cain was aware that his fratricide would mean that within the state of nature, he could rightfully be executed by others for violating natural law,

which is also why God created governments to move beyond the state of nature and curtail the partiality and violence between humans (Parker, 2004: p. 129-130). While we may know that there is no historical evidence to say that the state of nature ever existed, Locke takes the state of nature as being factual and historical due to his devotion and belief in the validity of Christian creation stories and theology. This may explain why he confidently writes about Indigenous peoples in the Americas as being within a state of nature, as his historical reference point for progress is Christian creationism.

Throughout his *Second Treatise*, Locke continues to quote biblical scriptures or make passing references to Christian creation stories to support his argument that uncultivated land in the state of nature can be seized and transformed into private property. For example, in Chapter V: Of Property, the infamous chapter where he makes direct comparisons between English and Indigenous uses of land, Locke discusses Christian creation stories at several points to argue for the cultivating land into productive private property. For example, Locke (1986) makes this theological argument to rationalize private property:

God, when He gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required of it of him. God and his reason commanded him to subdue the earth – i.e. improve it for the benefit of life and therein lay out something upon that was his own, his labour. He that, in obedience to this command of God, subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him (p. 22).

The reading of this excerpt is, quite frankly, incredible for how blatantly ethnocentric it is. First, Locke continues to assert that mixing one's labour with the land automatically produces private property within a state of nature, but grounds his argument under the highest lawful authority of "God's command". Second, it is taken as a historical fact, rather than being understood as a creation story, that there is a God who commanded destitute humans after the Fall of Adam to be

laborious by cultivating the land within the state of nature (Arneil, 1996: p. 29; Dunn, 1969: p. 115). In addition, this story of God and the Fall of Adam suggests that only humans have personhood, agency and autonomy as nature is passive and meant to be transformed into private property by Adam and his descendants. Third, and building on the previous point, if it is a historical fact that God commanded humans to toil the passive earth, Locke basically implies that since Indigenous peoples did not cultivate the land into private property according to Eurocentric standards, they did not abide to God's command and thus their territories can be expropriated under natural law. Christian creationism and biblical scriptures are therefore repurposed by Locke to build a legal, discursive, and moral framework for settler colonialism in the Americas.

This exploration into how Locke relied on biblical scriptures and Christian creationism to support his arguments regarding the state of nature, natural law and private property is revelatory. It shows that the making of property is inextricably tied to storytelling. According to Rose (1994), English philosophers like Hobbes and Locke produced stories regarding how the desire to have property is “just there”; that is, these philosophers put forward the idea that there is simply a universal and omnipresent feeling that one should acquire property in order to stay alive (p. 28-29). These “just there” stories subsequently naturalize and dictate the preference for how property can be ordered and divided (Rose, 1994: p. 28-29). Furthermore, the fact that this Enlightenment era philosopher turns to old Christian theology to justify the cultivation of land into private property, and by extension settler colonial attitudes and beliefs about proper land use in the Americas, shows why it is important to consider how pre-Enlightenment creation stories impact Canadian constitutionalism, and liberal theory in general. While Mills (2019) argues that concepts of personhood, autonomy, and liberty arose during the Enlightenment period, with only humans being “persons” who could rationally exercise freedom (p. 57), it seems that these ideas

already existed in Christian creation stories and were revitalized by liberal philosophers. From reading both Locke and the biblical scriptures which shaped his writing, Adam and his offspring are imagined as being both separate and above nature, as if Adam is just plopped into God's dominion so that he can start using it for his own comforts and pleasures. Additionally, God commands humans after Adam's expulsion from the Garden of Eden to use their labour to improve the earth by creating property. Thus, this anthropocentric idea that only humans are persons and that nature, which consists of plants, animals along with other earthly elements, are passive non-persons that are meant to be dominated by humans is a European worldview that has its cosmological origins in Christian theology.

What is equally important to note is that Locke's reimagining of Adam to be the original male settler has larger implications besides normalizing anthropocentrism. That is, Adam's time in the Garden of Eden and the subsequent Fall of Man may be used by Locke to advocate for the domination of nature by humans, but the repurposing of this creation story seems to have occurred at a time when the concepts of "humanity" and "modernity" were becoming exclusively associated with Englishness (or at the very least Europeanness in general). In *We Have Never Been Modern*, Bruno Latour (1993) observes how the debates between political philosopher Thomas Hobbes and natural philosopher Robert Boyle along with their followers ultimately led to the natural world being believed to be completely separate from the social world (p. 42). Latour (1993) further discusses how the first Enlightenment thinkers desired to separate "material causality from human fantasy" in a marked contrast to a supposed "yesteryear" in which natural phenomena were not scientifically understood, and that this produced a sense of modernity (p. 46). Thus, not only did Enlightenment thinkers like Hobbes and Locke separate humans from nature, but that this newfound desire to separate and analyze natural phenomena

gave individuals living in a supposedly enlightened Europe a sense that they were scientific, modern, and therefore sophisticated and superior. Modernity thus takes its cue from anthropocentrism, which would fit neatly within Locke's belief that there was a real historical "yesteryear" when Adam and his male descendants had to transform the state of nature into a modern property regime through toiling the earth.

This claim that anthropocentrism, modernity and racism intersect is not without additional merit. English colonists who believed in Locke's repurposing of Adam as a creation story for property regimes often believed themselves to be modern while racializing Indigenous peoples as "inferior" and "primitive". Of course, like the state of nature, this self-perception held by English colonists that they were modern lacked any credibility, once the historical record is taken into account. As succinctly put by Sanderson (2012), "Indigenous people lived on their lands for thousands of years; they were self-governing people with land laws, complex philosophies and inter societal structures; and they were, at the time of contact with the Europeans, distinctly modern people, though their philosophical and technological outlooks varied considerably from those of the newcomers." (p. 96). Settler colonial claims to being modern in contrast to Indigenous peoples were ungrounded, and constantly needed to be defended. To give a short example of how this occurred, it is perhaps best to do what Locke and his colonial admirers could not do, which is to acknowledge that their claims that the English had agriculture and Indigenous peoples did not was a false binary. The fact of the matter is that Indigenous agriculture predated European contact. For example, in *Braiding Sweetgrass*, Potawatomi scientist Robin Wall Kimmerer (2013) refers to the Three Sisters – corn, beans and squash – as "the genius of Indigenous agriculture" which had been planted for millennia by Indigenous women across North America (p. 129). According to Kimmerer (2013), when

colonists from Massachusetts first saw Indigenous gardens, they assumed that Indigenous peoples did not know how to properly farm since Indigenous agriculture did not involve dividing up their gardens into straight rows for each plant species, which was a common agricultural practice amongst European farmers (p. 129). The inability for English settlers to appreciate Indigenous gardens seems to stem from the Enlightenment obsession with neatly separating natural phenomena as a signifier of European modernity, as noted above. Latour (1993) notes how, “Century after century, colonial empire after colonial empire, the poor premodern collectives were accused of making a horrible mishmash of things and humans, of objects and signs, while their accusers finally separated them totally” (p. 51). Given that Indigenous peoples practiced agriculture long before contact, it seems that their English colonial accusers imagined themselves as modern because their version of agriculture consisted of dividing up plants and crops into separate areas of land. In effect, this would racialize Indigenous peoples as unmodern, and would go on to support this Lockean notion that Indigenous peoples existed in a state of nature without property because they did not cultivate the land according to these new Enlightenment standards of modernity.

Other similar arguments were put forth by colonists to maintain this unstable Lockean binary. For instance, Tully (1993) observes a debate in which Roger Williams argued that Indigenous peoples who engaged in hunting and land-clearing held title to their lands, so his opponents proclaimed that only “sedentary agriculture” and “improvement” led to property rights (p. 150). What this seems to reveal is that European claims to modernity based on their dual commitment to anthropocentrism and studying natural phenomena separately stood on shaky grounds, as colonists had to consistently reckon with the fact that Indigenous peoples also practiced agriculture by devaluing it. Technically speaking, it seems that Locke’s argument that

land must be cultivated in order for it to be transformed into private property which cannot be expropriated should have extended to Indigenous peoples, given that Indigenous peoples had practiced agriculture by mixing their labour with the land long before the arrival of Europeans¹². It seems, however, that this desire to diminish Indigenous agricultural practices was meant to accomplish two colonial objectives. First, colonists could reinvent themselves as being modern while racializing Indigenous peoples as primitive. Second, by devaluing Indigenous agricultural practices, colonists could continue to uphold Locke's biblically inspired creation story that Indigenous peoples were not modern and existed in a state of nature, wherein land can be appropriated without consent. White supremacy thus emerges from and exists in relation to Locke's retelling of the story of Adam, as only Europeans were believed to have a legitimate claim to property within liberal constitutional orders in North America.

The same can be said about how patriarchal norms are reflected in Locke's retelling of Adam's time in the Garden of Eden and the Fall of Man, which also makes gender indicative of who can own property in a liberal constitutional order. Throughout Chapter V: Of Property, Locke (1986) will make reference to "Adam and his heirs in succession", including other male biblical prophets like Noah, to frame his argument about expropriating land into private property (p. 19). Women in these Christian creation stories, like Eve, are not referred to in his re-storying of liberal property regimes. If Adam and his male heirs in succession are stories which Locke

¹² This claim is not entirely farfetched; in his work, Tully (1993) arrives at a similar conclusion when he writes about how American and Canadian constitutional law along with international law should have applied to and protected Indigenous territories (p. 171-176). In his own words, Tully (1993) writes, "If, therefore, Locke is wrong about the nature of property and government in non-state and specifically Amerindian societies, as I have argued; and if the aboriginal peoples, the British Crown, Chief Justice Marshall, International law, and Canadian and United States constitutional law are right in claiming that Amerindians are self-governing nations with ownership of their territories; then it follows from the central theory of government of the *Two treatises* itself that they have the right to defend themselves and their property, with force if necessary, against these injustices, as the Haida, Gitksan and Wet'suwet'en, Lubicon Cree, Kanesatake, Mohawk, James Bay Cree, and Innu of Labrador, among others, are currently doing" (p. 175). Tully, therefore, goes further in suggesting that the arguments in the *Two Treatises* can be appropriated to support Indigenous anticolonial resistance.

uses to justify private property, then Locke's writing produces an inseparable association between maleness and property. It seems that English colonists influenced by Locke would attempt to recreate this patriarchal link when colonizing Indigenous territories. In her recounting of how Long Island was colonized, Leonard (2018) discusses how English settlers enacted laws which would diminish the legal personhood of Algonquin Shinnecock women to suppress a Shinnecock legal order and government structure (p. 105). For instance, under English common law, if an Algonquin woman married an Englishman, he would acquire her property and have the right to control it (Leonard, 2018: p. 107). Leonard (2018) also emphasizes that since Algonquin women were able to influence and prevent deed transactions, the English would legislate away any rights over property, a process that started in the seventeenth century and would continue throughout the eighteenth century through new laws, rules and regulations meant to erase their legal personhood (p. 108-109). Thus, it was only the "modern" European male who had personhood and who was able to legitimately hold property within a liberal constitutional order, an idea which is implicitly suggested by Locke when he excludes women in his biblically informed "just there" creation story of property.

After examining how John Locke based his arguments on Christian creation stories involving Adam and his male descendants, it is perhaps worth questioning if this analysis contributes anything relevant to understanding Canadian constitutionalism. After all, why does it matter if Enlightenment principles were based on Christian creation stories? Acknowledging the theological roots of a Canadian legality tree produces a destabilizing effect, one which is aligned with the intent and purpose of Mills' overview of Canadian liberal constitutionalism. As stated by Mills (2019), claiming that liberalism is neutral and tells no stories about persons, freedom or belonging is simply untrue (p. 56). As the above analysis has shown, liberalism's "just there"

stories about property are inspired by Christian creationism, which also happens to initially determine who can even own property within a liberal constitutional order based on their race and gender. Furthermore, by ignoring how liberal creation stories condition Canadian constitutionalism and by extension Canadian laws will reproduce a troubling and very inaccurate notion that any constitutional order based on liberalism is natural and rational in comparison to Indigenous legal orders (Mills, 2019: p. 56; Mills, 2016: p. 852-853). Similarly, to recognize how British¹³, and later Canadian, laws originate from Christian theology can undermine the supposed belief that Canadian constitutionalism is “objective”. By starting with how old Christian theology shaped liberal views on law, property and sovereignty, it challenges this idea that inherently “rational” thinkers during the Enlightenment agnostically came up with reasoned ethical arguments to support the legal expropriation of nature into private property. Rather, it unveils how “just there” Christian creation stories, which have no basis in “rationality” let alone reality, have left their mark on supposedly secular ideas. As such, it makes it possible to study throughout this dissertation how fundamental ideas, concepts, and institutions found in Canadian constitutionalism, such as “reconciliation”, are informed by strange notions of moral anthropocentrism found in Christian theology, and how this may shape the scope and contents of laws and reconciliatory technologies, like resource revenue sharing agreements in the present-day.

¹³ For the remainder of this section, I will be using the words “English” and “British” somewhat interchangeably. Locke was an Englishman, and his *Two Treatises of Government* was published in 1689 in England. However, shortly after his death in 1704, there was the unification of the English and Scottish Crowns in 1707, which established the Kingdom of Great Britain (also known as the British Crown). Given his lasting influence, it makes more sense to use the phrase “British constitutionalism” rather than “English constitutionalism”, especially when considering that the conclusion of the Seven Years War in 1763 led to Great Britain laying claim to North America, with the British Crown signing treaties with First Nations (this will be discussed in the next section). The Kingdom of Great Britain lasted until 1800, when the United Kingdom of Great Britain and Northern Ireland was established as its successor state, but its Crown and its citizens are still referred to as “British”.

Digging up the theological roots within a Canadian legality tree can also reveal why Indigenous constitutional orders are incompatible with a Canadian constitutional order. In *Braiding Sweetgrass*, Kimmerer (2013) outlines how the cosmological differences between creation stories amongst Indigenous peoples throughout the Great Lakes and Christian creationism has led to opposing conceptions of the world. She brilliantly compares how Skywoman¹⁴ and Eve are both women with gardens, but while Skywoman created a garden for the well-being of all, Eve's expulsion from her garden taught her to "subdue the wilderness into which she was cast" (Kimmerer, 2013: p. 6-7). This interpretation of Eve's expulsion from the Garden of Eden demonstrates once again that Christian creation stories reproduce this idea that humans are above nature and must dominate it. Moreover, this explanation of these cosmological differences can reveal why conflicts between Indigenous constitutional orders and a Euro-Canadian constitutional order were inevitable. As explained by some Indigenous scholars, creation stories contain Original Instructions (or "Indigenous laws") in which sacred gifts are recognized as being bestowed unto all of Creation and that Indigenous peoples have been instructed to know and share these sacred gifts (Borrows, 2010: p. 25; Kimmerer, 2013: p. 7-8; Mills, 2019: p. 68-71). For instance, when reflecting on these Original Instructions, Kimmerer (2013) states that this could mean "to take care of the land as if our lives, both material and spiritual, depended on it" (p. 9). Thus, Indigenous creation stories did not recognize a hierarchy of beings within nature, instead acknowledging that humans are dependent on all beings, as reflected in Original Instructions and Indigenous laws and protocols. In contrast, Christian

¹⁴ As a non-Indigenous person, I do not believe that it is appropriate me to recount Indigenous stories, lest I produce constitutional capture. However, Kimmerer's analysis is really fascinating, as she points out the epistemological, cosmological and ontological differences between these two creation stories. As such, I hope it is permissible for me to at least reproduce her analysis about the main difference between the stories of Skywoman and Eve, especially since this may provide a deeper understanding of settler colonialism in Canada.

creation stories of Adam and Eve effectively cleaved humans from nature, thereby justifying the domination of nature for survival and comfort both in the Garden of Eden and after the Fall; consequently, this led to a pervasive anthropocentric belief spread during the Enlightenment by philosophers like John Locke that natural law permits land to be cultivated into private property. The differences found in Indigenous and Christian creation stories therefore shows that male British settlers lacked the ontological and cosmological understanding of Indigenous constitutional orders and so conveniently characterized Indigenous peoples as existing within a Christianity-inspired state of nature, before then turning to natural law to support the imperial project's violent expropriation of land.

Unfortunately, it is beyond the scope of this chapter to analyze the totality of Christian creationism and explore how many of these stories influenced liberal constitutionalism. Locke (1986) in Chapter V: Of Property in *Second Treatise*, not only refers to the story of Adam to justify private property, but also makes passing references to other biblical stories involving male protagonists, such as Noah, King David, Cain and Abel, Abraham and Lot, and Esau to argue in favour of natural law and the division of land into private property (p. 19-26). Christian creationism seems to have had a large yet unacknowledged impact on liberal constitutional orders, as this one English philosopher produced a theologically informed argument that was adopted by many British male settlers across North America to advocate for the legal and violent dispossession of Indigenous peoples. While it is not possible to examine every element of Christianity, ideally this section will have accomplished two goals: 1) challenging the belief that liberalism is “natural”, “objective” and “superior” by revealing that it is based in a nonsecular, Christian worldview that is derived from creation stories and 2) showing that there are hidden pre-Enlightenment and theological roots which inform settler colonial attitudes, beliefs and laws.

In the next section, I will continue to examine how elements of Christian theology have shaped Canadian constitutionalism, or the formation of a political community around the mystified Crown, and the implications for treaty-making with Indigenous peoples in Canada.

The Mystification and Multiplication of The Crown

Although British settlers were influenced by Locke's use of biblical creation stories to justify the dispossession of Indigenous peoples in the Americas, this recounting of settler colonialism is somewhat incomplete. In what is now Canada, it seems that settler colonial desires to expropriate land without consent was partially mitigated by the British Crown, the hierarchical figure that a political community of British settlers were constitutionally organized under (i.e., what Mills' would refer to as the branch of the legality tree¹⁵). In the mid-eighteenth century,

¹⁵ Unfortunately, it is beyond the scope of this chapter to delve into the constitutional trunk of British, and in turn, Canadian constitutionalism. However, it can be stated that by the time of British colonialism in the Americas, British constitutionalism had undergone several distinct changes. In their chapter titled, "Roots: British Legal Traditions", Girard, Phillips & Brown (2018) trace the origins of common law after the Norman Conquest of England in 1066, noting that "the king was the ultimate source of earthly justice within his realm", a common idea held in Medieval Europe (p. 62). This pervasive notion that the Christian monarch held ultimate earthly power within their own domain can be found in the works of Christian authors during the medieval period and was even consecrated through the Church's relationship with European monarchies (for examples, see: Cowdrey, 1998; Davis, 2013; Kantorowicz, 1957). Douglas Sanderson (2018) also discusses how Christian creation stories were used to produce a legal fiction that that only the English king could own land, a story that dates back to when William the Conqueror became king after the Norman Conquest of 1066 (p. 333). Sanderson (2018) also recounts how the power of the Crown was defended through the divine right of kings' doctrine, which justified the absolute rule of the monarch because it was the "will of God" (p. 333). The use of Christian creation stories to bolster the authority of the Crown appears to fit within Mills' (2016) description that creation stories (or roots) are used to organize a political community (p. 862). After the Norman Conquest of 1066, it could be interpreted that the Crown served as the trunk of British constitutionalism as there was a political community organized under its vast authoritative powers. As explained by Girard, Phillips & Brown (2018), there was no clear distinction between adjudication and legislation during the early medieval period, and under *curia regis* or "king's council", the monarch with the aid of their council would be responsible for resolving a dispute and laying down rules (p. 62; p. 73). Thus, the English Crown was consecrated as having divinely authority due to Christian creation stories and held exclusive adjudicative and legislative powers within and over this political community.

However, it would be both historically and legally inaccurate to say that the Crown equates to the trunk of British constitutionalism by the time of British colonialism in North America. Girard, Phillips & Brown (2018) establish that there was the emergence of a British constitution made up of the Crown, Parliament and the courts, with the latter two bodies originating from *curia regis* and that these bodies had become autonomous from the Crown over the course of a few centuries, and sometimes through direct legal conflicts with the Crown (p. 73-77). By the time of the Glorious Revolution in 1688, the power of the Crown was considerably constrained, with Parliament and the courts assuming greater legal authority (Girard, Phillips & Brown, 2018: p. 79). Thus, the trunk of British constitutionalism was divided into executive, legislative, and judicial authorities by the time it was "exported to British North America", and has since been "Canadianized" (Girard, Phillips & Brown, 2018: p. 76-79). Due to

British authorities were concerned with producing colonial security and sought to establish and maintain military and economic partnerships with First Nations in the Great Lakes region (Borrows, 1997: p. 159; Chamberlin, 1997: p. 23). Meanwhile, First Nations in the Great Lakes equally wanted to guarantee a form of co-existence with British settlers to avoid either resettlement or violent conflicts with settlers (Borrows, 1997: p. 159). This led to the declaration of the *Royal Proclamation of 1763*, which sought to reduce the likelihood of conflicts by forbidding Indigenous lands from being taken or settled by private British settlers without the consent of governing First Nations (Borrows, 1997: p. 159-160). While British settlers may have felt compelled to colonize Indigenous lands in accordance with the intersection of popular notions of modernity, white supremacy, masculinity, natural law and private property, the British Crown somewhat aspired to regulate the activities of British settlers in North America (specifically the Great Lakes region) through law to secure its larger political and economic objectives.

The *Royal Proclamation of 1763*, however, did not necessarily protect Indigenous lands. As explored by Borrows (1997), the language of the *Royal Proclamation* recognized Indigenous jurisdictions as being separate from European jurisdictions but also situated Indigenous jurisdictions under the dominion and protection of Crown sovereignty, thereby allowing for the gradual expansion of Crown sovereignty over Indigenous lands (p. 160-161). Thus, on the one hand, private British settlers could not legally trespass, encroach and settle on Indigenous lands, yet, on the other hand, legal and discursive mechanisms were built into the *Royal Proclamation* to claim that Crown sovereignty exists over Indigenous territories. Furthermore, the *Royal*

these historical, constitutional and legal changes, it is theoretically wrong to proclaim that the Crown is the trunk of the Canadian constitutional order, and more accurate to say that the Crown is a branch within Canadian constitutionalism.

Proclamation did not necessarily placate colonial governments, whose authority is also derived from the Crown and is responsible for advising the monarch (Hogg, 1992: p. 10-2), from seeking to expand onto Indigenous territories. While the *Royal Proclamation* outlines a process for the extinguishment of Indigenous territories to the Crown, representatives of the Crown have been historically recorded in engaging in unscrupulous behaviours to achieve land surrenders, such as testing the loyalty of First Nations to the Crown or issuing vague threats (Borrows, 1992: p. 322; Borrows, 1997: p. 160; Lawrence, 2002: p. 40). Thus, the Crown, through its colonial governments (or the branches on the Canadian legality tree) have a long history of expanding Crown sovereignty by acting in ways that produce “legal” land surrenders in accordance with the *Royal Proclamation*. For instance, John Borrows (1992) discusses how the Crown (as represented by the Superintendent of Indian Affairs) believed that Borrows’ ancestors held strange views on land use and therefore encouraged them to surrender it to attain an “immediate benefit” rather than “deriv[ing] no advantage from it” (p. 320-321). Borrows (1992) then recounts how the Superintendent resorted to threats to try to persuade a land surrender, by stating that the colonial government would be unable to protect the Band from settlers without a formal surrender (p. 323). This example shows that representatives of the Crown often held anthropocentric Lockean beliefs about cultivating the land and wanted to secure land for settlers, yet they had to also adhere to the extinguishment process instituted by the *Royal Proclamation*. Colonial governments of the British Crown were willing to commit dishonourable actions to induce Indigenous peoples to negotiate land surrenders with the Crown.

This exploration into the Crown’s issuance of the *Royal Proclamation of 1763* and the subsequent violations of the spirit of this foundational document for Canadian constitutionalism reveals that there is an internal struggle within “the Crown” which impacts its relationships with

Indigenous peoples. The Crown, broadly speaking, is responsible for treaty-making with another “legal personality” (i.e., another nation) and title to land could only be acquired for private settlement following a Crown grant (Hogg, 1992: p. 11-2; Slattery, 1987: p.743). In the case of the *Royal Proclamation* and the subsequent *Treaty of Niagara in 1764*, there was an explicit understanding that relationships between the Crown and First Nations were based on peace and respect, a recognition of Indigenous sovereignty and a promise of non-interference in each other’s internal affairs (Borrows, 1997: p. 164). And yet, the people who make up “the Crown”, from individuals, governments and other state institutions, have historically acted in ways that have run contrary to the spirit and intent of the *Royal Proclamation* and *Treaty of Niagara*. Thus, there is an observable discrepancy between what the Crown agrees to through treaties and what the Crown does to permit settler colonialism.

This discrepancy can be partly understood by returning to Mills’ conception of the legality tree. Mills (2019) explains that “the roots both empower and constrain the range of possibility for what the trunk and the levels above it may become” (p. 40). Therefore, the theological creation stories that shaped anthropocentric Lockean ideas, beliefs and attitudes about “proper” and “productive” land use amongst British male settlers during the Enlightenment period would underlie how the Crown, through its colonial governments, would engage with Indigenous peoples. As noted earlier, Borrows (1992) shows how the Crown could not appreciate nor comprehend his ancestors’ traditional uses of the land and so employed bad faith tactics, including the indirect threat of violence, to try to produce a land surrender that would enrich settlers (p. 320-324). This one example illustrates that Crown servants rationalized their violations of the Crown’s own *Royal Proclamation* through popular and ethnocentric interpretations that land must be cultivated into private property in order to be consecrated with

legal status. Moreover, this was a longstanding pattern committed by various governments of the Crown. In her work, Mi'kmaq lawyer and scholar Pamela Palmater (2014) contends that, "The ultimate objective of early Indian policy was to access Indigenous lands and resources and, at the same time, to reduce the government's financial obligations to Indigenous peoples, and their methods were far from benign" (p. 28). The issuing of the *Royal Proclamation* can be reinterpreted as the Crown securing the initial peaceful conditions for settler colonialism. Consequently, the multiple historical violations of both the *Royal Proclamation* and the *Treaty of Niagara* were meant to enlarge Crown sovereignty, produce settlements based on private property and enrich British male settlers. The theological roots thus conditioned how the Crown would ultimately act in its nation-to-nation relationships with Indigenous peoples.

While this analysis can explain why the Crown would eventually lend its support to the colonization of this region by reneging on its commitments in the *Royal Proclamation* and the *Treaty of Niagara*, this may only be a partial explanation for how the Crown, as a branch in this legality tree, conducts itself in its relations with Indigenous peoples. In fact, arguing that the Crown, in its totality, only enables settler colonial attitudes to be acted on may make it difficult to account for the present-day concerns about upholding the constitutional principle of the "honour of the Crown" and why other institutions (or branches) are now committed to reconciliation as a normative political goal. As such, it would be helpful to complicate this picture of "the singular Crown" by recognizing its mystification, divisibility and multiplication through other aspects of Christian theology. This will allow for a more well-rounded and nuanced account of how the Crown, (and the institutions or branches that have historically or more recently emanated from it), govern Indigenous-settler relations, both in the past and in the present-day.

Christlike Conceptions of the Crown

It is necessary to go back further in time, to the late Tudor period and to once again examine how nonrational ideas within Christian theology were borrowed, this time by jurists theorizing “the Crown”. In *The King’s Two Bodies*, Kantorowicz (1957) observes many instances in which English jurists basically plagiarized theological concepts to resolve difficult court cases regarding what the king can do as a private person versus in their capacity as the monarch (p. 7-11). According to Kantorowicz (1957), English jurists regularly imported Christian ideas to contest that the monarch had both a “body natural”, an imperfect physical body destined to die, and a “body politic”, an unseen and immortal body made up of the monarch’s subjects (such as governments) in which the monarch is the head (p. 7-16). The most egregious example of theological thought being reworked to mystify the Crown can be seen with how the Two Natures, an argument put forth at early Church councils to claim that Christ had both a human nature and a divine nature within his sole body, was reproduced by English jurists to explicate that the monarch also had two bodies (Kantorowicz, 1957: p. 16-19). Thus, like Christ, the Crown became divisible, with one body physically existing on earth and the other body being elevated to the heavens.

The creation of the metaphysical body of the Crown has produced many noteworthy effects. First, it established a sense of continuity between monarchs. When one physical body of the Crown inevitably dies, the body politic does not dissolve or disintegrate since a new body is installed as the monarch instantaneously; curiously, this gives a sense that the Crown is somewhat immortal and above the fleshy constraints of life (Kantorowicz, 1957: p. 13). More importantly, it is through this perceived immortality that not only does the Crown exist above the physical bodies of its subjects, but it is simply accepted as always being right and honourable.

For instance, Kantorowicz (1957) notes how in Sir William Blackstone's *Commentaries*, the king is not only conceived as being immortal, but he is also argued to be incapable of doing or thinking anything wrong (p. 4). Similarly, Valverde (2012) observes that the divine and mystical nature of the Crown means that the Crown remains unsullied by the wrongdoings of its servants (p. 7). Thus, the Crown seems to be imagined as existing above the physical bodies of its servants. By being above the flesh, it occupies a Christlike authority in a heavenly plane where it can legally and morally do no wrong because it is, in perpetuity, the arbiter of right.

The mystification of the Crown through Christian theology has resulted in an impenetrable circular reasoning which protects the legitimacy of a settler political community organized around the Crown. Since the metaphysical body of the Crown is inherently honourable, the Crown can never be dishonourable, even though there is a systemic pattern in which the physical bodies of the Crown have enacted genocidal laws and policies meant to eliminate Indigenous peoples. For instance, Palmater (2014) outlines the various strategies implemented to try to eliminate Indigenous peoples across Canada, from the legalized killing of Indigenous peoples through "scalping bounties" instituted by Governor Cornwallis, the use of "biological weapons" wherein the colonial military would provide Indigenous peoples with smallpox blankets, to the creation of the residential school system meant to culturally, if not physically, "kill the Indian in the child" (p. 32-33). This is not an exhaustive list, but these examples undoubtedly show that the various governments and institutions (or branches, to invoke Mills' legality tree) of the Crown have not just acted dishonourably but are responsible for perpetrating widespread and systemic settler colonial violence towards Indigenous peoples. Despite the fact that the Crown has been responsible for genocidal practices and policies, before and after the *Royal Proclamation of 1763* and the *Treaty of Niagara of 1764*, blame is usually

directed at the physical bodies of the Crown (i.e. the servants of the Crown), such as past governments, and not the metaphysical body itself. A statue commemorating Sir John A. MacDonald will be vandalized, toppled, and removed for his role in instituting the residential school system (Draaisma and Ng, 2021), but a “homecoming” tour of the late monarch¹⁶ or her heir apparent (now King Charles III) may spark interest and ambivalence (Ahead of A Royal Tour, 2022), but not necessarily protests (at least in Canada).

The Crown then appears to exist as and represent a series of contradictions within a settler political community, especially when considering the theological roots of the Crown. On the one hand, concepts within Christian theology were regularly transposed into common law by English jurists in the Tudor period to bolster the legitimacy and authority of the Crown, with the ultimate effect being that the Crown was reconceived as immortal and intrinsically Christlike¹⁷. At the same time, these same theological roots, in the form of Christian creation stories, were reinterpreted to make “theo-Lockean¹⁸” arguments supporting the cultivation of land into private

¹⁶ At the time of editing this chapter, Queen Elizabeth II has passed away. It has been very surreal to see the news coverage of her death and the global outpouring of emotion towards her passing by politicians and everyday citizens. This seems to be representative of the “Crown effects” discussed in this section. For instance, she is revered for her grace and commitment to public service, and Prime Minister Justin Trudeau has acknowledged that her 70-year reign was about half the length of Canada’s 155-year history (Mak, 2022). Well, if we want to unpack the Prime Minister’s statement, during her reign the residential school system was fully operational, the Sixties Scoop happened, and many other horrible state actions by Her Majesty’s governments towards Indigenous peoples were commonplace. And yet, she remains untouched by these actions. The host of Canadian Broadcasting Corporation’s (CBC) podcast *Front Burner* even said that she was instrumental for decolonization in Canada and across the world (Poisson, 2022). Thus, state institutions and state actors can be criticized for settler colonialism, but the monarch who lends their authority to this cold monster and gives it a personable touch is praised by many for their gracefulness at the time of their passing.

¹⁷ What is remarkable is how accurate Ernst Kantorowicz’ *The King’s Two Bodies* has been in showing the extent of how Christian theology has mystified the Crown. As per my last footnote, this footnote is written after Queen Elizabeth II has passed away. In the New York Times’ podcast *The Daily*, it opens with a man distraught hearing about her death, in which he explains that he prays to her everyday and that he wanted her to live forever, which is ironic since he does not believe in or pray to a God (Tavernise, 2022). In Vox’s *Today, Explained* podcast, the interviewee describes how the Queen was beloved for “turning [herself] into a quasi-religious symbol of the nation, something that is above politics” (Rameswaram, 2022). These strange, but outward feelings of affection towards her, along with sadness about her death, seem to be the result of the Crown being conflated with Christlike authority and thus above the fleshy constraints of human life.

¹⁸ Rather than continuously refer to the fact that Christian creationism undoubtedly influenced John Locke’s conceptions of private property and sovereignty, a portmanteau of “theological” and “Lockean” may help destabilize

property, in turn rationalizing settler colonialism. It is through “the Crown” that these two theologically informed ideas twist together to result in nonsensical, thorny settler colonial effects. The Crown, as the embodiment of the executive branch of government for a settler political community, engages in treaty-making with First Nations, which signifies that the Crown honourably recognizes the “legal personality” of First Nations political communities and their jurisdictions. The *Treaty of Niagara*, for instance, can be understood as a reaffirmation on the part of the Crown that it must honour its promise of peace, respect and non-interference in the affairs of First Nations. However, the popularity of theo-Lockean conceptions of land use amongst supposedly “modern” private settlers and Crown servants, often meant that the governments and institutions of the Crown (or the branches of British/Canadian constitutionalism) not only acted dishonourably to compel land surrenders but would also institute genocidal laws and policies in order to eliminate Indigenous peoples and access land long after the *Royal Proclamation* and *Treaty of Niagara* were reaffirmed. Still, the metaphysical body of the Crown remains ideologically right and honourable, despite how in reality the physical bodies of the Crown have acted dishonourably by permitting and partaking in the worst excesses of settler colonialism time and time again. This doublethink, that the Crown is honourable even when its dishonourable, will go on to affect decision-making within state institutions whose vested authority comes from the Crown and must somehow make the Crown’s honour real in the present-day. This will be explored in the following section.

Before moving on to how the Crown’s honour is made tangible, there is one other point about the Crown’s two bodies that needs to be addressed (as this will be expanded on in the next

this idea that liberal philosophers were wholly secular and can instead help to emphasize that Christian theology is intricately tied into Lockean arguments of land use.

chapter). Thus far, the discussion around the mystification of the Crown has centred on how Christian theological concepts were used by English jurists to successfully divide the Crown into a “body natural” and a “body politic”. While this may be true, it does not fully capture the further divisibility and multiplication of “the Crown” in the present-day. When the *Royal Proclamation* and *Treaty of Niagara* were declared, the parties included various First Nations and Crown servants representing the British Crown. As explained by Williams (2019), the Crown was believed to be indivisible under the British Empire (p. 48). However, the devolution from an Empire to the Commonwealth through the *Balfour Declaration 1926* and the *Statute of Westminster 1931* meant that Commonwealth nations like Canada had legislative authority over its affairs and thus its own separate and distinct legal personality, or a “Canadian Crown” (Smith, McCreery & Shanks, 2022: p. 15; Williams, 2019: p. 48). The late Queen, and now the new King, therefore, has one “body natural” but multiple “body politics” for the Commonwealth nations in which he remains the monarch. However, in Canada, it is even more complex, as each province has its own Crown represented by a Lieutenant Governor whose role has greatly expanded the presence of the Crown within the provinces (Shore, 2019: p. 8; Smith, McCreery & Shanks, 2022: p. 83-85). To speak of the Crown as only having two bodies is now a bit of a misnomer, especially with recent developments in Canadian constitutionalism.

New Branches, Old Honour: The Wrong March Through The Institutions?

As explored in the previous section, “the Crown” is strange and nonsensical, borrowing from Christian theology in order to mystify itself as inherently Christlike, despite its undeniable record of its institutions and servants enacting settler colonial violence towards Indigenous peoples. Many federal and provincial governments in Canada have acted under the authority of the Crown to institute genocidal laws and policies meant to eliminate Indigenous peoples. In fact,

creating such blatantly genocidal laws and policies were instrumental in establishing Canada as a new nation-state. The creation of the residential school system, under “The Right Honourable” Sir John A. MacDonald’s government, was meant to assimilate Indigenous children into Euro-Canadian “civilization” so that settling European immigrants onto unceded Indigenous territories in the West was more easily accomplished, especially since First Nations and Métis peoples were actively resisting settler colonialism (Ishiguro, 2016: p. 128-133; Murray, 2017: p. 753-754). Physical and sexual violence by religious authorities was rampant within these state institutions, with many governments often disregarding the welfare of the Indigenous children in residential schools, if not trying to cover up what was going on (Bourgeois, 2018: p. 73-74; Murray, 2017: p. 763-764; Palmater, 2014: p. 33). Thus, the federal government, as an institution representing the Crown, sought to expand Crown sovereignty through an assimilatory policy that legally sanctioned the kidnapping of Indigenous children and then acted wilfully blind when violence and wrongdoing was made apparent in these schools.

What is important to analyze now is how new branches of Canadian constitutionalism can emerge and the potential for these new branches to generate or unmake law. As explained by Mills (2019), the branches of a legality tree refer to “legal traditions”, which are the processes and institutions used to create, modify and destroy law (p. 62). Mills (2019) also reminds us that these branches are empowered and constrained by the constitutional order from which they emerge (p. 62). Curiously, while the Crown’s mysticism often meant that the metaphysical body of the Crown remained honourable even though the Crown’s governments, institutions and other “branches” were enacting laws and policies in accordance with settler desires to cultivate land into private property, it is now the Crown’s mysticism which can allow for the unmaking of some of these laws by the earlier branches of Canadian constitutionalism. The next part of this analysis

of Canadian constitutionalism will focus on how the Supreme Court of Canada, the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission sought to change law through indeterminate concepts of “honour” and “reconciliation” and the limitations each branch on this legality tree faced.

The Supreme Court of Canada, Reconciliation, and the Honour of the Crown

The Supreme Court of Canada is not exactly a new branch in Canadian constitutionalism given that it was created in 1875. However, as a judicial institution which has assumed the power to review the constitutional validity of legislation (Hogg, 1992: p. 5-21) and which regularly grants appeals from lower courts to hear and determine the constitutionality of a government’s law or action, the importance of the Supreme Court within Canadian constitutionalism cannot be overstated¹⁹. It is through the Supreme Court that the constitutionality of a law is affirmed or rejected with nine justices deciding on the case. Oftentimes, these Supreme Court decisions lead to new constitutional principles and legal doctrines which can challenge and undermine popular legal reasoning and force governments to act lawfully or rewrite their laws. The ability for the Supreme Court to create new authoritative constitutional principles that can evaluate, uphold or unmake laws seems to come from the doctrine of *stare decisis*. According to the doctrine of *stare*

¹⁹ The Supreme Court’s judicial authority can be traced back to the evolution of the courts within British constitutionalism. As noted in a previous footnote, the courts gained their autonomy from the Crown over a few centuries, and there were many conflicts between the prevailing monarch and the courts. As stated by Girard, Phillips & Brown (2018), “Tudor and Stuart monarchs were not great fans of the independence of the judiciary in any case. Their theory was that judges, as royal appointees, should not be quick to decide against the interests of the Crown” (p. 75). Additionally, the Stuarts did not believe that kings should be subject to the rule of law (Girard, Phillips & Brown, 2018: p. 75). Judges could easily be dismissed for going against the Crown’s interests until the Glorious Revolution in 1688 and the passage of the *Act of Settlement, 1701* (Girard, Phillips & Brown, 2018: p. 75-76). British courts thus gained their judicial independence from the Crown and emerged as a branch within British constitutionalism with greater authority. This reverberated in the British colonies in North America, as the Glorious Revolution confirmed “the rule of law and defeat of arbitrary royal authority”, although this did not mean that these effects were immediate, as colonial judges could still be dismissed by the Crown (Girard, Phillips & Brown, 2018: p. 76). However, it is likely that the Supreme Court’s power to interpret the constitutionality of statutes or to make rulings against the Crown would not have become commonplace if it were not for this historical development in British constitutionalism in which the Crown’s authority was curtailed.

decisis, judicial decisions of the present must be justified and based on judicial decisions of the past; in addition, lower courts are obliged to make their decisions based on precedents of higher courts (Bell and Asch, 1997: p. 39). As the highest court in Canada, the Supreme Court's judicial decision-making must trickle down to how lower courts across the country make their decisions in accordance with *stare decisis*. At the same time that *stare decisis* promotes the superiority of the Supreme Court in establishing precedents and thus uniformity between courts, this doctrine can also allow for change. As argued by Bell and Asch (1997), the applicability of a precedent depends on if the present case is determined to be similar to past cases (p. 40). When cases are successfully argued as not being alike, precedent may not apply, thereby resulting in law evolving and new precedents taking shape. Thus, the Supreme Court has the potential to change or unmake laws through new precedents being set.

The Supreme Court, however, is not a decolonizing institution within Canadian constitutionalism, as it is unwilling to challenge the assumption of Crown sovereignty and the subordination of Indigenous peoples to the Crown (as I will discuss below). At most, it exists as an imperfect avenue to challenge settler colonial authority, but not settler colonialism itself. That is, through the doctrine of *stare decisis*, the Supreme Court might not recognize two cases involving Indigenous peoples as being alike, which can result in new constitutional interpretations and precedents being created that lower courts must then adopt and apply in their own judicial decisions. These new constitutional doctrines, legal tests and precedents may even challenge and lead to the removal of laws which adversely affect Indigenous peoples. However, since the Supreme Court is an old institution in which decolonization was never its central goal, more often than not, Supreme Court decisions may lack clarity and guidance that can result in settler colonial attitudes, beliefs, norms and values being reinforced. For example, in

Delgamuukw v. British Columbia, the Supreme Court modernized the rules in 1997 so that Indigenous knowledges and forms of oral evidence, such as the Wet'suwet'en *kungax* (a spiritual song and/or dance which ties them to their land), could be presented in courts without trial judges ethnocentrically devaluing it as myths or non-evidence (Valverde, 2012: p. 12). However, as observed by Valverde (2012), this change to what can count as evidence did not clarify to trial judges when Indigenous forms of evidence outweigh the legal arguments of government lawyers using written historical records (p. 12-13). This indeterminacy means that settler beliefs, which have historically placed Indigenous laws and oral traditions at the bottom of Canada's legal structure for not being codified (Borrows, 2016: p. 33-34; Borrows, 2010: p. 13) and thus "modern" can continue to seep into judicial decisions which privilege settler forms of evidence. For instance, in the Ontario Superior Court of Justice case *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation* in 2006, the presiding Justice minimized and ignored the oral evidence given by Indigenous witnesses of Treaty #9 in favour of the technical language found in the treaty to make his ruling (Ariss & Cutfeet, 2011: p. 31-32). Thus, the Supreme Court can sometimes promote changes that can legally benefit Indigenous peoples, but the Supreme Court, along with the lower courts in general, still exist as contested institutional spaces where settler colonial attitudes, beliefs and values can overrule the application of Indigenous laws and trivialize Indigenous knowledges and forms of evidence.

The Supreme Court is therefore a branch within the Canadian legality tree that has the potential to address and unmake laws by establishing new constitutional principles, legal doctrines, tests and precedents, but it would be a fallacy to assume that the Supreme Court is actively working towards decolonizing Canadian law. It might influence the shape of settler colonialism, but it is institutionally committed to reifying the perceived legitimacy of settler

colonialism. This can be observed over the past thirty years, as the Supreme Court has tried to chart a third way in its attempt to clarify Aboriginal rights and the Crown's fiduciary duty. What has arisen is a messy introduction and evolution of concepts and doctrines such as "reconciliation" or the "honour of the Crown" that are theoretically meant to address the constitutional legacies of settler colonialism. Interestingly, these concepts and doctrines draw on the Crown's mysticism that the metaphysical body of the Crown is always honourable. This has resulted in peculiar effects which have contributed to the evolution of constitutional law within Canadian constitutionalism, in which settler colonial governance is often recognized as illegitimate yet the "original settler sin" of Crown sovereignty is continuously believed to legitimately asserted over Indigenous lands.

This contradiction can first be seen when the Supreme Court introduced the concept of reconciliation in *R. v. Sparrow* in 1990. In this case, the Supreme Court had unanimously ruled that the infringement of Aboriginal rights as found in Section 35 of the *Constitution Act, 1982* required the reconciliation of the federal government's legislative power with the federal government's duty to Indigenous peoples (McNeil, 2003: p. 2). As such, the Supreme Court created the *Sparrow* test, in which the federal government would have to demonstrate that its infringement of Aboriginal rights was not only a valid legislative objective but respected the Crown's fiduciary obligations to Indigenous peoples (McNeil, 2003: p. 2). Establishing the *Sparrow* test was therefore a mechanism that the courts could use to evaluate if federal legislation benefitted Indigenous peoples, despite the infringement on Aboriginal rights. On the surface, the Supreme Court's first usage of "reconciliation" in the context of Aboriginal rights seems to suggest that the federal government cannot just ignore Aboriginal rights without cause or justification and if it does, its legislation can be deemed invalid and must be revised. In fact,

the judicial reasoning within *R. v. Sparrow* and the creation of the *Sparrow* test seems to rest on the Crown's mysticism.

As noted earlier, Christian theological concepts, like Christ's Two Natures, were regularly used by early English jurists to bolster the legitimacy of the Crown as always having a metaphysical and honourable body that is above its physical bodies. The result is that the metaphysical body of the Crown can be used to sanction the Crown's physical bodies to be honourable. This can be seen in the decision for *R. v. Sparrow*, as "the Crown" is spoken about metaphysically within Chief Justice Dickson and Justice La Forest's reasoning. For instance, the decision for *R. v. Sparrow* (1990) reads, "The test for justification requires that a legislative objective must be attained in such a way as to uphold the honour of the Crown and be in keeping with the unique contemporary relationship, grounded in history and policy, between the Crown and Canada's aboriginal peoples." The Crown's divine, metaphysical and always honourable body is thus summoned by Chief Justice Dickson and Justice La Forest to emphasize that the federal government must have legislative objectives which reflect the Crown's honourableness towards Indigenous peoples. Thus, the federal government, or the physical bodies of the Crown, must create legislation that benefits Indigenous peoples despite the infringement of Aboriginal rights. The *Sparrow* test therefore allowed for the unmaking of law to happen if its criteria of reconciliation could not be met.

However, *R. v. Sparrow* was not necessarily a benevolent ruling. While it did produce an early test that could be used to delimit the federal government's legislative power, its underlying premise consequently reified the legitimacy of settler colonialism. Several court cases in the 1990s, including *R. v. Sparrow* (which would later be cited in *Delgamuukw*), are based on this

ethnocentric view that the Crown was able to assert sovereignty over Indigenous lands,²⁰ including lands not surrendered, because Indigenous peoples did not properly inhabit the land leading to a so-called “jurisdictional vacuum” (Asch & Macklem, 1991: p. 507; Asch & Zlotkin, 1997: p. 222; Bell & Asch, 1997: p. 61). By asserting that the Crown held sovereignty and thus had to act in the interests of Indigenous peoples, the Crown had a self-imposed fiduciary duty to act honourably (Valverde, 2015: p. 133). Although the Supreme Court may have produced a test meant to curtail unbridled federal power and to compel governments to act in alignment with the metaphysical body of the Crown by carrying out its fiduciary obligations, the Supreme Court nevertheless resorted back to this notion that Indigenous peoples did not properly use the land to explain why the Crown could assert sovereignty in the first place. The legal concept of reconciliation, as established in *R. v. Sparrow*, therefore reinforces the long-held notion that the Crown ultimately asserted and retains its sovereignty over Indigenous lands, but that its assertion of sovereignty requires that its governments render some sort of justification for why Aboriginal rights are infringed upon, otherwise its laws can be unmade and compensation would have to be provided.

The Supreme Court’s usage of reconciliation was thus problematic from the outset, as it superimposed Crown sovereignty on Indigenous territories despite recognizing that the federal government must uphold its fiduciary obligations towards Indigenous peoples. While it seems that the *Sparrow* test may have had the potential to ascertain explanations for why Aboriginal rights were being infringed upon and may have made it possible for legislation to be revised, the

²⁰ In *R. v. Sparrow* (1990), it reads, “It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition to which the Royal Proclamation of 1763 bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown”. Thus, the Supreme Court recognized that Indigenous peoples had a right to occupy their lands, but that the Crown ultimately held sovereignty over these lands.

evolution of this concept in future cases would make the possibility of evaluating and revising Canadian law less likely. In a series of 1996 cases informally known as the “*Van der Peet* trilogy”, the Supreme Court produced a more restrictive definition of reconciliation. In *R. v. Van der Peet*, the Supreme Court had to grapple with what Chief Justice Lamer called “the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown” (Barsh & Henderson, 1997: p. 997; McNeil, 2003: p. 5). Similar to *R. v. Sparrow*, the assertion of Crown sovereignty is just a fact, but instead of Crown sovereignty meaning that federal power must be reconciled with the Crown’s fiduciary duty, reconciliation is now meant to convey that Indigenous peoples must fit within Crown sovereignty. To that end, the Supreme Court determined in *R. v. Van der Peet* that Aboriginal rights under Section 35(1) of the *Constitution Act, 1982* could only protect precolonial Indigenous practices that were central and significant to an Indigenous culture and not a response to European influences (Barsh & Henderson, 1997: p. 997-998). This “naïve imperialism” means that authority resides in the courts to determine the validity of Indigenous cultures and if these practices can be reconciled with Crown sovereignty (Barsh & Henderson, 1997: p. 1002). The Supreme Court’s rearticulation of reconciliation thus limits what Indigenous practices can be protected under Section 35 of the constitution, thereby reproducing the legal argument that Crown sovereignty exists over Indigenous peoples. The courts ultimately have the authority to determine the scope of Aboriginal rights and Indigenous cultural practices failing to meet this new criterion of reconciliation could technically be subject to the Crown’s laws and defined as illegal.

The Supreme Court produced another decision within the *Van der Peet* trilogy that is important to note since it further allowed for the erosion of Aboriginal rights and the inability to unmake settler colonial laws under the guise of reconciliation. In *R. v. Gladstone*, Chief Justice

Lamer applied the *Sparrow* test and expanded its criteria regarding what legislative objectives can infringe upon Aboriginal rights (McNeil, 2003: p. 5). The Supreme Court's ruling in *R. v. Gladstone* further narrowed Aboriginal rights by indicating that reconciliation could require the infringement of these rights for the vague economic interests of Canadians (McNeil, 2003: p. 8-9). These Supreme Court decisions set precedents in which Aboriginal rights are limited in scope and applicability as they only protect precolonial practices, and even those rights that are constitutionally protected can be infringed upon. What this appears to mean is that the Supreme Court's legal concept of reconciliation has the potential to declare legislation invalid, but its interpretation of reconciliation can also allow for the expansion of economic exploitation on Indigenous lands through the infringement of Aboriginal rights.

Throughout the early to mid-2000s, the Supreme Court would continue to evolve its definition of reconciliation in relation to the "honour of the Crown" doctrine. In *Haida Nation v. British Columbia* in 2004, the Supreme Court set the precedent that where fiduciary duty does not exist, the "honour of the Crown" mandated that governments still had a duty to consult and accommodate the interests of Indigenous peoples (Stanton, 2017: p. 29; Valverde, 2015: p. 141). Furthermore, in *Haida Nation*, the process of reconciliation was seen to emerge from the "honour of the Crown" (Craft, 2019: p. 70; Stanton, 2017: p. 30). The honour of the Crown doctrine obliges governments of the Crown to carry out the Crown's duties towards Indigenous peoples honourably, thereby establishing a frame of reference for how governments should act. Through this doctrine, there is a possibility to unmake laws, or at least force governments to be honourable in its dealings with Indigenous peoples.

The honour of the Crown, however, is a strange doctrine with origins that cannot easily be traced back to modern common law. In her assessment of *Haida Nation*, Valverde (2012)

observes how the “historical roots” of the honour of the Crown are mentioned in the case but never exactly pinpointed (p. 8). In fact, amongst legal scholars, there does not seem to be an overarching consensus of where the honour of the Crown stems from. In his work, Slattery (2005) summarizes that there are three theories about the origins of the Crown’s duty to act honourably: 1) the Royal Proclamation, in which the Crown assumed this duty once it asserted sovereignty and placed Indigenous peoples under the Crown’s protection 2) a pre-existing legal responsibility under imperial law (predating the Royal Proclamation) in which claims of sovereignty required respecting basic rights and 3) Section 35 of the *Constitution Act, 1982* (p. 443-444). These three theories acknowledge that the Crown’s duty to act honourably exists, but their differing views of when the Crown had to start showing honourableness in its interactions with Indigenous peoples reveals that the historicity of this doctrine is truly unknown. Some scholars have even noted that the notion of honour can be traced as far back to medieval times, that it relates to the mysticism of the Crown through Christian theology and has now been recycled to resolve injustices produced by settler colonialism that positive law cannot address (McMorrow, 2018: p. 317-320; Valverde, 2015: p. 127). Although the exact origins of this doctrine remain a mystery, what can be said is that appealing to an old and vague notion of “honour” in the present-day can lead to the revision of laws, result in a shift in direction for policymaking and can even result in other irregular effects not associated with positive law.

To understand why, it is important to remember how a central feature within Canadian constitutionalism is that the Crown, thanks to its theological roots, has at least two bodies. Through *Haida Nation*, the honour of the Crown is spoken as a matter of fact. The Supreme Court resorts to a tautological reasoning wherein the metaphysical, Christlike body of the Crown is always honourable because the Crown can never be dishonourable despite the history of its

Crown servants suggesting otherwise (Valverde, 2012: p. 7). While there is an implicit danger with ascribing the Crown with a Christlike honourableness since this can imply that the Crown can do no wrong and cannot be held accountable, the opposite seems to sometimes occur. For instance, in *Tsleil-Waututh Nation v. Canada*, the Federal Court of Appeal found that the federal government did not consult with the First Nations affected by the Trans Mountain pipeline expansion, thus not demonstrating the honour of the Crown and resulting in the expansion being quashed (McMorrow, 2018: p. 327). Calling into question the Crown's honourableness may allow for the evaluation and possible removal of laws which are successfully argued as violating the Crown's honour.

This is not to say that the decisions based on the honour of the Crown doctrine necessarily favour the interests of Indigenous peoples. While the Supreme Court was setting different precedents for reconciliation through the honour of the Crown, it did not automatically result in Indigenous peoples being able to hold governments accountable. McMorrow (2018), for example, lists the numerous times when the honour of the Crown did not work in the favour of Indigenous peoples (p. 329-333). Moreover, the honour of the Crown reinforces the same settler colonial attitudes that informed previous Supreme Court precedents. That is, it assumes that Crown sovereignty was just asserted over Indigenous territories and does not attempt to contest or dispel this notion. In *Haida Nation*, Chief Justice McLachlin's judgement states that reconciliation and the honour of the Crown stem from the Crown's assertion of sovereignty over Indigenous peoples (Stanton, 2017: p. 30). Rather than challenging the original sin of settler colonialism, the Supreme Court reinforces the Crown's paternalistic and flimsy assertion of sovereignty as a legal fact through these seemingly progressive legal concepts and precedents.

What does this all mean? Well, it seems that as an important branch on the Canadian legality tree, the Supreme Court has the authority to create concepts, doctrines and precedents which rely on the Crown's mystification of having an unquestionably honourable and Christlike body that exists outside of normal space-time. Such a mystification can allow for Indigenous peoples to hold the physical bodies of the Crown, or other branches on the Canadian legality tree (like the federal government), accountable through Supreme Court decisions and precedents on reconciliation and the honour of the Crown. The Supreme Court can therefore function to undo settler colonial laws. However, this is not an easy, straightforward or automatic process. The Supreme Court can lead to reinterpretations of reconciliation and honour which can result in divergent precedents being set on the applicability and protection of Aboriginal rights. Moreover, the Supreme Court's articulation of reconciliation and the honour of the Crown does not equate to an easy legal win for Indigenous appellants. In fact, the basis of these concepts can reinforce the theo-Lockean legal fiction that the Crown was able to assert sovereignty over Indigenous peoples and territories because Indigenous peoples did not settle land or form political societies according to Eurocentric standards. Thus, the Supreme Court may undo laws which adversely impact Indigenous peoples through its doctrines, legal tests, legal concepts and new precedents on reconciliation and the honour of the Crown, but it does not challenge the settler colonial attitudes and beliefs that underpinned the Crown's assertion of sovereignty in the first place.

The Royal Commission on Aboriginal Peoples and Reconciliation

The Supreme Court, while a powerful branch that can evaluate and either remove or reaffirm settler colonial laws, is not the only branch stemming from Canadian constitutionalism that can influence constitutional law through vague concepts such as "honour" and "reconciliation". In 1991, the Royal Commission on Aboriginal Peoples (RCAP) was launched

by the federal government to investigate the relationship between Indigenous peoples and the government, write a report and propose solutions that would produce reconciliation and foster a renewed relationship between Indigenous peoples and settler Canadians. Interestingly, the reason for its far-reaching mandate was due to the influence of a familiar state actor. Brian Dickson, the recently retired Chief Justice, was appointed by then Prime Minister Brian Mulroney to act as a special representative and determine the mandate and scope of the commission (Hughes, 2012: p. 105). According to Hughes (2012), Indigenous leaders convinced Dickson to give the new commission a broad mandate of investigating all relevant issues affecting Indigenous peoples (p. 105-106). In addition, RCAP was granted subpoena powers which would make it possible to complete this massive undertaking into studying Indigenous health, education, governance, and many other socio-economic issues (Turner, 2012: p. 102). With its large mandate, subpoena powers and ability to assess law and policy in order to provide solutions, RCAP can be interpreted as a branch within Canadian constitutionalism that had the potential to address the effects of settler colonialism by recommending the reformation or removal of laws and policies.

For several years, RCAP worked to research the issues negatively impacting Indigenous peoples. The seven-member commission, made up of four Indigenous and three non-Indigenous commissioners were selected by Dickson, who wanted the commission to have an Indigenous majority with diverse backgrounds (Hughes, 2012: p. 116). In her work, Hughes (2012) suggests that the commission may have been seen as fair which resulted in a high number of Indigenous peoples testifying, not just because of how the panel was representative but because the commissioners created “hearing modes” that were comfortable for participants (p. 117). Apparently, one of the first tasks that the commission undertook was to learn how to approach Indigenous communities and convince them that RCAP was serious about producing genuinely

cooperative research at every stage of the process, which would reflect their oral traditions (Chamberlin, 1997: p. 16-17). This goal of making the commission accessible and approachable seemed to have been accomplished, as many Indigenous peoples were able to participate and share their experiences at public hearings over 178 days and within 96 communities, which produced an extensive archive of 20,000 pages of documents (Coulthard, 2014: p. 119; Turner, 2012: p. 102). Clearly, RCAP was successful in inviting Indigenous peoples to participate within its research process, which was crucial if it was going to be able to write about the relationship between Indigenous peoples and the state, along with the numerous issues negatively affecting Indigenous peoples.

Creating appropriate hearing modes to encourage many Indigenous communities to participate in the research process was just the first step for RCAP. The other major task it had was to take these oral testimonies and formulate a report in which it would explain the troubled relationships between Indigenous peoples and Canadian society and propose legal and policy solutions that would theoretically improve the lives of Indigenous peoples. To that end, RCAP produced an impressive five-volume final report in November 1996 that unpacked the historical relationship between Indigenous peoples and the Crown, the multiple systemic issues affecting Indigenous peoples due to colonialism, and the fundamental reforms needed for transforming these relationships. It is also within its final report that RCAP produces its own state-led discourse of reconciliation to foreground its assessment of Indigenous-settler relations along with its hundreds of recommendations. Early in the first volume, it states that for the process of reconciliation to begin, the Canadian state must acknowledge and express deep regret for past spiritual, cultural, economic, and physical violence and publicly promise non-repetition (RCAP, 1996a: p. 17). At the same time, the commission calls upon Indigenous peoples to forgive settler

society to free themselves of the anger, fear and other negative emotions that hinder positive pursuits (RCAP, 1996a: p. 17).

There is much to be said about how RCAP's early use of reconciliation in its final report is problematic and can embolden a Canadian constitutional order that continues to colonize Indigenous constitutional orders. For instance, its suggestion that reconciliation can be a historic break which can herald in a new era of positive relationships between Indigenous peoples and settler Canadians implies that settler colonialism is firmly in the past. In his book, Coulthard (2014) warns that the fabrication that Canada only has a colonial past, and no colonial present, means that the state may not be mandated to fundamentally change its current policies that adversely harm Indigenous communities (p. 121). Reconciliation can therefore veil the present realities of settler colonialism and the state's actions. Moreover, there is something equally troubling about garnering forgiveness from Indigenous peoples. First, forgiveness is closely tied to Christianity, especially Christian uses of reconciliation (Garneau, 2016: p. 23-24; Wylie, 2017: p. 608). Not only does this show that the state is continuing to borrow from theological ideas to address Indigenous-settler relations, but it is also once again questionable if this desire to elicit forgiveness from Indigenous peoples is at all appropriate. Second, this discursive association between reconciliation, forgiveness and healing can pacify Indigenous resistance to settler colonialism. As mentioned by Coulthard (2014), RCAP's focus on healing negative emotions has translated into state policies that are concerned with healing Indigenous peoples, when often these negative emotions can lead to productive organizing amongst Indigenous peoples that can challenge and generate serious state responses (p. 120-121). That is, "what is treated in the Canadian discourse of reconciliation as an unhealthy and debilitating incapacity to forgive and move on is actually our sign of our *critical consciousness*, of our sense of justice and injustice,

and of our awareness and unwillingness to *reconcile* ourselves with a structural and symbolic violence that is still very much present in our lives” (Coulthard, 2014: p. 126, emphasis in original). RCAP’s support for reconciliation can thus pacify Indigenous peoples and distract from settler colonialism, which can allow for settler colonial laws and policies that harm Indigenous peoples and marginalize Indigenous constitutional orders to continue unabated.

However, at the same time that RCAP problematically instructs Indigenous peoples to heal and forgive for reconciliation, RCAP does utilize reconciliation discourses throughout its multi-volume final report to argue for implementing substantive constitutional changes. For instance, *Volume 5 Renewal: A Twenty-Year Commitment* states that:

The preamble should make clear the foundational principles of that new relationship. These include, above all, recognition that Aboriginal peoples have a right to fashion their own destiny and control their own governments, lands and resources. They constitute nations, with an inherent right of self-government. The federal Crown should undertake to deal with them as such. This would pave the way for genuine reconciliation and enable Aboriginal people to embrace with confidence dual citizenship in an Aboriginal nation and in Canada. (RCAP, 1996c: p. 5).

Thus, for RCAP, reconciliation does require that the federal government, acting under the authority of the Crown, recognize and respect that Indigenous peoples have control over their territories and have an inherent right of self-government. This is nowhere more apparent in RCAP’s discussion of how upholding or renewing the treaties between Indigenous peoples and the Crown is aligned with its version of reconciliation. For example, in *Volume 2 Restructuring the Relationship*, RCAP (1996b) states that, “It is the treaty relationship that will establish a genuine reconciliation between Aboriginal peoples and other Canadians, based on the principles of mutual respect and sharing” (p. 657). Perhaps unsurprisingly, RCAP’s (1996c) recommendation 2.2.2 is straightforwardly that, “The parties implement the historical treaties from the perspective of both justice and reconciliation” (p. 137). Thus, reconciliation is not just

simply equated with healing in RCAP's final report, as the reformation or removal of Canadian laws and the upholding or renewing of the historical treaties between the Crown and Indigenous peoples is also pertinent for RCAP's vision of reconciliation.

In this capacity, RCAP can be interpreted as a short branch on the Canadian legality tree which had the institutional authority to assess laws and provide legal recommendations for a Canadian constitutional order. Remarkably, RCAP sometimes suggests these constitutional reforms by not just referring to reconciliation, but by invoking the honour of the Crown, several years before the Supreme Court does in its 2004 decision in *Haida Nation*. For instance, in *Volume 1 Looking Back, Looking Forward*, RCAP (1996a) explains that historical treaty-making between the Crown and Indigenous nations involved representatives of the Crown pledging to uphold the honour of the Crown (p. 121). Interestingly, like the Supreme Court, RCAP also relies on the Crown's mysticism that its metaphysical and Christlike body is always honourable even when its physical bodies have not been in order to rationalize its recommendations. For example, in *Volume 2 Restructuring the Relationship*, RCAP (1996b) opines that, "Treaties need to become a central part of our national identity and mythology" before succinctly stating that, "The fulfilment of the spirit and intent of the treaties is a fundamental test of the honour of the Crown and of Canada" (p. 16). By appealing to the honour of the Crown, RCAP summoned the metaphysical body of the Crown to compel the Crown's governments to act honourably by both remembering and adhering to these historical and longstanding treaties.

By explicating the historical importance of the treaties, RCAP's discourse of reconciliation contrasts with how the Supreme Court discursively constructed reconciliation in the *Van der Peet* trilogy in 1996. Whereas the Supreme Court held that reconciliation meant the curtailment of Aboriginal rights found in Section 35 of the *Constitution Act*, RCAP took the

opposite view. In *Volume 1 Looking Forward, Looking Back*, RCAP (1996a) states, “We have come to the conclusion that the inherent right of self-government is one of the ‘existing Aboriginal and treaty rights’ recognized and affirmed by section 35 of the *Constitution Act, 1982*” (p. 647). Thus, not only does RCAP’s final report call upon the federal government to remember the treaty relationships between the Crown and Indigenous peoples and to implement the treaties for reconciliation, but the report concludes that the inherent right of self-government is protected under Section 35. Reconciliation, according to RCAP, seems to involve the recognition, implementation and preservation of Aboriginal rights within Section 35 of the *Constitution Act*, which clashes with how the Supreme Court has sought to delimit Aboriginal rights for reconciliation, despite its Justices being acutely aware of how RCAP defines reconciliation (Stanton, 2017: p. 28; Turner, 2012: p. 103-104). Curiously, this means that in 1996, these two state-led discourses were in opposition, with RCAP’s more expansive view of what reconciliation entails being ignored within Supreme Court precedents wherein reconciliation is equated with reconciling Indigenous peoples to the Crown’s assertion of sovereignty.

Nevertheless, like the Supreme Court, RCAP did not exist as a radical state institution within Canadian constitutionalism that could fundamentally unravel or effectively dismantle settler colonialism. Although RCAP proposed hundreds of recommendations which would theoretically produce a renewed relationship, the commission could only try to convince the federal government (now under Prime Minister Jean Chrétien) to honourably change its laws and policies regarding Indigenous peoples. In fact, RCAP’s final report was characterized as “dead on arrival” while the federal government’s response *Gathering Strength* was criticized for being unwilling to institute the necessary policies needed (Coulthard, 2014: p. 121-122; Ladner, 2001:

p. 241). For instance, Coulthard (2014) points out how the federal government's response narrowly focused on producing reconciliation through healing Indigenous peoples by funding the Aboriginal Healing Foundation, rather than more meaningfully recognizing Indigenous political authorities or redistributing land and resources to Indigenous communities (p. 121-122). RCAP may have had the expansive mandate and subpoena powers required to investigate all issues affecting Indigenous peoples alongside the ability to put forth thoughtful recommendations based on reconciliation. Unfortunately, all this commission could do was try to convince the federal government, the branch within Canadian constitutionalism that can systemically reform and remove settler colonial laws and policies, to implement its recommendations. The federal government, however, seemed to prefer maintaining the status quo by selectively engaging with RCAP's discourse of reconciliation, as healing initiatives were funded while implementing treaties were not considered.

RCAP's limited influence on the federal government is emblematic of the internal discord between the Crown's supposed honourableness and the institutions and servants that act dishonourably under the authority of the Crown, as noted earlier in this chapter. RCAP's insightful final report marked years of serious collaborative research and within various recommendations in *Volume 5 Renewal: A Twenty-Year Commitment*, the report calls upon governments to act honourably and commit to its version of reconciliation. To give another example, it recommended the creation of an Aboriginal Peoples Review Commission which would have had the institutional mandate to track the progress being made "by governments to honour and implement existing treaties" (RCAP, 1996c: p. 18). Despite once again invoking the Crown's honour to induce the government to comply with longstanding treaties with Indigenous peoples, the federal government did not implement this recommendation and ignored most of

RCAP's other hundreds of recommendations. In fact, the government's official response to RCAP's final report is symbolic of the dichotomy between the Crown's honour and the federal government's lack of it. In 1998, a lengthy period of time since the final report was released, then Minister of Indian and Northern Affairs Jane Stewart tearfully delivered the government's *Statement of Reconciliation* at a lunchtime ceremony where Prime Minister Jean Chrétien was noticeably absent (Lightfoot, 2015: p. 30; Murphy, 2004: p. 160; Niezen, 2013: p. 34). In terms of the "apology", the government acknowledged past harms from residential schools, expressed regret and promised non-repetition but did not officially apologize for having created this genocidal policy (Lightfoot, 2015: p. 30; Niezen, 2013: p. 34-35). While the *Statement of Reconciliation* may have been given by the Minister with remorsefulness and sincerity, the Prime Minister's callous truancy and the non-apologetic statement can be interpreted that even when the Crown's metaphysical honour is called upon, the government can be slow to respond and even dismissive. Such a cavalier response to RCAP's final report reflects how old settler colonial attitudes towards Indigenous peoples are deeply entrenched within Canadian liberal constitutionalism²¹.

The Truth and Reconciliation Commission of Canada

The final branch within a Canadian legality tree that is worth exploring is the Truth and Reconciliation Commission (TRC). The TRC was launched in 2008 following the Indian Residential Schools Settlement Agreement (IRSSA) with the federal government in 2005, which

²¹ Although RCAP had a limited impact on the federal government, some of its ideas and recommendations for reconciliation would eventually have an effect on how the Government of Ontario would understand and engage with reconciliation. I will return to RCAP and how its version of reconciliation was defined in future chapters and argue that this affected the development of resource revenue sharing agreements in Ontario. For now, it is important to recognize how RCAP (as a branch within a Canadian legality tree) also borrowed from Christian theology and myths within Canadian constitutionalism in its attempt to change Indigenous-settler relations. This idea will also be returned to in future chapters to demonstrate how Indigenous actors used discursive strategies, like invoking the metaphysical body of the Crown, to call for resource revenue sharing.

was itself the result of survivors litigating against the federal government. According to Schedule N of the IRSSA, the TRC had many overarching goals, which included creating a culturally safe space to encourage survivors to share their experiences in residential schools, completing a publicly accessible historical record of the residential school system and its legacy, educating the Canadian public about the residential school system and writing a report for the federal government which included recommendations. After seven years, the TRC published its multi-volume final report in December 2015, which extensively documented the various and overlapping harms inflicted on Indigenous children and communities by the residential school system. The final report also explored the legacy of these institutions for Indigenous peoples and provided 94 Calls to Action directed at governments and non-government agencies, institutions, organizations, and industries across Canada. Throughout its final report, the TRC repeatedly discussed reconciliation and how it could be achieved.

In this sense, the TRC is one of the more recent state commissions which had the institutional authority to assess Indigenous-settler relations and provide recommendations that could theoretically materialize its own distinct version of reconciliation. However, in contrast to the Supreme Court and RCAP, the TRC was very limited in its capacity to unmake laws within Canadian constitutionalism. Whereas the Supreme Court could set new precedents based on reconciliation and the honour of the Crown doctrine to possibly undermine and undo laws, the TRC, like RCAP, could not. This could be expected, given that commissions like RCAP and the TRC cannot directly change law and policy, unlike governments or the Supreme Court, and can only put forth recommendations for legal and constitutional reforms. However, what is important to note is that not all commissions are built equally. Although RCAP and the TRC could only

provide recommendations, unlike the TRC, RCAP had the necessary subpoena powers which allowed it to fulfill its far-reaching mandate.

The reason why the TRC lacked the same subpoena powers as RCAP was due to the involvement of the various Christian churches combined with how reconciliation was equated with healing. In her work on how the TRC was structured, Nagy (2014) reports that there were two competing versions of a truth commission being considered, with the first one sponsored by the Assembly of First Nations (AFN) which would have subpoena powers and could name perpetrators in order to procure truth and produce public accountability (p. 210-211). In contrast, the TRC Roundtable, a group made up of Indigenous survivor organizations and churches, proposed the creation of a truth commission which would focus on “restorative justice, healing and reconciliation” and would lack any investigative powers (Nagy, 2014: p. 209-211). For its part the churches, especially the Canadian Catholic entities, were insistent that a “blame-free structure” was put in place and implied that they would strongly contest any subpoenas in court, a strategy that the AFN learned was used by their Irish Catholic counterparts during Ireland’s Commission to Inquire into Child Abuse (Mahoney, 2014: p. 519; Nagy, 2014: p. 211). Eventually, the AFN relented on its hopes to have a truth commission with subpoena powers, as the concern turned to healing elderly survivors by allowing them to share their stories (Mahoney, 2014: p. 519; Nagy, 2014: p. 210-211). In fact, the TRC’s mandate of documenting the historical injustices of the residential school system was considered to be a necessary step towards healing and thus reconciliation (Turner, 2012: p. 109). This revelation into why the TRC lacked subpoena powers shows how the twinning of reconciliation with healing by the churches hampered its legal ability to conduct a thorough investigation into the systemic abuse at residential schools, thereby divorcing truth from reconciliation.

Remarkably, the churches did not just undermine the TRC's ability to produce a holistic historical record of the residential school system but may have (at least indirectly) influenced the very nature of the TRC itself. As Niezen (2013) discusses, the ritual of confession is an essential feature in various Christian denominations, as the sinner therapeutically relieves themselves of the weight of their sins by confessing them; such a process seems to have been transplanted to the TRC, as having survivors heal through self-revelation (either publicly or privately) was an essential component of this commission (p. 110). This may be attributed to the fact that since the TRC was mandated within the IRSSA to produce reconciliation through healing, it was likely that public confessions would be built into the TRC's functions, especially with the churches involved in both structuring this commission and participating in its national events. For instance, Nagy (2014) recorded how a senior Protestant church leader who was part of the TRC Roundtable believed that restorative justice, reconciliation and healing required an environment based on voluntary participation (p. 211). In other words, the goal was to create a TRC that lacked subpoena powers and would encourage survivors to participate in the ritual of confession in order to heal. Interestingly, the integration of confessions into this state commission is not particularly revolutionary. In *The History of Sexuality*, Foucault (1978) discusses how the Catholic Church codified the sacrament of penance in 1215 and since then confessions, along with interrogative techniques meant to produce confessions, became widely adopted by civil and religious authorities to the point that we are now a "confessing society" in which we confess our crimes, sins, thoughts, desires and illnesses (p. 58-59). As noted throughout this chapter, the borrowing of Christian ideas and practices by state institutions has a long history within Canadian constitutionalism, so it is not too peculiar that the TRC essentially adopted a confessional structure. Of course, it was likely that only survivors would be confessing for

healing and reconciliation, and not the actual transgressors, as the churches made sure to prevent the TRC from having subpoena powers and procuring confessions from the sinners of the residential school system.

Although the TRC's structure was undercut by the lack of subpoena powers and reflects the Christian ritual of confession for reconciliation and healing, the TRC did have an educative function that it exercised throughout its duration. As explained by de Costa (2017), the TRC mainly existed as a "discursive institution" in that it used its time and resources to educate Canadians of the residential school system and to make persuasive arguments for social, political and legal changes (p. 190). In order to ground its arguments that drastic reforms for law and policy were needed, the TRC attempted to appeal to the emotions of settler Canadians. For instance, the TRC would put together films from the many hours of recorded testimony which would focus on loss, suffering and grief but would conclude with a story of healing, which would be released online (Niezen, 2013: p. 68). In addition, the media attention that the TRC's national events would attract were also relied upon by the TRC to educate the general public about the residential school system, with the media often portraying reconciliation as Indigenous peoples healing through testifying and settler Canadians openly learning about residential schools (James, 2017: p. 375; Niezen, 2013: p. 147). These efforts were clearly meant to draw out an emotional response from indifferent or uninformed Canadians, which could have theoretically led to public support for substantive legal and constitutional reforms. Thus, while the TRC could not directly address laws like the Supreme Court or had subpoena powers like RCAP, this commission could mobilize the testimony of survivors to evoke an emotional response from the wider public that could eventually lead to the unmaking or reforming of Canadian laws.

Ironically, it may have been this goal to elicit an emotional response from settler Canadians that may have eclipsed the TRC's already limited potential to unmake laws within Canadian constitutionalism. The TRC did provide 94 Calls to Action, some of which are meant to truly address the settler colonial nature of Canadian law. For instance, Call to Action #45 calls upon the federal government and Indigenous peoples to create a Royal Proclamation of Reconciliation to be issued by the Crown, which would repudiate concepts such as the Doctrine of Discovery or *terra nullius*, renew or establish treaty relationships and reconcile Indigenous and Crown constitutional orders (TRC, 2015a: p. 4-5). Implementing this Call to Action could lead to substantial changes within Canadian constitutionalism, especially when considering how it could go beyond the Supreme Court's concepts of reconciliation and honour of the Crown which reify the myth that the Crown legitimately asserted its sovereignty. And yet, it is likely that most settler Canadians are unaware of this Call to Action or what a new Royal Proclamation based on reconciliation would include. After all, many settler Canadians either associate reconciliation with affectionately supporting Indigenous peoples in their healing from residential schools, or worse in that they reject reconciliation and remain steadfast in their vitriol towards Indigenous peoples (James, 2017: p. 376-378; Niezen, 2013: p. 145-146). On this latter point, this could be seen when following Queen Elizabeth II's death, the AFN's National Chief RoseAnne Archibald released a statement calling for the new king to issue a Royal Proclamation of Reconciliation that was covered by the CBC and released on YouTube (CBC News, 2022), which was met with typical settler colonial responses in the comments section that are not worth repeating. It seems that anything that would compel settler Canadians to go beyond an affective response towards reconciliation by implementing substantive constitutional and legal changes is still met with confusion, ambivalence and outright disdain. The lack of public support for this

Call to Action possibly explains why there has been no political willpower to move forward with a new Royal Proclamation, many years since the final report was released. Thus, the TRC may have had several insightful Calls to Action, but its mainly educative function and its limited authority within a Canadian legality tree meant that it would also struggle to address and resolve the excesses of settler colonialism.

Dead Leaves: The Limits of Reconciliation

Thus far, this chapter has examined the Christian creation stories that are the foundation of settler colonial attitudes and liberal laws, the borrowing of Christian theological concepts to mystify the Crown as innately honourable, and the institutions that operate under and in relation to the Crown's authority that must now try to rationalize the Crown's honour due to its history of permitting settler colonialism. The last section has shown how the branches of a Canadian legality tree are unable to change the underlying settler colonial attitudes, norms and laws that are rooted in and structure Indigenous-Crown and Indigenous-settler relations, from the Supreme Court's "honour of the Crown" reifying the legal fiction that Crown sovereignty was legitimately asserted over Indigenous lands, to the RCAP report's invocation of honour and reconciliation to justify legal reforms ultimately falling on deaf ears, and to the TRC's unsuccessful attempt to associate reconciliation beyond healing Indigenous peoples. Through pursuing an examination into the internal discord within the Crown, this chapter has shown how settler colonial tendencies are rationalized and supported through law, how settler colonialism may have unevenly but nevertheless taken its shape through law and violence within Canada and why state institutions have been limited in reworking the relationship between Indigenous peoples and settler Canadians. What is noticeable is how in many branches of the Canadian legality tree seem to be interested in using reconciliation discourses to advocate for and advance new laws and legal

reforms. Perhaps the lingering question that remains is, “Why had ‘reconciliation’ become the chosen word to fundamentally rework the constitutional and legal relationships between Indigenous peoples and settler Canadians?”

Such a question may be strange to ask; after all, why does it matter where the word reconciliation comes from and how it is regularly used by state institutions (or the branches with Canadian constitutionalism)? This is a fair question, especially as the previous section has highlighted how unmaking settler colonial laws by invoking vague discourses of honour and reconciliation have not always worked or have alternatively produced unintended effects. However, by tracing the genealogy of this constitutional discourse, it will be possible to understand how its roots exist within Christian theology in order to better contextualize the limited contents of this discourse²². This may even help to account for why the branches within a Canadian legality tree may have an almost natural affinity for using reconciliation to preface their constitutional and legal interventions into Indigenous-settler relations. Furthermore, this will help to explain its shortcomings in addressing and even perpetuating settler colonial governance, which will be briefly explored here and be made clearer in the following chapters.

As noted earlier in this chapter, one of the first uses of “reconciliation” came from then Chief Justice Dickson and Justice La Forest when rendering their decision in *R. v. Sparrow* in 1990. Why the former Chief Justice chose to use this word, and why the Supreme Court seemed inclined to use it when ruling on Aboriginal rights, is unknown. Wylie (2017) observes that “reconciliation” became a prominent discourse in the late 1980s when addressing Quebec’s claims to self-determination through constitutional reforms and that this discourse continued to

²² In later chapters, I further explore the limited scope of reconciliation discourses, and how Indigenous peoples responded to calls for reconciliation within some of the above branches of Canadian constitutionalism.

circulate in the 1990s (p. 611-612). She later theorizes that reconciliation as a normative political goal became popularized within the dual contexts of addressing both Indigenous and Quebec nationalism in the 1990s (Wylie, 2017: p. 623-624). It seems that reconciliation, as a concept meant to address Quebec nationalism starting in the late 1980s, was then grafted onto addressing Indigenous self-determination in the 1990s. This might explain why the Supreme Court of Canada may have unintentionally used this word in *Sparrow*, as a discourse of reconciliation was already circulating in a national effort to constitutionally reconcile Quebec with Canada.

Additionally, the concept of reconciliation was circulating globally in the late twentieth century. Reconciliation was increasingly connected with truth commissions focused on the past, along with transitional justice, the transition from autocracy to democracy, and international law (Hayner, 1994: p. 608-609). In Latin America, specifically Chile in the early 1990s, the transition from a dictatorship to democracy took on a “broader mandate for reconciliation premised on markers of repentance” (Wilkes, 2021: p. 168). During this same period, the Canadian government under Prime Minister Brian Mulroney directly imposed sanctions onto South Africa as part of a larger effort with Scandinavian countries to end South African apartheid (Pratt, 2001: p. 46-47; Webster, 2018: p. 337). Notably, Prime Minister Mulroney’s decision to work towards ending South African apartheid came through his relationship with Archbishop Desmond Tutu, who advocated for forgiveness and reconciliation and would go on to chair the South African Truth and Reconciliation Commission when it was launched in 1995 (Deegan, 2011: p. 134; MacDonald, 2024; Nagy, 2012: p. 350). Within South Africa, reconciliation was also linked to transitional justice and shared some similarities with the Chilean concept of reconciliation, as perpetrators could be granted amnesty for politically motivated crimes in exchange for their confessions and to advance reconciliation (Nagy, 2012: p. 354; Shore, 2016: p. 107-111; Wilkes,

2021: p. 170). Thus, the establishment of a truth and reconciliation commission in Chile, along with the Canadian government's interest and involvement in ending apartheid in South Africa, meant that on an international scale, the notion of reconciliation was gaining prominence both in Canada and abroad. This may help to further contextualize why the concept of reconciliation was borrowed by the Supreme Court, as its connection to transitional justice and law was already established and could be easily transferred into a Canadian legal context.

Although these analyses help to explain how national and international developments in reconciliation and transitional justice may have led to a reconciliation discourse being adopted in the decision within *R. v. Sparrow*, it does not necessarily explain why reconciliation was the chosen word to address self-determination in the first place. That is, it does not seek to investigate the theological roots and connotations of this discourse. Reconciliation is not a rootless word, as it is a central sacrament within Catholicism that occurs after confession and penance for the purposes of reconciling the sinner with the Church (Garneau, 2016: p. 32-33). Since reconciliation has religious connotations, it is perhaps fruitful to reconsider why then Chief Justice Dickson and Justice La Forest may have unconsciously used this word in *R. v. Sparrow*. From what I can infer about Chief Justice Dickson, he was likely raised Christian as later in his life he served as the Chancellor of the Anglican Archdiocese of Rupertsland, in which he was a legal advisor for the Anglican Church of Canada in the prairies (Gibson, 1991: p. 272). While the word "reconciliation" comes from Catholicism, my understanding is that Anglican Christians also speak of and believe in "Christ's mission of reconciliation in the world" and "future reconciliation" within their theological worldview (Bates, 2004: p. 259; Clawson, 2013: p. 297). It is possible then that Dickson's habitus, or what Bourdieu (1980) would define as "systems of durable, transposable dispositions, structured structures predisposed to function as structuring

structures” (p. 53), may have meant that his Christian upbringing and his lifelong connection to the Anglican Church resulted in him unconsciously transposing this concept to his and Justice La Forest’s decision on *R. v. Sparrow*.

Of course, this is just speculation, as there is no way to know for certain why the then Chief Justice used this particularly religious term in his judgement on Aboriginal rights. What can be said is that his introduction of reconciliation to the Supreme Court (and possibly RCAP given that he had a large influence on its mandate and also chose its commissioners) reflects a historical trend observed earlier in this chapter, wherein English jurists borrowed concepts from Christian theology and mysticism to bolster the authority and honourableness of the Crown. As Kantorowicz (1957) observed, “the taking over of theological notions for defining the state – had been going on for many centuries, just as, vice versa, in the early centuries of the Christian era the imperial political terminology and the imperial ceremonial had been adapted to the needs of the Church” (p. 19). Given this pattern, it is probably not surprising that reconciliation was transferred from a religious discursive terrain to a legal one, as there is a long history within British constitutionalism, and later Canadian constitutionalism, of state actors borrowing religious concepts to mystify and ultimately legitimate the Crown and its actions.

Since there is a long tradition of Christian theology crossing into state governance, it would be insightful to return to the theological roots of Canadian constitutionalism to uncover the contents of reconciliation discourses, and how these discourses may enable settler colonialism to persist on Indigenous territories. In their work, Corntassel, Chaw-win-is and T’lakwadzi (2009) argue that since reconciliation is a Western concept about restoring a relationship with a Christian God and not an Indigenous concept, Indigenous peoples should move beyond reconciliation and not attempt to restore an asymmetrical relationship with the

state (p. 9). Not only do these authors point out that reconciliation has roots within Christian theology, but they also reveal the inappropriateness of this concept. If the Crown calls for reconciliation, similar to how the Church believes sinners must confess and be given a penance to reconcile with the Church, the Crown may not call for the state institutions acting under its authority to change their colonial laws, policies and actions, but would rather call upon Indigenous peoples to reconcile themselves within settler colonialism. Thus, the theological roots of reconciliation discourses may lead to disconcerting efforts for how state actors and institutions within Canadian constitutionalism try to address Indigenous-settler relations.

There is another notable limitation within these discourses that can also be traced back to the theological roots of Canadian constitutionalism. As stated by D. McGregor (2018), “One of the limitations of conventional Western conceptions of reconciliation is the underlying assumption that reconciliation applies, virtually exclusively, to relationships among peoples” (p. 223). Thus, current discursive uses of reconciliation by settler Canadians do not consider the potential for reconciling with the earth and producing environmental justice, which some scholars believe is necessary to transform Indigenous-Crown relations (Borrows, 2018: p. 49; D. McGregor, 2018: p. 223-224; Tully, 2018: p. 83-84). Reconciliation, as promoted by the branches within Canadian constitutionalism, are therefore too humancentric and do not consider reconciliation with the land, plants and animals. The reason for the limited contents of these discourses seems to be again due to its roots within Christian theology and the stories that influenced and rationalized settler colonial attitudes, law and violence. As discussed at the beginning of this chapter, Christian creation stories, such as the creation of Adam, his time in the Garden of Eden and the Fall, influenced Enlightenment era thinkers like John Locke, who used these stories to proclaim that humans were distinct from nature and to justify male British

settlers' violent expropriation of land into private property in the Americas. It seems that this theo-Lockean anthropocentric belief that only humans matter is deeply engrained within Canadian constitutionalism, which may explain why reconciliation is imagined by actors within state institutions as solely occurring within the confines of human-to-human relationships.

While this argument may seem implausible at first, it might be useful to recall how reconciliation is defined and how it has already been conceptualized by state institutions attempting to manifest the Crown's honour. Reconciliation, as a theological concept, is based on restoring a harmonious relationship between a sinner and the Church, or in other words, repairing the relationship between a human within a human institution. Within this one concept (although I would suspect that this is relevant for other theological concepts in Christianity), there is no recognition of earthly beings or the need to reconcile the relationship between humans and nature. This can be seen through some of the precedents set by the Supreme Court. For instance, Chief Justice Dickson and Justice La Forest establish the *Sparrow* test, which is meant to reconcile the federal government's legislative objectives with its fiduciary obligations towards Indigenous peoples, but nowhere is their decision are they concerned with reconciling the federal government's power with the welfare of non-humans. Or worse, the Supreme Court in *R. v. Gladstone* proposes that reconciliation not only means that Indigenous peoples need to reconcile themselves with settler Canadians (i.e., settler colonialism), but that the economic interests of settler Canadians (which could technically include the permanent transformation of Indigenous lands through resource extraction) triumphs over Aboriginal rights in Section 35 of the Constitution. There is no discussion or regard for the welfare and autonomy of non-humans. Even the so-called "honour of the Crown" doctrine, which proposes that the Crown must dually

demonstrate reconciliation and honourableness, is concerned about producing reconciliation within Crown-Indigenous relations, not with humans and the environment.

Other state institutions also seem to advocate for recommendations that would materialize humancentric notions of reconciliation. For example, RCAP's (1996c) vision of a renewed relationship is based on mutual respect and reconciliation between Indigenous and non-Indigenous peoples alike (p. 84). While such a notion may have been revolutionary at the time, it does not seem to acknowledge nor encourage reconciliation with non-humans, so unsurprisingly there is no commitment, or at most minimal engagement with, reforming the relationship with the environment. For instance, RCAP's (1996c) recommendation 2.5.9 states that within the context of resource extraction, there should be an "acceptance of Aboriginal environmental standards" (p. 186). Although this recommendation implicitly acknowledges Indigenous laws, it does not necessarily appreciate nor recognize the agency and welfare of non-humans. It also does not admonish state and corporate actors from wanting to start up and carry out extractive activities in the first place. Furthermore, what is interesting is how RCAP's discourse on reconciliation is similar to the Supreme Court's discourse, despite holding opposing views on what reconciliation means for Aboriginal rights and Indigenous sovereignties, in that its primary concern is with producing reconciliation between peoples.

Similarly, the TRC's Calls to Action also limit reconciliation to just human relationships. Under "Business and Reconciliation," the TRC (2015a) calls upon the corporate sector to implement the *United Nations Declaration on the Rights of Indigenous Peoples* in its operational activities involving Indigenous lands and resources, to build respectful relationships with Indigenous peoples and to provide jobs, training and education opportunities for Indigenous peoples (p. 10). While this Call to Action may be commendable for its efforts to safeguard

Indigenous lands and resources through international law, its overall focus is on improving relationships between corporate actors and Indigenous peoples and not between humans and the environment. Extractive activities are thus allowed to continue unhindered under both of these recommendations for reconciliation. What this all seems to reveal is that between Supreme Court precedents and recommendations from commissions such as RCAP and the TRC, state-led discourses of reconciliation do not seem to care about restoring relationships with the earth. This dually reflects how the original theological definition of reconciliation is concerned with only human-to-human relationships and how anthropocentrism is deeply engrained within Christian creationism as humans are permitted to hold dominion over non-living persons.

The consequence of theologically based state-led reconciliation discourses is that they advocate for legal and constitutional reforms meant to redress settler colonialism which may be destined to fail since they cannot address the incongruence between Canadian and Indigenous constitutional orders. For Tully (2018), the danger in this humancentric conception of reconciliation is that, “If we try to reconcile Indigenous and non-Indigenous people with each other without reconciling our way of life with the living earth, we will fail, because the unsustainable and crisis-ridden relationship between Indigenous and non-Indigenous people that we are trying to reconcile has its deepest roots in the unsustainable and crisis-ridden relationship between human beings and the living earth” (p. 84). In other words, reconciling human-to-human relationships will not resolve the underlying tension at the root of Indigenous-settler relations, since settler colonialism is predicated on the pacification of Indigenous peoples to perpetually and unsustainably access lands and resources for capitalist accumulation. If anything, this will not necessarily reduce conflicts between a Canadian constitutional order and Indigenous constitutional orders. For instance, Mills (2010) argues that “Flashpoint encounters resulting

from direct action initiatives aren't so much about the failure to recognize or adequately ensure enjoyment of s. 35 rights as they are about sharply different legal orders imposing differing (and often conflicting) sets of obligations on the same group of people" (p. 114). Mills (2010) further explains that under Anishinaabe law, the Anishinaabe are responsible for ensuring the welfare of all persons, which can result in conflict with settlers since Canadian law permits widescale resource extraction (p. 134). Thus, as governments, courts and commissions are trying to rework the Crown's relationship with Indigenous peoples in the present by publicly committing to calls to action, by upholding the honour of the Crown and by defining the scope of Aboriginal rights, it seems that these reconciliation initiatives ultimately fail to respect Indigenous constitutional orders and the legal obligations that are placed on Indigenous peoples to protect the welfare of all persons, both human and non-human. Consequently, since theologically informed state-led discourses on reconciliation are intrinsically anthropocentric, it can be inferred that conflicts between Canadian and Indigenous constitutional orders will likely manifest in the future.

And herein lies the reasons for why reconciliation, as a series of discourses and a normative political goal, will result in solutions that may not radically challenge settler colonial governance. Its conceptual framework originates from Christianity, in which its stories do not recognize the autonomy, agency or welfare of non-humans, as seen with how liberal philosophers used Christian creation stories to justify the subversion of nature and the cordoning off of land to make private property. As such, Christian theological concepts like reconciliation presuppose that the only relationships that matter are between humans (and occasionally God). As a result, the transposal of this concept from a religious domain to a legal one seems to have affected how Indigenous-settler reconciliation is conceptually envisioned by state institutions and may also explain why the reformation of settler colonial laws have been problematic and limited.

That is, by turning towards reconciliation, human-to-human relationships remain the priority, thereby leaving room for the settler colonial attitudes, values and beliefs that have historically allowed for the derision of Indigenous worldviews towards land, their legal orders, and the violent dispossession of Indigenous peoples. This can account for why recommendations for reconciliation may not go far enough to change laws and policies and can even result in future conflicts between Indigenous and Canadian constitutional orders. Furthermore, with the state using this theological concept, it may position itself like the Church, thereby implying that Indigenous peoples must reconcile with it. This may explain why state institutions advocate for healing, such as when RCAP suggested the creation of the Aboriginal Healing Foundation, are sometimes acted on by state institutions, as it does not require the transference of land or the recognition of Indigenous constitutional orders. By returning to the roots of reconciliation, it is possible to contextualize the contents of this discourse to see why it may not be able to radically change laws and policies within Canadian constitutionalism.

Conclusion

In this chapter, I sought to take Mills' conceptual framework of the legality tree seriously by applying it to Canadian liberal constitutionalism. Rather than starting from the point of view that Canadian liberal constitutionalism is wholly based on secular principles, I wanted to challenge this myth by conducting a history of our constitutional present that closely examined how Christian theology has left an indelible yet often unacknowledged mark on a Canadian legality tree. Beginning with the roots of Canadian constitutionalism, it appears that nonrational Christian creation stories were repurposed by English liberal philosophers to rationalize settler colonial projects based on private property, providing intellectual cover for dismissive attitudes being held by settlers towards Indigenous worldviews and constitutional orders. Such theo-

Lockean beliefs remained prevalent, even after the formation of a political community around the Crown which had recognized the legal personality of Indigenous nations through the issuing of the *Royal Proclamation of 1763* and the *Treaty at Niagara*, as colonial governments operating under the Crown's authority continuously sought to induce land surrenders through law, deceit or the threat of violence. Interestingly, it has been the borrowing of other Christian theological concepts, such as Christ's Two Natures, which has produced a settler colonial situation where the Crown's metaphysical body is constantly honourable and remains unsullied despite its many governmental bodies enacting genocidal laws and policies to access Indigenous lands. In the present-day, this explains why state institutions must demonstrate the Crown's supposed honourableness towards Indigenous peoples given its complicity in past injustices, and how the Crown's honour is invoked to try to influence governments to create laws and policies based on vague notions of reconciliation that address the judicial anxiety caused by the Crown's shaky assertion of sovereignty.

This chapter has not only shown how Christian creation stories and theological concepts are the roots which condition the trunk of Canadian constitutionalism, which in turn impacts the functioning of Crown institutions and Canadian laws, but that this Canadian constitutional order is still trying to colonize Indigenous constitutional orders in the present-day. That is, the Lockean beliefs that stem from these roots continue to circulate; for instance, the Supreme Court's precedents on the honour of the Crown does not doubt the validity that the British Crown legitimately asserted its sovereignty due to settler colonial notions of *terra nullius*. Thus, the interweaving of settler colonial beliefs steeped in Christian creationism with the concept of honour produced through Christian mysticism may work to support the legal rationale for settler colonialism and the Crown's assertion of sovereignty. Even reconciliation, another concept

borrowed from Christian theology by state institutions for the express purpose of theoretically improving Indigenous-settler relations, may not be able to prevent a Canadian constitutional order from colonizing Indigenous constitutional orders. This can be seen with how the contents of state-led reconciliation discourses overwhelmingly focus on human relationships due to Christian uses of this concept, which means that producing sustainable relationships with non-humans and respecting Indigenous worldviews and constitutional orders remains unlikely. From this analysis, it seems that the early Christian worldviews that ultimately shaped settler colonial laws and policies are deeply entrenched within Canadian constitutionalism, meaning that conflicts between Canadian and Indigenous constitutional orders will persist in an era of reconciliation. This argument will be further explored in future chapters.

While this chapter sought to provide a bit of a history of the present by explicating the origins of settler colonial ideas, attitudes, norms and beliefs and their impact on law and policy, it should be remembered that this is not a complete account. This chapter may have been able to show that Christian theological worldviews and concepts have historically been transposed into Canadian constitutionalism to both justify the colonization of Indigenous lands and to then resolve the problems produced under settler colonialism. However, it has not discussed why reconciliation has become a hegemonic discourse, how it has been taken up by Indigenous, extractive and corporate actors and organizations, or the effects that are occurring at the provincial level in relation to reconciliation. This chapter may have provided some much-needed context to our settler colonial present and the contents within state-led discourses of reconciliation, but it may give the impression that settler colonial governance is able to function automatically and without challenge from Indigenous peoples. The next chapter will take on a governmentality perspective by considering how reconciliation became a dominant political

rationality and the effects that this can produce in maintaining and destabilizing settler colonial governance.

This is not to say that the analysis developed through Mills' theoretical framework and outlined in this chapter will be abandoned. The remainder of this dissertation will continue to empirically assess how the preliberal and Christian roots of Canadian constitutionalism have resulted in a limited anthropocentric conception of reconciliation and what this means for Indigenous-settler relations in the present-day. If anthropocentrism is inherent within a Canadian liberal constitutional order and trickles down to how reconciliation is narrowly conceived, which seems to clash with Indigenous worldviews and constitutional orders, then is the Crown and its institutions and servants doomed to remake the settler colonial relationship with Indigenous peoples? If the Crown is invested in reconciliation, what expectations might its governments, institutions, courts and commissions along with non-state actors and organizations who have committed to reconciliation have of their Indigenous counterparts within the context of resource extraction? Does reconciliation foreclose the possibility for Indigenous peoples to not participate in or even veto extractive activities on their territories? How does reconciliation lead to the development of resource revenue sharing agreements, and how does it shape the scope and contents of these agreements? How might old settler colonial notions of race and gender continue to structure the relationship with Indigenous peoples within extractive projects? Through these questions, it will be possible to consider how anthropocentric notions not only exist within reconciliation discourses, but how settler Canadians involved in resource extraction may privilege their own worldviews and how this impacts their relations with Indigenous peoples. This analysis will occur by specifically examining how the provincial government (which is itself another branch whose authority is granted through the Crown in right of Ontario) grapples

with reconciliation through its laws and policies meant to encourage resource extraction near or on Indigenous territories.

Chapter 4: The Rise of Reconciliation

Introduction

The previous chapter had outlined that the word “reconciliation” is intrinsically tied to Christian theology and how its theological origins have limited its definition to repairing only human relationships. This chapter will build on the previous chapter’s analysis by examining how reconciliation became a dominant political rationality, starting with its conceptualization within different state institutions responding to constitutional crises in the early to mid-1990s. Moreover, it will continue to study how Christian mysticism has influenced the functioning of “the Crown” by outlining the further divisibility of the Crown within Canadian constitutionalism and how reconciliation became a normative political goal, first amongst the Crown in right of Canada and then amongst the Crown in right of Ontario. In order to produce this type of analysis, this chapter will employ a governmentality framework to examine the emergence of reconciliation as a new and distinct political rationality within settler colonialism.

As noted in the Chapter 2, using a governmentality framework is meant to enhance an analysis of settler colonialism and reconciliation. Through a governmentality analysis, I will be able to consider how the limits of governmental power led to reconciliation displacing assimilation as the dominant political rationality. Additionally, this theoretical framework will make it possible to decentre “the state” to consider how Indigenous leaders, communities and organizations were problematizing Indigenous-settler relations and were pushing for radical changes meant to reset the relationship between Indigenous peoples and the Crown. By conducting this type of theoretical analysis, we can start to acknowledge how reconciliation is a political rationality that forms out of the criticism of assimilation and the multiple crises that occur in relation to settler colonial governance. Additionally, this analysis can lead to an

understanding of the specific types of solutions that were being proposed with reconciliation becoming the new political rationality in the 1990s. This will lay the groundwork for the next set of chapters which study how Indigenous, state, extractive and market actors formed a coalition to create governmental interventions in Indigenous-settler relations based on reconciliation, and how this led to resource revenue sharing agreements in Ontario. Furthermore, producing this type of analysis will make it possible to trace the continuities and discontinuities between assimilation and reconciliation as political rationalities, such as how the liberal despotism advocated in relation to assimilation would re-emerge within the discussion of resource revenue sharing, Indigenous self-sufficiency and reconciliation. Thus, this chapter seeks to build a genealogy of settler colonialism's rationalities in Canada (and specifically Ontario) in order to better contextualize the development of resource revenue sharing agreements.

Settler Colonialism's Rationalities: From Assimilation to Reconciliation

Unfortunately, it is beyond the scope of this chapter, if not this dissertation, to account for the totality of Indigenous-settler relations over hundreds of years. This section will only be able to analyze some key historical moments within Indigenous-settler relations in Canada. Despite the brevity of this overview, this section will outline how assimilation was the dominant (yet constantly revised) governmental rationality since pre-Confederation until its challenges and critiques in the 1990s, which led to assimilation being abandoned in favour of vague ideas of reconciliation. By conducting this brief genealogy, it will be possible to account for how reconciliation emerges in relation to crises in settler colonial governance. Moreover, this analysis will start the process of tracing the continuities and discontinuities within the logics of assimilation and reconciliation, including how both rationalities are premised on the "improvement" of Indigenous peoples. In turn, this analysis will draw out how the logics and

discourses within these rationalities shaped the arguments for resource revenue sharing agreements, along with some of the contents found within the agreements, as will be explored in future chapters.

Assimilation (sometimes referred to as “civilization”) had become the dominant governmental rationality in the decades leading up to Canadian Confederation in 1867²³. Arguably, assimilation had been an aspirational goal amongst imperial and religious actors operating in the Americas for centuries, especially since missionaries positioned themselves as bringing salvation to the souls of Indigenous peoples (King, 2012: p. 101). However, since settler colonialism is predicated on the logic of elimination and the permanent establishment of settler societies through violence and dispossession, it perhaps makes more sense to start a discussion of assimilation as a political rationality in pre-Confederation Canada, in which settlers were building up the legal architecture of the Province of Canada in the mid-1800s, rather than in previous historical eras wherein imperial officials and Christian missionaries would willingly return to Europe once their mission ended²⁴. In tracing the genealogy of assimilation as a

²³ This was not always the case. As noted in the previous chapter, prior to Confederation, British settlers may have had the theo-Lockean desire to settle and appropriate land, but larger concerns about colonial security resulted in military and economic alliances being formed between the British Crown and First Nations in the Great Lakes region. Borrows (1997) recounts how representatives of the British Crown participated within First Nations legal institutions, such as how during the negotiations for the *Treaty of Niagara* in 1764, the *Royal Proclamation* was presented to and then ratified by First Nations through the exchanging of Wampum belts (p. 161-164). In this section, I explore how assimilation ultimately became the dominant political rationality pre- and post-Confederation.

²⁴ I am deeply aware that trying to differentiate “pre-Confederation Canada” of the 1800s as settler colonialism from earlier colonial periods in North America is not an easy or neat delineation. Veracini (2015) notes that colonialism and settler colonialism share many similarities, including the desire to both exploit Indigenous Others and displace them (p. 26). Despite the overlapping conceptual features in colonialism and settler colonialism, scholars within settler colonial studies contend that the difference is that while colonialism is exercised by an expanding metropole, includes numerous “colonial sojourners” and reproduces unequal relationships based on racial difference, settler colonialism seeks to discontinue unequal relationships through law and biopower in order to replace Indigenous societies with a settler colonial society (Morgensen, 2011: p. 56; Veracini, 2010: p. 6; Veracini, 2016: p. 3; Wolfe, 2006: p. 388). Colonialism and settler colonialism may therefore share similar structural elements, and it is not always easy to draw a line from when colonialism ended and settler colonialism began, but they still have important distinctions, such as when the state seeks to actively replace Indigenous peoples with settlers. For instance, the desire by settlers to stay can be seen when Lieutenant Governor John Graves Simcoe established the Town of York (now Toronto) and other townships in the 1790s, divided up Upper Canada into several counties and enticed British

political rationality, it would be helpful to examine how Indigeneity was beginning to be problematized in the 1840s through government-commissioned reports.

In March 1845, a royal commission authorized by then Governor General Sir Charles Bagot which would be informally known as “the Bagot Commission”, published its “Report on the Affairs of the Indians in Canada” (Province of Canada, 1845). The commissioners were tasked with investigating how the monies provided by the Parliament of the United Kingdom of Great Britain and Ireland were being applied for the “benefit” of Indigenous peoples in the province, along with how the Indian Department was being run (Province of Canada, 1845). In describing the relationship between the British and their Indigenous allies, the commissioners took issue with how the government continued to provide presents to their Indigenous allies long after they secured their allegiance to the British Crown and military conflicts in the region were over (Province of Canada, 1845). Thus, the participation of British officials within Indigenous legal traditions and the maintenance of social relationships through the Indigenous protocol of gift-giving (Bohaker, 2020: p. 90-92) was reinterpreted as being unnecessary now that British colonial security had been guaranteed. They also explained how Indigenous peoples were under the special care of the British Crown and how “Little was done by the Government to raise their mental and moral condition”, specifically by converting Indigenous peoples to a Christian sect (Province of Canada, 1845). These commissioners surmised:

They were thus left in a state of tutelage, which although devised for their protection and benefit, has in the event proved very detrimental to their interests, by encouraging them

soldiers and American loyalists through offers of land to leave the nascent United States of America (Gates, 1968: p. 28-29; Fryer & Dracott, 1998: p. 153-163); however, this colonial sojourner returned home to England in 1796 (Fryer & Dracott, 1998: p. 190). In this case, there is an overlap between colonialism and settler colonialism in the 1790s. In contrast, the Province of Canada (made up of now Ontario and Quebec) had a growing permanent settler population (Reid & Peace, 2016: p. 89), in which government officials and “experts” began to articulate the replacement of Indigenous peoples through their absorption into the Euro-Canadian body politic, as this section will demonstrate. Thus, the Province of Canada in the mid-1800s fits the definition of settler colonialism better than previous eras of colonialism.

to rely wholly upon the support and advice of the Government, and to neglect the opportunities which they have possessed of raising themselves from the state of dependence to the level of the surrounding population.

It is easy, at the present day, on looking back, to trace the error of the Government and its evil consequences; but it is only just to observe that the system was in accordance with the legislation of the times. The regenerative power of religion and education was not then now as appreciated. The effects of civilization, and the necessities arising out of it, were not foreseen. The information of the Imperial Government was very imperfect. It was not easy nor safe rashly to change a mode of treatment to which the Indians had become accustomed, and thus the system has been allowed to continue up to the present time, long after the Government has become aware of its imperfections and inconveniences. (Province of Canada, 1845²⁵)

There is much to be said about this selected passage from the Bagot Commission's 1845 report.

First, it problematizes the conduct of Indigenous peoples in relation to liberal despotism. Starting in Britain during the 1830s, there was a dominant philosophy of "philanthropic liberalism" which centred on the paternalistic notion of the "white man's burden" and was expressed through programs meant to "civilize" Indigenous peoples in the colonies (Leslie, 1982: p. 33). In her work, Valverde (1996) contends that this despotism, advocated for by liberal philosophers like John Stuart Mill, is not just a racist expression meant to justify liberal rule, but also reflects how the liberal subject is meant to be governed, often through illiberal means targeting desires and habits (p. 360-362). Within his conception of "good government", in which the form of government corresponds with the level of "civilization", John Stuart Mill even advocates for an intermediary body which would have the singular goal of cultivating the "uncivilized" into the "civilized" without the consent of the "uncivilized" (J. B. D. Nichols, 2020: p. 90-93). Thus, despotic forms of government were widely argued to lead to the production of liberal subjects. In the above quote, it seems that the ideal liberal subject is imagined to be white, Christian, independent from government and able to conduct themselves in a manner in which they can

²⁵ While I strive to provide page numbers for every idea or direct quote from another author or from a primary archival source, the Bagot Commission's report does not have any page numbers. However, the online availability of this report indicates that this quote can be found on the sixth page.

seize opportunities and maximize their wealth (arguably within the scope of the free market and laissez-faire economics). It is through this imagery of the perfect liberal subject, constructed during a historical period of British paternalistic humanitarianism, that problematized Indigenous peoples and produced an aptitude for liberal despotism amongst British-Canadian settlers studying Indigenous peoples.

Second, this quote is emblematic of how the failures of governmental power led to the production of new political rationalities meant to usher in improvements to the targeted population. The Bagot Commission was authorized to produce knowledge about the state of Indigenous peoples in the Province of Canada and notably, the commissioners argue that previous governmental efforts had failed to subsume Indigenous peoples into a “civilization” based on a market economy. Perhaps conveniently or through neglectfulness, the commissioners seem to have forgotten the spirit and intent of the *Royal Proclamation of 1763* and the *Treaty of Niagara in 1764*, which had instructed that the British Crown and its First Nation allies would work together but not interfere in each other’s personal affairs. Nevertheless, the providing of gifts is reconfigured from a signalling of good relations and respect for Indigenous legal traditions to a demonstration that Indigenous peoples were dependent on government and had not entered “civilization” in comparison to the white settler population. The commissioners even racialize Indigenous peoples as potentially violent if this were to stop. Since previous imperial governance is deemed a failure, the Bagot Commission starts to suggest solutions, such as religion and education²⁶.

²⁶ Apparently, the Bagot Commission’s report recommended the separation of Indigenous children from their families and their emplacement in boarding schools. However, I have only be able to access the first half of the Bagot Commission’s report online; the report in its entirety seems to be unavailable so I am unable to confirm this claim.

In 1847, the “Report of Dr Ryerson on Industrial Schools” was submitted (also known as the “Ryerson report”), which combined the governmental solutions of religion and education through industrial boarding schools in order to create an industrious liberal Christian Indigenous civilization. Similar to how Mill advocates for “good government” based on the creation of an intermediary body that would govern “the uncivilized” without their consent (J. B. D. Nichols, 2020: p. 93), the Ryerson report was steeped within liberal despotism and advocated for illiberal governance to produce liberal Christian subjects:

It is, therefore, necessary that the pupils should reside together. Hence the necessity of providing for their domestic education, and for every part of their religious instruction. This last, I conceive to be absolutely essential, not merely upon general Christian principles, but also upon the ground of what I may term Indian economics, as it is a fact established by numerous experiments, that the North American Indian cannot be civilized or preserved in a state of civilization (including habits of industry and sobriety) except in connection with, if not by the influence of not only religious instruction and sentiment but of religious feelings. (Department of Indian Affairs, 1898: p. 73²⁷).

Even a knowledge of the doctrines and moral precepts of orthodox Christianity, with all the appliances of prudential example and instruction, is inadequate to produce in the heart and life of the Indian, the spirit and habits of an industrial civilization, without the additional energy and impulsive activity of religious feeling. The animating and controlling spirit of each industrial school establishment, should, therefore, in my opinion, be a religious one. (Department of Indian Affairs, 1898: p. 73).

These two quotes from the Ryerson report are revelatory for a few reasons. First, these quotes reflect an argument made in my previous chapter that liberalism is not secular, but intricately connected with Christianity, as “Christian feelings” are believed to be essential for the conditioning of Indigenous peoples to become an industrious working class within Canadian liberal capitalism. Second, industrial boarding schools are proposed as an illiberal governmental intervention (or what Mill would describe as an “intermediary body”) meant to discipline

²⁷ I was unable to locate the original Ryerson report of 1847. However, the Ryerson report was reproduced as Appendix A of the Department of Indian Affairs’ “Statistics Respecting Indian Schools with Dr. Ryerson’s Report of 1847 Attached” which was published in 1898. For ease of locating the Ryerson report of 1847, I am citing the Department of Indian Affairs’ 1898 report here.

Indigenous peoples into becoming liberal subjects. Third, the Ryerson report clearly advocates that Indigenous children should be separated from their parents and left at these industrial boarding schools, which reflects how an aggregate of a population is specifically targeted by governmental power for “improvement”.

This governmental push towards “civilizing” Indigenous peoples would often be sanctioned through law. In 1857, a bill which would serve as the predecessor to the *Indian Act* titled, “An Act to encourage the gradual civilization of Indian Tribes in this Province, and to amend the Laws relating to Indians” (also known as the *Gradual Civilization Act*) was passed and indicated the Province of Canada’s intention to assimilate Indigenous peoples:

Whereas it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty’s other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it: Therefore, Her Majesty, with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows... (Bill No. 58, 1857)

This piece of legislation is notable in that it sought to erase Indigeneity by encouraging Indigenous peoples to be enfranchised, which included providing property and money to any Indigenous person who was deemed enfranchised by the Governor (Bill No. 58, 1857).

Interestingly, this legislation also instituted a gendered process in which the wife and children of an enfranchised Indigenous man would automatically be enfranchised as well, unless a widow remarried a non-enfranchised Indigenous man, to which her status would revert to being non-enfranchised (Bill No. 58, 1857); such a gendered approach to removing status would later appear in the *Indian Act*. Perhaps what is most important is that this legislation showed that while state commissions and reports would recommend the “civilization” of Indigenous peoples in the Province of Canada through technologies of power, such as boarding schools, law was also

being wielded by the state to ensure that this assimilatory process would occur over time. Therefore, we start to see how state power is used to legally sanction a governmental rationality based on assimilation, which would allow for the further creation of assimilatory technologies which could then be legally enforced.

Canadian Confederation marked a continuation of treating Indigenous peoples as a distinct population that needed to be assimilated into the nascent Canadian body politic. The *British North America Act, 1867* 91(24) constitutionally dictates that the Parliament of Canada has exclusive legislative authority over “Indians, and Lands reserved for the Indians”. As explored in the previous chapter, the *Royal Proclamation of 1763* was confusingly written, recognizing Indigenous jurisdictions while also stating that those jurisdictions were under the protection of the British Crown. In a sense, this provision within the *British North America Act, 1867* follows a similar trend of settler governments placing Indigenous peoples under the authority of the Crown; however, what is perhaps different is the fact that while the *Royal Proclamation* and *Treaty at Niagara* somewhat recognized Indigenous peoples as having control over their own affairs, the Dominion of Canada was founded on placing the affairs of Indigenous peoples within the legislative authority of the federal government. *The Indian Act*, a consolidation of previous legislation applying to Indigenous peoples, such as the aforementioned *Gradual Civilization Act*, would later be enacted in 1876, and would carry out this governmental goal of controlling the affairs of Indigenous peoples through law, with the ultimate purpose to assimilate Indigenous peoples. As noted by Monchalin (2016), the *Indian Act of 1876* was meant to produce full assimilation, as it first defined who had “Indian status” (and who lost it, such as Indian women who married non-Indian men); for those with status, the *Indian Act* sought to control and criminalize their affairs to compel them to revoke their status and become

enfranchised (p. 109-111). Canadian Confederation and the decades following it therefore enshrined a governmental rationality of assimilation into law.

In 1879, Nicholas Flood Davin's "Report on Industrial Schools for Indians and Half-Breeds" (also known as the "Davin report") was submitted to the Minister of the Interior (who happened to be Prime Minister Sir John A. MacDonald) in which he studied how the American Congress legally sanctioned the creation of industrial schools for "aggressive civilization". In prefacing the imagined assimilatory utility of industrial boarding schools, the Davin report states:

The experience of the United States is the same as our own as far as the adult Indian is concerned. Little can be done with him. He can be taught to do a little at farming and at stock-raising, and to dress in a more civilized manner, but that is all. The child, again, who goes to a day school learns little, and what little he learns is soon forgotten, while his tastes are fashioned at home, and his inherited aversion to toil is in no way combated. (Davin, 1879: p. 2)

Here, there is a return to problematizing the conduct of Indigenous peoples, both of adults and children. Indigenous adults are constructed as unable to be fully assimilated into the white settler body politic, whereas Indigenous children are portrayed as quickly forgetting the habits that they have learned at day schools. Throughout the rest of the Davin report, it describes how industrial boarding schools operate by contracting them to a religious order, along with how these schools have led to five "civilized" nations. Davin (1879) also claims that:

All the representatives of the five civilized nations declared their belief that the chief thing to attend to in dealing with the less civilized or wholly barbarous tribes, was to separate the children from the parents. As I have said, the Indian Department, at Washington, have not much hope in regard to the adult Indians, but sanguine anticipations are cherished respecting the children. The five nations are themselves a proof that a certain degree of civilization is within the reach of the red man while illustrating his deficiencies. (p. 7).

While the conduct of both Indigenous adults and children are problematized, the Davin report suggests that Indigenous children can be targeted for instruction and reform, and that separating Indigenous children from their parents by placing them in boarding schools will allow for a

generational assimilation of Indigenous peoples into settler society. The Davin report's governmental solutions meant to usher in "civilization" are basically a reiteration of what was proposed in the 1847 Ryerson report to make an Indigenous working class.

The creation of the residential school system and its expansion followed the Davin report. It seems that these state institutions run by the churches later received the full backing of the force of law in the 1920 amendment to the *Indian Act*. Indigenous children between the ages of 7-15 were mandated to attend school through the 1920 amendment, and state authorities had the lawful power to issue fines or threaten imprisonment to parents who refused to send their children to these institutions (Monchalin, 2016: p. 126). Assimilation and the erasure of Indigenous peoples was the dominant and desired political goal, with Indigenous children continuously constructed as aggregates within the Indigenous population whose habits and lifestyles could be amenable to change through mandatory schooling away from their parents and respective communities. However, the fact that the *Indian Act* had to be updated seemed to have signified that governmental power could not take hold of its Indigenous subjects nor produce its intended goal of fully assimilating Indigenous peoples into the white Christian liberal body politic. Placing Indigenous children in residential schools was not just meant to reconfigure the habits of those children, as there was a belief that graduates of these schools would then act as "agents of assimilation" themselves by convincing their communities to assimilate (Smith, 2014: p. 151-152). And yet, Duncan Campbell Scott's 1920 annual report recorded that only 102 Indigenous persons became enfranchised since Canadian Confederation (Smith, 2014: p. 115). Taken together, this low number seems to reveal that assimilation, as a dominant governmental rationality, was hardly being materialized and that new illiberal techniques, technologies and strategies were needed to assimilate Indigenous peoples. Thus, the 1920 amendments to the

Indian Act could be interpreted as state power being summoned to procure compulsory attendance at these church-run disciplinary institutions, in the hopes that this reworking of governmental power would make the settler dream of assimilation a political reality.

Within residential schools, there is ample evidence that the church staff had systemically turned to violence to “kill the Indian in the child”. It is now an undeniable fact that teachers and staff employed at these institutions regularly sanctioned the use of violence against Indigenous students for any type of minor infraction, sometimes leading to death (See: Truth and Reconciliation Commission of Canada, 2015b). The pervasiveness of violence within residential schools could be interpreted as a systemic reaction to the fact that assimilatory techniques, technologies or strategies, such as teaching English or French in a closed off classroom, were unsuccessful when students were not being assimilable, such as speaking their own language with their peers. Moreover, the fact that violence was meted out to discipline Indigenous children seems to indicate that this violence was undoubtedly racialized. According to Foucault (2003), the discovery of the “population” as being governable dually led to a biological continuum of races that could be identified within the population, in which some races were constructed as inferior; those inferior races were thus allowed to let die in order to make a “healthier” population live (p. 255). The distinguishing of Indigenous peoples as a biologically “inferior” race for not abiding to white liberal Christian principles, alongside the desire to reconfigure the habits of Indigenous children so that they are absorbed into the body politic within these state-commissioned reports, arguably shows that assimilation and its liberally despotic technologies are intrinsically violent, as the political goal is to allow for a white settler population to thrive through the disappearance of the Indigenous population. Thus, the residential school system was already premised on violence, and the rationality of assimilation normalized violence within

these institutions. This may explain why physical and sexual violence was rampant, why communicable diseases were left untreated (Murray, 2017: p. 761-762), amongst a plethora of other examples which illuminate how violence against Indigenous children was normalized.

Despite the pervasive assimilatory violence within the residential school system and the fact that the *Indian Act* made it mandatory for parents to send their children to a residential school, it was apparent that these institutions were unable to assimilate Indigenous peoples into the Canadian body politic²⁸. In the 1960s, growing disenchantment amongst Indigenous peoples towards government policies, combined with senior officials in the Indian Affairs Branch frustration with the lack of effectiveness for their programs and public awareness of (and perhaps sympathy to) Indigenous peoples led to a suggestion that the Indian Affairs Branch needed to gather information about the conditions of Indigenous peoples in order to improve their programs (Weaver, 1993: p. 76-77). In 1966 and 1967, Volume 1 and 2 of “A Survey of The Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies” (also known simply as the “Hawthorn report”) was published under the stewardship of Harry B. Hawthorn, an anthropology professor, and his team of fifty-two social scientists (Weaver, 1993: p. 78). Thus, in response to the limits of governmental power and the ability to make assimilation a political reality, a new assemblage of state actors and non-state experts came together to assess Canadian laws and policies and their effects on Indigenous peoples. Interestingly, the Hawthorn

²⁸ I want to emphasize here that while the political goal of assimilating Indigenous peoples has failed, this does not preclude that the violence within residential schools did not lead to other harmful effects. There are several studies that look at how the physical and mental health of residential school survivors have been adversely affected or severely deteriorated through their attendance at these institutions and may have contributed to harmful coping mechanisms (Mosby & Galloway, 2017; Ross et al., 2015; Wilk, Maltby & Cooke, 2017). Other studies have found that the violence within residential schools have led to a cycle of intergenerational trauma (Bombay, Matheson & Anisman, 2014; Elias et al., 2012). Although I am arguing that governmental power and political rationalities almost certainly cannot achieve their desired outcomes, I do not want to downplay the fact that these institutions produced widespread and irreversible harms to survivors that have only recently been recognized by the wider Canadian public. These harmful effects may continue to manifest in the present-day and so it is important to be cognizant of them even when noting how residential schools failed to achieve their assimilatory purpose.

report conclusively rejected assimilation as a governmental rationality, with its very first recommendation stating that:

Integration or assimilation are not objectives which anyone else can properly hold for the Indian. The effort of the Indian Affairs Branch should be concentrated on a series of specific middle range objectives, such as increasing the educational attainments of the Indian people, increasing their real income, and adding to their life expectancy. (Hawthorn et al., 1966: p. 13).

Notably, the Hawthorn report's second volume evaluated the residential school system and found that it was a disastrous governmental policy (Monchalin, 2016: p. 121). In fact, the first half of the second volume of the Hawthorn report notes the many academic and social failures of the residential school system, and towards the end of this section, it makes the following observation:

As a result, far from encouraging adaptation to the world of the White man, the residential school in fact perpetuates the Indians* idea that they are different from White people by leaguering them together against the Whites, so that the gulf between the two groups remains deep. As a result, so far as acculturation is concerned, the residential school does not seem to help the process, or at least offers a path which appears easy but is in fact dangerous. (Hawthorn et al., 1967: p. 93).

The Hawthorn report therefore marked a significant shift in how governmental power should be exercised. Rather than continue with the pre-Confederation rationality of overt assimilation, the Hawthorn report makes note of how assimilatory technologies, policies and strategies, such as the creation and imposition of the residential school system, have failed or led to worsened conditions for Indigenous peoples and that “middle range objectives” were now needed to address the socio-economic circumstances of Indigenous peoples across Canada.

While the Hawthorn report may have been fairly progressive for its time, it seems that it contravened liberal orthodoxy. Pierre Trudeau did not believe in “special rights” for cultural minorities and thus him winning the Liberal Party's leadership convention in which he would also be appointed Prime Minister meant that the Hawthorn report's recommendations would be

re-evaluated by a new administration which shared his views (Weaver, 1993: p. 82-83). In her work, Weaver (1993) traces how the Hawthorn report ended up having a limited impact within the new Trudeau administration, as the Prime Minister's Office (PMO) and the Privy Council Office (PCO) were expanded and thus curtailed the proposals put forth by the Department of Indian Affairs and Northern Development (DIAND) which had relied on the Hawthorn report (p. 84-89). In fact, the PMO and PCO held an implicit distrust of academics and experts, "who were seen to be too narrow in their comprehension of the problems facing government, too insensitive to political 'realities,' and too removed from government to understand the political implications of their own recommendations" (Weaver, 1993: p. 89). While an assemblage of government officials and academic experts had previously worked together to draft the Hawthorn report and envision a different way to govern Indigenous-settler affairs, this assemblage was now being disentangled through a new Liberal administration which viewed academics and experts as being out of touch with the realities of governing.

What this meant was that assimilation remained the dominant political rationality under the Liberal government of Prime Minister Pierre Trudeau. Inspired by liberal philosopher John Rawls' *A Theory of Justice* and his Christian upbringing, Prime Minister Trudeau frequently espoused a building a "Just Society"²⁹, in which there would be a continued search for a rational and universal notion of "justice", in which "race does not matter" (Dunlop, 2009: p. 73-74; Foster, 2014: p. 361-370). One of his government's earliest attempts to build a liberal and Christian "Just Society" seems to come through the drafting of the *Statement of the Government*

²⁹ John Rawls was a noted atheist, however, his theory of justice within liberal societies seems to be partially influenced by old Christian beliefs and values, according to some scholars (See: Kronman, 2016; Weithman, 2016). In explaining Rawls', *A Theory of Justice*, Foster (2014) seems to inadvertently state that negotiating a new social contract requires that the negotiators to "return mythologically to a time before humans ate from the tree of knowledge of good and evil", also known as the "veil of ignorance" (p. 366). This seems to reflect a pattern noted in the previous chapter, that liberal constitutional principles often have a theologically Christian root.

of Canada on Indian Policy, 1969 by Minister of Indian Affairs and Northern Development Jean Chrétien (better known as “the White Paper”). In the White Paper, it expresses that the “Legislative and constitutional bases of discrimination must be removed” (Department of Indian Affairs and Northern Development, 1969: p. 8) before further outlining that:

Canada cannot seek the just society and keep discriminatory legislation on its statute books. The Government believes this to be self-evident. The ultimate aim of removing the specific references to Indians from the constitution may take some time, but it is a goal to be kept constantly in view. In the meantime, barriers created by special legislation can generally be struck down.

Under the authority of Head 24, Section 91 of the *British North America Act*, the Parliament of Canada has enacted the *Indian Act*. Various federal-provincial agreements and some other statutes also affect Indian policies.

In the long term, removal of the reference in the constitution would be necessary to end the legal distinction between Indians and other Canadians. In the short term, repeal of the *Indian Act* and enactment of transitional legislation to ensure the orderly management of Indian land would do much to mitigate the problem.

The ultimate goal could not be achieved quickly, for it requires a change in the economic circumstances of the Indian people and much preliminary adjustment with provincial authorities. Until the Indian people are satisfied that their land holdings are solely within their control, there may have to be some special legislation for Indian lands.” (Department of Indian Affairs and Northern Development, 1969: p. 8).

A “Just Society” in which race does not matter, was thus predicated on the total and automatic enfranchisement of Indigenous peoples through the revocation of the *Indian Act*. Furthermore, this new form of assimilation was presented as being benign and to the benefit of Indigenous peoples under the guise of formal legal equality. Coulthard (2014) explains that “formal legal equality was used by the state as a wrecking ball that threatened to undermine Aboriginal and treaty rights by unilaterally enfranchising First Nations individuals as Canadian citizens under the law” (p. 95). The federal government therefore sought to erase the distinctions between Indigenous peoples and Canadians, after these distinctions had been produced through assimilatory legislation over the past century. In addition, the White Paper proposed that reserve lands would be turned into “fee simple ownership” subject to Canadian property laws and a

capitalist economy (Coulthard, 2014: p. 95; Manuel & Derrickson, 2015: p. 34). The White Paper would therefore eliminate the factual existence of Indigenous peoples while opening up Indigenous lands to extractive activities and real estate development.

Amongst Indigenous peoples, the White Paper was not well received, was not praised or had any endorsements. In the opposite effect, it mobilized widespread First Nation opposition to it, with the National Indian Brotherhood (NIB), the predecessor political organization to the Assembly of First Nations, designating it as cultural genocide and an attempt to destroy the concept of Aboriginal rights (Coulthard, 2014: p. 4-5). Under the leadership of George Manuel, the NIB and its leaders organized mass meetings to demonstrate to the federal government that the White Paper would never be accepted amongst Indigenous peoples (Manuel & Derrickson, 2015: p. 34). Importantly, George Manuel was also a residential school survivor (Manuel & Derrickson, 2015: p. 28). During this time, the Indian Chiefs of Alberta, partially inspired by the Hawthorn report, issued *Citizens Plus* (also known as the Red Paper) which countered and rejected every element found in the White Paper (Monchalin, 2016: p. 120-121). Due to Indigenous activism and mass dissent, the White Paper was formally rescinded on March 17, 1971, although not without disparaging remarks being publicly made by Prime Minister Trudeau once his government realized that the White Paper would not receive any solid support (Coulthard, 2014: p. 5; Monchalin, 2016: p. 121-122). Indigenous activism essentially killed the White Paper and prevented a liberal Just Society from colonizing their existence.

Through a governmentality perspective, there is much to be said about the White Paper. Governmentality may be optimistic, but government is always failing since governmental power is unable to execute total control over the population or aggregates within the population which it seeks to “improve” through a distinct rationality (Miller & Rose, 2008: p. 17). For the previous

century, the federal government had articulated and reinforced through numerous state commissions and reports assimilation as the *de jure* political rationality for “improving” Indigenous peoples. This led to the creation of institutions, technologies, techniques and strategies meant to assimilate Indigenous peoples into the white settler body politic, such as the residential school system run by non-state actors. When these institutions, technologies, techniques and strategies would eventually fall short, the *Indian Act* was revised in the hopes that the state and law could make assimilation a reality. Yet, this marriage between state actors enforcing the law and non-state actors governing Indigenous peoples through the reconfiguration of thoughts and habits would perpetually fail to reach its intended goal of assimilating Indigenous peoples. The fact that assimilation could not be truly materialized exemplifies the limits of governmental power. Moreover, the decision to scrap the *Indian Act* is indicative of how the failure to manifest a governmental rationality leads to the abandonment of old strategies and the adoption of new ones. The *Indian Act* was purposefully designed to place restrictions on Indigenous peoples to encourage their enfranchisement, however, its inability to do so along with its criticisms within the Hawthorn report led to a government committed to revoking the *Indian Act* in order to produce a “Just Society”.

Furthermore, governmental power is not only unable to fully take hold of its targeted population, but it often produces messy, unintended results and contradictory effects. In the case of the White Paper, this is noticeable in two interrelated ways. First, the *Indian Act* was paternalistic and was meant to entice Indigenous peoples to renounce their status through intense restrictions placed on them in favour of the rights and freedoms of Canadian citizenship and yet the White Paper’s announcement that it would remove the *Indian Act* led to massive Indigenous dissent. From what I understand, the *Indian Act*, despite its inherent paternalism and its devastating

impact on Indigenous communities, at the very least recognizes that Indigenous peoples are legally distinct from settler Canadians, and that this difference leads to certain rights and access to and protection for reserve lands. In that sense, the *Indian Act* provides a form of self-government, albeit one that is limited and heavily regulated. The *Indian Act* sought to expediate assimilation, and yet due to its recognition of Indigenous peoples by determining who has status, it is why Palmater (2014) states that “Simply repealing the entire *Indian Act*, without anything more, would cause more problems, not less” (p. 45). That is, the *Indian Act* seems to have ironically and inadvertently prevented full scale assimilation through its recognition of Indian status and its establishment of the band and band council system. Second, the White Paper led to national solidarity and activism amongst Indigenous peoples, with residential school survivors such as George Manuel, forming Indigenous political organizations, taking on leadership positions and pushing against the federal government’s new policy direction which threatened their status as Indigenous peoples. Thus, assimilatory institutions, technologies, techniques, strategies, laws and policies not only did not succeed in assimilating Indigenous peoples, they unintentionally orchestrated and galvanized mass Indigenous dissent. The federal government under Prime Minister Trudeau therefore did not just struggle to make assimilation a political reality, it mobilized Indigenous dissent in ways that were probably not predicted when the *Indian Act* was first drafted and signed into law in 1876.

It may even be permissible to say that the White Paper not only crystalized Indigenous activism in the late 1960s and early 1970s but opened up this governmental rationality to political challenge. According to some scholars, the White Paper’s attempt to dismantle Aboriginal rights led to some Indigenous peoples seeking to secure the recognition, protection and constitutional incorporation of their rights, especially once the Trudeau government began

the process of patriating the constitution (Borrows, 2016: p. 116; Ladner & McCrossan, 2009: p. 266-267; Patzer & Ladner, 2022: p. 18). However, there was a lack of unanimity amongst Indigenous peoples regarding the constitutionalization of their rights. Some First Nation, Metis, and Inuit leaders viewed the constitutional incorporation of their rights as a way to resist policies like the White Paper and guarantee protection against legislative extinguishment of the treaties and their special status (Borrows, 2016: p. 116). As a result, some Indigenous political organizations provided input into formal constitutional talks regarding Aboriginal and treaty rights (Borrows, 2016: p. 117). In contrast, many other Indigenous peoples and political organizations attempted to block the constitutional incorporation of their rights and the domestication of Canada's constitution, as they believed that they had a treaty relationship with the British Crown, and that this relationship provided them with political protection against the Canadian state's actions (Borrows, 2016: p. 113-114). This latter group engaged in various strategies, which included George Manuel, now President of the Union of British Columbia Indian Chiefs, organizing a "Constitution Express" to Ottawa in 1980 in order to raise domestic and international awareness of why they were against the nonconsensual constitutionalization of their rights (Borrows, 2016: p. 117; Major & Stirbys, 2022: p. 369). It also involved NIB sending a constitutional delegation to present their position forward to the Queen and to address the British Parliament on July 25th, 1979 (Borrows, 2016: p. 117; Major & Stirbys, 2022: p. 369). Lastly, it involved several First Nation organizations launching litigation within English courts and making the argument that since the British Crown "never explicitly transferred responsibility for Indians to Canada", treaty implementation continued to be Britain's responsibility (Borrows, 2016: p. 119). Thus, there was widespread Indigenous support against the White Paper, but this

did not translate into a unified Indigenous bloc with a shared understanding of how to best protect their rights.

Ultimately, the constitutionalization of Aboriginal and treaty rights would proceed, partly due to the constitutional inability to involve the British Crown for the purpose of blocking the domestication of the constitution. The reason for why the case in the English courts failed goes back to the purported notion that the monarch now has more than two bodies, with one being a physical body and the others being metaphysical body politics. As noted in the last chapter, the devolution of the British Empire through the *Balfour Declaration 1926* and the *Statute of Westminster 1931* meant that Canada had legislative authority over its own affairs, which subsequently meant that Canada has its own separate and distinct legal personality, or a “Canadian Crown” (Smith, McCreery & Shanks, 2022: p. 15; Williams, 2019: p. 48). At the English Court of Appeal, Lord Denning ruled in *R. v. The Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta, Union of New Brunswick and the Union of Nova Scotian Indians* that “the Crown” is no longer single and indivisible, and that the Crown’s obligations under the *Royal Proclamation* and the treaties became binding of the Crown in Canada (Borrows, 2016: p. 119; *R. v. The Secretary of State for Foreign and Commonwealth Affairs*, 1982: p. 1-2). This means that while the Canadian Crown and British Crown resided in the same physical body, the late Queen Elizabeth II, the British Crown was declared by this English court to no longer have any executive authority over the affairs of the Canadian Crown. As a result of the mystification and multiplication of the Crown’s bodies, the attempt by First Nation organizations to compel the British Crown to intervene in the patriation of the constitution failed.

However, the ruling that the British Crown could not intervene in Canadian affairs does not mean that there were no discernable effects. As noted by Borrows (2016), “the pressure created by Indigenous peoples in Britain, sent the federal government back to the bargaining table with the provinces, with an additional promise to include Aboriginal and treaty rights in the final document” (p. 120). Thus, the federal government, continued to advance the constitutionalization of Aboriginal and treaty rights, and this included continuing to selectively partner with Indigenous political organizations that were open to this process (Borrows, 2016: p. 120). While there was a notable withdrawal of support by many Indigenous political organizations, including the NIB, it seems that ultimately, the efforts to constitutionalize Aboriginal and treaty rights would be successful and lead to the inclusion of Section 35 in the patriated Constitution, thereby recognizing and affirming pre-existing Aboriginal and treaty rights (Borrows, 2016: p. 120; Ladner & McCrossan, 2009: p. 268; Patzer & Ladner, 2022: p. 18; Major & Stirbys, 2022: p. 369-370). Thus, in the early 1980s, the constitutionalization of Aboriginal and treaty rights was completed.

Despite this constitutional change, the state of Indigenous-settler relations remained unstable. In the late 1980s, numerous Indigenous-settler conflicts erupted, likely since these rights were “recognized and affirmed” but its contents of these rights were left undefined (Coulthard, 2014: p. 116-117). This is because the constitutional negotiations that immediately followed the patriation of the Constitution in 1982 did not lead to a consensus about the definition, nature or extent of these rights amongst Indigenous representatives, the federal government and the provinces (Patzer, 2019: p. 217-218; Patzer & Ladner, 2022: p. 22). Assimilation, therefore, may have been a declining governmental rationality in this time period given the activism and solidarity amongst Indigenous peoples and the push to entrench their pre-

existing rights in the constitution. However, it seems that in the immediate aftermath of the patriation of the Constitution and the unresolved consensus for how Section 35 would be applied, Indigenous-settler relations would continue to be based on conflict.

It is in this historical context that we start to see the emergence of “reconciliation” as a new governmental rationality which would ultimately displace assimilation as the dominant rationality within settler colonialism. Since post-1982 constitutional conferences with Indigenous and state attendees were unable to lead to a consensus about how Aboriginal rights would be recognized and affirmed within Canadian constitutionalism, appellate courts, especially the Supreme Court of Canada, were now tasked with giving shape to and defining these rights (Patzer & Ladner, 2022: p. 21-22). This branch of the Canadian legality tree was thus responsible for refining and delimiting the scope and nature of Aboriginal rights in the face of sustained conflicting relationships between Indigenous peoples and settler Canadians. As explored in the previous chapter, the May 31st, 1990, judgement for *R. v. Sparrow* outlined that the federal government’s legislative power must be reconciled with its federal duty and that any infringement on Aboriginal rights must have a valid objective and be done so in relation to the Crown’s fiduciary duty. Reconciliation, as a unique political rationality, is thus born out of conflict, as the courts sought to reconcile Indigenous peoples through defining Aboriginal rights, rather than continuing a governmental trend of trying to erase Indigenous peoples through assimilation.

In 1990, tensions between Indigenous peoples and various federal and provincial governments continued to escalate, with the latter half of the year being marked by national crises in settler sovereignty that resulted in yet another state commission. It appears that in 1990, there were three unrelated events which challenged the legitimacy of settler colonial governance

on Indigenous lands. First, on June 12th, 1990, the Meech Lake Accord, a series of constitutional reforms meant to appease Quebec after the patriation of the Constitution, had failed to pass due to Cree Manitoba Member of the Legislative Assembly Elijah Harper's filibuster; notably, the Meech Lake Accord required all ten provinces to ratify it for its constitutional amendments to be adopted (Coulthard, 2014: p. 115-116; Russell, 2022: p. 336-337). The Meech Lake Accord did not take into account Indigenous issues nor invited Indigenous leaders and was intrinsically based on the wrongful idea that Canada was founded by only the British and the French; as such, Indigenous dissent was vocal and the Assembly of Manitoba Chiefs endorsed Elijah Harper's filibuster (Russell, 2022: p. 336-337; Schwartz, 2018: p. 78-79). Second, starting on July 11th, 1990 (a month after the failed Meech Lake Accord), the so-called "Oka Crisis"³⁰ began as the Mohawk nation of Kanesatake, who were defending their sacred territory from being turned into a golf course, were confronted by Quebec's provincial police force and eventually the military (Coulthard, 2014: p. 116). The Oka Crisis lasted a total of seventy-eight days but led to nationwide Indigenous-led solidarity actions taking place (Coulthard, 2014: p. 116). Furthermore, the widespread circulation of the images taken at Oka led to an international questioning of Canada's concerns for human rights (Turner, 2012), which may have furthered a crisis in the legitimacy of settler sovereignty. Shortly after the conclusion of the Oka Crisis, there was another issue that was brought forth. On October 30th, 1990, there was a watershed moment

³⁰ The "Oka Crisis" is referred to as the "Kanehsatake Resistance" amongst the Haudenosaunee. It has been pointed out to me that using the term "Oka Crisis" instead of the "Kanehsatake Resistance" privileges a settler colonial perspective since it was settlers who viewed its events as a "crisis" whereas the Haudenosaunee viewed these same events as resistance against the illegitimate rule of a settler colonial government. While I use the term "Kanehsatake Resistance" elsewhere in this dissertation, I have chosen to use the term "Oka Crisis" in this chapter for one reason. An argument that I start to put forth later in this chapter and in other parts of my dissertation is that crises in settler colonial governance often leads to calls for reconciliation (mainly by settlers). In this section, I am trying to draw a line from the "Oka Crisis" (and other crises in settler colonialism at this time) to the Royal Commission on Aboriginal Peoples and the mobilization of reconciliation discourses. I believe that using the term "crisis" helps to elucidate this argument.

when then Grand Chief of the Assembly of Manitoba Chiefs disclosed in a CBC interview that he had been abused within the residential school he attended; this public admission resulted in solidarity amongst survivors and litigation against the federal government (Niezen³¹, 2013: p. 29-30). Interestingly, the CBC interview begins by briefly acknowledging the Oka Crisis, and how it has led to Canadian interest in “Native anguish and discontent” (Frum, 1990), thereby providing a conceptual link for the viewer between the Oka Crisis and abuse in residential schools³². Thus, in the latter half of 1990, Indigenous peoples across Canada were organizing *en masse* to challenge and protest settler colonial governance, with the Canadian public forced to acknowledge this reckoning through failed constitutional reforms and awareness of issues impacting Indigenous peoples.

The federal government, now under the premiership of Progressive Conservative Brian Mulroney, launched the Royal Commission on Aboriginal Peoples (RCAP) in 1991. As mentioned in the previous chapter, RCAP was tasked with investigating the relationship between Indigenous peoples and settler Canadians, and to propose a vision of reconciliation. In contrast to the other state commissions discussed in this section, RCAP heard hundreds of testimonies directly from Indigenous peoples, and four out of its seven commissioners were Indigenous. Arguably, it was a progressive commission and took its role seriously, with a five-volume report being published in November 1996 with over four hundred recommendations. What is

³¹ I do not know if this needs to be noted, but it appears that Niezen accidentally states in his book that Phil Fontaine was the Grand Chief of the Assembly of First Nations, however, Chief Fontaine would not take on this position until 1997. Moreover, the CBC interview in which he admits being physically and sexually abused has “Assembly of Manitoba Chiefs” under his name. As such, I have issued a correction here.

³² Most of the interview is very dated, with the host asking questions that would not be considered appropriate by today’s standards when speaking with a survivor of abuse. The host wanted to know what kind of abuse he specifically experienced, which he declined to answer, and later asked him to qualify why the abuse he experienced is different from how many Canadians of their generation were subject to corporal punishment by their parents. These inappropriate questions seem to stem from how the general Canadian public may not have known about the existence of residential schools or how they operated.

noteworthy is that in its efforts to conceptualize “reconciliation”, RCAP’s final report completely disavows assimilation as a governmental rationality. In Volume 1, it reads:

The analysis we present and the avenues of reconciliation we propose in this and the other four volumes of our report do not attempt to resolve the so-called 'Aboriginal' problem. Identifying it as an Aboriginal problem inevitably places the onus on Aboriginal people to desist from 'troublesome behaviour'. It is an assimilationist approach, the kind that has been attempted repeatedly in the past, seeking to eradicate Aboriginal language, culture and political institutions from the face of Canada and to absorb Aboriginal people into the body politic — so that there are no discernible Aboriginal people and thus, no Aboriginal problem. (RCAP, 1996a: p. 12).

Through this short paragraph, the RCAP report scathingly criticizes how previous governments have problematized Indigenous peoples and then attempted to assimilate Indigenous peoples into the settler body politic. Instead, the report seems to problematize the assimilationist governmental policies of the state, as assimilation is identified as the problem that has destabilized Indigenous-settler relations. Reconciliation, according to RCAP, therefore requires the total abandonment of assimilation in favour of new governmental approaches which would lead to a renewed relationship between Indigenous peoples and settler Canadians.

At this point, there is much to be said about how governmental power within settler colonialism works. First, there are noticeable patterns within settler colonial governance. Whether it was the Bagot Commission, the Hawthorn report or RCAP, it appears that there is a cycle in which the state launches a commission to study Indigenous peoples, with the commissioners then problematizing conduct, articulating a governmental rationality, and proposing recommendations meant to materialize this rationality. In the above examples, knowledges are also circulated by state authorities and non-state experts who contribute to the findings in these commissions or reports. Moreover, it seems that the reason for this cycle of the settler state launching fact-finding missions is that rather than being totalizing and absolute, power within settler colonialism is unable to fully control the agency of Indigenous peoples

within this structure. Assimilation, and the technologies of power that were meant to make this rationality a reality, were seriously harmful but were nevertheless unsuccessful. Residential schools were envisioned by its nineteenth century architects as a means to eradicate Indigenous peoples through their conversion into Christian liberal subjects, but instead these institutions resulted in its survivors, such as George Manuel and Phil Fontaine, taking up leadership positions in Indigenous political organizations and successfully challenging the federal government assimilationist agenda and the Crown's assertion of sovereignty in the late twentieth century. Thus, the repeated failures of this rationality over a century led to solidarity amongst Indigenous peoples and several national crises which undermined settler colonial governmentality. According to Miller & Rose (2008), when governmentalities enter periods of criticism and crisis and multiple failures become perceptible, this leads to opportunities for the formulation of a new mode of governing (p. 17). These national crises, the consequence of governmental power based on assimilation, thus provided a chance to criticize this rationality, as RCAP led to the disavowal of outwardly assimilationist laws, policies, institutions, technologies and strategies and a reformation of governmental power based on the optimistic rationality of reconciliation and its technologies of power.

Reconciliation, like assimilation, should also be characterized as a unique political rationality in the sense that it consists of "changing discursive fields within which the exercise of power is conceptualized, the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the of the proper distribution of such tasks among secular, spiritual, military and familial sectors" (Miller & Rose, 2008: p. 55). The previous chapter has already noted how reconciliation has its discursive and moral origins in Christian theology, which is predominantly

concerned with repairing human relationships (and specifically relationships between humans and institutions). The RCAP report seems to take up this theological division and ordering of governmental power and tasks in numerous ways. First, for reconciliation to begin to be materialized, RCAP (1996a) calls upon the federal government, as the authority representing Canadians, to acknowledge past harms and promise non-repetition while also requesting that Indigenous peoples heal themselves by forgiving settler Canadians (p. 17). The moral justification for reconciliation seems to be that forgiveness will lead to renewed relationships between Indigenous peoples and settlers, which will have the effect of healing Indigenous communities. RCAP (1996b) also advances that reconciliation must be generated by embracing the “spirit and intent” of the treaty relationship and through the implementation of these rights, which it rationalizes in relation to vague moral notions of “justice” (p. 34-35). Perhaps unsurprisingly, several of the recommendations in the final volume explicates how to implement the treaty relationship, and RCAP (1996c) explicitly states that “The inherent right of Aboriginal self-government is recognized and affirmed in section 35(1) of the *Constitution Act, 1982* as an Aboriginal and treaty-protected rights” (p. 145). In addition, while the final volume mainly calls upon federal, provincial and territorial governments to implement its hundreds of recommendations, the RCAP (1996c) also calls for religious institutions, municipalities, educational institutions, labour unions, professional organizations, the media, Indigenous organizations and other stakeholders to participate in public education and other activities meant to increase awareness of Indigenous issues (p. 87-96). Thus, through the RCAP report, reconciliation is articulated as a political rationality that is different from assimilation, as it has a distinct moral justification and division of responsibilities amongst its authorities.

Curiously, the RCAP report seemed to express a hesitancy that judicial authorities should partake in reconciliation, despite the fact that “reconciliation” was first used by Chief Justice Dickson (who would then go on to influence the design and mandate of RCAP). On the one hand, the RCAP (1996a) report does acknowledge the importance of the judicial system, including how the federal government’s fiduciary duty is being recognized and implemented through the courts and how the courts have become responsible for interpreting Aboriginal rights (p. 8). On the other hand, the RCAP report makes these astute observations about the limitations of the courts:

The role of the courts is limited in significant ways. They develop the law of Aboriginal and treaty rights on the basis of a particular set of facts before them in each case. They cannot design an entire legislative scheme to implement self-government. Courts must function within the parameters of existing constitutional structures; they cannot innovate or accommodate outside these structures. They are also bound by the doctrine of precedent to apply principles enunciated in earlier cases in which Aboriginal peoples had no representation and their voices were not heard. For these reasons courts can become unwitting instruments of division rather than instruments of reconciliation. (RCAP, 1996a: p. 9).

Court proceedings simply do not foster reconciliation. They create winners and losers. Those who lose an argument in court do not always accept it, particularly if they regard the process or the result as illegitimate. This applies equally to treaty nations people and to segments of the non-Aboriginal population. For this reason, we see a need for treaty nations, the institutions of the Crown and the Canadian public to engage in a process of mutual understanding and respect that is not driven by successes or failures in court. (RCAP, 1996b: p. 33).

From these two statements, it appears that RCAP’s commissioners were of the view that the adversarial nature of the courts would not lead to their version of reconciliation based on healing, forgiveness and the implementation of the treaty relationship. In fact, the courts are associated with the structure of settler colonialism, as the RCAP report seems to warn that these institutions lack the innovativeness to be able to radically alter the trajectory of its decision-making on Aboriginal rights (or, to put in other words, the trunk of Canadian constitutionalism will constrain how this constitutional branch interprets Aboriginal law). If anything, the RCAP report

seems to warn that creating “winners and losers” will lead to further conflicts between Indigenous peoples and settler Canadians, which is why it assigns responsibility to other non-judicial authorities, institutions and organizations to materialize reconciliation.

RCAP’s stark warning about the judicial system seemed to be accurate. As explored in Chapter 2, the Supreme Court ruled on a series of cases known as the “*Van der Peet* trilogy” in 1996 which reconceptualized how the Supreme Court would apply its jurisprudential doctrine of reconciliation. These series of cases would end up having a devastating impact on the scope and nature of Aboriginal rights by fundamentally limiting the extent to which Aboriginal rights would apply. Chief Justice Lamer stated that the purpose of Aboriginal rights in Section 35 of the Constitution was to lead to the reconciliation of pre-existence of Indigenous societies with the Crown’s sovereignty (Barsh & Henderson, 1997: p. 997). Not only does Chief Justice Lamer take Crown sovereignty as uncontested and factual, but he then issues judgements that curtail Aboriginal rights in favour of reconciliation. *R. v. Van der Peet* determined that Aboriginal rights found in Section 35 of the Constitution would only apply to precolonial practices which were central to a First Nation’s culture and had not been influenced by European colonization, and that constitutionally protecting cultural practices post-contact would somehow contradict the interests of reconciliation (Barsh & Henderson, 1997: p. 998; McNeil, 2003: p. 6). The stage was set for the courts to produce “winners and losers” according to RCAP.

In fact, “winners and losers” were immediately produced, as this cultural test would be used to assess the facts in *R. v. N.T.C. Smokehouse Ltd.* and *R. v. Gladstone*, which were ruled on the same day as *R. v. Van der Peet*. The Supreme Court found that in the former, bartering salmon with its neighbours was not central feature of the Sheshaht band’s culture and thus Aboriginal rights did not apply, while in the latter the Supreme Court found that bartering fish

was a central element of Heilstuk culture (who were also neighbours to the Sheshaht band) and that Aboriginal rights did apply (Barsh & Henderson, 1997: p. 1003). This led to the case being sent back for a new trial so that more evidence could be presented (*R. v. Gladstone*, 1996: para 51). In *R. v. Gladstone*, the Supreme Court went even further, with Chief Justice Lamer indicating that reconciliation could mean the infringement of Aboriginal rights by Canadian governments for wide-ranging legislative objectives and the expansive economic interests of Canadians (McNeil, 2003: p. 8-9). Through these judgements, the Supreme Court redefined reconciliation as reconciling the pre-existence of Indigenous peoples with the Crown's claim to sovereignty, and in this context, Aboriginal rights would only apply to practices central to an Indigenous culture but that they could be infringed upon for vague reasons.

Curiously, this meant that how reconciliation was envisioned in the RCAP report was markedly different from how reconciliation evolved over time through the Supreme Court decisions. RCAP seems to focus on healing, forgiveness and restoring Indigenous-settler relations to the treaty relationship. As such, the RCAP report recognized that Indigenous nations exercise sovereignty, that they have never given up their right to self-government and that since this is protected in Section 35(1) of the *Constitution Act, 1982*, it could ultimately lead to a renewed relationship (Ladner, 2001: p. 243-244; Turner, 2012: p. 103). In contradistinction, the Supreme Court's rulings on Section 35 of the *Constitution Act, 1982* during the *Van der Peet* trilogy suggest that proper "reconciliation" involves the subordination of Indigenous authority in a colonial relationship to the Crown, as Aboriginal rights found in Section 35 had a limited application and could also be infringed upon. Thus, in 1996, reconciliation was linked to both the protection and erosion of Aboriginal rights by these two state institutions interpreting broadly defined rights following the lack of consensus after the post-1982 constitutional talks.

Despite RCAP and the Supreme Court producing reconciliation discourses that are fundamentally opposed in content and conception, the production of these political discourses ultimately contributes to the formation of reconciliation as a unique political rationality. In their work, governmentality scholars Miller & Rose (2008) explain that “Political argument does not have the systematic and coherent character of theoretical discourse” however, “it is possible to specify and differentiate political rationalities in terms of the relatively systematic discursive matrices within which the activity of government is articulated” (p. 30). Therefore, the fact that reconciliation, as a series of political discourses, is not necessarily coherent at the moment that RCAP and the Supreme Court iterate oppositional discourses does not mean that it is not possible to see that these political discourses make up a distinct political rationality. What unifies these political discourses of reconciliation is that they do share a relatively systematic discursive matrix. As explored above, reconciliation started to become articulated through the activism against, the criticism of and the ultimate demise of assimilation as a political rationality. At this time, there was also a transposal of reconciliation from Christian theology to the juridical and legal sphere. The RCAP report may advocate for the ecclesiastical nature of healing and forgiveness along with the implementation of Aboriginal rights in contrast to the Supreme Court’s decisions which determined that Aboriginal rights have a limited applicability, but both state institutions acknowledge Indigenous peoples as unique by holding Aboriginal rights. Furthermore, both institutions seem to be focused on charting a new way forward between Indigenous and settler populations, compared to how assimilation sought to “improve” Indigenous peoples by subsuming them into the white settler body politic. While reconciliation may be a series of highly malleable discourses, as these two state institutions have shown, there are regularities within these discourses. Their conceptualization by these state institutions

nevertheless led to the elevation of reconciliation as a new and dominant political rationality in the mid-1990s.

Of course, this did not necessarily mean that the adoption of reconciliation as the new political rationality was universally accepted. At first, the federal government seemed to be resistant to governing in accordance with reconciliation. This may have been due to how Jean Chrétien, author of the White Paper, had demonstrated a few years earlier that failing upwards is a possibility if you are around long enough, as he was now the Prime Minister. As noted in the preceding chapter, the RCAP report was largely ignored by the Chrétien government, even being described as “dead on arrival” (Ladner, 2001: p. 241). Furthermore, the Prime Minister signified his unwillingness to consider the possibility of reconciliation, as he did not even meet with Indigenous representatives at a lunchtime ceremony, instead sending his Minister of Indian and Northern Affairs to express the federal government’s *Statement of Reconciliation* in his place³³. However, while the Prime Minister may have been disinterested in reconciliation, his government eventually released *Gathering Strength: Canada’s Aboriginal Action Plan* in 1998. While Coulthard (2014) rightfully argues that the action plan does not go far enough as it does not consider land restitution, focuses mainly on healing and thus only commits to funding the Aboriginal Healing Foundation and is a summary of what the government was already doing at the time (p. 121-123), it seems that *Gathering Strength* should be slightly reframed. The action plan was a response to RCAP’s final report which anthropocentrically construed reconciliation as healing human relationships; thus, *Gathering Strength* seems to be a response for how the federal government would materialize a political rationality of reconciliation through the creation of new

³³ Perhaps it was good that he was not in attendance, since in February 1996 he had shown the country that when confronted with opposing politics, he will use his pro-wrestling move the “Shawinigan Handshake”.

technologies, strategies, institutions, laws and policies. Therefore, by the turn of the century, reconciliation not only ascended to be the new political rationality which refocused governance from assimilating Indigenous peoples to producing a new relationship between Indigenous peoples and settler Canadians but was already beginning to be materialized through healing Indigenous peoples.

Reconciliation in Ontario: Crisis, Optimism and Constitutional Mysticism

If the federal government was minimally (if not reluctantly) adopting reconciliation as a political rationality in the mid-1990s, the same could not be said about the Government of Ontario. Through my research process, I was unable to locate any provincial texts from around the time that RCAP's final report was published and when the Supreme Court of Canada was dealing with the *Van der Peet* trilogy. At most, I was able to find a report published in February 1995 titled *New Relationship, New Challenges: Aboriginal Peoples and the Province of Ontario*, however, this was part of RCAP's project to study governments across Canada and their relationships with Indigenous peoples. In the final paragraph of this report, the authors argue for a paradigm shift in Indigenous-settler relations in which "The members of the communities themselves must join hands in a spirit of friendship, equality and reconciliation. That is, ultimately, the challenge which this new relationship invites Ontarians to address" (Cameron, Wherrett & Brascoupe, 1995: p. 98). This is the only reference to reconciliation within this study, but it is notable in that it reflects the anthropocentric and overly optimistic idea that repairing human relationships will result in harmonious relations being re-established between Indigenous peoples and settler Ontarians. Similar to the future RCAP report, it encourages settlers and not just Indigenous peoples to partake in reconciliation. However, this appears to be the only provincial level text that speaks of reconciliation from this time period and was not published by

the Ontario government. The lack of a provincial response to calls for reconciliation means that it is entirely plausible that in the mid-1990s, amongst national crises and Supreme Court decisions, reconciliation was narrowly conceived to be a federal goal and not exactly a top priority for provincial governments, such as the Government of Ontario.

This seems to indicate that the spread of reconciliation as a new political rationality was uneven and sporadic, and that it did not permeate a provincial level of governance at the same time that some federal and national actors began to seriously concern themselves with how to demonstrate that they were committed to reconciliation. Nonetheless, this does not mean that it is impossible to trace how reconciliation became a dominant political rationality in Ontario or that assimilation remained a popular political goal in the province. The 1995 RCAP study of the Ontario government observes that the activism in the 1980s sparked national interest in Indigenous issues, and at the provincial level, the Liberal government under Premier David Peterson introduced intergovernmental initiatives that raised the profile of Indigenous issues in Ontario (Cameron, Wherrett & Brascoupe, 1995: p. 7). The 1995 RCAP study also notes that this activism heightened under the New Democrat government of Premier Bob Rae, and that his government supports the inherent right of self-government (Cameron, Wherrett & Brascoupe, 1995: p. 7). What this seems to reveal is that the national Indigenous activism in the 1980s led to two successive and politically different provincial governments starting to take note of and address issues affecting Indigenous peoples in Ontario in the mid-1980s and early 1990s. Thus, while reconciliation may not have been a dominant political rationality at this point in time, as this 1995 report on Ontario predated RCAP's final report and the Supreme Court's decisions in 1996, it seems that at the provincial level there was at least a recognition of Indigenous peoples as having constitutionally protected Aboriginal rights.

There are perhaps two reasons which can explain why reconciliation was not more explicitly taken up as a political rationality within Ontario at this point in time. The first reason can be linked to a judicial interpretation of the strict division of powers found within the *British North America Act, 1867*. This interpretation was first proposed by Lord Atkin in 1937 in *Canada (Attorney General) v. Ontario (Attorney General)* where he described the distribution of legislative authority between the Dominion and the Provinces as a “ship” with “watertight compartments” (*Canada (Attorney General) v. Ontario (Attorney General)*, 1937: p. 10). Under the “watertight compartments” interpretation, the Canadian constitution “establishes mutually exclusive jurisdictional spheres of limited power designed to minimize, if not outright prevent, jurisdictional overlap” within Sections 91-95 (Honickman, 2017: p. 226). Thus, the courts have articulated that there is a strict division of powers as found within Section 91 of the *British North America Act, 1867*. This is important, as Section 91(24) of the *British North America Act, 1867* gives exclusive authority of “Indians, and Lands reserved for the Indians” to the federal government. Thus, the courts interpretation of the division of powers in accordance with the “watertight compartments” doctrine may have meant that the provinces had no authority over issues relating to Indigenous peoples, as that was under the exclusive constitutional authority of the federal government. This may explain why reconciliation as a political rationality was limited to the federal level of government, and why the interest in Indigenous issues in Ontario began in the 1980s. The loosening of the “watertight compartments” doctrine within the courts (as explored below) may be further account for why reconciliation would eventually become a dominant political rationality in Ontario.

Beyond the “watertight compartments” interpretation of the division of powers found in the Section 91 of the *Constitution Act, 1982*, there may be another reason for why reconciliation

was not adopted as a political rationality in Ontario in the 1990s. This can be attributed to the changing political context and the events following a change of government in the mid-1990s. Shortly after this 1995 RCAP-commissioned study on the Ontario government was published, the New Democrat government completely collapsed in the June 1995 election. The outcome was that the Progressive Conservatives would form government, with the populist Mike Harris being installed as the new Premier of Ontario over a year before the RCAP report would be released advocating for healing and reconciliation or the *Van der Peet* trilogy would lay out a series of judgements regarding reconciliation. It was unlikely that the new Progressive Conservative government would embrace the notion of reconciliation. Some scholars argue that Harris' life trajectory as a conservative from North Bay, a place that embodies "rugged Northern Ontario entrepreneurial individualism", meant that he viewed government as inefficient, despised taxes and was suspicious of "disadvantaged groups" (which included Indigenous peoples) and perhaps even harboured racist settler colonial attitudes about Indigenous peoples too (Hedican, 2013: p. 213; Walkom, 1997: p. 409-410). While this may just be speculation, Trickey (1997) argues that Harris' neoliberal "Common Sense Revolution" relied on discourses that there were no predisposing conditions for poverty, unemployment and crime (p. 114). In addition, the Common Sense Revolution relied on dehumanizing and racist images to put forth a simplistic notion that not only do poor and racialized groups deserve their fate for not working hard enough or assimilating, but that they are "drains" on the system (Trickey, 1997: p. 114). The hostility and racism underlying the senseless "Common Sense Revolution" therefore positioned Indigenous peoples in opposition to the new Progressive Conservative provincial government, thereby making reconciliation an unlikely political goal.

There is one other element of the Common Sense Revolution worth accounting for in order to unpack why reconciliation was not adopted at the provincial level of governance. Within the Common Sense Revolution campaign, there was a renewed desire to get tough on crime rather than address the roots of crime, such as poverty or racism (Trickey, 1997: p. 118). Consequently, Indigenous leaders and other groups who had previously used protest and direct action during the Liberal and New Democrat governments in order to make gains were reconceptualized as lawless, holding “special interests” and were therefore dangers to the Ontario economy during the Common Sense Revolution (Lawson, 2018: p. 427). The racist discourses and imagery within the Common Sense Revolution, combined with the tough on crime approach and the linking of protest with criminality, meant that the new government had produced the conditions for further tensions and confrontations between Indigenous peoples and settler Ontarians to occur. Within just a few months into Premier Harris’ tenure, the so-called “Ippeewash Crisis” began.

The Ippeewash Crisis unfolded in early September 1995 when members of Stoney Point First Nation occupied Ippeewash Provincial Park. To provide some brief historical context, in 1942, the federal government invoked the War Measures Act to use its emergency powers and appropriate the Stoney Point reserve for military purposes, thereby dispossessing the Stoney Point First Nation (Ippeewash Inquiry, 2007a: p. 52). When the Department of National Defence seized this land, they promised Stoney Point First Nation that this land would be returned after the war, however, for many decades, it was not (Ippeewash Inquiry, 2007a: p. 59-63). When members of the Stoney Point First Nation began to occupy the park, Premier Harris demanded the Ontario Provincial Police to aggressively remove them. In fact, Premier Harris had used a racist and derogatory statement to express his anger at the First Nation members occupying the

park, which was also an instruction to the Ontario Provincial Police to remove the protestors, and his statement may have both incited and condoned the use of state violence (Hedican, 2013: p. 187-188; Ipperwash Inquiry, 2007a: p. 363). The Progressive Conservative government's Common Sense Revolution, with all its law-and-order rhetoric and implicit racism, therefore escalated the conflict by motivating the Ontario Provincial Police to move in on the protestors. This led to the police killing Dudley George, an Indigenous man helping to occupy the park.

For several years, calls for an inquiry into the death of Dudley George were ignored by Premier Mike Harris and the Progressive Conservative government. This was perhaps because the government would have been found at fault for needlessly escalating the crisis by demanding the aggressive removal of the protestors. This also marked a difference between the federal government and the provincial government. When the Progressive Conservative government of Prime Minister Mulroney was confronted with national crises in settler claims to sovereignty, his government launched RCAP in the following year, which would eventually call for reconciliation in 1996. In contrast, the Progressive Conservative government of Premier Harris did not consider setting up an inquiry or commission to investigate the causes or events of this provincial crisis in settler sovereignty. As noted above, the lack of provincial level documents regarding reconciliation seems to indicate that the provincial government did not even engage with reconciliation discourses following RCAP's final report, which was published a little over a year after the Ipperwash Crisis. Thus, despite a provincial level crisis, there was no inquiry or vague acknowledgement of RCAP's version of reconciliation, thereby leaving reconciliation as a political rationality at the federal level.

The first chance for a provincial inquiry into the Ipperwash Crisis came in 2003. The Liberals, under leader Dalton McGuinty, campaigned in the 2003 election that they would set up

an inquiry into the death of Dudley George (Hedican, 2013: p. 164). In November 2003, one month into the Liberals forming the provincial government, Premier Dalton McGuinty launched an inquiry under the Public Inquiries Act (Hedican, 2013: p. 37). It would still be several years until the Ipperwash Inquiry would publish its final report in May 2007 which would speak of the need for reconciliation between Indigenous peoples and settler Ontarians. However, in that time, a few important constitutional changes would occur, which would end up influencing the contents of the Ipperwash Inquiry's final report and would even lead the provincial government to start to engage with and govern reconciliation.

Part of this governmental shift in Ontario would have to be attributed to the Christian mysticism which is constitutionally employed to portray the Crown as existing metaphysically and honourably while also being represented by its imperfect and at times dishonourable physical bodies. As the previous chapter showed, this configuration of the Crown was the result of English jurists in the Tudor period inspired by Christ's Two Natures trying to resolve complicated legal matters and has led to some illogical thinking that the Crown is intrinsically honourable even though historical accounts and evidence easily disproves this claim of honourableness. In the present day, it is now believed that the monarch has more than just two bodies, given that the metaphysical body politic has multiplied across the globe and within each country in which the monarch remains the Head of State (Williams, 2019: p. 48-49). In Canada, following the *Statute of Westminster* and the patriation of the Constitution, there are now eleven Crowns, with one federal Crown represented by the Governor General and a Crown for each province represented by a Lieutenant Governor (Patel & Raudon, 2019: p. 147-148). It is through this Christian mysticism and multiplication that would allow for a quiet constitutional transferring of responsibilities that would be taken up in the Ipperwash Inquiry's final report.

To explain why, it would be helpful to return to the Honour of the Crown doctrine, which was explored in Chapter 3. In 2004, the Supreme Court, now under the direction of Chief Justice McLachlin, issued a judgement for *Haida Nation v. British Columbia (Minister of Forests)* in which it was determined the honour of the Crown means that governments, whose authority is derived from the Crown, have a duty to consult and accommodate the Section 35(1) rights of Indigenous peoples, even when those rights are asserted and not yet proven (Stanton, 2017: p. 29; Valverde, 2015: p. 141). The decision was notable for how it spoke of the Crown's honour as a matter of fact, despite the history of Crown governments dishonourably acting in its relationships with Indigenous peoples across Canada. However, the decision is important for another reason as it sets a precedent which transgresses the original division of powers between the federal government and provincial governments. As discussed earlier, the Canadian Constitution outlined that only the federal government had the paternalistic authority over the affairs of Indigenous peoples. Yet, in *Haida Nation*, Valverde (2012) observes that through the Supreme Court's reference to a singular Crown in its judgement (rather than using "the Queen in Right of British Columbia" to reference the British Columbia government), the Supreme Court was able to transfer this federal constitutional power to the provinces under the honour of the Crown doctrine (p. 6-8). Through Christian mysticism of honourableness and the indeterminacy and vagueness of the Crown's existence, a federal responsibility was able to be imposed onto provincial governments by the Supreme Court, thereby leading to a loosening of the "watertight compartments" interpretation of the division of powers in the *Constitution Act, 1982*.

Other notable Supreme Court cases heard during the mid-2000s would also contribute to the diminishing of the "watertight compartments" interpretation in relation to the honour of the Crown. In *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*,

which was heard on the same day as *Haida Nation*, the Supreme Court further confirmed that “where the Crown, federal or provincial, has ‘knowledge, real or constructive,’ of the potential existence of an Aboriginal right, title or a treaty right, and contemplates conduct that might adversely affect that right or title, the honour of the Crown requires the Crown to consult and in some circumstances accommodate that interest” (Tzimas, 2005: p. 461). Thus, through *Haida Nation* and *Taku River*, the Supreme Court had expanded the duty to consult and accommodate to the provinces, despite the fact that this responsibility was exclusively held by the federal government. The following year, the Supreme Court would make a similar ruling regarding the duty to consult. In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, the Court was tasked with addressing the tension in the numbered treaties regarding the right of First Nations to hunt and fish and the authority of governments to take up land for settlement (Schwartz & Rettie, 2006: p. 465). In its decision, the Court ruled “that the Crown must engage in a meaningful process of consultation and accommodation when a contemplated ‘taking up’ may have an adverse effect on the exercise of a First Nation’s treaty rights” (Schwartz & Rettie, 2006: p. 465). Notably, the ruling reconfirmed that the duty to consult applied to both federal and provincial legislatures (Nichols & Hamilton, 2020: p. 347). Thus, these three Supreme Court decisions in the mid-2000s have been instrumental in loosening the “watertight compartments” approach to understanding the division of powers in the Canadian Constitution³⁴. In turn,

³⁴ It appears that the Supreme Court was generally moving towards a different direction regarding the relationship between provincial legislative authority and Indigenous peoples around the same time that it was ruling on these cases involving the duty to consult and accommodate. According to Kerry Wilkins (1999), the doctrine of interjurisdictional immunity sets out that there is a division of powers between Parliament and the provinces, as determined in the *Constitution Act, 1982*, and that Section 91(24) gives the federal government exclusive authority to make laws in relation to “Indians, and Lands reserved for the Indians” (p. 190-206). Wilkins (2018) further explains that “Provincial legislative provisions deemed to be really about matters relating to ‘Indians, or Lands reserved for the Indians,’ therefore, will be invalid” (p. 24). In different cases, the Supreme Court has held this to be true. For example, in the 2006 case *R. v. Morris*, “the Court concluded unanimously that the regular constitution gives the provinces, acting as such, no power to infringe Indians’ treaty rights” (Wilkins, 2008: p. 16). However, there have been several developments which has led to the doctrine of interjurisdictional immunity being restrained.

provincial governments are compelled to uphold the honour of the Crown by exercising their duty to consult Indigenous peoples and accommodate their interests.

It is evident that Justice Linden and his Research Advisory Committee were inspired by the Supreme Court decisions made regarding the honour of the Crown doctrine along with RCAP's final report, including its recommendations, when the Ipperwash Inquiry's final report was published in May 2007³⁵. In regard to the former, it was the loosening of the "watertight compartments" through *Haida Nation*, *Taku River*, and *Mikisew Cree* which grounded the Ipperwash Inquiry's view that the Government of Ontario had to now uphold the honour of the Crown by exercising its duty to consult and accommodate. Specifically, the Ipperwash Inquiry (2007b) states the following regarding the honour of the Crown and the duty to consult and accommodate:

However, *Haida Nation*, *Taku River*, and *Mikisew* added an important element to the existing principles: federal, provincial, and local governments now have a duty to consult not only in situations where the treaty or Aboriginal right is proven, but also in cases where (sic) the right is asserted but not yet proven. The Supreme Court decision in *Mikisew* is particularly relevant to Ontario since it involved treaty rights on off-reserve "traditional" or "surrendered" lands.

The duty to consult and accommodate is extremely important. It offers the real prospect of reconciling Aboriginal rights and interests in land, water, and resources by promoting peaceful, meaningful consultation and participation in decision-making with respect to natural resources. Thus, the duty to consult and accommodate, if properly and effectively

Shortly after ruling on *R. v. Morris*, the Supreme Court heard *Canadian Western Bank v. Alberta* in 2007, in which *Morris* was "no longer good law" because it was decided prior to the Supreme Court's modern approach to interjurisdictional immunity (Wilkins, 2017: p. 105-106). Through *Canadian Western Bank*, the doctrine of interjurisdictional immunity, which would render provincial laws inapplicable to core federal matters, such as Section 91(24), was rejected as being "too inclusive" (Wilkins, 2018: p. 27). Additionally, the Supreme Court reasoned that a broad application of the doctrine was inconsistent with "flexible federalism" (Wilkins, 2008: p. 18). Provincial law would have to impair federal power and authority for it to be invalid (Wilkins, 2018: p. 27). Through these constitutional developments, the provinces would ultimately acquire greater legislative authority to intervene into Indigenous-settler relations. This reflects a parallel development in which the provinces would be assigned the duty to consult and accommodate.

³⁵ The Research Advisory Committee was made up of several Canadian legal scholars specializing on Indigenous law and Aboriginal rights. One served as a researcher for RCAP. Thus, it was inevitable that RCAP and Supreme Court decisions would influence the Ipperwash Inquiry's research process and the drafting of their report. The other members included a former Grand Chief and a former Royal Canadian Mounted Police commissioner.

fulfilled, offers the very real potential to significantly reduce the number of Aboriginal occupations and protests. (p. 109-110).

These statements reveal that the Ipperwash Inquiry believed that due to these Supreme Court decisions, the provincial government now had the responsibility to uphold the honour of the Crown by fulfilling its duty to consult and accommodate Indigenous peoples in Ontario. Additionally, the duty to consult and accommodate is linked to the process of “reconciling” Aboriginal rights. Through this discursive connection, the stage was set for the Ipperwash Inquiry to also push for the reconfiguration of Indigenous-settler relations in accordance with reconciliation.

In fact, the Ipperwash Inquiry’s final report was one of the first provincial level texts to meaningfully grapple with and advocate for the reformation of governmental power based on the political rationality of “reconciliation”³⁶. It also reflected the previously observed national trend where violence towards Indigenous peoples by settlers leads to settlers calling for reconciliation. As observed above, national crises in the legitimacy of settler colonial governance in the 1990s led to the discursive construction and deployment of reconciliation discourses. Such a trend seems to be replicated here, as racially motivated violence towards Indigenous activists calling for the return of Ipperwash provincial park ultimately led to the development and use of reconciliation discourses to address this provincial crisis in settler colonial legitimacy.

Throughout its final report, the Ipperwash Inquiry makes these articulations about reconciliation:

Finally, Ipperwash is important to the future of Aboriginal and non-Aboriginal peoples in this province. There can be no reconciliation without truth. The truth must come out so

³⁶ While I am fairly confident that there were no provincial level texts about “reconciliation” produced while Mike Harris was premier, I cannot fully determine that “reconciliation” did not start to be used when the Liberals formed government in the early 2000s. As such, I do not want to claim that this was the first instance of reconciliation being transposed from the federal to the provincial level. That being said, the Ipperwash Inquiry’s usage of “reconciliation” does seem to be one of the earliest examples of reconciliation entering into a provincial discussion of reforming governmental power to focus on modifying Indigenous-settler relations, so its importance cannot be overstated.

that Aboriginal and non-Aboriginal Ontarians can move forward together to our collective future. (Ipperwash Inquiry, 2007a: p. 672).

Furthermore, any process that is designed to resolve the park land issue must promote reconciliation and the long-term interests of all the communities involved. To this end, the communities affected must be actively involved in the process. Therefore, the best I can do is to recommend a process for going forward. (Ipperwash Inquiry, 2007a: p. 689).

As Chief Justice Lamer stated in *Delgamuukw v. British Columbia*, ‘let us face it, we are all here to stay’. My hope is that not only will we face this reality; we will embrace it in the original spirit and intent of the treaties. As I discuss in Part 2 of this report, these treaties envisioned Aboriginal peoples and settlers sharing the wealth and stewardship of this great land. Since we are all here to stay, we must continue to build relationships of trust, mutual respect and support. The road to reconciliation may be long and difficult, but it is a road that all peoples, Aboriginal and non-Aboriginal, must walk together. I hope the Inquiry process and this report have helped us to take a few steps forward along this road. (Ipperwash Inquiry, 2007a: p. 691-692).

Finally, experience has demonstrated that conflicts and disputes can be major setbacks in attaining the shared goal of harmonious relations based on understanding and reconciliation. Occupations and protests are often catalysts for the expression of racist or hateful sentiments on both sides of the barricade, with an attendant corrosive effect on Aboriginal/non-Aboriginal community relations. (Ipperwash Inquiry, 2007b: p. 34).

It appears that these statements mark discursive trends about reconciliation noted in this chapter and the previous one. In the first statement, reconciliation is presented in relation to truth, and that through the truth being told, reconciliation will lead to a historic transition in Indigenous-settler relations. In essence, reconciliation is meant to imply that settler colonialism is over, a series of past events that could be moved on from through truth-telling and healing. The second statement, speaking more directly to how the land at Ipperwash Provincial Park should be dealt with, indeterminately mentions reconciliation, but nonetheless relates it to resolving the long-term land interests between Indigenous peoples and settlers, or to put in other words, reconciling sovereignties. This seems to be akin to how the Supreme Court under Chief Justice Lamer used reconciliation. In the fourth statement, which directly addresses the crisis, explains that reconciliation and returning to an era of harmonious relations will not be possible through conflicts. The fourth statement is also noteworthy for another reason. The RCAP report explicitly

rejected seeing crises as the result of an “Aboriginal problem”, describing this as assimilationist; however, the fourth statement seems to have this false equivalency that both sides are at fault, despite the Common Sense Revolution’s internal racism and law-and-order rhetoric contributing to the police killing of Dudley George.

The third statement (which is the very last paragraph of Volume 1 of the Ipperwash Inquiry’s final report) is probably the most unique conception of reconciliation in this text. It incredibly weaves together the reconciliation discourses from the RCAP report and the Supreme Court’s decision on *Delgamuukw* to optimistically purport that reconciliation will lead to a brighter future. As observed in the earlier section, the reconciliation discourses produced by the RCAP report and the Supreme Court were diametrically opposed, with the RCAP report linking the treaty relationship, self-government and Aboriginal rights to reconciliation and the Supreme Court delimiting the scope and nature of Aboriginal rights under their jurisprudential doctrine of reconciliation. The Ipperwash Inquiry seemingly combines these oppositional discourses in its conceptualization of reconciliation. That is, it takes up Chief Justice Lamer’s view that reconciliation requires the reconciling of the pre-existence of Indigenous occupation of the land with the Crown’s assertion of sovereignty by emphasizing that “we” (settlers and Indigenous peoples) are “all here to stay”. Reconciliation, according to the Ipperwash Inquiry, means that “we” (settlers and Indigenous peoples) must therefore “walk together” on this road, thereby rejecting an assimilationist notion that one group should absorb the other. In order to walk together on the road to reconciliation, the Ipperwash Inquiry suggests embracing the spirit and intent of the treaties, which is what the RCAP report had stated in several of its recommendations. Thus, the Ipperwash Inquiry seems to combine these competing discourses of

reconciliation to resolve a provincial crisis in settler sovereignty and to advocate for a shift in how Indigenous-settler relations are conceived and governed in Ontario.

In framing the importance of reforming governmental power in accordance with this optimistic and coherent new rationality, the Ipperwash Inquiry makes several remarks about honourableness in Volume 2 of its final report. For instance, the Ipperwash Inquiry (2007b) states that the Crown is mandated to act honourably by securing the best interests of Indigenous peoples, but the 1927 and 1928 land surrenders at Kettle Point and Stoney Point (which would later lead to the Ipperwash Crisis) were not honourable, nor were they isolated incidents (p. 49). Here, the Ipperwash Inquiry seems to acknowledge that there is a duality (as I argue in the previous chapter), in which the Crown's claim to honourableness is often undermined or stymied by its historical reputation of Crown representatives across Canada acting on their theo-Lockean beliefs of land use by advancing settler colonial interests through neglecting or minimizing their fiduciary duties to Indigenous peoples. Rather than dispense with this medieval notion of honourableness given its false pretenses, the Ipperwash Inquiry uses the honour of the Crown to call for changes and to restore honour in Indigenous-settler relations, noting that the provincial government is legally obliged to be honourable in its dealings with Indigenous peoples. To argue this point, the Ipperwash Inquiry (2007b) notes how *Haida Nation*, along with the decisions in *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* determined that federal and provincial governments must uphold the honour of the Crown through its duty to consult and accommodate, and that this duty must be exercised on Ontario's "surrendered" treaty lands (p. 109). For the Ipperwash Inquiry (2007b), the fulfillment of the duty to consult and accommodate "offers the real prospect of reconciling Aboriginal rights and interests in land, water, and

resources by promoting peaceful, meaningful consultation and participation in decision-making” thereby reducing the likelihood of occupations and protests (p. 109-110). Thus, the honour of the Crown, which would be demonstrated through the provincial government properly exercising its duty to consult and accommodate, is linked with the potential for reconciliation.

Similar to the Supreme Court’s ruling for *Haida Nation*, the honour of the Crown is invoked by the Ipperwash Inquiry to compel the Government of Ontario to take upon itself the federal duty to consult and accommodate. For example, when discussing how the province only entered into agreements regarding natural resources after prosecutions and court decisions on Aboriginal rights, the Ipperwash Inquiry (2007b) bluntly states “the provincial government should not rely on prosecutions to determine the scope and extent of Aboriginal rights. This is not consistent with the honour of the Crown” (p. 122). In this example, the provincial government’s reliance on court decisions to resolve Aboriginal rights is problematized. Furthermore, the honour of the Crown is also mentioned as a way to instruct how the provincial government should conduct itself in its relations with Indigenous peoples. To give a brief example, when discussing burial and heritage sites, the Ipperwash Inquiry (2007b) is adamant that Indigenous peoples are involved in the decision-making process as “participation is consistent with the honour of the Crown” (p. 129). Through these examples, it appears that the honour of the Crown is called upon to problematize and admonish the provincial government’s past actions but to also suggest how the province should now act in its relationships with Indigenous peoples across Ontario.

The Ipperwash Inquiry’s final report led to 100 recommendations. Many of the Ipperwash Inquiry’s recommendations seem to be directly influenced by the recommendations found within the RCAP report and are aligned with how RCAP envisions reconciliation as an implementation

of the treaty relationship. For example, RCAP (1996c) recommendation 2.2.15 explicitly states that there should be an establishment of treaty commissions by all governments across Canada to oversee treaty processes, while recommendation 2.2.16 lists the essential features needed for a successful treaty commission (p. 142). The Ipperwash Inquiry (2007b) also recommends the creation of a Treaty Commission of Ontario to negotiate the settlement of land claims and explains that this recommendation was taken from RCAP's final report (p. 86). Ten of the Ipperwash Inquiry's (2007b) fourteen recommendations meant to settle land claims in Volume 2 are therefore concerned with the establishment, function, operation, effectiveness, and efficiency of a proposed Treaty Commission of Ontario (p. 99-101). Other recommendations reflect how provincial governments are also responsible for upholding the honour of the Crown and are thus inspired by reconciliation initiatives of other provincial governments. For instance, the Ipperwash Inquiry (2007b) observes that Indigenous issues have often been overshadowed since Indigenous affairs had been housed in ministries with other priorities, and therefore suggests the creation of a "Ministry of Aboriginal Affairs" akin to British Columbia's "Ministry of Aboriginal Relations and Reconciliation"³⁷ (p. 168-169). While the Ipperwash Inquiry (2007b) assigns the province the responsibility of promoting and developing policies and legislation regarding the duty to consult and accommodate under recommendations 14 and 15 (p. 367), recommendation

³⁷ In this section, I have argued that reconciliation was not a universally accepted political rationality, and that while it had become prominent at a federal level of governance in the mid- to late 1990s, it would still be several years before it became a dominant rationality in Ontario. I believe that the fact that British Columbia had a Ministry of Aboriginal Relations and Reconciliation in 2005 may be further evidence of this argument, as it seems that for reasons I do not have time to investigate, the Government of British Columbia seemed to be more inclined to govern Indigenous-British Columbian relations according to reconciliation than in Ontario, where it would still be a couple of years before reconciliation gained acceptance within the Ontario legislature (see below). This seems to show that reconciliation may have become popular in some provinces, while remaining unacknowledged in others at the same historical point in time. I would argue that scholars studying reconciliation should carefully consider how their provincial, municipal and local contexts may have resulted in the eventual adoption of reconciliation as a political rationality, rather than just assuming that events at the national level, such as the Oka Crisis and the RCAP report, automatically led to governmental power at every scale of governance being reformed, as this was likely not the case (as seen with Ontario).

34e. specifically outlines that this new ministry must ensure that the provincial government fulfills its duty to consult and accommodate (p. 370). A genealogy of the Ipperwash Inquiry's recommendations reveals that its central ideas and principles for reworking Indigenous-settler relations are derived from how reconciliation has been conceptualized in RCAP, how the Supreme Court has diffused federal duties to the provinces under the honour of the Crown, along with how other provincial governments are attempting to lead reconciliation efforts.

Unlike how RCAP's final report was received by the federal government, the Ipperwash Inquiry's final report seemed to have had a warmer reception. Upon receipt of the Ipperwash Inquiry's final report on May 31st, 2007, Premier McGuinty spoke in the legislature, in which he states the report "speaks to a shared desire among us all for healing, for reconciliation and for a new beginning" (Legislative Assembly of Ontario, 2007: p. 9157). In this instance, reconciliation is connected to healing Indigenous peoples, moving on from a past event and heralding a historic transformation in Indigenous-Ontarian relations. What is also noteworthy is that unlike how Prime Minister Chrétien sent another minister to a lunchtime ceremony to express regret, Premier McGuinty apologized in private and during his speech to the legislature to the family of Dudley George, before continuing by stating that his government would honour his life by implementing the recommendations of the Ipperwash Inquiry and work in a constructive partnership with Indigenous peoples across Ontario (Legislative Assembly of Ontario, 2007: p. 9157). Other party leaders also spoke of the final report. John Tory, then leader of the Progressive Conservatives, was absent, but his statement supported the report and the official apology, pushed for improved relations and that "We need the tools to develop reconciliation and understanding between aboriginal peoples and other citizens of Ontario and all of Canada" (Legislative Assembly of Ontario, 2007: p. 9158). Going further, the leader of the New

Democratic Party (NDP) Howard Hampton read the recommendations from the report and criticized Premier McGuinty for not explaining how his government would begin to implement them (Legislative Assembly of Ontario, 2007: p. 9158). Hampton even noted how Indigenous-Ontarian relations had worsened under Premier McGuinty's government³⁸ (Legislative Assembly of Ontario, 2007: p. 9158-9159). Thus, the Ipperwash Inquiry's report was embraced by all three major political parties in the Legislative Assembly of Ontario.

The official acceptance of the Ipperwash Inquiry's final report within the Ontario legislature on May 31st, 2007, seems to mark a point in time when reconciliation ultimately became a dominant political rationality for reconfiguring Indigenous-settler relations within Ontario. The Liberals and the Progressive Conservatives, the two largest parties of the legislature that are often in disagreement, spoke of the need for reconciliation through the implementation of the report's recommendations. This is in contrast to when the Progressive Conservatives were in government under Premier Harris and refused to institute an inquiry to investigate the Ipperwash Crisis or commit to implementing any recommendations that the RCAP report made toward provincial governments. Moreover, while the NDP did not mention the word "reconciliation" in its praise for the Ipperwash Inquiry's report, it was apparent that the third party had accepted and wanted formal explanations regarding how the province would move towards improving Indigenous-Ontarian relations. Thus, eleven years after the publication of RCAP's final report and the *Van der Peet* trilogy, reconciliation eventually emerged as the prominent political rationality for governing Indigenous-settler relations at the provincial level.

³⁸ I was not sure where to bring up this fact, but the so-called "Caledonia land dispute" unfolded in 2006. NDP leader Howard Hampton did not directly mention the Caledonia land dispute, but it is undoubtable that this was what he was referring to when criticizing Premier McGuinty's government.

While the submission and acceptance of the Ipperwash Inquiry's final report indicated that the province would govern according to reconciliation, it is important to recall that discourses of reconciliation are not neutral or innocent. Many of the discursive limits of reconciliation are apparent as these discourses are adopted and reiterated by actors at the provincial level. For instance, the anthropocentrism within these discourses is evident and hegemonic, as the three leaders of the major parties spoke of repairing human-to-human relationships but did not acknowledge the necessity of reconciliation with the earth. This reflects the theological underpinning of reconciliation. Moreover, reconciliation is discussed as a historic break in Indigenous-settler relations, and even frames settler colonialism as a series of past events. The Ipperwash crisis is framed as the consequence of a landgrab from fifty years prior, and while the Ipperwash Inquiry examines many events in Ontario's settler colonial history and discusses how they violate the Crown's supposed honour, the report optimistically believes that through reconciliation and its recommendations, improved relationships will occur, and that settler colonialism will be over. Furthermore, the honour of the Crown may continue to purport the theo-Lockean claim that the Crown's provincial sovereignty exists over Indigenous peoples, while reconciling Aboriginal rights has the potential to delimit and restrain Indigenous peoples based on criteria made by an institution which stems from Canadian liberal constitutionalism. Defining Aboriginal rights for reconciliation, therefore, seems to be a way to fit Indigenous peoples under Canadian liberal constitutionalism, especially as settler Canadians/Ontarians proclaim through Canadian constitutional law that for better or for worse, "we are all here to stay". Reconciliation may not be the same as assimilation (especially as it rejects the legitimacy of overtly assimilating Indigenous peoples), but its reformation of governmental power may have troubling implications for Indigenous peoples, as the next chapter will evaluate.

Conclusion

Through a governmentality framework, this chapter traced the emergence of different political rationalities within settler colonialism. Beginning in the 1840s, I first tried to examine how assimilation became the dominant governmental rationality, along with the increasing number of techniques, technologies, institutions, laws and policies that corresponded to settler goals of assimilating Indigenous peoples into the white settler body politic. This led to a close reading of the several state-sponsored reports that justified the perceived benefits of assimilation, while also accounting for how non-state experts contributed to the formation of assimilation as a political rationality and its corresponding governmental interventions, such as how the Ryerson report recommended the creation of industrial boarding schools. In line with my previous chapter, I also made sure to note how assimilation as a political rationality was not secular and had a religious dimension within its moral justifications and division of powers. In studying assimilation as a political goal and how governmental power operates within settler colonialism, I attempted to show that power is always failing and being reformed, as assimilatory laws, policies, institutions and technologies were continuously updated, modified or abandoned as they were unable to make assimilation a political reality for the white settler state.

In tracing the shift from assimilation to reconciliation, I continued to elaborate on how power within settler colonialism is not absolute nor totalizing but is fundamentally unstable as it cannot permanently condition and control the agency of Indigenous peoples. This is not to say that there have not been harmful effects emanating from how settlers had sought to assimilate Indigenous peoples into the body politic. As we know, various forms of child abuse and violence were prevalent in state sanctioned and church run residential schools, with these experiences contributing to future harm for Indigenous children and their communities. However, the focus

of this chapter has been to draw out the limits of governmental power, such as how assimilation not only failed to eliminate the existence of Indigenous peoples but led to contradictory results, as Indigenous peoples, including residential school survivors, worked together to disrupt and challenge the smooth operation of settler colonial governance. This most notably occurred through the mass rejection of the White Paper, forcing the state to have to contend with Indigenous activism and the eventual recognition of Indigenous peoples and their inherent Aboriginal rights in the 1980s.

Additionally, through this chapter I have tried to account for how there are different scales of governance and what this meant for reconciliation. It appears that the rejection of assimilation and the shift towards reconciliation as a political rationality was messy and incoherent, as RCAP and the Supreme Court produced conflicting discourses of reconciliation in 1996. Nevertheless, at the federal level, reconciliation became a dominant political rationality, although the federal government seemed to have dragged its feet at embracing the notion of reconstituting how it governs Indigenous-settler relations. Meanwhile, it seems that in Ontario, reconciliation was not immediately accepted, despite how RCAP made several recommendations that the provincial government could have adopted. While the story is similar, there are some key differences between what happened at the federal level and what occurred at the provincial level. That is, the Oka Crisis, Indigenous dissent towards the Meech Lake Accord and the acknowledgement of violence within residential schools were national crises in settler sovereignty, leading to the Progressive Conservative government establishing RCAP with a broad mandate and investigative powers. Similarly, the Ipperwash Crisis led to a provincial crisis in settler claims to sovereignty, however, the Progressive Conservative provincial government did not institute an inquiry or commission to investigate the causes of this crisis. It would only be

over a decade later that the Ipperwash Inquiry would publish its findings on the crisis, with many of its recommendations based on the recommendations found in RCAP's final report.

It seems that there are constants and variables when comparing what happened at the federal level and the provincial level. First, crises such as the Oka Crisis or the Ipperwash Crisis, were the result of Indigenous activism in the 1990s, and could be seen as challenges to settler claims to sovereignty. Both crises also led to both the federal government and provincial government launching a commission or inquiry to investigate these events, with RCAP and the Ipperwash Inquiry detailing the history of colonialism and providing recommendations meant to improve Indigenous-settler relations. This marks an ongoing cycle in which the failure or contradictory effects stemming from governmental power and its political rationality leads to the settler state launching a fact-finding mission to learn about Indigenous peoples. Through both these state institutions, recommendations were made to materialize reconciliation. That being said, there are puzzling differences between what happened at the federal level versus the provincial level. While the federal Progressive Conservatives launched RCAP in the face of several national crises, the provincial Progressive Conservatives abstained from establishing a fact-finding institution (likely because Premier Harris would have been implicated as escalating the crisis, whereas Prime Minister Mulroney was more removed from the events in Oka). RCAP was thus born the following year after the Oka Crisis, while the Ipperwash Inquiry would only come to fruition once the Liberals formed government in Ontario several years later. Besides the differences between how the Progressive Conservatives responded at the federal and provincial level, the same could be said for the Liberals. At the federal level, Prime Minister Chrétien did not apologize nor seemed very interested in the RCAP report, whereas Premier McGuinty spoke favourably of the Ipperwash Inquiry and apologized in the legislature. Thus, both at the federal

and provincial level, the Liberals received the findings and recommendations from these fact-finding state institutions, and yet their responses were polar opposite. There are thus close similarities but also stark differences regarding how reconciliation achieved hegemony at the federal and then the provincial level.

Although this chapter has outlined how reconciliation became a dominant political rationality, and the discursive limits within it, this is only the first part of a governmentality analysis of power within settler colonialism. That is, while I have looked at how reconciliation ultimately became a political rationality in the mid-2000s in Ontario, I have not yet examined how a diverse assemblage of Indigenous, state, extractive and market actors, institutions, communities, and organizations formed to materialize reconciliation. This includes looking at how this network became convinced that their interests were aligned and sought to construct technologies in accordance with this political rationality. Thus, this chapter may have provided an overview of how assimilation emerged as a political rationality and its technologies of power, and how intense political challenges by Indigenous peoples led to its decline in favour of reconciliation as a new political rationality for reconfiguring Indigenous-settler relations. However, this chapter has not looked at the technologies, tools, techniques, strategies, laws or policies that have been thought up and made real in a concerted effort to make reconciliation a reality. The next few chapters will therefore continue with a governmentality analysis to study the creation of resource revenue sharing agreements, how these new legal arrangements were connected with reconciliation, and some of the multifaceted and complex effects arising from these agreements in relation to the limits of reconciliation. These chapters will also build on some of the ideas and arguments put forth in this chapter, as I highlight how despotic liberal

notions of the self-sufficient subject re-emerge, blend with reconciliation discourses and shape the intentions and goals behind instituting resource revenue sharing agreements in Ontario.

Chapter 5: The Tensions in Translating Reconciliation into Reality

Introduction

Thus far, I have argued that reconciliation is an anthropocentric concept transposed from Christian theology into Canadian state institutions, such as the Supreme Court and RCAP. I have also traced how Indigenous activism against the dominant political rationality of assimilation led to the emergence of reconciliation as a new distinct political rationality. As noted in the last chapter, the development of reconciliation as a political rationality began in the 1990s at the federal level, and that it would not be until the mid-2000s that reconciliation would be embraced as a political rationality in Ontario. While this analysis has meticulously traced the origins and meanings of reconciliation over centuries, including how the deployment of reconciliation discourses occurs in relation to crises in settler colonialism, I have yet to consider the governmental technologies associated with translating reconciliation into reality in Ontario. For this chapter, I want to focus my governmentality analysis on how resource revenue sharing was conceived as a governmental concept related to reconciliation, and the arguments for its implementation. I will argue that although reconciliation had become a dominant political rationality, competing interests and the uncertainties discursively attached to resource revenue sharing prevented it from being instituted in Ontario in the mid-2000s. In turn, this governmentality analysis will show that despite the embrasure of reconciliation as a new political rationality, the creation of reconciliatory technologies was not a neat and straightforward process.

To emphasize this point, I want to give a brief overview of how it took several years for resource revenue sharing to be embraced under the same political actors. In June 2004, the NDP Member of Provincial Parliament (MPP) for Timmins-James Bay Gilles Bisson's Private Member's Bill known as "Bill 97: An Act respecting the sharing of resource revenues for First

Nations” (also referred to as the “*First Nations Resource Revenue Sharing Act, 2004*”) is moved to a second reading. Its feasibility is subsequently assessed through the Standing Committee on Finance and Economic Affairs in September 2004, in which leaders from Indigenous communities, executives from mining and forestry companies and associations and private citizens come forth to give their views on the potential impact of this Private Member’s Bill. The almost one-year-old Liberal government of Premier Dalton McGuinty, which seemed to have wanted improved relationships with Indigenous peoples given that they had launched the Ipperwash Inquiry several months earlier, did not allow the bill to go to a third reading. The Liberals had effectively killed this Private Member’s Bill. Fourteen years later, the Liberal government under Premier Kathleen Wynne announced in May 2018 that the provincial government had entered into three resource revenue sharing agreements with Indigenous political organizations and councils representing a large number of First Nations across Ontario. This announcement was steeped in reconciliatory language and optimism about a new relationship and marked a shift from the Liberals rejecting resource revenue sharing to believing in its utility in governing Indigenous-settler relations in Ontario.

The present and following chapters will show how resource revenue sharing went from being a novel, marginal and even radical idea that was extremely divisive to one that would be openly adopted by a diverse assemblage of Indigenous, state, extractive and market actors as a necessary governmental solution. This chapter will specifically establish that the conceptual origins of resource revenue sharing can be traced to when reconciliation was being formalized as a legitimate and dominant political rationality in the 1990s. This chapter will also unpack how the arguments for resource revenue sharing reflect both Indigenous perspectives of the treaty relationship, along with similar liberal despotic desires to promote “self-sufficiency” amongst

Indigenous peoples. This chapter will also argue that resource revenue sharing was a polarizing governmental solution for Indigenous-settler relations amongst different Indigenous, political and extractive actors, organizations and institutions. This will be demonstrated through how the aforementioned Bill 97 led to division between First Nation Chiefs, executives from mining associations and companies, and the Liberal provincial government, with the collapse of this Private Member's Bill being attributed to how it produced uncertainties for Ontario's mining industry. This chapter is therefore interested in uncovering the tensions and failures in translating resource revenue sharing from a reconciliatory concept to a governmental intervention into Indigenous-settler relations in Ontario. It will unveil how the presumed uncertainties from resource revenue sharing meant that different sets of actors felt that their interests and goals were at risk or unaligned, which prevented these actors from coming together to advocate for this governmental technology.

A New (Economic) Relationship: Treaties, Resource Extraction and Revenue Sharing

The concept of resource revenue sharing seemingly appeared to have come out of thin air. Its discursive origins in Ontario along with its authors could not be easily located, yet the idea of sharing resource revenues with Indigenous peoples has become prominent over the last decade. However, by employing governmentality as a theoretical tool, it became apparent that the origins for this concept were glaringly evident, if not obvious. According to governmentality scholars, "If political rationalities render reality into the domain of thought, these 'technologies of government' seek to translate thought into the domain of reality, and to establish 'in the world of persons and things' spaces and devices for acting upon those entities of which they dream and scheme" (Miller & Rose, 2008: p. 32). In other words, new technologies of power are developed in relation to corresponding political rationalities, as the purpose of these technologies are to

make these political rationalities “real”. These technologies can encompass any “devices, tools, techniques, personnel, materials and apparatuses that enabled authorities to imagine and act upon the conduct of persons individually and collectively, and in locales that were often very distant” (Miller & Rose, 2008: 16). Therefore, if a political rationality is a style of thinking about how to govern and manage the conduct of a population, technologies can be any set of persons (e.g. institutions or assemblages), instruments, mechanisms, techniques and strategies that are purposefully constructed or relied upon to govern a population in accordance with a specific political rationality.

When assimilation was the dominant political rationality concerning Indigenous-settler relations across Canada, there was no attempt to share the revenues from resource extraction. As discussed in the last chapter, the global rise of British liberal despotism as an ideology in the nineteenth century resulted in British colonial governments believing that providing presents to their First Nations allies promoted “state dependency” and required correction through assimilatory interventions. Clearly, sharing resource revenues could not have been articulated when assimilation was still the dominant political rationality for intervening into Indigenous-settler relations. Thus, it could be reasonably hypothesized that resource revenue sharing was a relatively recent idea that was tied to the abandonment of assimilation as a political rationality. This could be confirmed through RCAP’s multivolume final report, in which assimilation was rejected as a legitimate political rationality in favour of reconciliation. Within RCAP’s final report, resource revenue sharing was indeed proposed as one of several new technologies that would help to materialize the new political rationality of reconciliation across Canada.

As noted in the last chapter, RCAP associated reconciliation with the return of the treaty relationship. To make reconciliation real, resource revenue sharing emerges in RCAP’s

recommendations as part of the general emphasis on returning to the “spirit and intent” of the treaties and the implementation of the treaty relationship. Within the report, treaty-making and the implementation of existing treaties are believed to be necessary preconditions that will result in economic security and self-government. This can be seen in the second volume of the RCAP (1996b) report:

A major objective of treaty making and treaty implementation and renewal is to facilitate Aboriginal economic self-reliance, cultural autonomy and self-government. To accomplish this, Aboriginal nations must have more territory and rights of access to resources than they do now under Canadian law. Without adequate lands and resources, Aboriginal nations will be pushed to the edge of economic, cultural and political extinction. This is as true for nations that have yet to enter into treaty with the Crown as it is for those that are party to historical treaties. (p. 550).

Treaty implementation is therefore considered by RCAP to be an integral step towards economic self-sufficiency and self-government. Furthermore, if assimilation was premised on the extinction of Indigenous peoples, redistributing lands and resources under reconciliation and through the treaties is deemed fundamental to preventing the extinction of Indigenous peoples. This leads RCAP (1996b) to recommend that:

2.4.2 Federal, provincial and territorial governments, through negotiation, provide Aboriginal nations with lands that are sufficient in size and quality to foster Aboriginal economic self-reliance and cultural and political autonomy.

2.4.3 The goal of negotiations be to ensure that Aboriginal nations, within their traditional territories, have (a) exclusive or preferential access to certain renewable and non-renewable resources, including water, or to a guaranteed share of them; (b) a guaranteed share of the revenues flowing from resources development; and (c) specified preferential guarantees or priorities to the economic benefits and opportunities flowing from development projects (for example, negotiated community benefits packages and rights of first refusal). (p. 550-551).

Recommendation 2.4.2 essentially opens up federal and provincial governments to negotiate lands for Indigenous peoples for their political and economic benefits, while recommendation 2.4.3 states that these negotiations must lead to particular land-related economic outcomes for Indigenous peoples. Importantly, recommendation 2.4.3(b) directly calls for resource revenue

sharing to be instituted. This would be the first time that resource revenue sharing is pitched in an official state document as a governmental solution to improve the political and economic situation of Indigenous peoples. Since resource revenue sharing is connected with treaty implementation, this means that it is also implicitly related to an overall effort to make reconciliation a reality.

RCAP, however, was not solely responsible for the suggestion that resource revenue sharing be implemented in order to improve Indigenous-settler relations. RCAP, like other state commissions, represents the governmentalization of the state in the sense that its public hearings brought forth a diverse network of Indigenous and non-Indigenous actors providing suggestions based on Indigenous and Western knowledges for how Indigenous-settler relations could be improved through state-led policies and initiatives. In fact, to continue with this governmentality analysis, it may be best to characterize RCAP's public hearings as moments when a governmental assemblage made up of Indigenous, state and extractive actors came together to problematize Indigenous-settler relations and provide potential technologies to intervene into these relations. Upon reviewing the overviews for all four rounds of RCAP's public hearings³⁹, it is evident that sharing the revenues from resource extraction was primarily advocated for by Indigenous persons and Indigenous-led organizations, with occasional but hesitant support from non-Indigenous individuals within extractive industries.

At RCAP's public hearings, many Indigenous individuals alongside prominent national and provincial Indigenous organizations made comments that would problematize the Crown's historical conduct and also made suggestions that seemed to push RCAP's commissioners to

³⁹ I was unable to locate documents from each public hearing (e.g., transcripts), however, I was fortunate to find a series of documents which summarized what was stated and by whom at each round of these public hearings.

recommend the creation of resource revenue sharing. In the first round of public hearings, there was no mention of sharing the revenues from resource extraction, however, Indigenous participants brought up the inherent right to self-government and treaty violations. For instance, Chief Harold Turner of the Swampy Cree Tribal Council had argued that Indigenous peoples have always exercised self-government before stating that:

Our ancestors did not sign a real estate deal as you cannot give away something you do not own... As well, the Treaties were not signed to extinguish our sovereignty and our form of government...The importance of the Treaties and the Treaty making process to the First Nations governments cannot be overstated. They are the essence of our inherent right to self-government and reflect our historic relationship with the Crown as sovereign nations. (RCAP, 1992: p. 8).

Phil Fontaine, then Grand Chief of the Assembly of Manitoba Chiefs, also noted the systemic pattern of treaty violations, including the fact that treaty rights had been restricted (RCAP, 1992: p. 41-42). Thus, in this first round of public hearings, Indigenous authorities had informed RCAP that their respective First Nations exercised self-government, which was not conferred by the Crown's colonial governments. There were also grievances concerning how the treaties, which symbolized their inherent right to self-government, had been repeatedly violated by the Crown. Sometimes, this would lead to suggestions for some form of monetary compensation:

Treaty money and the support of services promised in the Treaties should not be seen as handouts, one woman said. These were payments for the enormous quantity of resources and land that Aboriginal people had given up to Canada. (RCAP, 1992: p. 42).

Development and pollution were affecting Aboriginal rights and traditional life styles, some said, and were violating Treaty rights and areas covered under land claims. Resources were being exploited without compensation or consideration for resulting damage to the land and environment. (RCAP, 1992: p. 55).

These statements suggest that the signing of the treaties between Indigenous peoples and the Crown meant that Indigenous peoples should receive financial compensation for the loss of resources and the violations towards Aboriginal and treaty rights which had historically occurred through extractive activities.

It was not until the second round of hearings that sharing resource revenues were called for by Indigenous leaders and organizations. These Indigenous participants put forward the concept of resource revenue sharing as one of three methods which would contribute to the practical financing of Indigenous self-government, the other two being unconditional transfer payments and a potential tax system (RCAP, 1993a: p. 37⁴⁰). For instance, the President of the Native Council of Prince Edward Island suggested that Indigenous governments should receive revenues from natural resources from the provinces (RCAP, 1993a: p. 39). In the third round of public hearings, one individual who was formerly of the Cree Naskapi Commission stated that a percentage of federal resource revenues should be collected (RCAP, 1993b: p. 58). Thus, during the second and third round of public hearings, Indigenous leaders and community members at the local level of governance had actively pushed for the redistribution of resource revenues collected by federal and provincial governments to support Indigenous self-government efforts.

It was not until the fourth round of public hearings (which unlike the other overviews was titled, “Toward Reconciliation”) when national level Indigenous actors and organizations, such as the Aboriginal Rights Coalition and the Assembly of First Nations (AFN), participated in the discussion about resource revenue sharing and self-government. For example:

The Assembly noted that First Nations governments will need a reliable and independent source of revenue in order to exercise their inherent right of self-government. Besides receiving tax revenues from their citizens, it recommended that these governments receive an equitable share of revenues derived from natural resources in traditional Aboriginal territories, in line with the commitments made in their original treaties. (RCAP, 1994: p. 76⁴¹).

⁴⁰ For some reason, the authors who put together the overview for the second round of public hearings did not paginate their report. As such, I am just putting the page number that the information can be found on.

⁴¹ Similar to the second round of public hearings, the authors for the fourth round of public hearings did not paginate their report and so I have provided the page number for where these sentences can be located.

From this paragraph, it appears that the AFN, as an organization representing the interests of First Nations across Canada, also believed that First Nation governments needed a fair share of revenues from resource extraction as a precondition for self-government. Therefore, as RCAP's public hearings were underway, resource revenue sharing as a concept gained traction, being voiced first by local Indigenous actors before being advocated for by national Indigenous organizations, like the AFN. Together, both local and national Indigenous actors and organizations repeatedly brought up to the Royal Commission that resource revenue sharing was a governmental solution that could reflect the treaties and make Indigenous self-government fiscally possible.

In their written submissions, Indigenous leaders further emphasized the importance of resource revenue sharing as necessary solution for reworking Indigenous-Crown relationships. For example, the Nishnawbe Aski Nation (NAN), a Political Territorial Organization (PTO) in Ontario which currently represents 49 First Nations, submitted an "Intervention Report" to RCAP dated September 1993. The report repeatedly brings up resource revenue sharing as a way to finance self-government and thus makes recommendations regarding the implementation of resource revenue sharing. For example:

Rebuilding our relationship with Canada and Ontario must take the path of reconciliation of past injustices, decolonization of our territory, an equal share in revenues from our lands and resources, and ultimately the recovery of our power to govern all aspects of our existence. (NAN, 1993: 63).

This statement emphasizes that remaking the relationship with the Crown requires the equal sharing of resource revenues, especially as this can lead to financing their self-government. It also connects reconciliation with decolonization, resource revenue sharing and self-government, which the RCAP report would explore in its recommendations for land distribution and revenue

sharing. Indigenous organizations seem to have been instrumental in pushing forward the notion that reconciliation should include some form of resource revenue sharing.

Occasionally, non-Indigenous individuals in extractive industries would voice their support for resource revenue sharing with the government. For example, in the second round of public hearings, the president of a mining company argued that governments and resource companies should engage in revenue sharing for the purpose of assisting Indigenous communities (RCAP, 1993a: p. 76). However, this support was more of an exception than a standard view held amongst extractive actors. In the third round of public hearings, an individual representing the Prospectors & Developers Association (PDAC) recommended that governments provide their tax and royalty revenues from tourism, recreation, hydro, mining and forestry to Indigenous peoples and other northern residents on the condition that prospectors can continue to explore for resources on public lands (RCAP, 1993b: p. 65). In this example, resource revenue sharing between governments and Indigenous communities was supported in principle by one of the largest mining associations in Canada, as long as sharing resource revenues would be used to buy conditions for peace to permit more exploratory and extractive activities. Most non-Indigenous individuals from extractive industries were therefore either reluctant to fully support resource revenue sharing or were cautious in their support for it (RCAP, 1993b: p. 62). Given this information, it seems fair to say that the reason why RCAP included resource revenue sharing in its final report can be attributed to Indigenous persons and leaders testifying at these public hearings, as extractive actors were not as enthusiastic about the concept of resource revenue sharing.

Resource revenue sharing therefore first appeared as a recommendation in RCAP's final report, which had disavowed assimilation in favour of reconciliation as a new political rationality

to govern Indigenous-settler relations. Reconciliation, within RCAP's final report, was conceived as honouring the spirit and intent of the treaties through the implementation of the treaty relationship. For RCAP, this included negotiating the redistribution of lands and resources to Indigenous peoples, which would also lead to the sharing of revenues collected through resource extraction. This would theoretically produce economic self-sufficiency and political autonomy of Indigenous peoples. Resource revenue sharing was therefore one technology of government meant to contribute to a wider goal of transforming reconciliation from a political thought into a political reality. Importantly, this technology of government was predominantly the result of Indigenous peoples and organizations testifying about violations to their Aboriginal and treaty rights and the financing of self-government at the four rounds of public hearings held by RCAP. While extractive actors and organizations may have expressed some support for resource revenue sharing, this seemed to have been after this technology of government had already been proposed by Indigenous individuals, organizations and institutions emphasizing the need to economically sustain Indigenous governments. As such, resource revenue sharing was envisioned as a practical and necessary method to finance Indigenous self-government, which RCAP would repackage as a governmental technology that would help to implement the treaties and therefore chart a new relationship between Indigenous peoples and Canadians under the banner of reconciliation.

However, it would be inaccurate to conclude that because Indigenous peoples were able to successfully push for resource revenue sharing to be consecrated under the political rationality of reconciliation that it would be much easier to institute this governmental technology. As the following section will show, resource revenue sharing was widely supported by First Nations in Ontario, some of whom had testified during RCAP's four rounds of public hearings. However, the skepticism expressed by extractive actors and organizations of what resource revenue sharing

should look like and how revenues should be redistributed to First Nations remained prevalent in Ontario. The next section will observe how the discourse of uncertainty was mobilized, first by extractive actors and then by Indigenous actors, albeit for different reasons, and how this prevented resource revenue sharing from being implemented in Ontario as a law.

Kill Bill 97: Uncertainties and Anxieties Towards Resource Revenue Sharing

As discussed in the introduction of this chapter, one of the earliest attempts to create a mechanism for resource revenue sharing in Ontario was when MPP Bisson of the NDP proposed his Private Member's Bill "Bill 97: An Act respecting the sharing of resource revenues for First Nations" in 2004⁴². Although RCAP also recommended resource revenue sharing, it is difficult to establish any firm links between MPP Bisson's bill and RCAP's final report. RCAP's final report was published in 1996, long before reconciliation would become a dominant political rationality in Ontario. MPP Bisson does not cite the RCAP report, although it is likely that him and his staff may have partially read the RCAP report or been indirectly inspired by it⁴³.

⁴² Bill 97 was not the first effort to institute resource revenue sharing in Ontario, nor was the concept of resource revenue sharing only brought up in 2004. In October 2000, NDP Leader Howard Hampton asked in the legislature why the Progressive Conservative government has refused to talk with First Nations on multiple issues, including resource revenue sharing (Legislative Assembly of Ontario, 2000: p. 4503). As far as I can tell, this is the earliest mention of resource revenue sharing being brought up in the legislature. Meanwhile, it appears that the Mushkegowuk Council was having serious conversations with MPP Bisson about creating a resource revenue sharing mechanism. In September 2001, the Mushkegowuk Council would pass Resolution No. 2001-09-33, which gave support to MPP Bisson in presenting a bill which would allow the Mushkegowuk Council to either share revenues or tax extractive actors in Mushkegowuk territories (Mushkegowuk Council, 2001). MPP Bisson would introduce a motion on resource revenue sharing in December 2002, however, the motion was lost by a vote of 35 ayes to 39 nays (Legislative Assembly of Ontario, 2002: p. 3844-3853). Unfortunately, no other information about this first attempt to install resource revenue sharing in Ontario could be found – including if it was inspired by RCAP and reconciliation.

⁴³ That being said, it is not outside the realm of possibility that RCAP's report had no influence. As seen in the previous chapter, the Ipperwash Inquiry's recommendations were partially informed by looking at how other provinces were engaging with RCAP's final report and calls for reconciliation. It is probable that MPP Bisson had been inspired by another jurisdiction or by another individual who had read the RCAP report. In addition, there were numerous Indigenous persons and prominent Indigenous organizations within Ontario (such as the Chiefs of Ontario alongside the PTOs, like the Union of Ontario Indians) who testified at RCAP's public hearings in the early 1990s and had made statements regarding the treaties, having a land base to secure economic benefits, and financing self-government, so there is a further possibility that an individual or organization involved in these hearings may have conveyed support for resource revenue sharing to MPP Bisson. Unfortunately, I cannot establish a firm link between

Nevertheless, I will examine the wording in his bill, its purpose and intent, alongside the Standing Committee hearings on this bill, to assess whether or not the discourses and logics surrounding this bill are similar to the reasons for why resource revenue sharing became a recommendation within RCAP's final report. Furthermore, studying this bill will reveal why resource revenue sharing between the provincial government and Indigenous communities was initially rejected in 2004, despite the fact that resource revenue sharing had been recommended as a governmental intervention in the early 1990s.

MPP Bisson's rationale for the bill can be gleaned from both the bill itself, along with comments he made in the legislature. In the preamble, it reads:

Many First Nations communities in Ontario are impoverished, although their traditional lands contain natural resources that could provide vital revenue.

An equitable method for sharing the revenues from such resources would be beneficial to the First Nations, the resource companies and the Government of Ontario. (*Bill No. 97*, 2004).

The purpose of the bill was therefore to help alleviate poverty and remedy socio-economic inequity in First Nations communities affected by or in close proximity to resource extraction. In moving the bill to its second reading in the legislature on June 17th, 2004, MPP Bisson spoke passionately about how in his riding of Timmins-James Bay, First Nations communities face extreme poverty, chronic underfunding and a lack of basic services (Legislative Assembly of Ontario, 2004: p. 3005). While he lays blame at the federal government, MPP Bisson notes how there is an inequity stemming from how extractive companies generate hundreds of millions of

the RCAP report and his Private Member's Bill as there is no available empirical evidence to support such a claim. However, since resource revenue sharing had been discussed at RCAP's public hearings over a decade before his bill was drafted, I am highly skeptical that MPP Bisson came up with the idea by himself, without any external influence. Sadly, attempts to get his contact information following his election defeat in 2022 were unsuccessful, otherwise, I would have set up an interview to learn more about his decision to author this bill and learn where he got the idea for resource revenue sharing.

dollars without having to share revenues from these resources, that First Nations cannot levy taxes unlike municipalities impacted by resource extraction, and that the province, which exercises control over natural resources, has a responsibility to create a legal resource revenue sharing mechanism that would “break the cycle of dependency” (Legislative Assembly of Ontario, 2004: p. 3006). Unlike the RCAP report, revenue sharing is not tied to the treaties or reconciliation in Bill 97; instead, sharing the wealth from resource extraction is conceived as being a way to address poverty within Indigenous communities. Arguably, this still somewhat aligns with RCAP’s proposal for resource revenue sharing. While MPP Bisson calls for revenue sharing to “break the cycle of dependency”, the RCAP recommendation was geared towards providing economic self-sufficiency. There is a continuum within liberalism that ending state dependency (i.e., government programs and services) occurs through economic self-sufficiency, an idea that stretches back to the British liberal despotism found in the Bagot Commission’s report on the state of Indigenous peoples in the Province of Canada and its rationale for assimilation. So, despite a rejection of assimilation as a political rationality, there is still a concern with producing Indigenous peoples to be independent liberal subjects. Furthermore, although different words were used between RCAP’s final report and MPP Bisson’s speech, the discourse underlying resource revenue sharing is the same, and also has its roots in liberalism. By sharing the wealth from resource extraction, Indigenous peoples will become proper liberal subjects who are economically independent from the state, thereby breaking the so-called cycle of dependency⁴⁴. Thus, there is a blending of Indigenous and liberal perspectives and arguments for resource revenue sharing.

⁴⁴ It might be more accurate to use the words “neoliberalism” and “neoliberal subjects” in lieu of “liberalism” and “liberal subjects” in this paragraph. According to Foucault and Foucault-inspired thinkers, “neoliberalism” is a “reprogramming of liberalism”, as it is a new political/market rationality which is less concerned with the exchange of commodities (a concern of classical liberalism) and more concerned with the promotion of “mechanisms of

There is also an explanation given for why the provincial government should engage in resource revenue sharing. In his speech, MPP Bisson alludes to the fact that while the federal government has an exclusive constitutional jurisdiction over the autonomy of Indigenous peoples, the *Constitution Act, 1982* gives constitutional responsibility over natural resources to the provinces. To rectify poverty within First Nations communities, MPP Bisson calls upon the province's constitutional authority to create a resource revenue sharing mechanism. This is important since the RCAP report stated that negotiations for redistributing land and resources should occur and should result in positive outcomes, such as revenue sharing, to ensure the political survival and autonomy of Indigenous peoples, but the report did not explain how provinces could authoritatively and constitutionally create a resource revenue sharing mechanism. Thus, his speech asserted that they had the constitutional and legislative authority to institute resource revenue sharing. Ultimately, many of his NDP colleagues spoke of their support for this bill, and following a debate in the legislature, the bill was successfully referred to the Standing Committee on Finance and Economic Affairs.

Between September 20th to the 23rd, 2004, the Standing Committee on Finance and Economic Affairs traveled to Sioux Lookout, Mishkeegogamang, Attawapiskat and Moose Factory to get input regarding the passage of Bill 97 into law. Throughout these different

competition" (Brown, 2019: p. 19-20; Foucault, 2008: p. 145-147). Foucault (2008) elaborates on the difference between liberalism and neoliberalism when he describes how, "what is sought is not a society subject to the commodity-effect, but a society subject to the dynamic of competition. Not a supermarket society, but an enterprise society. The *homo æconomicus* sought after is not the man of exchange or man the consumer; he is the man of enterprise and production" (p. 147). Arguably, promoting "Indigenous economic self-sufficiency" and the desire to "break the cycle of dependency" are discourses which fit within a neoliberal rationality of conditioning Indigenous peoples to be entrepreneurial, enterprising, competitive and productive within a neoliberalized market society. Numerous scholars have since theorized the relationship between settler colonialism and neoliberalism in Canada (for examples, see: Altamirano-Jiménez, 2013; Pasternak, 2015; Preston, 2017; Stanley, 2016; Tomiak, 2017). While I appreciate how these scholars theorize settler colonialism and neoliberalism, I have elected to use the words "liberalism" and "liberal subjects" to emphasize the long trajectory from the liberal despotism of the 1830s to the present-day attempts of "breaking the cycle of dependency" through resource revenue sharing, as the overarching goal has always been to realize the liberal desire of making Indigenous peoples independent from the state.

locations, contrasting discursive patterns by Indigenous and extractive actors regarding the importance and feasibility of resource revenue sharing were increasingly noticeable, similar to what occurred when resource revenue sharing was brought up during the RCAP public hearings. Many leaders and individuals from First Nations communities expressed several reasons for why the government should adopt and pass Bill 97. However, before speaking of the necessity of Bill 97 or resource revenue sharing, many First Nations Chiefs and other Indigenous individuals⁴⁵ reminded the Standing Committee of the fact that the treaties signed between their First Nation and the Crown were about sharing the land, as well as resources and the wealth derived from extraction, and not about establishing an asymmetrical relationship between the Crown and First Nations:

Chief Kenequanash (North Caribou Lake First Nation)⁴⁶: Our ancestors and our elders have always taught that, upon negotiating and signing the treaties, the land and resources would be shared fairly by all. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1007).

Chief Roundhead (Mishkeegogamang First Nation): We did not think, 100 years ago, that when the crown put itself in the position of our great mother—or father—it would do anything other than act in our best interests, consistent with the treaty understanding of sharing and not domination. (Standing Committee on Finance and Economic Affairs, 2004b: p. F-1032).

This historical and legal context would often be brought up to argue that the treaties have not been abided to by the Crown, and that this has negatively impacted their respective communities. This is illustrated by two statements given by Deputy Chief Forbister of Grassy Narrows First Nation during his presentation:

⁴⁵ At these Standing Committee hearings, there were occasionally individuals, such as Elders, from Indigenous communities who would speak about Bill 97, and may not necessarily represent or speak on behalf of the entire community. In contrast, the Standing Committee would call for the First Nation to come forward, which would usually result in the Chief of that First Nation stepping forward and giving a presentation.

⁴⁶ A brief note on quotations: these Standing Committee testimonies were usually ten minutes or longer. Sometimes, the same individual representing one organization would testify the next day on behalf of a different organization. To keep things orderly, I have put within each long quotation the author, their community or organization that they represent followed by a chosen excerpt from their testimony.

Deputy Chief Forbister (Grassy Narrows First Nation): The Grassy Narrows First Nation of the Anishinaabe Nation in Treaty 3 is indeed suffering from impoverished living conditions brought by the crown ministry's policies which ignore the spirit of the intent of Treaty 3 with Canada. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1001).

Deputy Chief Forbister (Grassy Narrows First Nation): However, the sacred law of the Anishinaabe Nation in Treaty 3 has not been respected by ministries or companies to date, resulting in increasing tension between our First Nation communities and those who are extracting natural resources from our territory. Sustainable development and a healthy economy are not possible in this confrontational environment. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1001).

Through these two quotes in Deputy Chief Forbister's presentation, the violation of the treaty by the Crown has led to both poverty along with conflicts with extractive actors, an argument that was previously put forth during the first round of RCAP's public hearings twelve years earlier. Other First Nations leaders also point out how resource extraction has been a one-sided process, with their respective communities not sharing in the wealth or benefits from extractive activities, especially after the signing of the treaties:

Chief Kenequanash (North Caribou Lake First Nation): I must bring up the fact that more than gold is extracted from this project. While this investor-driven activity continues to extract resources from our traditional lands, Canada and Ontario are also major beneficiaries of millions of dollars in taxes from goods and services: income taxes, land taxes and all taxes associated with any major economic project. We do not get any share from this tax base extracted from this major project. When we approached the Canadian and Ontario governments for financial resources for projects that will ease welfare rolls by providing jobs, we were told that there are no resources. There are resources. We see them leave our territory every day. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1007).

Chief Peters (Pikangikum First Nation): The way resources have been taken out of our lands goes against our teachings and values that guide how we are to take care of the land. These harvesting and extraction practices go against many of our values of taking care of the land at Pikangikum. It is against central teachings of our culture. Furthermore, none of the benefits from resources being taken out of ancestral First Nation territories by non-native people have come back to First Nation people, other than through welfare after 1966. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1009).

Chief Carpenter (Attawapiskat First Nation): I want to talk about one thing from when the elders were talking. If the treaty was signed in 1905, how come it took 65 years for welfare assistance to reach our people? Also, in regard to housing, it took 61 years

before they started building housing. I think the government owes us a number of houses. (Standing Committee on Finance and Economic Affairs, 2004c: p. F-1067).

The argument put forth by First Nation leaders then is that resource extraction has made governments and extractive industries rich, as resources found within First Nation jurisdictions have been removed, sold and taxed. Meanwhile, this process has excluded First Nation communities, which has resulted in poverty and further treaty violations. Thus, at these Standing Committee hearings, First Nation leaders and other community representatives brought up the original meaning of the treaties, how they have been violated by governments for decades (if not centuries) and how the Crown's disregard for these living legal documents has led to inequality, exclusion and abject poverty.

For leaders and individuals whose First Nations community resides in the jurisdiction of Treaty #9, they often held the provincial government as equally responsible as the federal government for violating the government-to-government relationship that was established in the treaties. Amongst First Nations leaders and other individuals speaking to the Standing Committee, this blame was warranted since the province of Ontario was a signatory on Treaty #9, unlike other treaties which were negotiated between First Nations and the federal government. As such, many First Nations within Treaty #9 sought to educate the Standing Committee about the role the province played in setting the terms of this treaty:

Chief Kenequanash (North Caribou Lake First Nation): Treaty 9 is unique, as it is the only treaty in Ontario where the provincial government is a signatory to the terms and conditions of the treaty. Our people entered into this treaty relationship with the government of Canada and the government of Ontario to share the resources for the benefit of all three parties. The treaty was never intended to be a tool to wrest control of resources from the First Nations people. This is a treaty partnership that still stands to this day, and we still seek fulfillment of the promises made to our people 100 years ago. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1008).

Chief Roundhead (Mishkeegogamang First Nation): Reflecting on the last 100 years, we, as the original inhabitants of this vast land in northern Canada entrusted to our

forefathers to protect and preserve for the benefit of future generations, have much to consider in an effort to employ a reasonable level of course correction so that 100 years from now our children could actually be living the promise of Treaty 9. (Standing Committee on Finance and Economic Affairs, 2004b: p. F-1031).

Chief Hardisty Jr (Moose Cree First Nation): In 1905, the federal government signed the James Bay Treaty 9 with the people of Moose Cree. People did not realize how big a part the Ontario government played within the treaty process. The province in fact played a major role in the treaty process. They had the veto power to decide the location of each reserve. It is the opinion of our elders on the aftermath that Ontario already knew the potential areas of resource development; hence, we received all invaluable lands. (Standing Committee on Finance and Economic Affairs, 2004d: p. F-1070).

Thus, the historical fact that the province of Ontario signed Treaty #9 was used to argue that past provincial governments are responsible for violating the spirit and intent of the treaty. What is fascinating is that even when Treaty #9 is not mentioned, “the Crown” is sometimes invoked by First Nations presenters in ways to assign the provincial government a constitutional responsibility to First Nations, reminiscent of how the Supreme Court used the “honour of the Crown” in *Haida Nation v. British Columbia* to diffuse federal responsibilities to the provinces. This is emblematic in this exchange:

Mr Michael Prue (Beaches-East York): I have a number of questions. The first one is, I take it you want to continue your relationship with the federal government but you are asking that the province now take a greater role with First Nations.

Grand Chief Beardy: I think if you were to look at historical documents, there was never any real distinction between the Canadian government and the provincial government. When we signed a treaty, it said, ‘The commissioners, in right of His Majesty.’ (Standing Committee on Finance and Economic Affairs, 2004a: p. F-999).

Therefore, the Crown’s elusiveness, mysticism and confusing nature represented through the words “in right of His Majesty” is used to draw out how the Crown has many bodies, and that both the federal and provincial governments (as the bodies of the Crown) are perceived by First Nations as having signed the treaty. Thus, in 2004, First Nation leaders at these Standing Committee hearings would either reference the legal uniqueness of Treaty #9 or would invoke “the Crown” to suggest that the province of Ontario should abide to the treaties, similar to how

the Supreme Court also loosened the “watertight compartments” interpretation of the Canadian Constitution’s division of powers by downloading the federal government’s constitutional duties to Indigenous peoples onto the provinces through its decisions in the mid-2000s.

In fact, bringing up how the treaties have not been honoured by the Crown (as represented by the provincial government, especially in regard to Treaty #9) was used to contextualize the current socio-economic disparity between First Nations and Ontarians and other issues plaguing First Nation communities. Many First Nations Chiefs therefore associated Bill 97 and resource revenue sharing as a fulfillment of the treaties:

Grand Chief Stan Beardy (Nishnawbe Aski Nation): There is no single, painless solution to the crises in our communities, but revenue sharing can be part of the solution. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-999).

Deputy Chief Forbister (Grassy Narrows First Nation): Bill 97, if enacted, will be a helpful step by the government of Ontario in addressing the long-outstanding injustices which have led to the impoverishment of our communities. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1001).

Chief Kenequanash (North Caribou Lake First Nation): I am proud to stand before you today, the same as many of my colleagues who will make presentations before you, to state that we are partners and beneficiaries of Treaty 9. Our people have held the treaty as sacred for almost 100 years now and look forward to sharing in the benefits of our partnership and upholding the promises that were made. Bill 97, An Act respecting the sharing of resource revenues for First Nations, is a timely proposition as we are heading toward the 100-year commemoration of our treaty relationship in July of 2005. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1008).

Chief Roundhead (Mishkeegogamang First Nation): Reflecting on the last 100 years, we, as the original inhabitants of this vast land in northern Canada entrusted to our forefathers to protect and preserve for the benefit of future generations, have much to consider in an effort to employ a reasonable level of course correction so that 100 years from now our children could actually be living the promise of Treaty 9. (Standing Committee on Finance and Economic Affairs, 2004b: p. F-1031).

Chief Carpenter (Attawapiskat First Nation): We are here to talk about Bill 97, a proposed act to share resource revenues with First Nations. This discussion has been long overdue, and I want to congratulate the Legislature for starting this process and working toward reconciliation between your government and our First Nation. (Standing Committee on Finance and Economic Affairs, 2004c: p. F-1054).

Chief Hardisty Jr. (Moose Cree First Nation): This act is a long time coming—99 years after the signing of our treaty. I invite you just for a second to try to envision a picture of the Moose Cree if the government of the day had included this act as part of our treaty. (Standing Committee on Finance and Economic Affairs, 2004d: p. F-1069).

Several First Nation Chiefs addressing the Standing Committee therefore saw Bill 97 as an overdue commitment to uphold the promises of sharing the wealth within the treaties, with many believing that it can help to address the issues that their communities are facing. Curiously, it was even associated with “reconciliation” by Chief Carpenter from Attawapiskat First Nation (see quote above), which may be the first and only time that resource revenue sharing was publicly and discursively linked with “reconciliation” in Ontario until over a decade later⁴⁷. Most First Nation leaders testifying to the Standing Committee had supported the concept of resource revenue sharing and how it would be indicative of the treaties (and even reconciliation), although a few suggested that amendments to Bill 97 needed to be made before it should be passed.

Although most First Nations at the Standing Committee seemed to have supported Bill 97 in principle, this was not enough to convince the province to pass Bill 97 into law. In addition, at the Standing Committee, private citizens, extractive actors from the mining and forestry industries and even some leaders from First Nation communities criticized the bill for its lack of clarity regarding the process for sharing revenues, and the effects that would result from the bill’s uncertainty. Extractive actors argued that the bill was too unclear, and that this would negatively impact the mining and forestry industries in Ontario. For example, Patrick Reid, the president of the Ontario Mining Association (OMA) and a former Liberal MPP, made these comments:

Mr. Patrick Reid (Ontario Mining Association): I will very shortly, Mr. Chairman. Just one thing: I want to emphasize to the committee that there are already many impact and benefit agreements with mining companies in Ontario. The industry knows this is going

⁴⁷ A quick search of “Attawapiskat” into the summaries of the RCAP public hearings and RCAP’s multivolume final report reveals that leaders from Attawapiskat First Nation did participate in RCAP’s public hearings, which may help to contextualize why “reconciliation” was used by Chief Carpenter when discussing resource revenue sharing.

to happen and we don't feel, necessarily, that it needs to be legislated. It's a way of doing business in partnership with our communities. You'll hear details about that from Mr. Seeley of Placer Dome. I just want to run through the recommendations: We feel the bill is too vague. The definitions are not very well defined. We do not believe that it should go any further until there's been a lot more work done on it and the complexity of this issue is dealt with by a broad group. However, if a restructured Bill 97 is to proceed, it must ensure that there are no additional costs to the mining industry, which already pays a number of taxes at the municipal, provincial and federal levels, including the Ontario mining tax. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1003)

According to these comments, the mining industry already enters into Impact and Benefit Agreements (IBAs) on their own accord and pays many taxes, and Bill 97 has the potential to impose additional costs on the industry as it does not guarantee that there will be no new taxes. IBAs, the terms and conditions of which mining companies can privately negotiate often from a position of strength (Scott, 2020: p. 277), are seemingly much more preferable than new taxes on the industry. In addition, Bill 97 was viewed as having vague definitions and an unclear procedure for sharing revenues, with numerous extractive actors stating that this will lead to uncertainty that will result in more business costs, less extractive activities and thus less investments flowing into Ontario's economy:

Mr. Patrick Reid (Ontario Mining Association): Government and First Nations must identify in advance those lands which are their 'traditional lands.' (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1004).

Mr. Colin Seeley (Placer Dome Canada): I think that you have to remove a lot of the uncertainty that already exists, preventing developers from coming into the north. Most of it is centred on secure access to the land. Those issues will not be resolved by this bill. They will only show the developer that he is going to incur additional costs going into this area, and the underlying fundamental issues that are out there are still going to be there. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1006).

Mr. Patrick Reid (Ontario Prospectors Association⁴⁸): It's going to depend on how it's done. If you're going to layer more costs on the mining industry, then every time you add a cost on, no matter where it comes from, you make mines more marginal and they drop

⁴⁸ This is the same individual who was also the president of OMA. Here, he is substituting for the executive director of the Ontario Prospectors Association (OPA) since he was a former director. What is noteworthy is that within the extractive industry, there are many individuals who take up multiple positions in similar organizations. Below this excerpt is another individual representing both the Northern Prospectors Association (NPA), a local organization that lobbies on behalf of the industry, and PDAC, a national lobbying group.

off the scale, especially if metal prices are lower. The reaction from most of the mining community to this bill is on the uncertainty of it and what is in fact going to happen at the end of the day. A lot of people who invest in mining companies and take the risk of hoping that something develops are not just in Canada. There's a lot of European investment and a lot of American investment, and they don't like uncertainty any more than anybody else in this room does. So the more uncertain you make the prospects, the riskier it is, and the harder it is to raise money. (Standing Committee on Finance and Economic Affairs, 2004b: p. F-1039).

Mr. Michael Leahy (Northern Prospectors Association/PDAC): Governments at both the provincial and federal levels have failed to provide the residents of the north or developers of natural resources with a clear framework within which they can plan or operate. For these reasons, we feel Bill 97 will fail to achieve its intended goal of creating prosperity if it proposes a solution that penalizes industry without addressing the underlying issues that have created the present climate of uncertainty and the cycle of poverty that exist today. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1083).

Taken together, these statements to the Standing Committee construed Bill 97 as producing uncertainty due to its unclear definitions, its inability to confirm that prospecting and mining companies will be able access "traditional lands" and the fact that the procedure for revenue sharing has not been outlined, with the potential that this will eat into the industry's profits. The comments made by the individual representing both the Northern Prospectors Association (NPA) and PDAC is particularly noteworthy. PDAC had previously expressed that they would support revenue sharing at the RCAP public hearings as long as it did not inhibit exploration and would remove uncertainties around the access to Indigenous lands; here, Bill 97's uncertainties are believed to not conclusively solve the industry's problems at no additional cost to the industry, and so resource revenue sharing is rejected by PDAC⁴⁹. All extractive actors at the Standing Committee therefore viewed the passage of Bill 97 as detrimental to the extractive sector and petitioned for it to not move forward.

⁴⁹ I should note that the individual representing the NPA and PDAC only read the presentation for the NPA, but this was because "Much of what is being presented by the mining industry is very similar" (Standing Committee on Finance and Economic Affairs, 2004d: p. F-1083) so there was no need to repeat what was in the PDAC presentation.

What is interesting is that claiming “uncertainty” is a common discursive strategy used by extractive actors to protect their economic interests when lobbying the government. Settler colonialism, as a structure and not an event, requires continual access to Indigenous lands in order for capitalist development to occur (Coulthard, 2014: p. 125). However, accessing Indigenous lands is by no means a guarantee, as Indigenous anticolonial resistance can prevent or impede settlers from acquiring or transforming land for the purpose of resource extraction. Not surprisingly, governments and extractive industries have sought to increase their certainty to access Indigenous lands through law, often through the recognition of Aboriginal rights and through private agreements negotiated between companies within extractive industries and Indigenous peoples (Blackburn, 2005: p. 591; Coulthard, 2014: p. 41; Mackey, 2014: p. 235-237; Newman & Graham, 2021: p. 50). When settlers become unsettled through decolonial actions or legal challenges to their livelihoods, angry sentiments and a discourse of economic uncertainty proliferates in which the loss of capital is attributed to unresolved land claims (Blackburn, 2005: p. 594; Mackey, 2014: p. 238-239). In a similar manner, Bill 97 was portrayed by extractive actors as producing multiple uncertainties for the extractive sector. This included uncertainties regarding access to “traditional lands” and uncertainties around whether Bill 97 would impose new financial obligations onto extractive actors to share their revenues with First Nations. These uncertainties were thus equated to a loss of domestic and international capital investments into Ontario’s mining industry and a threat to the profitability of mining in Ontario.

However, it would be mistaken to suggest that uncertainty was only felt by extractive actors. While the majority of First Nation leaders advocated for the government to legislate resource revenue sharing, many believed that there needed to be clarifications and amendments made to the bill before it could proceed any further, especially as there were uncertainties

regarding how this bill would affect Aboriginal and treaty rights, how revenues would actually be shared and how this could impact IBA negotiations. For instance:

Mr. Ananias Anderson (Kitchenuhmaykoosib Inninuwig First Nation): I would like to emphasize that we must be cautious and vigilant in how we proceed. Kitchenuhmaykoosib Inninuwig supports the concept of revenue-sharing; however, we must be prepared to represent the interests and well-being of our people effectively, to protect at all times their aboriginal and treaty rights and to enhance those rights. We should never compromise the aboriginal and treaty rights of our people for the sake of the dollar. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1020).

Deputy Chief Anderson (Kasabonika Lake First Nation): What revenues and benefits? We must have some clarity as to whether we are just talking about government revenues that would be shared or whether it would be company revenues that are shared. We all know that companies do not want to be taxed twice. Currently, when we negotiate with a company on a development in our area there is, at the insistence—other governments—no other government participation in those negotiations. Would this change with Bill 97? If so, what would be the role of Ontario? (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1023).

Chief Carpenter (Attawapiskat First Nation): I'll make a few remarks about Bill 97 and my legal counsel will provide more detail. My main concerns about Bill 97 are threefold: (1) Bill 97 might jeopardize the potential IBA with De Beers and future IBAs; (2) The bill must focus on a government-to-government relationship concerning true resource revenue-sharing, which is sharing the crown revenues with First Nations; and (3) The enforced agreement of an arbitrator is completely unacceptable, as the bill seeks to impose a so-called solution determined by one person. (Standing Committee on Finance and Economic Affairs, 2004c: p. F-1054).

What these quotes reveal is that while many First Nation leaders may have believed that revenue sharing should be supported in principle, especially as many First Nation Chiefs had argued that resource revenue sharing would be a long overdue fulfillment of the treaties, the uncertainties surrounding how revenue sharing would actually be implemented meant that there were practical concerns that Bill 97 would negatively affect their political, legal and economic interests. This was an interesting view on resource revenue sharing, as RCAP had believed that sharing resource revenues should lead to certainty, economic self-sufficiency and political autonomy.

Nevertheless, both Indigenous and extractive actors believed that Bill 97 led to many

uncertainties, albeit for different political, legal and economic reasons, and that it could not be passed into law in its current form.

On the surface, it may appear that the mining industry and First Nations held opposing views regarding resource revenue sharing. As seen above, many First Nation leaders reasoned that there must be some form of resource revenue sharing as a helpful step towards the implementation of the spirit and intent of the treaties, although many First Nation leaders and community members stated that there needed to be clarifications and amendments to Bill 97 before it would garner their unbridled support. Meanwhile, it seemed as if executives and private citizens lobbying on behalf of the mining industry had completely rejected the prospect of Bill 97 due to its vague definitions and unclear guidelines. However, what is noticeable is that Indigenous and extractive actors held similar views as to who should be sharing the revenues from resource extraction. Below are a few statements to the Standing Committee by First Nations leaders and representatives from the forestry and mining industries:

Grand Chief Beardy (Nishnawbe Aski Nation): I think the starting point, when we talk about fairness—it has to start on a government-to-government basis. Through those discussions, we can arrive at some formulas that we can work with industry, but I think the primary place to start sharing the wealth is with the province. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-999).

Mr. Murray Ferguson (Weyerhaeuser Company Ltd): In summary, we believe that resource revenue-sharing in Ontario is a government-to-government issue. It is inappropriate for the private sector to be involved in these negotiations. And again, the bottom line: The forest industry cannot afford increased costs for this purpose. (Standing Committee on Finance and Economic Affairs, 2004a: p. F-1026).

Mr. Patrick Reid (Ontario Prospectors Association): The concept of revenue-sharing is already being practised on a project-by-project basis as new mines are planned in the province. The mining industry presently pays the Ontario mining tax, which benefits all in the province. Revenue-sharing within the concept of Bill 97 should be restricted to new mines and be taken from the taxes already paid to the province. (Standing Committee on Finance and Economic Affairs, 2004b: p. F-1038).

Deputy Grand Chief Koosees (Nishnawbe Aski Nation): Over the course of these hearings, industry has made it clear that they believe that it is inappropriate for them to be negotiating agreements with First Nations that contain aboriginal and treaty rights, and that it must be left to the fiduciary, which is the province. We are in total agreement with this. We agree that revenue-sharing must be done: a government-to-government relationship. Revenue sharing goes to the very heart of aboriginal and treaty rights. (Standing Committee on Finance and Economic Affairs, 2004c: p. F-1062).

Through these statements, it is evident that both First Nation Chiefs and leaders or executives from extractive companies and associations were in agreement that the provincial government should be sharing its revenues, since it has a government-to-government relationship with First Nations. Moreover, since extractive industries privately negotiate sharing the wealth with First Nations through IBAs, whereas the provincial government just collects resource revenues through taxing the industry, it is believed that it is the provincial government's turn to share its tax revenues with First Nations. There even seems to be discursive signalling and allying between First Nation Chiefs and extractive actors, such as when the representative for Weyerhaeuser Company states that this is a government-to-government issue or when Deputy Grand Chief reiterates the industry's position that extractive actors should not be involved in these revenue sharing negotiations. Thus, amongst Indigenous and extractive actors, there started to be an understanding of each other's position, and perhaps even the beginning of a shared view that the provincial government had a fiduciary duty to fairly share its revenues. This appears to be illustrated through how they borrowed each other's discourses to make their claims.

Following the Standing Committee's hearings, Bill 97 was not permitted by the Liberal government to go to a third reading. On February 21st, 2005 (several months after the Standing Committee hearings), MPP Bisson brought up how Kashechewan First Nation erected a barricade to block De Beers mining project, noting that his bill offered revenue sharing and would prevent conflicts while developing northern Ontario (Legislative Assembly of Ontario,

2005: p. 5236). In response, the Honourable Michael Bryant, serving as the Attorney General and the Minister Responsible for Native Affairs, stated that Bill 97 had numerous flaws but that the Liberal government would pursue “a new approach that will include some aspect of revenue-sharing” (Legislative Assembly of Ontario, 2005: p. 5236). This would mark the final time that Bill 97 would be publicly discussed and with those words, the Liberal government had confirmed that Bill 97 was dead.

While the bill was not successful, it seems that Indigenous, state and extractive actors, institutions, communities, corporations and associations were beginning to communicate about resource revenue sharing at the provincial level. The Standing Committee hearings could best be described as a moment when an assemblage of diverse actors came together to discuss if resource revenue sharing could be a governmental intervention which would improve Indigenous-settler relations in Ontario through sharing the wealth derived from resource extraction. For First Nation leaders, this could address longstanding, interrelated and severe socio-economic issues within their communities and lead to a fulfillment of the spirit and intent of the treaties. However, some First Nation leaders expressed that Bill 97’s uncertainties regarding how it would affect their Aboriginal and treaty rights along with how it would impact their negotiations and relationships with these extractive industries meant that they were concerned that these uncertainties would adversely affect their political, legal, and economic interests. For representatives and executives from extractive industries, the bill’s uncertainties would equate to a loss of investment in Ontario’s economy, result in less resource extraction and would drastically harm the profits of mining and forestry companies, especially if these industries were required to pay more in taxes.

Although the bill did not go forward, the Standing Committee resulted in a curious and informal agreement between Indigenous and extractive actors. While First Nations leaders were more receptive to the idea of resource revenue sharing than representatives from the mining and forestry industries, both Indigenous and extractive actors started to concur that it was the provincial government's responsibility to share its revenues from resource extraction. Meanwhile, the Liberal government made a noncommittal acknowledgement of incorporating some form of revenue sharing in their new approach to governing Indigenous relations. Thus, the legacy of Bill 97's death may be that it brought together a network of actors within Ontario who were communicating their interests and problems, along with how these problems could potentially be addressed through sharing the wealth from resource extraction.

Conclusion

The current chapter has shown that the concept of resource revenue sharing was tied to the abandonment of assimilation and the subsequent emergence of reconciliation as a dominant political rationality in the mid-1990s. Reconciliation, which was premised on returning to the spirit and intent of the treaties, led to RCAP proposing many recommendations that were meant to materialize reconciliation into a political reality, one of which was resource revenue sharing. As I have shown, the notion of resource revenue sharing was first put forward by many Indigenous leaders participating at RCAP's public hearings across Canada. The second, third and fourth round of hearings contained explicit calls for the implementation of resource revenue sharing to fund Indigenous self-governments. Yet, what is also seen during these hearings is how this concept was originally divisive. Some extractive actors who would testify at RCAP's public hearings had signaled their discomfort, reluctance or disapproval of resource revenue sharing

with Indigenous communities, indicating that they did not support resource revenue sharing being a governmental solution unless it could help them gain access to Indigenous land.

This tension would reemerge in 2004 in Ontario, when NDP MPP Bisson proposed his Private Member's Bill to "break the cycle of dependency" by mandating the sharing of resource revenues with First Nation communities. At the Standing Committee of Finance and Economic Affairs hearings, many First Nation community leaders spoke in favour of resource revenue sharing. They argued how the treaty relationship has not been honoured by the provincial government, how this has led to an unequal one-sided process in which only settlers accumulated wealth, and why resource revenue sharing would be important to honour the treaties and rectify poverty. Yet, the concern about the supposed uncertainties pertaining to Bill 97 were also persistently brought forward at these Standing Committee meetings by both representatives of extractive organizations and some First Nation Chiefs. Both extractive and Indigenous actors felt that Bill 97 could undermine their goals rather than protecting their interests and solving their respective problems. As a result, Bill 97 did not move forward to a third reading.

However, it would be a mistake to assume that this did not lead to any substantial changes. The Standing Committees were moments in which an assemblage of different and competing Indigenous, political, and extractive actors were able to communicate to each other about their interests, goals and problems. There is even evidence of discursive signalling, with executives and representatives from the mining and forestry industries reiterating the position held by First Nation Chiefs that the province has a fiduciary responsibility and First Nation Chiefs repeating that extractive industries should not be "taxed twice" or involved in resource revenue sharing negotiations. A "Bootlegger and Baptist" alliance (Yandle, 2011: p. 25) was therefore starting to form between Indigenous and extractive actors in Ontario, both of whom

believed that it was the province's tax revenues that needed to be shared albeit for different political and economic reasons. The legacy of Bill 97, therefore, was that it led to an assemblage of diverse actors coming together, with Indigenous and extractive actors forming stronger bonds as they sought to make the state responsible for sharing its resource revenues with First Nations.

In the next chapter, I will continue to trace this assemblage over time and across many different spaces in order to analyze how resource revenue sharing went from being associated with uncertainties to being conceived as a necessary governmental intervention into Indigenous-settler relations in Ontario. The next chapter will explore Foucault's (2004) idea of the "governmentalization of the state" (p. 108-109) by discussing how the concept of resource revenue sharing made its way into the Ipperwash Inquiry's final report before moving on to how Indigenous and extractive actors participated in many Standing Committees and other provincial committees. It will also entail a careful examination of how several Indigenous, state, extractive and market actors, organizations and institutions increasingly believed that differing interests, problems and goals were aligned, and that resource revenue sharing could benefit all. Finally, the next chapter will note how resource revenue sharing was reconnected with the political rationality of reconciliation and how that pushed forward the creation of resource revenue sharing agreements. While this chapter was mainly concerned with why resource revenue sharing as a governmental technology related to reconciliation could not be translated into reality in Ontario, the following chapter will explore how resource revenue sharing ultimately was instituted by the province to signal reconciliation with Indigenous peoples.

Chapter 6: Reconciling on Resource Revenue Sharing

Introduction

How did resource revenue sharing go from a divisive concept in Ontario in 2004 to a dominant idea for intervening into Indigenous-settler relations in the mid-2000s to late 2010s? This chapter will continue with a careful governmentality analysis to understand the normalization of this concept and its ultimate translation into three resource revenue sharing agreements between the provincial government and the Grand Council Treaty #3, the Mushkegowuk Tribal Council and the Wabun Tribal Council in 2018. In doing so, this chapter argues that a loose assemblage of Indigenous, state, extractive and market actors in Ontario ultimately came to believe that their interests were aligned and that their different problems could be solved by working together to implement this governmental intervention⁵⁰. This chapter shows how the growing acceptance of resource revenue sharing gradually happened through many separate and disconnected moments across space and time, beginning in the mid-2000s and occurring until the late 2010s.

To accurately account for the reconceptualization of resource revenue sharing from a radical idea consisting of “uncertainties” to a new governmental technology linked with “certainty” within this assemblage, this chapter will proceed in three parts. In the first section, I

⁵⁰ I must warn that the story of how resource revenue sharing was instituted in Ontario is complex and messy. While the previous two chapters were able to look at how reconciliation and resource revenue sharing were first accepted at the federal level of governance and how this was translated at the provincial level, it is not easy to divide this part of my governmentality analysis according to different scales of governance. At the same time that there are provincial level actors pushing for resource revenue sharing in Ontario, there are also national level actors, groups, institutions and organizations who are contributing to this conversation about the need to install resource revenue sharing mechanisms. There is a strong likelihood that what happened at the national level corresponds with or normalizes the notion of resource revenue sharing at the provincial level, just as it is likely that what happens at the provincial and local levels of governance may influence the conversation about resource revenue sharing at the national level. Where it is possible, I will attempt to draw out how national level actors and organizations may have helped to normalize the idea of sharing revenues from resource extraction, and if this influenced decision-making within Ontario.

will show some of the key moments and spaces in which Indigenous, state, and extractive actors had gathered, and how the concept of resource revenue sharing started to gain traction as a governmental solution into fraught Indigenous-settler relations following the Ipperwash Inquiry. This section will uncover how Indigenous and extractive actors started to see common ground on resource revenue sharing, provided that both set of actors believed that it should be provincial tax revenues shared with Indigenous communities. The result was that Indigenous and extractive actors would end up forming closer partnerships and reiterate shared discourses to make demands from the province. The second section argues conservative-libertarian thinktanks played an influential role in rationalizing resource revenue sharing to the provincial government, which they would do so through their partnerships with Indigenous and extractive actors. As this section will show, these “market actors” (as I refer to them) published astronomical valuations of the Ring of Fire, a large mineral deposit in northern Ontario, and portrayed resource revenue sharing as a mechanism which would make extraction possible. The final section demonstrates how despite the general acceptance of resource revenue sharing amongst Indigenous, extractive, market and some political actors, the provincial government remained uncommitted. It was only with the publication of the TRC’s final report and the reconnection of this concept with reconciliation that resource revenue sharing was offered as a concession by the provincial government.

To advance these arguments, this chapter relied on the collection and analysis of several types of documents between the mid-2000s to late 2010s and published by various authors and organizations. This included transcripts from parliamentary debates in the Legislative Assembly of Ontario and from different Standing Committees, as these sources allowed for a close reading into how Indigenous, extractive, political and market actors communicated to each other the

necessity of resource revenue sharing. Additionally, media articles were also collected, especially since they contained direct quotes from some of these actors at different events (such as at PDAC's annual convention, when Indigenous speakers would call for extractive actors to support resource revenue sharing). Announcements and statements issued by the provincial government and issued through the "Ontario Newsroom" website were also collected as they provided information on the progress related to the implementation of resource revenue sharing with First Nations. The selection of Ontario Newsroom webpages was complemented through an FOI request to the Archives of Ontario, which provided communications, memos, speeches, briefing notes, letters and other internal documents of the Ministry of Northern Development and Mines between 2013-2018. This FOI request allowed for a deeper understanding of the progress made towards resource revenue sharing under the Liberal government, including how the government's skepticism towards this reconciliatory technology did not always match its public support for resource revenue sharing. Beyond these state-sanctioned texts, other documents, reports, and webpages published by Indigenous, extractive and market actors and organizations were also used, since they outlined the position that these actors and organizations took and resulted in a better comprehension of the evolution of their views on resource revenue sharing. Moreover, these texts were also useful for two reasons: 1) they helped to extrapolate the relationship between different Indigenous, extractive and market actors and 2) these texts were sometimes cited by political actors in an effort to convince the provincial government to adopt resource revenue sharing. Together, these documents helped to produce a stronger governmentality analysis and paint a larger picture of the trajectory of resource revenue sharing in Ontario.

The purpose of this chapter is twofold. First, I aim to use a governmentality analysis to provide a careful description of how resource revenue sharing became widely supported and then

eventually instituted as a governmental intervention into Indigenous-settler relations. This will unveil the many “strange bedfellows” that exist within this network, as there is a myriad of Indigenous, state, extractive and market actors with competing views and interests who end up working together to secure their respective political, economic, social and environmental goals. Besides outlining this web of relations, my second aim is to start to consider how reconciliation has a concessionary logic in that calls for reconciliation have the potential to lead to concessions from settlers to Indigenous peoples, without necessarily ending settler colonial governance. This is an idea that will be further theorized in later chapters, but it is worth introducing this idea here as it makes us start to consider what reconciliation, as a political rationality, can do to change Indigenous-settler relations within the confines of settler colonialism, while still reproducing unequal relations between Indigenous peoples and settlers.

Governmentalizing the Province: Tracing the Assemblage across Space and Time

Although Bill 97 had died in the legislature in early 2005, the concept of resource revenue sharing would live on, gathering momentum within Ontario and across Canada in the mid- to late 2000s. The reason why it would continue to be promoted can be attributed to the governmentalization of the provincial government. While structuralist theorizations of power may view the state as being the locus of power, the wide-range of documents gathered from Indigenous, state, political, extractive and market actors and organizations instead suggest that governmental interventions are the result of a loose network of state and non-state actors who occasionally coalesce to problematize and govern Indigenous-settler relations in Ontario. As I will show, the hegemonic acceptance of resource revenue sharing as a governmental solution by this network of actors slowly occurred following many separate, fragmented, and disconnected moments across space and time in the mid- to late 2000s.

The Ipperwash Inquiry's final report provides a fruitful starting point for understanding how resource revenue sharing became increasingly accepted as a mechanism that could improve Indigenous-Ontarian relations. As noted earlier, this report led to reconciliation becoming a dominant political rationality in Ontario in May 2007, with many of its recommendations, such as a Treaty Commission of Ontario, being proposed as governmental interventions which would make reconciliation a political reality. Strangely, there is no recommendation to share the revenues from resource extraction by the Ipperwash Inquiry. At most, recommendation 16 states:

The provincial government should continue to work with Aboriginal organizations in Ontario to develop co-management arrangements and resource-sharing initiatives. The provincial government should also provide financial or other support to Aboriginal organizations and third parties to develop capacity, identify best practices, and formulate strategies to promote co-management and resource-sharing. (Ipperwash Inquiry, 2007b: p. 123).

While the Ipperwash Inquiry did not explicitly create a recommendation to adopt and implement resource revenue sharing, this does not mean that the Ipperwash Inquiry did not believe in the utility of this governmental intervention. A few pages earlier, the final report reads:

The Union of Ontario Indians submitted that, in any government and Aboriginal initiative to improve the sharing of resource management and the revenues from resources, 'the focus must be on measurable targets that bring meaningful benefit to First Nation communities whose traditional territories are being directly affected by resource extraction.' The Union further recommended that new initiatives should be subject to independent evaluation to determine their effectiveness. I consider this proposal reasonable, and I recommend that the province commission an independent evaluation of one or more significant co-management initiatives. (Ipperwash Inquiry, 2007b: p. 119).

Thus, on the suggestion of the Union of Ontario Indians⁵¹, there is a short reference on the need to implement resource revenue sharing to bring measurable and meaningful benefits for First Nation communities.

⁵¹ The Union of Ontario Indians is a PTO representing 39 First Nations. This PTO prefers to be referred to as the "Anishinabek Nation", but the "Union of Ontario Indians" is their legally incorporated name. I use these names interchangeably in this chapter and the following chapters.

In fact, like RCAP's public hearings, in which many First Nation leaders, community members and political organizations came forward to recommend the creation of resource revenue sharing mechanisms in relation to reconciliation, it appears that the Ipperwash Inquiry also got this idea from Indigenous-led organizations and by looking at how British Columbia engaged with reconciliation. The Ipperwash Inquiry's (2006) *Discussion Paper on Treaty and Aboriginal Rights* makes note of how since the Supreme Court's decisions on *Haida Nation* and *Taku River*, the Government of British Columbia has embarked on a new relationship, in which resource revenue sharing has been accepted as part of a government-to-government agreement (p. 19). However, this appears to be more of an observation rather than a suggestion to adopt this policy. In contrast, the COO's (2006) *Final Submission to the Ipperwash Inquiry* noted that the Government of British Columbia was committed to reconciliation, and that one of the government's new approaches for addressing rights has been the creation of "forestry agreements" in which the revenues the government receives would be shared with First Nations (p. 14). It seems that the notion of establishing resource revenue sharing agreements between First Nations and the Government of Ontario was pushed forward by Indigenous organizations participating in the Ipperwash Inquiry's fact-finding mission, and even associated with reconciliation and a new relationship, as the Union of Ontario Indians and the COO both suggested this idea in their submissions to the Ipperwash Inquiry.

Therefore, the Ipperwash Inquiry briefly acknowledged and tacitly approved of the concept of revenue sharing without making it a formal recommendation. Despite resource revenue sharing not having an official recommendation, it would end up being taken seriously in the mid- to late 2000s. The publication of the Ipperwash Inquiry's final report in 2007 led to the establishment of the Ipperwash Inquiry Priorities and Action Committee (IIPAC). The IIPAC was

a joint taskforce made up of the First Nations PTOs and the provincial government's ministries, and co-chaired by the Ontario Regional Chief and the Minister of Aboriginal Affairs with the purpose of determining how to implement the recommendations from the final report. This minor reference to resource revenue sharing within the final report would have lasting implications, as the IIPAC would actively make resource revenue sharing an exploratory initiative. Two PTOs, the Anishinabek Nation and the Grand Council Treaty #3, listed on their websites and in related documents that "resource revenue/benefit sharing" was a priority for the IIPAC (Anishinabek Nation, n.d.; Grand Council Treaty #3, n.d.-a). The Grand Council Treaty #3 states on their Ipperwash Inquiry webpage that the IIPAC led to "working groups" made up of COO, First Nations PTOs, and government ministries, and that the resource revenue sharing working group "is to ensure the Crown recognizes that resource revenue sharing is a Treaty right" (Grand Council Treaty #3, n.d.-a). The formation of IIPAC led to a coalition of Indigenous and state actors actively exploring a provincial resource revenue sharing mechanism, with First Nations PTOs once again linking revenue sharing as part of their treaty rights.

IIPAC was not the only instance of this assemblage coming together to evaluate the possibility of instituting resource revenue sharing between Indigenous peoples and the province. In November 2003, the new Liberal government launched the "Ontario Mineral Industry Cluster Council" (OMICC) whose central objective was to help build a prosperous economy by creating wealth and attracting investments into Ontario's mineral industry (Energy, Northern Development and Mines, 2004a; 2004b). This decision to create a provincial entity to strengthen Ontario's resource economy by a new government is not too surprising. Foucault (1978) once stated that the foundation and expansion of capitalist economies was due to biopower, and the ability to adjust "the phenomena of population to economic processes" (p. 140-141). Moreover,

settler colonial economies are generally extractive in nature, as wealth creation is largely dependent on construing and valuing resources as “non-persons” that can be extracted without consent and sold within a liberal marketplace (LaDuke & Cowen, 2020: 244-245; Mills, 2019: p. 57; Pasternak et al., 2019: p. 230-232). For its part, “the state” secures the conditions of capitalist growth within settler colonialism, although politically speaking, the success and longevity of a government in Canada sometimes corresponds with how voters feel about the state of the economy and its source of decline (Coulthard, 2014: p. 125; Gidengil, 2012: p. 79), so it is in the interest of the governing party to ensure that the economy is performing well. The creation of OMICC was another moment in which a network of diverse actors was summoned to produce knowledge on Ontario’s mining industry so that governmental interventions could be proposed, as that could lead to unprecedented capitalist growth.

In December 2006, then Minister of Northern Development and Mines Rick Bartolucci announced that OMICC’s Aboriginal Working Group was working on resource revenue sharing models that could potentially provide guidance to the provincial government and industry (Bartolucci, 2006). Unfortunately, these revenue sharing models from OMICC’s Aboriginal Working Group could not be located. However, like IIPAC, this entity did bring together various Indigenous, state and extractive actors, groups, institutions and organizations to study if resource revenue sharing could measurably contribute to increasing the wealth from Ontario’s resource economy. The main difference between IIPAC and OMICC is that while IIPAC was tasked with intervening into and improving Indigenous-Ontarian relations, OMICC was created to attract investments into Ontario’s economy. Interestingly, despite their differing governmental mandates, both provincial bodies normalized the concept of revenue sharing in the mid-2000s.

Besides IIPAC and OMICC, Standing Committees (like the one that evaluated Bill 97) became another space in which the concept of resource revenue sharing was referenced and increasingly normalized. Indigenous and extractive actors, associations, organizations, and corporations (some of which were involved in IIPAC and OMICC) would openly discuss how resource revenue sharing was essential for their own political and economic interests, as well as necessary for the province's legal obligations and its reputation as an attractive mining jurisdiction. For instance, on January 26th, 2006, numerous prospecting and mining associations testified at a Standing Committee on Finance and Economic Affairs about the costliness and lack of clarity about consulting Indigenous peoples, and the desire to increase Indigenous participation in mining:

Allen Hayward (OMA): Tied in with a need for more geological mapping and exploration incentives is the need for additional resources and support for First Nations and aboriginal communities for training and education. Supporting the greater involvement of First Nations residents in the economy through skills development is a just action from the perspective of societal development and something that we hope will better equip First Nations communities to take advantage of employment and entrepreneurial opportunities in the mining industry. (Standing Committee on Finance and Economic Affairs, 2006: p. F-106)

Bill MacRae (Porcupine Prospectors and Developers Association): If you approach it on a company-by-company basis, the larger companies tend to set a precedent, like the De Beers benefit impact. They'll set the precedent and then the native groups will want to have that same sort of benefit. For a junior company that is only doing some diamond drilling, it's just unrealistic. We would like to see the government facilitating these meetings and negotiations so that the junior companies don't take the full financial burden for a small program that a large company can manage quite easily. (Standing Committee on Finance and Economic Affairs, 2006: p. F-109)

Brian Polk (PDAC): We've got lots of issues with regard to land right now. First Nations issues are very prominent, and nobody is working to solve the First Nations issues, as far as we can see. They're thrown into our lap, at our expense, and we can't afford it. We cannot afford it. (Standing Committee on Finance and Economic Affairs, 2006: p. F-125)

At this Standing Committee, representatives from prominent mining associations were complaining about the lack of provincial leadership on addressing "First Nation issues" and how

this has become a costly expense for their member companies, which have had to navigate the consulting process with First Nations. These associations believed that to solve the problems they faced, the province was responsible for leading consultations and providing financial compensation to First Nations. Thus, Standing Committees could bring together a vast network of Indigenous, state, and extractive actors to communicate their interests, goals, and problems to one another.

First Nation leaders also continued to attend these Standing Committees to make their views known, especially about resource revenue sharing. Between January 22-23rd, 2008, the Standing Committee on Finance and Economic Affairs heard from several First Nation Chiefs who spoke on the socio-economic issues their communities faced, and on the fact that the provincial Crown has not honoured its treaty obligations, and the necessity of economic development and resource revenue sharing. For instance, this can be illustrated through quotes that were selected from a longer testimony by Chief Dean Sayers of Batchewana First Nation:

There is a relationship that we need to, again, expand on with the province. The province does carry the honour of the crown, and the honour of the crown is at stake with the way that our treaties are currently being interpreted. We have guaranteed rights. In exchange for all this land around here that we gave up, we have guaranteed rights, including that right to education, housing, health care, the list goes on. It's not that we want to have castles and palaces and this extravagant lifestyle. All we expected when we signed those treaties was the same quality of life as everybody else who comes to this land. When we look at hundreds and hundreds of logging trucks coming out of our territories and we don't get a cent out of those things, it's disturbing to us, because in that treaty we said that we would benefit as well, and we're getting piddles.

Today, we now know that we have rights. Ontario specifically has some responsibility there. There's the Robinson-Huron treaty of 1850, where we said and we all agreed; all of you guys were there, all of your forefathers were there, and you said, 'We will all benefit, and when Ontario makes a profit, you guys will benefit, too.' We're still getting \$4 a year; I'm sure the province has made a couple of bucks since 1850. It's ridiculous. It's a shame that we're still only getting \$4 a year. We shouldn't have to take the province of Ontario to court to get our annuities increased. Look at what you're enjoying around you.

Our people are taking stands today and saying, 'If you're not going to honour those treaties, guess what? We're not going to honour those treaties anymore either, so we're going to start taking those things back.' Our people are still wanting to sit down and talk about a mutually beneficial relationship with the visiting governments. We're willing to do that.

Your court, the Supreme Court of Canada, has made numerous decisions in the last few years that said, 'Yes, you have to talk to the native people in Canada about their rights, and you have to consult with them.' Not only do you have to consult, but you have to actually listen to them. You can't just knock on the door and say, 'Hello, I'm here,' and then leave and say, 'Well, I talked to them. There, now I can do what I want.' No, you have to be accommodating. You have to actually sit down with us and we have to mutually benefit, and we've not seen that.

We're asking the province of Ontario to share the benefits that they're reaping with First Nations, not out of your good feelings of social responsibility but as the result of a contractual obligation you have with us. We're supposed to benefit. We know how we need to work in order to benefit. We know what's going to have to happen in our communities for our people's prosperity levels to increase. We need to have those revenues, and those revenues should come directly to us. (Standing Committee on Finance and Economic Affairs, 2008a: p. F-81-82).

Chief Sayers overarching and powerful argument is that settler colonialism has led to poverty within his community. By drawing out the treaties, and specifically the Robinson-Huron treaty of 1850 and how it has not been properly honoured by the provincial Crown due to the Crown freezing the annuities at \$4, Chief Sayers illustrates how the past dishonourable actions of the Crown have led to the impoverishment of First Nations. Moreover, in pointing out how the province has historically profited and how natural resources are continuously extracted without benefiting First Nations, Chief Sayers demonstrates how there is a settler colonial reality which has structurally marginalized Indigenous peoples. There is also a hint that not honouring the treaties will inevitably lead to future conflicts. In order to rectify the poverty and injustices First Nations face due to past and present settler colonial actions, Chief Sayers cites recent Supreme Court decisions to advance that there is a duty to consult and accommodate, and to ensure that Indigenous peoples mutually benefit; sharing the revenues from resource extraction is therefore presented as a way to honour the treaties (i.e., fulfill the provincial Crown's contractual

obligation). A couple of other First Nations leaders made similar points regarding the provincial Crown's treaty obligations and the desire for economic development and revenue sharing⁵².

The importance of these Standing Committees cannot be overstated. Unlike IIPAC and OMICC, which involved private conversations and a selective set of actors, Standing Committees provided opportunities where all three types of actors could publicly recount their problems and offer suggestions for how Indigenous-settler relations could be improved through new technologies of governance. For instance, besides resource revenue sharing, creating policies that address the duty to consult was sometimes mentioned as a way to improve relationships between First Nations and the Crown (Standing Committee on Finance and Economic Affairs, 2008b: p. F-120). However, it would be an error to assume that Standing Committees only led to Indigenous leaders testifying to MPPs and their staff, or alternatively, executives from mining companies and associations giving presentations to politicians. Oftentimes, Indigenous and extractive actors would be in the same audience, listening to the presentation and occasionally, information given in a previous presentation would be reiterated to the Standing Committee. Usually, this would be when similar actors (such as First Nation Chiefs) wanted to emphasize a point previously made, but once in a while, there would be an instance of discursive signalling, such as when an extractive actor would reiterate a point made by an Indigenous actor, or vice versa. For example, in a Standing Committee that will be discussed below, the president of PDAC made this comment, "as a representative of the PDAC, I

⁵² For instance, Chief Arthur Fisher of Pic River First Nation stated at the same meeting, "Canada has not lived up to the intent of the treaty process. We need Ontario to put the pressure on Canada to provide the financial resources needed for First Nations" (Standing Committee on Finance and Economic Affairs, 2008a: p. F-64). When Chief Fisher was asked which initiatives the provincial government could take to support First Nations, part of his response included, "Both governments have to look at sending money in there to have partnerships set up where they can put in their fair share of money, providing resource revenue-sharing that First Nations could use on their behalf in the future" (Standing Committee on Finance and Economic Affairs, 2008a: p. F-64).

can express my agreement with NAN's concerns” (Standing Committee on General Government, 2009a: p. G-849). These comments are reflective of how in this time period and in other spaces, closer relationships were being fostered between the mining industry and Indigenous peoples.

The most high-profile relationship between the mining industry and Indigenous political organizations could be seen between PDAC and the AFN in the mid-2000s. A PDAC communication dated February 26th, 2007, proudly mentions how Phil Fontaine, now the National Chief of the AFN, recently cited PDAC’s resource revenue sharing discussion paper in a presentation to business leaders at the Economic Club of Toronto (PDAC, 2007). A PDAC communication dated February 6th, 2008, a year after the AFN referred to this PDAC study on resource revenue sharing, states how the AFN launched a “Corporate Challenge” in 2007, which was meant to encourage corporations to “increase business activities with First Nations and encourage partnerships between companies and communities” (PDAC, 2008). About a month later, at the annual PDAC convention held in Toronto, National Chief Fontaine gave a speech, in which he made these selected remarks about the mining industry:

Some of you may be wondering why we want to work with the mining industry. It’s pretty simple. First Nations want to work with all industries and corporations in order to achieve economic self-sufficiency. By doing so, this will empower First Nations to break the chains of dependency and despair; empower us to revitalize our languages and cultures; and empower us to participate and prosper in the Canadian economy.

Two months ago, I had the opportunity to travel to the Attawapiskat First Nation to visit the community and the new Victor Diamond Mine, which is operated by De Beers. As you may know, this is Ontario’s only diamond mine. I was very impressed with De Beers’ commitment to working closely with Attawapiskat and the surrounding First Nations communities. This kind of economic development is bringing hope to so many people who are desperate to provide for their families.

You can help to alleviate First Nations’ poverty by providing employment opportunities; holding governments accountable; demanding that First Nations be given a fair share of the resource revenues and creating with us, the kind of development that is economically beneficial, yet environmentally sustainable.

In fact, the PDAC stated in a recent discussion paper about the benefits of resource sharing with First Nations, and I quote: ‘sharing of the public revenues would increase the political stability and economic predictability that support long-term investment.’ (Fontaine, 2008)

These excerpts from his speech are noteworthy for a few reasons. First, this discourse of the ideal (white) liberal subject who is independent from the government, and which has its roots within the British-Canadian liberal despotism of the 19th century, seems to be taken up by the AFN. This alarmingly marks an internalization of a racist settler colonial discourse of liberal despotism by the leader of a prominent Indigenous advocacy and political organization. Furthermore, the same discursive idea of “breaking the chains of dependency,” last seen when MPP Bisson proposed his Private Member’s Bill, is reiterated here to rationalize why the AFN is partnering with PDAC. In that sense, it seems that many (but not all) Indigenous, state and extractive actors are now using similar language and discourses to harmonize and connect their disparate interests and problems, thereby further concretizing this loose network of actors, organizations and institutions around a shared discourse.

In the second excerpt, National Chief Fontaine references the relationship between De Beers and Attawapiskat First Nation, illustrating a provincial example of a supposedly working partnership between First Nations and the mining industry. In this case, economic development is tied to mining, and that is believed to be raising the standard of living for Indigenous communities within proximity, thereby showing that Indigenous communities can benefit from resource extraction and do not necessarily exist in opposition to it. In the third and fourth excerpts, resource revenue sharing is noted to be a shared goal between the AFN and PDAC, with National Chief Fontaine even quoting from PDAC’s discussion paper on the topic. Revenue sharing is conceptualized as a process that would address poverty within Indigenous communities while providing political stability and economic certainty, ideas that have been

brought up at past Standing Committees. What is also noteworthy is how National Chief Fontaine says to this PDAC audience that they can help in, “demanding that First Nations be given a fair share of the resource revenues”, without explicitly referring to who they are demanding the revenues from, although it is likely that National Chief Fontaine is referring to governments who have violated their treaty rights. The speech culminated with a Memorandum of Understanding⁵³ being signed by these two national organizations, both of which would contribute to the conversation on mining and resource revenue sharing within Ontario.

Additionally, provincial level extractive organizations would also take up the call to demand resource revenue sharing. OMA’s president Chris Hodgson (who dually served as the Minister of Natural Resources and the Minister of Northern Development and Mines from 1995-1999 in Premier Mike Harris’ cabinet and had testified at the Ipperwash Inquiry) published a letter dated July 2008 to OMA’s members. The letter states that OMA’s position is that there should be a system of resource revenue sharing with First Nations so that First Nation communities can also benefit from the economic prosperity that comes from mining, but that these revenues should be derived from existing provincial tax streams (Hodgson, 2008). Given that OMA’s previous president (who also had a career in politics but as a Liberal MPP) rejected Bill 97, this open call for resource revenue sharing is a dramatic organizational shift. It seems to represent that the mining industry, across Canada, became more vocally supportive of having resource revenue sharing be implemented on the unnegotiable condition that revenues being

⁵³ The Memorandum of Understanding was developed between the AFN and PDAC and developed by PR Associates. From what I can publicly find, the Memorandum of Understanding was meant to have both organizations “work together to ensure that First Nations share in the economic benefits of sustainable and responsible mining in Canada” (Fontaine, n.d.).

shared came from government tax revenues and royalties, and that there would be no financial impact for prospecting and mining companies.

Thus, by 2008, an assemblage made up of diverse Indigenous, state and extractive actors was coming together to shift how Indigenous-settler relations, and specifically, Indigenous-Ontarian relations, were being governed. In particular, closer relationships were being formed between the mining industry and Indigenous communities without the federal and provincial governments being involved, as exemplified by the signing of the Memorandum of Understanding between PDAC and the AFN. Both national organizations, representing the interests of their respective members, would publicly advocate for revenue sharing through previous discourses in which revenue sharing was equated with political stability, economic certainty, and a way to produce liberal self-sufficiency amongst First Nations communities. However, even as this assemblage was coming together, and as resource revenue sharing is increasingly accepted as a possible technology to improve Indigenous-Ontarian relations under this new political rationality of reconciliation, relationships between these actors remained fraught and under increased strain, to the point that the assemblage almost collapsed.

Between 2006 to 2008, there was a growing conflict within Ontario between Kitchenuhmaykoosib Inninuwug First Nation (also known as “KI First Nation”) and Platinex Inc., a junior mining company. The conflict was a result of Ontario’s *Mining Act*, in which a “free entry” system permitted prospectors to stake claims on Crown land; in accordance with this legislation, Platinex Inc. “acquired” the mineral rights on KI First Nation’s traditional territory, thereby giving it exclusive authority over this staked land (Ariss & Cutfeet, 2012: p. 19; Drake, 2015: p. 191). This consequently led to several court proceedings revolving around “consultation” in relation to Section 35 and treaty rights, an injunction against KI First Nation,

and the arrest of KI First Nation's leadership, including Chief Donny Morris, in December 2007 for being in contempt of court due to their actions to prevent Platinex Inc. from conducting its exploratory drilling (Ariss & Cutfeet, 2012: p. 22; Drake, 2015: p. 191). While the provincial government did not recommend jailing KI First Nation's leadership, they did suggest that there should be a large fine that would hurt KI First Nation (Ariss & Cutfeet, 2012: p. 22). The sentencing of KI First Nation's leadership to jail occurred on March 17th, 2008 (Ariss & Cutfeet, 2012: p. 22-23), which was shortly after the AFN signed a Memorandum of Understanding with PDAC in March 2008. Their sentencing would lead to national Indigenous dissent, as Grand Chief Ed John of the Union of British Columbia Indian Chiefs would publish an open letter dated March 19th, 2008, to the AFN calling for the termination of the Memorandum of Understanding, arguing that it had already been violated by the mining industry ("Canadian mining perspectives", 2008). The arrests and sentencing of KI First Nation's leadership therefore led to intense criticism and threatened the relationship between First Nations and the mining industry.

In Ontario, there were immediate local ramifications that occurred following the sentencing of KI First Nation's leadership. For example, on the same day that KI First Nation's leaders were sentenced, Grand Chief Stan Beardy of NAN, announced a suspension of a bilateral partnership with the provincial government which was meant to address issues regarding consultation and accommodation, resource extraction and mining within NAN's traditional territory ("Canadian mining perspectives", 2008). The Anishinabek Nation also stated in their local newspaper that they would support KI First Nation's leadership (Anishinabek Nation, 2008). Deputy Chief Glen Hare of the Anishinabek Nation even stated, "In one breath we hear Ontario talk about the importance of First Nations sharing in the wealth of the province's resource revenues, and in the next breath they ignore Supreme Court of Canada rulings that say

we need to be consulted by companies wanting to exploit our lands,” and he concluded, “That’s not how good neighbours behave” (Anishinabek Nation, 2008). It is apparent that First Nation PTOs (which were part of IIPAC) were questioning their relationships with both the Government of Ontario and the mining industry due to how KI First Nation was punished for defending their lands. Arguably, they were even willing to withdraw from this assemblage that was meant to govern Indigenous-Ontarian relations in accordance with reconciliation. Thus, this network of Indigenous, state and extractive actors was extremely tenuous after the sentencing of KI First Nation’s leadership and was at serious risk of falling apart a year after the Ipperwash Inquiry’s report called for a new way of governing Indigenous-settler relations.

This tense political context may explain why in late May 2008, the provincial government seemed more committed to implementing resource revenue sharing with First Nations communities. Shortly after KI First Nation’s leadership were released from prison, then Minister of Aboriginal Affairs Michael Bryant made these comments to the Standing Committee on Estimates⁵⁴ on May 27th, 2008:

Resource benefit sharing: It was a commitment made in the fall 2005 throne speech to develop proposals for aboriginal peoples to share in the benefits of natural resource development. This will translate into meaningful employment and business development, but it is also, and perhaps primarily, about creating an economic incentive that will far exceed any net revenue that is shared with First Nations and Metis people, obviously because, if in fact there's greater economic development, if there's greater natural resource development, then it necessarily means an increase in revenues above and beyond jobs and any equity share.

Resource revenue sharing is not the end; it's a means to an end, the end being more partnerships, more economic activity and greater economic development amongst First Nations and Metis. (Standing Committee on Estimates, 2008a: p. E-80)

⁵⁴ Unlike other Standing Committees which are open to the public, the Standing Committee on Estimates does not invite members of the public to give presentations. This seems to be because the Standing Committee on Estimates is concerned with the internal operation of each government ministry, and closely evaluates if each ministry is using their fiscal resources properly and effectively.

These statements confirm that revenue sharing was construed as a mechanism that would softly encourage Indigenous communities to accept resource extraction on their territories and to participate in economic development. Arguably, resource revenue sharing was also seen as a way to align the province's interests with the interests of Indigenous communities; that is, sharing revenues will lead to economic development amongst Indigenous peoples and reduce the likelihood of conflict breaking out, thereby making Ontario an attractive mining jurisdiction. However, in light of KI First Nation's leaders being arrested and released and the local and national condemnation by Indigenous leaders against the province's handling of the conflict, it could also be interpreted that there was a newfound urgency amongst the province for instituting resource revenue sharing in order to signify that there was political stability and economic certainty within Ontario's mining industry. Thus, the end of the conflict involving KI First Nation, Platinex Inc. and the provincial government (which happened to occur almost one year to the day that the Ipperwash Inquiry's final report was released) might have rekindled efforts by the provincial government to adopt some form of resource revenue sharing in order to form stronger partnerships with Indigenous communities.

In fact, it seems that the provincial government was very aware that the jailing of the KI First Nation's leadership truly had the potential to unwind any progress made since the release of the Ipperwash Inquiry's final report. When the Standing Committee on Estimates resumed the next day, Minister Bryant made this admission:

National Chief Fontaine said to me and Grand Chief Toulouse⁵⁵ and a number of others, and he's repeated this to many people and in public, that the effect of jailing chief and council under circumstances like this not only is, in this case, wrong in the particular circumstances, but the effect that it has on everything else involving aboriginal affairs

⁵⁵ Grand Chief Angus Toulouse had served as the Regional Chief for the COO during this time period. I had previously brought up the COO in this chapter but did not indicate who was its leader.

and aboriginal federal, provincial and non-aboriginal relations—the impact, I think, cannot be underestimated.

In a number of other projects that were in fact taking place with partnerships with aboriginal peoples, with First Nations in particular and other companies, there became a question as to whether or not, in a moment of solidarity, that ought to slow down or stop in some cases. As National Chief Fontaine said, regardless of the best approach, which he certainly agrees is negotiation and partnership, the impact of jailing chief and council in these circumstances was one that—I'm very pleased that part of it is over. (Standing Committee on Estimates, 2008b: p. E-121).

These comments indicate that there really was a stalling of, if not the plausible breaking up, of a fragile assemblage of diverse actors who had only recently come together to govern Indigenous-Ontarian relations in a manner that would make reconciliation a political reality for the province.

The conclusion to this conflict led to further calls for the provincial government to come up with a process for consultation and resource revenue sharing. At the Standing Committee on Estimates (2008a), MPP Bisson (who had apparently invited Chief Donny Morris and the other KI First Nation leadership to Queen's Park that day) argued that, “it should be an automatic right that there is a process of consultation” along with legal mechanisms that would benefit First Nations impacted by resource exploration and extraction, including jobs, economic opportunities and revenue sharing (p. E-88). Similar to Bill 97, MPP Bisson explicitly connected revenue sharing with the original intention of the treaties, and as a solution which would resolve issues affecting First Nations communities (Standing Committee on Estimates, 2008a: p. E-88). Once again, resource revenue sharing was presented as integral to a new approach to governing Indigenous-settler relations, as it would potentially prevent conflict from erupting amongst Indigenous communities, the provincial government, and mining and prospecting companies that are looking to explore and extract in Ontario.

The desire to institute resource revenue sharing did not just come from the provincial government or private members. Several months later, in November 2008, COO would convene

its 34th All Ontario Chiefs Conference (also referred to as the All Ontario Special Chiefs Assembly), in which “Resolution 08/11 – First Nations Resource Revenue Sharing” would be formally adopted, thereby making the negotiation for regional resource revenue sharing arrangement a “leading priority” for the Ontario Regional Chief and the Political Confederacy (COO, n.d.; NationTalk, 2008). The agenda for the 34th Special Chiefs Assembly included discussion of the Ipperwash Inquiry’s recommendations, and even a signing of a Memorandum of Understanding with the provincial government to make progress on key recommendations (NationTalk, 2008). There was a renewed effort on the part of COO, which represents 133 First Nations and whose leader was already co-chairing IIPAC, to put additional pressure on the provincial government to implement some form of resource revenue sharing.

Between August to October 2009, a Standing Committee on General Government was tasked with determining appropriate amendments to the *Mining Act* and the *Far North Act*, which was likely a spillover effect of the dispute between KI First Nation and Platinex Inc. Like previous Standing Committees, this one also convened an assemblage of Indigenous, state and extractive actors converging to share their problems regarding mining in northern Ontario. From the transcripts for this Standing Committee, it seems that the overall purpose was to provide clarity regarding the province’s duty to consult and to establish guidelines for what constitutes proper consultation, and by extension, consent from Indigenous communities. This was discussed as a way to increase “certainty” for both extractive industries and Indigenous communities, a discourse which had previously appeared when Bill 97 was being evaluated by Indigenous and extractive actors and organizations. What was also remarkable was how resource revenue sharing (sometimes referred to as “resource benefit sharing”, a broader term which would encompass more than just sharing resource revenues), was brought up numerous times

during the Standing Committee's hearings, sometimes in the context of consultation and increasing certainty.

Among Indigenous leaders, there was a renewed desire to see resource revenue sharing as an amendment to the *Mining Act*, and even disappointment that it was not already added. This was noticeable throughout the August 2009 committee hearings:

Mr. Sam McKay (Kitchenuhmaykoosib Inninuwug): There is no easy answer to the problems we face, and we need to understand that we must balance the difference between two very different concepts. We must recognize aboriginal and treaty rights in terms of protecting the environment as having as much value as developing mines and creating jobs. We will not accept being marginalized. Where development is agreed to take place, it must be according to social and environmental standards we set, and with fair and just revenue-sharing agreements. (Standing Committee on General Government, 2009c: p. G-914)

Chief Toulouse (Chiefs of Ontario): Mining legislation and regulations in Ontario therefore must (1) recognize First Nations' role in decision-making respecting the licensing and approval of development and in resource revenue sharing as an aspect of First Nations' rights to self-determination; (2) respect and accommodate First Nations' law respecting the environment as an aspect of First Nations' rights to self-determination; and (3) respect and implement the crown's duty to consult and accommodate First Nations' rights under the constitution and the crown's obligation to obtain the free, prior and informed consent of First Nations in accordance with international law. (Standing Committee on General Government, 2009d: p. G-941)

Chief Slipperjack (Whitewater Lake First Nation): Bill 173, the Mining Amendment Act, contains some relatively progressive measures that in practice may make a positive difference, at least compared to the current Mining Act. However, there are significant problems that should be rectified before the bill goes further. In particular, regarding the free-entry systems that are still at the heart of the bill, the consultation rights are too vague and weak to be acceptable at this stage. The ministerial control and discretion for resolving disputes is not balanced. The relevant provisions should be revised with First Nations support to reflect real consultation, accommodation and, in some instances, consent. It is necessary to enshrine an acceptable system of revenue-sharing. (Standing Committee on General Government, 2009d: p. G-949)

Chief Moore (Matawa First Nations): Resource revenue sharing: No reference to resource revenue sharing is found in the legislation. Like the need for IBAs with the companies, there is an equal need for resource revenue sharing with the provincial government. This is part of the government-to-government relationship between First Nations and the province. (Standing Committee on General Government, 2009d: p. G-963)

Chief Hall (Attawapiskat First Nation): Revenue sharing: In April 2007, a letter of political agreement was signed between NAN, Nishnawbe Aski Nation, and the government of Ontario. In the letter, it states the parties will work to enable the aboriginal people of Nishnawbe Aski Nation First Nation to share fairly in the benefits of natural resources development, including revenue sharing, yet there is no mention of revenue sharing in the bill. This issue of revenue sharing is long overdue. I have to say I'm disappointed that the government actually thought they could present this bill without addressing this issue. Let me simplify this for you: There is a direct connection between access to resources and revenue sharing from Attawapiskat lands. (Standing Committee on General Government, 2009e: p. G-982)

The bill to update the *Mining Act* fell short to actually legislating a framework for the province's duty to consult and accommodate and respecting Indigenous self-determination through Aboriginal and treaty rights. In bringing up these shortcomings to the Standing Committee, the fact that there was no mechanism for resource revenue sharing being incorporated into the updated *Mining Act* was taken as evidence that the province was not interested in a government-to-government relationship with First Nations. Additionally, there was a collective disappointment expressed by First Nations Chiefs that the updated *Mining Act* will still allow for resource extraction to occur, without proper consultation, respect for First Nations laws, or adequate financial compensation to the First Nation communities impacted by extractive activities on their territories. Despite calling for the provincial government to make changes, the modernized version of the bill would not take into account these perspectives or include resource revenue sharing.

Non-Indigenous presenters from extractive organizations also showed concern regarding the lack of resource revenue sharing with First Nations, which shows how Indigenous-extractive relationships in Ontario had become more commonplace in the late 2000s. In fact, many extractive actors argued that the modernization of the *Mining Act* needed to legislate resource revenue sharing, largely due to their partnerships with Indigenous organizations. For instance, the Ontario Waterpower Association, a non-governmental organization concerned with

developing water into a renewable energy, stated that their report was prepared through their consultations with NAN and Indigenous communities (Standing Committee on General Government, 2009a: p. G-835). This association would go on to comment on resource benefits sharing and state that “resource royalties, or economic rents, could significantly advance and improve the capacity of far north First Nations to control and own their own destiny” (Standing Committee on General Government, 2009a: p. G-836). Such a comment is not surprising, since NAN’s leadership, who influenced this report, has supported the concept of revenue sharing since its written submission to the RCAP in 1993 and has testified on the importance of resource revenue sharing at the Standing Committee meetings on Bill 97. Similarly, the Canadian Boreal Initiative, a now defunct organization which worked with extractive industries⁵⁶, environmental groups and Indigenous communities on sustainability in Ontario’s north, also made note of how resource revenue sharing (albeit through mandatory IBAs and not provincial taxes) was missing from the bill, before arguing its importance for demonstrating consent and producing certainty:

Having the parties most directly engaged in the activity—the developer and the community—working out their differences and coming up with their common positions together and submitting then a statement to government that, ‘Yes, we have reached an agreement,’ would give government the confidence that the community has indeed consented to the development and has created a relationship with the developer which is going to secure that opportunity in both the short and the long term. (Standing Committee on General Government, 2009a: p. G-841)

Thus, amongst extractive actors, the concept of resource revenue sharing was fundamental for resource extraction, as a mandatory revenue sharing agreement could signal that Indigenous

⁵⁶ In the aforementioned letter from OMA to its members dated July 22nd, 2008, the president of OMA states that he discussed his concerns about the modernization of the *Mining Act* with government ministers and the Canadian Boreal Initiative (Hodgson, 2008). Given that OMA’s letter supported revenue sharing, and the fact that the Canadian Boreal Initiative would recommend resource revenue sharing be included in this bill, it would not be farfetched to assume that individuals from these extractive organizations exchanged a few words about the necessity of resource revenue sharing. However, there are notable differences about who would share resource revenues; OMA called for government tax revenues to be shared, while the Canadian Boreal Initiative wanted IBAs between companies and First Nations to be mandatory.

consent had been granted for an extractive project, thereby reducing the possibility of conflict. However, not all extractive actors held the same view as to who should share the revenues from resource extraction. An individual from the Porcupine Prospectors and Developers Association (PPDA) held that resource revenue sharing should come from the province's mineral taxes (Standing Committee on General Government, 2009b: p. G-877).

These Standing Committee hearings reveal that by 2009, there were closer relationships between the mining industry and Indigenous community leaders. For example, PDAC, which had signed the Memorandum of Understanding with the AFN just a year prior, would come forward to this Standing Committee to support NAN's position on these bills before PDAC explained their own reasons for why these bills should not move forward (Standing Committee on General Government, 2009a: p. G-848-G-849). Meanwhile, the Grand Council Treaty #3 made these comments regarding its own relationship with the mining industry:

Grand Chief Kelly: The chiefs stated in the 1873 treaty negotiations that led to the signing of Treaty 3 that they felt the rustling of gold beneath their feet. They knew where substantial gold deposits were in the territory and the value of these minerals and wanted to create a treaty that would lead to our community's wealth and well-being in a sustainable manner from that time forward.

Mineral rights in our territory: Millions of dollars have left our territory in gold and copper mining, with many environmental impacts as the only lasting result. Goldcorp, as an example, operates a gold mine near Red Lake, Ontario. We see this as unjust enrichment. Junior companies largely respect *Manito Aki Inakonigaawin*. They see the value in the certainty and the good relationships being defined through our law. (Standing Committee on General Government, 2009c: p. 896)

Similar to Chief Sayers' testimony, Grand Chief Kelly emphasizes how despite the promise of there being a mutual benefit for First Nations and the Crown through the signing of a treaty in 1873, the settler colonial reality is that First Nations of Treaty #3 have not historically received a fair amount of wealth, and continue to be economically marginalized and environmentally harmed as extractive companies remove and sell natural resources located in their territories.

However, what is interesting about her statement is that although she discusses how the spirit and intent of the treaty has been historically and presently violated, she does note that closer relationships have started to materialize between the Grand Council Treaty #3 and some extractive corporations. Her comment unveils that junior prospecting and mining companies seem to be more willing to abide to the Grand Council Treaty #3's constitutional law of *Manito Aki Inakonigaawin* because it produces certainty⁵⁷. As noted earlier, both Indigenous and extractive actors, organizations and institutions seem to have wanted to produce certainty through law, so it appears that Anishinaabe constitutional law has performed this function in the absence of any provincial legislation. Through these examples, it appears that by the late 2000s, some PTOs and their First Nations developed stronger relationships with some mining companies and associations (but not all, as exemplified with how the Grand Council Treaty #3 viewed GoldCorp's mine as "unjust enrichment"), as extractive actors started to recognize that working with First Nations can lead to certainty for their projects. This demonstrates a notable shift in the relationship between some Indigenous and extractive actors, given that the jailing of KI First Nation's leadership due to KI First Nation's conflict with a junior mining company, had just concluded the previous year.

The closer relationship between Indigenous and extractive actors may explain why they would start to echo each other's points, in accordance with the other set of actors' interests, problems and goals. For example:

⁵⁷ In the original vision of my doctoral project, it was my hope to learn about Anishinaabe constitutionalism and the Grand Council Treaty #3's constitutional law of *Manito Aki Inakonigaawin*. However, since I was unable to do so, this is my own interpretation of what this constitutional law is doing. From what I understand, this constitutional law was codified by the Grand Council Treaty #3 in 1997 and continues to be drawn upon to guide relationships between the Grand Council Treaty #3 and its respective First Nations with the Crown and mining proponents (an "Information Package" about applying this constitutional law was recently made publicly available on their website, which I would imagine would be read by mining companies looking to explore in Grand Council Treaty #3's traditional territory).

Mr. Jon Baird (PDAC): The PDAC contends that Bill 191 in its present form would deprive all of the citizens of Ontario, particularly First Nations communities that make up most of the population of the far north, of the economic benefits that responsible mineral resource development can provide.

Bill 191 fails to provide First Nations with an appropriate and clearly defined role in the land use planning process.

Bill 191 seriously compromises the ability of the minerals sector to operate in the far north by reducing the land base available for exploration by 50% or more, relegating the minerals sector to a peripheral role in land use planning, and damaging investor confidence in mineral exploration activities in the region. (Standing Committee on General Government, 2009a: p. G-849)

As seen thus far, for several years, many First Nations leaders brought up how the settler colonial reality has been that the treaties had been violated for over a century and a half, and that this has resulted in resources leaving their territories in the present-day with non-Indigenous individuals becoming enriched at their expense. While the president of PDAC does not bring up resource revenue sharing or the treaties being violated, he situates his organization's contention with this bill in relation to the fact that it will prevent Indigenous communities from experiencing economic benefits because it threatens mineral exploration in Ontario. In essence, both sets of actors are conveying that Indigenous peoples are not currently being enriched from resource extraction, albeit in different ways. Thus, Indigenous and extractive actors within this loose and delicate assemblage can be seen to be making similar points about mining, thereby harmonizing their problems and interests, in order to try to shape provincial legislation on mining.

While the final versions of the modernized *Mining Act* and the *Far North Act* would not include resource revenue sharing, this did not mean that the provincial government had ignored these comments brought forward by Indigenous and extractive actors, but it also does not mean that the provincial government would actually develop a resource revenue sharing mechanism. For instance, an IIPAC newsletter from 2010 reveals that in April 2009, the Ontario government committed \$30 million to explore the possibility for resource revenue sharing, with an IIPAC

working group weighing the utility of different options, preferences and methods for a resource-benefits sharing model (IIPAC, 2010: p. 8). This is somewhat intriguing since the same leaders from PTOs and First Nations communities who had publicly come forward to call for revenue sharing were also involved with IIPAC's working table on resource revenue sharing; for instance, Chief Toulouse of COO, who was co-chairing IIPAC with Minister Bryant, had come forward to this Standing Committee to note that the bills to update the *Mining Act* and the *Far North Act* did not include revenue sharing. It seems that there was a multipronged approach taken by Indigenous actors to advocate for resource revenue sharing between the mid- to late 2000s. This included privately negotiating with state and extractive actors, such as through IIPAC and OMICC, publicly testifying at Standing Committees how resource revenue sharing was necessary for honouring the treaties and allying with some extractive actors. Regardless of the closer relationships between Indigenous and extractive actors, and their willingness to engage in discursive signalling to put pressure on the provincial government to adopt resource revenue sharing, it seems that at this point in time, their joint efforts were ineffective.

Lighting the Ring of Fire: Market Actor Valuations of Ontario's Mining Sector

Despite the provincial government's \$30 million financial commitment towards exploring how resource revenue sharing could be implemented, negotiations for how it could be enacted fell apart. On September 4th, 2012, then Minister of Aboriginal Affairs Kathleen Wynne stated to the Standing Committee on Estimates that while there were intense talks between 2010-2011 regarding how revenue sharing could be executed within Ontario, by June 2011 these discussions fell apart (Standing Committee on Estimates, 2012c: p. E-479). According to Minister Wynne, the reason why resource benefits sharing could not be figured out was because there were many diverse opinions on how it should be installed amongst First Nations and thus there was no

“coherent vision of how this would work” (Standing Committee on Estimates, 2012c: p. E-480). While the provincial government claimed that they were unable to determine a clearcut process for how they would distribute the revenues from resource extraction with Indigenous communities, this did not mean that they would totally abandon the concept of resource revenue sharing. To understand why, it is essential to look at the role that pro-business thinktanks, research institutes and academics played in crafting a narrative that the provincial government would gain from giving up some of its tax revenues through resource revenue sharing. This can be seen through discussions about developing the Ring of Fire.

The Ring of Fire is an area in northern Ontario that is believed to hold significant amounts of different minerals and will lead to extravagant wealth for the province. Discovered in 2007, the Ring of Fire is a crescent shaped deposit named after the Johnny Cash song and is believed to contain vast amounts of chromite, which is used to make stainless steel, along with nickel and other minerals (McIntosh, 2022; Scott, 2023: p. 66; Scott et al., 2020: p. 1). However, despite initial excitement for mining the Ring of Fire, extraction has not occurred for several reasons. First, the Ring of Fire is 540 kilometres northeast of Thunder Bay, and practically speaking, there is no permanent road or infrastructure built in which extracted minerals can then be transported elsewhere (McIntosh, 2022). Second, there are climate justice related issues at stake – a road into the Ring of Fire would destroy the peatlands, which are believed to be instrumental for regulating the climate as they can hold approximately 35 billion tonnes of carbon, among other devastating and irreversible environmental effects (McIntosh, 2022; Scott et al., 2020: p. 4). Third, the Ring of Fire is located within the territory of Treaty #9, with nine proximate First Nations (known as the “Matawa Tribal Council” or “Matawa First Nations”) taking responsibility for this land who must weigh the potential benefits in relation to the

cumulative and longstanding harms that would occur through extracting from the Ring of Fire (Scott, 2023: p. 72). In July 2011, the Chiefs of all nine Matawa First Nations signed *Mamow-Wecheekapawetahteewiin Unity Declaration*, in which they stated that their Aboriginal and Treaty rights were secured under Section 35 of the *Constitution Act, 1982*, that no extraction can occur without their consent and that they promised to work together to protect their lands, water and resources (Matawa First Nations, 2011). Due to these various and overlapping reasons, there has been little progress towards opening up the Ring of Fire for resource extraction.

However, the dream of accessing and extracting from the Ring of Fire was kept alive thanks in part to market valuations of its deposits, its supposed prosperity for all Ontarians and the potential to be a political win for the then Liberal government. Sometime in 2013, the provincial government, now under the Liberal premiership of Kathleen Wynne⁵⁸, started to purport that the chromite deposits alone would lead to an upwards of \$60 billion dollars in revenue. For instance, in November 2013, when Cliffs Natural Resources' indefinitely suspended its chromite project due to lack of progress on opening the Ring of Fire, then Minister of Northern Development and Mines Michael Gravelle, whose name perfectly aligned with his ministerial portfolio, tried to save face by stating that the Ring of Fire has minerals worth \$60 billion and that the provincial government was carefully and diligently working to promote the right climate for extraction (Energy, Northern Development and Mines, 2013). Strangely, I have not been able to trace where exactly this incredibly high \$60 billion dollar figure came from,

⁵⁸ I am not sure where to put this “fun fact”, but I think it is helpful to include it only to demonstrate how this assemblage of Indigenous, state, and extractive actors continued to evolve. When Kathleen Wynne took over as Premier of Ontario, NAN's Grand Chief Harvey Yesno released a statement congratulating her before calling for the implementation of the treaties and resource revenue sharing (NationTalk, 2013). Interestingly, Grand Chief Yesno was listed as a member of OMICC in 2004, back when he was the President of the Nishnawbe Aski Development Fund (Energy, Northern Development and Mines, 2004b). As stated earlier, OMICC's Aboriginal Working Group had studied resource revenue sharing, so it's possible that Grand Chief Yesno's prior work on this concept transferred over to his position as NAN's Grand Chief.

nevertheless, since 2013 it has been taken as fact that there are billions of dollars located under the Ring of Fire in the form of natural resources, a claim that has been reproduced in many media articles and official government publications. The Liberals were determined to open the Ring of Fire for extraction, as they believed that this would lead to a stronger Ontario economy, which could translate into political capital.

While the provincial government has used their own estimates regarding the wealth that can be unlocked by making the Ring of Fire open for extraction, non-state actors have contributed to this calculus through their publications. This is due to a fourth set of actors and organizations, which I have deemed “market actors” since they consist of supposedly “non-partisan” thinktanks, research institutes and academics across Ontario and Canada that believe in free market solutions for complex socio-economic problems. In reality, many of them seem to hide behind the label of being “non-partisan” in order to be seen as “objectively” influencing policymaking, but with many of them touting the importance of laissez-faire economics, they could easily be placed as conservative or libertarian on the political spectrum. These actors and organizations include the Ontario Chamber of Commerce, the Northern Policy Institute, the Fraser Institute, and the Macdonald-Laurier Institute, among others. Thus far, I have neglected to mention this fourth set of actors and organizations because they have not really appeared in previous moments and spaces where a network of Indigenous, state, and extractive actors has come together. However, they seem to be held in high regard by state and extractive actors in problematizing both Ontario’s mining sector and Indigenous-settler relations during this time period. Many of these market actors also entered into this tenuous alliance between some Indigenous, state and extractive actors, organizations and institutions, and so it is not uncommon

for their seemingly “objective” market calculations and suggestions, interventions, and solutions to be cited by other actors within this assemblage.

While many of these thinktanks and research institutes position themselves as “objective” and thus “neutral” and “rational” this is an idea that is fundamentally false and needs to be unpacked before moving forward. In Chapter 3, I referenced Aaron Mills’ argument about how the view held by settler Canadians that liberalism is value-free, objective, neutral and that it tells no stories of how it conceives personhood is categorically wrong. I then examined how theo-Lockean worldviews foreground liberal thought and continue to exert influence on institutional decision-making and liberal laws. Modern conservative-libertarian thinktanks, research institutes and networks may advertise that they are “objective” and thus rationally working to “make poor quality public policy unacceptable in Ottawa” (Atlas Network, 2018: p. 3), however, this attempts to obscure the fact that their economic analyses and suggestions for public policy are grounded in liberal conceptions of the world. In his work on liberalism, van der Haar (2015) posits that there are three variants of liberalism known as classical liberalism, social liberalism, and libertarianism (p. 10-11). While each are ideologically distinct, they share many premises, such as the importance of individual freedom, although they may then disagree on the degree of state interference on individual liberty (van der Haar, 2015: p. 10-11). Libertarianism is the most extreme variation, in that it rejects the majority if not all forms of state regulation in favour of the free market and private enterprise, believing that this would lead to peace and a higher standard of living (MacLean, 2017: p. 297-298; van der Haar, 2015: p. 71-72). Despite its differences with other variations of liberalism, its philosophical underpinning can be attributed to John Locke’s political thoughts, whose writings influenced contemporary libertarian thinkers and policymakers (Layman, 2021: p. 465; Mack, 2011: p. 683-685). Like other variants of liberalism, its starting

point comes from how Locke attempted to make an argument for how private property can be acquired, given that God had given the world to all, with the conclusion being that mixing one's labour with the land entitled an individual to exclusive self-ownership (Layman, 2021: p. 468). Libertarianism, therefore, holds a theo-Lockean conception of the world as it takes Locke's Christian recounting of the world seriously, and so it would be inaccurate to claim that these conservative-libertarian market actors are totally "objective" and tell no stories of the world.

Since libertarianism shares its theo-Lockean worldview with liberalism, it should not be surprising that many of its cosmological features are similar, if not the same. In my third chapter, I analyzed how liberalism's conception of "persons" is derived from Christian theology, with only humans such as Adam being ascribed personhood, and how Locke uses this story to argue that humans must toil the earth under God's command. Nature is thus made up of non-persons, and these non-persons can be appropriated without consent and thereby become one's private property. In Locke's writings, money is eventually introduced as a way to stably exchange goods within the market, leading to a general desire to enlarge one's possessions in order to sell that surplus to the market for a profit (Layman, 2021: p. 468-469; Tully, 1993: p. 155). Thus, under liberalism, a human person's surplus collection of non-persons derived through the cultivation of land can be exchanged in a marketplace for money. Within libertarianism, this argument is taken to its theoretical limits, as there is a central thesis that "Anything that you have a property right in, you can exchange for money", which according to one author, is limitless and can include a market for kidneys as it is up to the "anti-commodification theorist" to explain why a resource cannot be sold (Jaworski, 2017: p. 240). Now, from what I understand about liberalism, libertarianism, and capitalism, it appears that non-person resources, such as a type of mineral, becomes valorized through ongoing market exchanges and therefore acquires a fluctuating

monetary value. The logic that would follow is that under liberalism, natural resources that have been discovered but are yet to be extracted are first anthropocentrically interpreted as non-persons before being assigned a monetary value because they have the potential for one to exert exclusive rights over (such as through Ontario's *Mining Act*), with the rights-owner being able to purchase labour to extract these resources and then sell them at a surplus value in a free market economy. Liberalism, and its variant of libertarianism, thus tells anthropocentric theo-Lockean stories of how humans relate to the world, and it is this worldview that influences these conservative-libertarian academics, thinktanks and research institutes producing "objective" market valuations and analyses.

Regarding the Ring of Fire, many of these market actors would either put together market analyses regarding the wealth underlying this region or would partner with Indigenous and extractive actors and organizations to advocate for market-based solutions which would kickstart extraction and improve Indigenous-Ontarian relations. For the former, individuals from the Ontario Chamber of Commerce (OCC) authored a report in 2014 which predicted through their "economic multiplier analysis" that in the first ten years, the Ring of Fire would generate up to \$9.4 billion in economic activity, result in \$6.2 billion in revenue for Ontario's mining industry, sustain 5,500 annual jobs and provide \$2 billion in government revenue (Hjartarson et al., 2014: p. 8). Through this economic analysis, billions of dollars were conceptually linked to the Ring of Fire becoming open for the extraction of non-person resources, a claim similarly made by the provincial government. Such a powerful financial claim would then be reiterated elsewhere. For example, OMA's 2016 report reproduces the provincial government's estimate that there are \$60 billion dollars worth of minerals within the Ring of Fire, and cites the OCC's figures above (OMA, 2016: p. 65). Thus, market actors were instrumental in performing economic analyses

which would attribute billions of dollars to the Ring of Fire's development, which would then be reiterated by other actors or organizations within this network. It seems that these incredibly high estimates of the wealth linked under the Ring of Fire and the perceived prosperity trickling into several sectors within Ontario's economy were essential in keeping the settler hope of extracting from this region alive.

Indeed, these theo-Lockean market analyses and assessments by these thinktanks and research institutes were often relied upon by state or political actors to problematize the state of mining in Ontario. Every year, the libertarian Fraser Institute publishes their "Annual Survey of Mining Companies" report, in which mining jurisdictions around the world are ranked. These rankings are taken seriously by the province as internal documents collected from my second FOI request to the Archives of Ontario for documents authored by the Ministry of Northern Development and Mines showed⁵⁹. This is because the figures from the Fraser Institute's report, along with statistics from other market analyses, are often wielded to criticize the government and to push for governmental policies which would increase mining in Ontario. For example, Progressive Conservative MPP Jim Wilson noted how the Fraser Institute's report ranks Ontario at 23 in 2015 when it was ranked number 1 when he was Minister of Northern Development and Mines, which he blames as being the fault of the Liberal government (Legislative Assembly of Ontario, 2015c: p. 6155). The publications produced by these conservative-libertarian market

⁵⁹ In the second FOI request, I received many emails that had Microsoft Word documents or PDFs that were attached. Fortunately, all these documents were viewable. A couple of these documents were concerned with the Fraser Institute's annual ranking or contained suggestions for how the Minister could respond to Ontario's current ranking. For instance, one document was a briefing note prepared for PDAC's annual convention in 2017, which outlined how the Fraser Institute wrote that Ontario was a jurisdiction with "mineral sector issues related to land claims" and stated that the media had sent in questions about Ontario's ranking. Another document was a draft briefing note/communication from 2012 which provided an overview of how the government could respond to the Fraser Institute ranking Ontario 13th for its mineral investment attractiveness, including downplaying the Fraser Institute's research as an "opinion survey" whereas the government deals with "actual facts". These documents show that the Fraser Institute's annual survey is taken seriously, both by government and the media, and that this results in the provincial government coming up with responses to Ontario's annual ranking.

actors were strategically used to problematize Ontario as a mining jurisdiction in the hopes that this would lead to new governmental strategies being enacted to make Ontario a more attractive to prospecting and mining companies.

Besides producing impressively large dollar figures surrounding the Ring of Fire and market valuations of Ontario's mining industry, these market actors closely partnered with many other non-state actors, groups, institutions, corporations, associations, and organizations within this wider governmental assemblage. For example, after a meeting with Richard Jock, the then CEO of the AFN, the Macdonald-Laurier Institute (MLI), a conservative-libertarian thinktank whose namesake is taken from Canada's first and seventh prime ministers and is based in Ottawa, partnered with the AFN to conduct research and publish a series of papers on their "Aboriginal Canada and the Natural Resource Economy" project (Atlas Network, 2018: p. 5-6; Coates & Crowley, 2013). To say that this research relationship is odd would be a total understatement. MLI uses every euphemism imaginable to minimize, downplay or deny the basic reality that Indigenous peoples across Canada have suffered from settler colonialism, and in recent years has publicly defended Sir John A. Macdonald's legacy. For example, in one of these publications, the authors write, "Experimentation has been the foundation of Indigenous programming since the 19th century, from the establishment of reserves and the Indian Act to residential schools to various attempts to configure band governance" (Coates & Crowley, 2013: p. 5). The word "experimentation" makes it seem as if these were benevolent state policies that had gone terribly wrong, instead of how governments had outwardly adopted a settler colonial political rationality of assimilation. In contrast, the AFN (and its predecessor organization the National Indian Brotherhood) had historically conducted mass campaigns against settler state policies of assimilation, like the White Paper. And yet, these "strange bedfellows" would

ultimately work together in the early to mid-2010s. A case study on MLI by the libertarian Atlas Network stated that MLI's success in pushing for libertarian solutions comes from its strategy of deliberately recruiting Indigenous persons who are trusted by Indigenous communities to parrot and champion their market-based policy solutions (Atlas Network, 2018: p. 2). The case study further outlines that with the AFN believing that resource extraction could address the social and economic issues affecting Indigenous peoples, they partnered with MLI to determine market-oriented approaches that would lead to self-sufficiency amongst Indigenous peoples (Atlas Network, 2018: p. 5). This one example shows that some of these market actors would end up closely working with Indigenous-led organizations, like the AFN, as it was believed that this would Indigenousize their theo-Lockean libertarian ideas of minimal state intervention and the extraction of non-person natural resources for profit. In turn, it was further hoped that this would legitimize capitalist exploitation of resources on Indigenous territories and lead to the fuller integration of Indigenous peoples into Canada's liberal free market economy.

These market actors and organizations would also establish working relationships with extractive actors, associations, and organizations. However, unlike the above example, it appears that extractive actors have long partnered with market actors to produce market valuations on mining. For instance, OMA has a history of partnering with chartered accountants and even the University of Toronto's Rotman School of Management to write reports using statistics and numerical figures to highlight that mining has a fundamental role in sustaining and expanding Ontario's economy (for examples, see: Dungan & Murphy, 2012; OMA, 2009). The relationships between extractive and market actors and organizations would continue to be built in the mid-2010s. The Mining Association of Canada's (MAC) Aboriginal Affairs Committee would also work on MLI's series of papers for its Aboriginal Canada and the Natural Resource Economy

project (MAC, 2016: p. 12). Interestingly, like PDAC, MAC would also sign a Memorandum of Understanding with the AFN in 2009, in which the AFN's National Chief Fontaine noted that First Nations and the mining industry were "natural partners" (MAC, 2009). Thus, this period is marked by closer relations between the mining industry, Indigenous organizations and conservative-libertarian thinktanks, as shown through the growing relationships between the AFN, MAC and MLI between 2009 to 2017.

Now, what is the point of bringing up how these market actors embedded themselves within this wider governmental assemblage of Indigenous, state, and extractive actors, institutions, and organizations? Well, working with other actors, institutions and organizations, these market actors and organizations authored numerous publications which would problematize Ontario as a slow and cumbersome mining jurisdiction, especially with the lack of progress on opening up the Ring of Fire for extraction, and would provide many suggestions on crafting market-oriented policies and other governmental solutions which would increase mining and benefit the economy. As noted above, through its collaboration with the AFN and MAC, MLI produced research papers for its Aboriginal Canada and the Natural Resource Economy series. Not only do some of these papers outline the issues within Ontario's mining sector, but the concept of resource revenue sharing is also presented as a necessary market-based policy solution. For example, in an MLI paper, the author suggests that "Ontario, seriously in need of an economic boost and eager to promote the stalled Ring of Fire development, needs to refine its resource revenue sharing arrangements, in concert with First Nations and the resource companies" (Coates, 2015: p. 25). In another MLI paper that focuses on the Ring of Fire, it recommends that Indigenous communities must be seen as full partners in extraction, and that this requires the development of government resource revenue sharing arrangements (Hall &

Coates, 2017: p. 25). It is likely that the AFN, which has been working with extractive actors for the past decade to normalize the concept of resource revenue sharing, perhaps held some degree of influence on the recommendations in MLI's papers. However, since libertarianism believes in bleeding the state dry, it is also likely that MLI would encourage government resource revenue sharing as it would redistribute and thus deplete government revenues for the supposed good of the free market. Regardless of who influenced who, it is evident that market actors were able to partner with Indigenous actors to call for resource revenue sharing.

Thus, support for resource revenue sharing seems to have been reinvigorated through these market actors, and even transformed to have a larger and more immediate practicality. Before, revenue sharing was recommended as a governmental intervention which would honour the spirit and intent of the treaties, address poverty in Indigenous communities and lead to economic certainty and political stability. However, economic certainty and political stability were often talked about in the abstract at past Standing Committee meetings. Now, resource revenue sharing is once again brought up and included as part of a larger set of recommendations and solutions which has an immediate practical application for producing economic certainty and political stability for mining the Ring of Fire, producing extraordinary wealth and maintaining Ontario's economy. Therefore, there is broad support for resource revenue sharing amongst Indigenous, extractive and market actors, with some Indigenous organizations (such as the AFN, and not necessarily individual First Nations) partnering with market and extractive actors and reproducing liberal, market-based arguments for resource revenue sharing.

That being said, it would be unfair to say these market actors were solely responsible for introducing the concept of resource revenue sharing as a solution for opening up the Ring of Fire. When Kathleen Wynne as the Minister of Aboriginal Affairs was testifying to the Standing

Committee on Estimates in 2012, she made a statement regarding how resource revenue sharing was an essential component for negotiating a Memorandum of Understanding with First Nations that would lead to the opening up of the Ring of Fire (Standing Committee on Estimates, 2012b: p. E-456). A letter was sent out by Minister of Northern Development and Mines Rick Bartolucci to the Matawa Nations, National Chief Shawn Atleo and Ontario Regional Chief Stan Beardy in which it outlined an overview of the Ring of Fire which included a commitment to revenue sharing (Standing Committee on Estimates, 2012a: p. E-442). Thus, even though negotiations for instituting revenue sharing at large had fallen apart, the provincial government was somewhat open to create a resource revenue sharing scheme for the Ring of Fire, without needing any prompting from market actors and organizations. After all, the political prize of opening the Ring of Fire for the Liberal government was big enough to warrant significant government intervention to make it happen. In addition, Minister Wynne had also noted that the Ring of Fire would not just benefit northern Ontario, but the entirety of Ontario's economy (Standing Committee on Estimates, 2012a: p. E-442). The main contribution from these market actors then is that they had imagined that there were billions of dollars linked to the development of the Ring of Fire through their economic analyses, and that in doing so, the concept of resource revenue sharing was valorized. That is, through these publications, there were numerical estimations of what the Ring of Fire would contribute to Ontario's economy (rather than just abstract imaginings of its financial benefits), and thus another reason for why the provincial government should be working towards a resource revenue sharing deal with the Matawa Tribal Council. Through the creation of this social fact, the province became convinced that it could gain more than it loses from instituting a resource revenue sharing model for the Ring of Fire.

To that end, there were active negotiations between the province and the Matawa Tribal Council in 2013. In May 2013, the Matawa Tribal Council appointed Bob Rae, the former NDP premier of Ontario, to be its Lead Negotiator on the Ring of Fire (“Bob Rae to lead”, 2013). Rae then resigned as a Liberal Member of Parliament in June 2013, stating that “Helping to improve the life of First Nations people has been a long-standing commitment of mine, and this opportunity to serve is one I felt I could not decline” (Rae, 2013). Not to be outdone by this high profile hiring, the provincial government appointed Frank Iacobucci, a former Supreme Court Justice, to be its Lead Negotiator (Office of the Premier, 2013). Both Lead Negotiators had distinguished careers which touched on governing Indigenous relations. As briefly mentioned in Chapter 4, Rae’s one-term NDP government had supported the inherent right of self-government. Justice Iacobucci (as he was then) served on the Supreme Court between 1991-2004, meaning that he heard and made decisions on notable cases, such as the Van der Peet trilogy, thereby helping to establish consequential precedents for reconciliation. Following negotiations, in March 2014, the provincial government and the Matawa Tribal Council signed a Regional Framework Agreement, which would allow both institutions a way to continue with a “negotiation process on a community-based regional approach” and would ensure that the Matawa First Nations can benefit from any mining of the Ring of Fire, including through the development of resource revenue sharing (Energy, Northern Development and Mines, 2014). Therefore, in 2014, as some Indigenous, extractive and market actors, institutions and organizations were forming alliances and beginning to write about the economic utility of resource revenue sharing, the provincial government had indicated that it was recommitted to negotiating resource revenue sharing with the Matawa Tribal Council. Moreover, it should be noted that the nine Matawa First Nations Chiefs signing onto the Regional Framework

Agreement seems to imply that the Matawa Tribal Council was not necessarily opposed to resource extraction and wanted to economically benefit from the mining of the Ring of Fire. However, signing the Regional Framework Agreement was only the first step. Since there was still no model for revenue sharing actually conceptualized and suggested, market actors would continue to push out publications on resource revenue sharing and the Ring of Fire for years.

Thus, by the early 2010s, the lack of political willpower on the part of the provincial government to design a resource revenue sharing mechanism meant that there had been little progress on improving Indigenous-settler relations, producing economic certainty and ensuring political stability for Ontario's mining industry. However, a loose coalition of Indigenous, political, extractive and market actors and organizations continued to work together to try to govern Indigenous-settler relations in the mining industry order to suit their own particular interests and address their problems. That is, during this time, the state of Ontario's mining industry was being problematized by conservative-libertarian market actors as being unattractive for exploration and thus investments. Meanwhile, the Liberal government was facing criticism by its political opponents in the legislature for the slow progress on opening up the Ring of Fire, with some market and extractive actors helping to produce, reinforce and circulate libertarian claims that there were billions of dollars in natural resources within this region. Lastly, Indigenous actors, institutions and organizations seemed to want to receive a portion of the economic benefits from resource extraction but continued to assert their Aboriginal and treaty rights and the provincial Crown's duty to consult and accommodate their interests. Interestingly, through the alignment of these interests and problems, resource revenue sharing was once again proposed as a governmental solution by this assemblage, despite years of effort and no achievement in creating a revenue sharing mechanism.

The difference is that by the mid-2010s, resource revenue sharing was valorized as a market-oriented governmental technology that could lead to multiple political wins through the discovery of the Ring of Fire and the involvement of market actors. It was believed that instituting resource revenue sharing would entice Indigenous peoples to support resource extraction by providing monies that could theoretically address complex socio-economic issues. Resource revenue sharing arrangements could also signify consent by Indigenous peoples leading to “certainty”, thereby making Ontario an attractive mining jurisdiction which would capture domestic and foreign capital, create jobs and contribute to the overall economy. As a result, conservative-libertarian thinktanks could claim to exert their “objective” influence on policymaking, Indigenous communities would receive revenue in contrast to when the treaties were ignored (and would theoretically become economically self-sufficient liberal subjects), the Liberal government could claim to be governing the economy for the benefit of all Ontario and mining companies could be certain that they could extract natural resources and get wealthy. Resource revenue sharing with Indigenous peoples had thus achieved widespread support and legitimacy as a necessary governmental technology within Ontario, as a large number of actors, institutions, groups and organizations believed that they would materially and reputationally gain from its creation.

Realizing Reconciliation: The Province’s Concession of Resource Revenue Sharing

So far, this chapter has documented how resource revenue sharing went from a novel, marginal and even somewhat radical idea supported by a small number of Indigenous and settler political actors (i.e., the NDP) to a dominant idea promulgated by a large variety of actors for their

own interests⁶⁰. Despite the acceptance of resource revenue sharing amongst Indigenous, state, extractive and market actors as an appropriate and necessary governmental intervention into Indigenous-settler relations within Ontario's mining sector, it would still be many years before it would actually be implemented. The Regional Framework Agreement between the provincial government and the Matawa Tribal Council only meant that there would be negotiations about installing it for the Ring of Fire. These negotiations ended up lasting for several years, with little to show from them, before being abruptly terminated in 2018 (this will be touched on in a following chapter). In fact, while resource revenue sharing was conceived in 2013-2014 as one of several potential governmental technologies that could open up the Ring of Fire, there would be a number of reasons why this region would still not be mined. This included new financial reasons, such as how there needed to be an estimated \$2 billion dollar investment into road construction just to access the region, along with the fact that the federal government would not financially commit to helping the provincial government with paying for this infrastructure (McIntosh, 2022). The lack of Indigenous consent for developing the Ring of Fire also was another factor preventing this project from moving forward. The Matawa First Nations continued to deliberate on whether supporting access to the Ring of Fire would be beneficial for their communities. That is, they were still weighing on whether the economic incentives from supporting development at the Ring of Fire was worth the environmental harms that could occur (McIntosh, 2022; Scott et al., 2020: p. 30; Scott, 2020: p. 67). This means that although resource revenue sharing was framed as the key

⁶⁰ The majority of the texts I gathered for my doctoral research helped to trace this shift over thirty years. Unfortunately, given how my governmentality analysis is already so long, there are many moments, spaces, and other texts which I may not be able to recount in this chapter. It is my hope then that the data I have presented thus far has clearly established links between different actors and how revenue sharing became a hegemonically supported intervention into Indigenous-settler relations in Ontario. There is also a sense that providing additional information would contribute to a feeling of "diminishing returns", since many of the texts cover the same ideas by similar actors, and thus reiterate the same arguments I have presented here.

governmental solution to enabling the development of the Ring of Fire, it was not enough to overcome the many obstacles that persisted in the first place.

In the meantime, resource revenue sharing outside the context of the Ring of Fire would continually be brought up in different spaces by similar actors. In 2014, PDAC released a research report on “government resource revenue sharing”, in which it argued that the mining industry already has to pay taxes, fees and royalties to different levels of government and contribute funds through commercial arrangements to Indigenous communities, leading to them already paying a “double tax”; as such, it is only fair that the Crown share its revenues with Indigenous communities, especially as that can alleviate the pressure for the industry and create certainty for projects (PDAC, 2014: p. 3-4). Meanwhile, at the annual PDAC convention held in Toronto every March, First Nations Chiefs would continue to drive the point that their treaty rights should be upheld, sometimes in relation to revenue sharing. For example, the Anishinabek Nation’s Chief Isadore Day would tell PDAC 2014 attendees that the treaties needed to be respected for certainty, with Grand Chief Patrick Madahbee further elaborating that First Nations needed to be consulted and accommodated whenever their Aboriginal rights would be impacted (“First Nations must be involved”, 2014). Grand Chief Madahbee would go on to say, “I’m at a loss as to why the province has decided to encourage mining within First Nation territories without due diligence, especially after we’ve had direct dialogue on resource revenue sharing” (“First Nations must be involved”, 2014), thereby implying that consulting and accommodating First Nations should occur in relation to resource revenue sharing. Later in the year, COO would coordinate the first “Leaders in the Legislature” event. This involved roundtables between COO’s 80 leaders, the Premier and 13 Ministers; at this event, Minister Michael Gravelle and Minister Bill Mauro attended a roundtable

on “Resource Revenue/Benefit Sharing” (COO, 2015). Discussions revolving around resource revenue sharing would continue to take place in different institutional and organizational spaces.

However, the difference in this latest governmental push to institute resource revenue sharing is that it became discursively associated with reconciliation. That is, the concept of resource revenue sharing definitely was imagined as a new technology to govern Indigenous-settler relations in accordance with the political rationality of reconciliation, but it was never directly stated to be reconciliation. Now, this was somewhat peculiar given its origins. As observed in the previous chapter, resource revenue sharing was called for at RCAP’s public hearings primarily by Indigenous peoples, and RCAP’s final report, which displaced assimilation in favour of reconciliation as a new way to govern Indigenous-settler relations, did scantily mention resource revenue sharing in its recommendations as a way to honour the treaty relationship. Similarly, the Ipperwash Inquiry’s final report, which also called for reconciliation, did flirt with the idea of revenue sharing, but never made it an official recommendation. Thus, there was never a statement in a government report or a speech by a provincial state actor in which resource revenue sharing was discursively linked to reconciliation, even in an indirect manner.

This would begin to change in June 2015, with the TRC’s closing ceremonies and the release of its final report. Following this national event, all three parties gave speeches in the legislature on June 3rd, 2015, in which they all spoke favourably of the TRC and its final report, acknowledged the systemic abuse within residential schools and the lasting legacy of these institutions before speaking of the need for reconciliation (Legislative Assembly of Ontario, 2015a: p. 4879-4881). An excerpt of Premier Wynne’s speech is particularly worthy of examination:

This painful chapter in our shared past is one in which Canada practised state-sanctioned abuse and assimilation. Over a period of generations, and under various governments, families were separated and children were deeply harmed, and continue to bear the scars and the consequences of this time. Their humanity was undermined. They were separated from their families and robbed of their youth, their potential, their comfort, their safety and their dignity. This has left a legacy of racism and marginalization that continues to echo in the lives of aboriginal peoples across our society.

We all have a responsibility to work towards reconciliation. Each one of us must ask what that reconciliation means in our own lives: in our work, in our families, in our places of worship, in our churches and in our broader communities.

I'm very pleased to join my fellow Premiers across Canada as we take steps towards reconciliation. We cannot change our past, but by unearthing the truth and truly understanding its meaning, we give ourselves the power to change the future. (Legislative Assembly of Ontario, 2015a: p. 4879).

This portion of her speech is interesting, if not somewhat troubling, for a few reasons. First, residential schools are presented as a “painful chapter” in our history. Phrases like a “painful chapter” misrepresent settler colonialism as a series of past events which we can now move on from through reconciliation, rather than a structure that continues to negatively impact Indigenous peoples in Ontario and across Canada (Coulthard, 2014: p. 22). Moreover, assimilation is narrowly associated with residential schools, which neglects how assimilation was a political rationality which was widely practiced with varying outcomes, as explored earlier. If anything, it makes it seem as if Indigenous-settler relations were harmonious, until the imposition of the residential school system. Second, reconciliation is vaguely grappled with, calling everyone to participate in reconciliation without any indication of what this actually means and entails. Thus, her speech, along with similar ones given by other leaders in the legislature, reproduce a limited understanding of what settler colonialism is (i.e., a series of past historical events) and broadly calls for reconciliation, without defining what this should mean.

However, it would be wrong to state that this was the only effect of her speech, alongside the speeches given by individuals from the other parties. At the end of this excerpt, Premier Wynne

states that she, and other premiers, will be working towards reconciliation, thereby recognizing that reconciliation is a provincial responsibility. Similar sentiments were expressed by the Progressive Conservatives and the NDP:

Jim Wilson (Progressive Conservative): Mr. Speaker, the PC caucus believes that the report is another step along the path to promoting reconciliation between aboriginal and non-aboriginal Canadians, and we look forward to continuing the work it will take to bring forgiveness, healing and true reconciliation to all. Thank you. Meegwetch. (Legislative Assembly of Ontario, 2015a: p. 4880).

Andrea Horwath (NDP): It is incumbent upon all of us not to allow this report from the Truth and Reconciliation Commission to gather dust somewhere on a shelf. This report should be seen as a call to action. It should drive us to recommit to building a stronger relationship—as equals—with First Nations governments and First Nations peoples. We owe it to all of those who suffered and continue to suffer. We owe it to them to continue to work to build a better future together with our First Nations partners—a future based on mutual respect, equality and truth. (Legislative Assembly of Ontario, 2015a: p. 4881).

Like the Ipperwash Inquiry's final report, in which all three parties spoke about reconciliation and the need for improved relations back in the legislature in 2007, the release of the TRC's final report eight years later sparked comparable statements in the legislature about the importance of reconciliation and producing stronger relationships with Indigenous peoples. Furthermore, if the Ipperwash Inquiry's final report led to reconciliation becoming a dominant political rationality in Ontario in 2007, then these speeches could be interpreted as a reaffirmation of reconciliation as a political rationality and thus a recommitment to governing in accordance with reconciliation.

It is through this renewed acceptance of reconciliation as a political rationality, largely due to the TRC's final report revealing settler colonial violence towards Indigenous children in residential schools and thus challenging the legitimacy of settler colonial authority, that the provincial government will take seriously its role to make reconciliation a political reality. Interestingly, the TRC never provided a recommendation for resource revenue sharing, but the province's recommitment to reconciliation led to the provincial government offering resource

revenue sharing as a serious concession to First Nations. On June 17th, 2015 (two weeks after the speeches in the Legislative Assembly), it was announced that the COO and the provincial government were drafting a new Political Accord, in which “resource benefits and revenue sharing” was one item that the two would work towards implementing (Indigenous Affairs, 2015). Two months later, on August 24th, 2015, the new Ontario Regional Chief Isadore Day and Premier Wynne signed a new Political Accord on behalf of COO and the provincial government, respectively. The province’s announcement of the Political Accord calls it a “positive step in reconciliation efforts” (Office of the Premier, 2015). The Political Accord itself states that COO and the province will work towards “resource benefits sharing” (Office of the Premier, 2015). The COO’s Annual Report reveals that the Political Accord also led to discussions on revenue sharing (COO, 2016: p. 20-21). Resource revenue sharing starts to be reconnected with the discourse of reconciliation, even if just indirectly. In addition, when questioned about the Political Accord in the legislature on October 1st, 2015, the Minister of Aboriginal Affairs David Zimmer explains that its purpose is meant to spearhead reconciliation, engage, and revitalize the treaty relationship, and increase positive social and economic results for Indigenous peoples (Legislative Assembly of Ontario, 2015b: p. 5501). Reconciliation becomes discursively expanded to include promoting positive socio-economic outcomes for Indigenous peoples in Ontario, which had been one of the original purposes for coming up with a revenue sharing framework dating back to Bill 97.

Indeed, the notion that reconciliation entails improving the socio-economic status of Indigenous peoples had become an accepted goal of the Ministry of Aboriginal Affairs. At the Standing Committee on Estimates hearing on November 25th, 2015, Deputy Minister of Aboriginal Affairs Deborah Richardson made the following statement:

Another element of Ontario's reconciliation efforts is our work with aboriginal communities and entrepreneurs to promote new economic opportunities. An early initiative was the launch of the New Relationship Fund—this goes back to 2008. Since that time, we've invested over \$111 million to help close to 200 First Nations and Métis communities and organizations to engage in consultation activities with governments and industry in resource-based economic development opportunities and provide increased economic development and skills training opportunities. (Standing Committee on Estimates, 2015: p. E-701).

What is interesting about the Deputy Minister's statement is that not only is reconciliation related to increasing economic opportunities for Indigenous communities, but it is revealed that there is a financial commitment to promoting consultation and "resource-based economic development opportunities", thereby more closely associating resource extraction with reconciliation. Elsewhere in the Deputy Minister's testimony to the Standing Committee, she makes note that the Ministry of Aboriginal Affairs has bilateral agreements with the PTOs and are in discussions for establishing resource revenue sharing, although there is no mention of reconciliation (Standing Committee on Estimates, 2015: p. E-708). On the part of the provincial government, it seems that reconciliation is linked with ensuring that Indigenous peoples derive benefits from resource extraction, with revenue sharing being on the periphery of these discursive linkages.

Due to cabinet privilege, these bilateral agreements were inaccessible, and there was no way to learn about what was said in meetings between the province and these PTOs. Nevertheless, it appears that during this same period, Indigenous organizations would continue to attend Standing Committees and other events to publicly call for the installation of a resource revenue sharing mechanism. For instance, at another Standing Committee of Finance and Economic Affairs on January 21st, 2016, the Anishinabek Nation called for the provincial government "to support an Anishinabek resource revenue and resource benefit-sharing framework as a vehicle for long-term participation in the economy" (Standing Committee on Finance and Economic Affairs, 2016a: p. F-1070). Interestingly, the discourse of reconciliation would be invoked by Indigenous

organizations once again to make the case for resource revenue sharing. For instance, the Chief Operating Officer of COO Nathan Wright made these pronouncements at the Standing Committee on Finance and Economic Affairs hearing on February 2nd, 2016:

Chiefs of Ontario is focused on nine major areas, which are grounded in the spirit of reconciliation and grounded in the spirit of building opportunities for our children and our young people.

Reconciliation goes beyond the TRC and includes Ontario fully implementing the Ipperwash recommendations and continuing down the path of reforms on consultation and accommodation of members, especially for the engagement, and the environmental sector as well. We're looking for full involvement on that decision-making, as well as their investments. Finally, we'd like to reinvigorate discussions on resource revenue sharing so that we can, as per the treaties, share in the wealth that comes from the indigenous territory on which I am standing today. (Standing Committee on Finance and Economic Affairs, 2016b: p. F-1267-F-1268).

As noted in my preceding chapters, reconciliation is a concept rooted in Christian theology that was taken up by branches or state institutions of Canadian constitutionalism, and it achieved dominance as a political rationality in Ontario in mid-2007. What is fascinating about these statements by a representative of COO is that it is evident that reconciliation was invoked to sanctify COO's policy recommendations to the Standing Committee. This shows how Indigenous actors and political organizations began to utilize this discourse to mediate their relationships with other non-Indigenous actors, organizations, and institutions within this wider, loose, and diverse assemblage. In this instance, the use of the phrase the "spirit of reconciliation" is meant to induce the Liberal government, which had previously acknowledged reconciliation to be within the province's constitutional and legal purview, to adopt COO's recommendations, along with the ones in the Ipperwash Inquiry, and to finally concede on resource revenue sharing.

Eventually, a more direct relation between reconciliation and resource revenue sharing would start to be established in the next year. On May 30th, 2016, the provincial government published *The Journey Together: Ontario's Commitment to Reconciliation with Indigenous*

Peoples in response to the TRC's final report. This was the first provincial level text that was authored and publicly circulated by the Liberal government which explicitly outlined how the province would manifest reconciliation as a political rationality. Coincidentally, it was disseminated almost nine years to the day after the Ipperwash Inquiry's final report was released. Nevertheless, the release of *The Journey Together* was significant for two reasons. First, on the day that the report was made public, there was a momentous occasion in which Indigenous leaders from numerous political organizations were permitted to give speeches in the legislature (albeit after the leaders from the three main political parties had finished). The speeches made by the leaders of the Indigenous-led political organizations were interesting in how they used the discourse of reconciliation to call for fundamental changes to Indigenous-settler relations. For example, speaking on behalf of COO, Ontario Regional Chief Day made these remarks:

It is an honour to be here today. We're gathered together to acknowledge the important effort of reconciliation by the Ontario government. Today, we journey together toward the restoration of the rights originally recognized through sacred and binding treaties with our ancestors, and reparation of lives of First Nation people damaged by Indian residential schools in Ontario.

The deepness of poverty that continues to kill our people is not right. This has never been right in a land as rich as Ontario. Our ancestors did not envision these present horrors when they agreed to share the wealth of this land. This goes against, again, the original peace and friendship treaties of this land.

Today, we will walk together on the path towards building happy, healthy First Nation families and communities. We will end the scourge of suicide. We will end the epidemic of missing and murdered indigenous women and girls. We will return our children to their families. We will work together to build economies in the spirit and intent of the treaties. We will work together to combat climate change. We will work together to return Ontario to the beauty and bounty that first attracted settlers to our lands. We will strengthen indigenous peoples' connection to our mother—Mother Earth. (Legislative Assembly of Ontario, 2016: p. 9626-9627).

These three excerpts from his speech illustrate a few ideas. We see that the discourse of reconciliation is increasingly employed by Indigenous actors seeking to remake their relationship with the state, with reconciliation being invoked in relation to honouring the treaties and respecting

Aboriginal and treaty rights. Reconciliation is therefore relied upon to try to modify how state actors currently behave in their relationships with Indigenous peoples. Next, the treaties are once again discussed as living legal documents that had signified that there was supposed to be a sharing of the wealth from the land, and that this had been violated for generations. Finally, through a renewed commitment to reconciliation as a political rationality, there are political outcomes that must be achieved, such as building economies that truly reflect the spirit and intent of the treaties. Reconciliation is thus strategically used by Indigenous actors and organizations to call for governmental interventions into Indigenous-settler relations which would honour the treaties.

The second significance of the release of *The Journey Together* can be ascertained from its contents. The report explains that the Ministry of Aboriginal Affairs would be renamed to be the “Ministry of Indigenous Relations and Reconciliation” to demonstrate the Liberal government’s ongoing commitment to rebuilding relationships with Indigenous peoples through reconciliation (Ministry of Aboriginal Affairs, 2016: p. 40). While the name change is largely symbolic, it seems to demonstrate that when state actors are faced with a settler colonial crisis, the language of “reconciliation” is quickly adopted. That being said, the decision by settlers to use reconciliatory language is not necessarily superficial, as obliging themselves to the political rationality of reconciliation must have tangible effects, which could include offering concessions to Indigenous peoples⁶¹. In this case, this document (and by extension, the rechristened ministry) reassociates resource revenue sharing with reconciliation. In the chapter, “Reconciling Relationships with Indigenous Peoples”, the report states that the provincial government will “close socio-economic

⁶¹ Here, I only allude to how settlers interested in reconciliation may become politically pressured to offer some material concessions to Indigenous peoples. In both Chapters 7 and 8, I fully explore how reconciliation has a concessionary logic as settlers who claim to be invested in reconciliation usually offer concessions for reconciliation. This is because settlers who speak of reconciliation are expected to prove how they are committed to realizing this political rationality, lest they are publicly criticized for not actually producing reconciliatory outcomes.

gaps and enhance participation in the resource sector” through resource revenue sharing (Ministry of Aboriginal Affairs, 2016: p. 41). Thus, through the revitalization of reconciliation as a political rationality, the provincial government seemed to become more open towards offering resource revenue sharing as a concession, and to publicly signpost that state and Indigenous actors share the same economic goals, and that resource revenue sharing could address their separate problems.

However, it seems that behind closed doors, the provincial government was still trying to determine if instituting resource revenue sharing was worth it. This could be ascertained through internal documents received through a secondary FOI request to the Archives of Ontario to access documents produced by the Ministry of Northern Development and Mines. At the PDAC Convention in 2017, held once again in Toronto, Minister Bill Mauro had a private meeting with British Columbia’s Minister of Energy and Mines Bill Bennett on March 7th. The internal briefing notes reveal that the topic of resource revenue sharing was one part of this bilateral discussion. Minister Mauro was to ask if British Columbia, which had instituted resource revenue sharing in the mid-2000s, had any performance measures post-implementation that would confirm that resource revenue sharing has led to 1) business certainty 2) improved relations with Indigenous peoples and 3) an economic impact for the province. These metrics are worth unpacking, as they reveal that the provincial government was not entirely persuaded to implement resource revenue sharing, despite publicly stating that it was part of their recommitment to reconciliation. While asking about improved relations with Indigenous peoples through revenue sharing could be expected, the first and third metrics are concerned with other outcomes. The problematizing of Ontario’s mining industry as uncertain has been put forth, mostly by extractive and market actors and organizations, so it is notable that the minister was tasked with trying to figure out if resource revenue sharing produces certainty for resource extraction. Furthermore, the provincial

government has been politically interested in maintaining and expanding growth in the economy through resource extraction, such as through the Ring of Fire, so it seems that asking for metrics which quantifies the economic impact resource revenue sharing on a province's economy is meant to help the province decide if this technology would also suit their interests. Looking at these metrics altogether, it seems that the Ministry of Northern Development and Mines was interested in determining if resource revenue sharing could be empirically validated as securing the separate and diverse political, legal, and economic interests of Indigenous communities, state actors and extractive companies. Thus, while the provincial government was publicly speaking about reconciliation, it was still skeptical about instituting this reconciliatory technology.

Meanwhile, Indigenous leaders would continue to pursue the creation of resource revenue sharing agreements in similar spaces and through their connections with other agents in this network. The program schedule for the PDAC Convention in 2017, highlights that there was an "Aboriginal Program" which held four sessions, one of which was curiously titled, "The Aboriginal Forum: Reconciliation – the new context for relationship building in Canada" (PDAC, 2017a: p. 25-26). According to the PDAC 2017 program, Ontario Regional Chief Day spoke at this session, alongside the Deputy Minister of Indigenous Relations and Reconciliation Deborah Richardson (PDAC, 2017a: p. 25). In his speech, Ontario Regional Chief Day stated that RCAP and the Ipperwash Inquiry's recommendations advocate for "self-government and sufficient land base for economic self-sufficiency" before then stating that "One of the major recommendations in the Ontario Ipperwash Report includes a recommendation for revenue sharing" (Giorno, 2017). In addition, he asked audience members to put pressure on the provincial government to finally install some form of resource revenue sharing (Giorno, 2017). Thus, despite the ultimate alignment of their specific interests and problems between Indigenous political organizations and the

provincial government, the yearly roundtables on revenue sharing, and the province's recent plan to materialize reconciliation, this example showcases that Indigenous leaders were still willing to sustain their relationships with extractive actors within this loose assemblage in order to increase the likelihood that resource revenue sharing would one day be implemented in Ontario.

In fact, it is likely that Indigenous leaders and representatives continued to participate at PDAC because the political rationality of reconciliation was also being normalized and adopted amongst actors, corporations, and associations within Canada's mining industry. Most notably, MAC would release a position statement on government resource revenue sharing, in which it acknowledged the relationship between provinces, resource revenue sharing and reconciliation, before calling for its widespread adoption between the Crown and Indigenous communities (MAC, 2016). Elsewhere in this assemblage, the Canadian Mineral Industry Federation (CMIF), a super organization made up of national, provincial and territorial associations in the mining industry, such as PDAC, MAC, OMA, OPA and numerous others, would submit their yearly submission to the Energy and Mines Ministers Conference (an annual event in which federal and provincial ministers whose portfolio deals with resource extraction come together) wherein they would advocate revenue sharing to enhance Indigenous participation and provide stable business environments (CMIF, 2016: p. 15). PDAC's Annual Report would claim that as a co-chair and primary author, it helped push for Indigenous participation in mining in the CMIF submission, called for resource revenue sharing and that governments should work with industry to "advance meaningful Indigenous economic reconciliation" (PDAC, 2017b: p. 7). It seems then that the Canadian mining industry had itself adopted the discourse of reconciliation.

Of course, the conscious effort by extractive actors and organizations to use the word reconciliation is not necessarily benevolent. Extractive actors' usage of reconciliation discourses,

and specifically “economic reconciliation”, is likely because this discourse now worked in tandem with their own economic interests. That is, it was a new discursive strategy that would create certainty for extractive activities, without necessarily having to offer their own concessions. As seen throughout this chapter, extractive actors, associations, and organizations have long pursued strategies that would increase business certainty, which is why they had become proponents of revenue sharing between the Crown and Indigenous communities a decade earlier. Now that reconciliation with Indigenous peoples is discursively tied to increasing certainty, extractive actors within this assemblage became willing to pressure state actors to institute policies for “economic reconciliation”, as that could secure their interests in accessing Indigenous lands for mining without extractive actors having to offer new concessions for economic reconciliation⁶². Nonetheless, with both Indigenous and extractive actors and organizations still invested in the creation of resource revenue sharing (especially now that it was relinked to reconciliation), it is perhaps not surprising that these relationships would continue, with Indigenous leaders presenting at PDAC or PDAC jointly authoring the CMIF submission to government ministers in which it wanted to advance economic reconciliation.

While Indigenous leaders and members of the mining industry were lobbying for the installation of resource revenue sharing in Ontario, negotiations between the Liberal government and Indigenous communities and First Nations PTOs were underway regarding how to overcome barriers in order to implement revenue sharing. This was confirmed by Minister of Indigenous Relations and Reconciliation David Zimmer at a Standing Committee on Estimates hearings in

⁶² As noted previously, extractive actors have long held that they pay a “double tax” in Ontario, which includes entering into IBAs with First Nations. Thus, they are already of the opinion that they provide concessions to First Nations through these private agreements unrelated to reconciliation. Since reconciliation can invite the possibility of concessions from settlers, it seems that “economic reconciliation” is deployed by non-state settlers to get state settlers to offer up resource revenue sharing as a concession.

2016, who stated that the government is committed to reconciliation and wants to build relationships and enhance Indigenous participation in resource extraction through resource revenue sharing (Standing Committee on Estimates, 2016: p. E-92). Unfortunately, this is where an important piece of the puzzle is lost. While it is publicly known that the provincial government has had bilateral agreements with the Indigenous PTOs for years, has coordinated the annual “Leaders in the Legislature” event with COO which included roundtables on resource revenue sharing, and has heard at various Standing Committees from Indigenous and extractive actors, what goes on behind closed doors is unknown. This is because the negotiations themselves are protected under “Cabinet privilege⁶³”.

What I can say is that Minister Zimmer’s comments to the Standing Committee in 2016 confirms that there had been a final accelerated push to successfully institute resource revenue sharing in Ontario. On May 3rd, 2018, the Liberal government announced that they entered into three legally binding resource revenue sharing agreements with the Grand Council Treaty #3, the Mushkegowuk Tribal Council and the Wabun Tribal Council. However, due to the lack of information that I could obtain thanks to cabinet privilege, questions remained such as, “how were the terms of these agreements agreed upon? And why was it that only three resource revenue sharing agreements were created, when the provincial government committed to resource revenue sharing with all Indigenous communities across Ontario?” Funnily enough, it seems that I am not the only person who really wanted to know about these negotiations and then faced issues trying to learn about them. In the provincial legislature on May 7th, 2018, a friendly fellow Liberal MPP asked twice about the negotiation process and how these arrangements were arrived at, with both

⁶³ The *Freedom of Information and Protection of Privacy Act* (1990) protects Crown negotiations from being accessed by the public. Section 12(1) specifically provides an exemption for disclosing Cabinet records that reveal substance of Crown deliberations unless they are over twenty years old, thereby making these negotiations unavailable through an FOI request.

the Minister of Northern Development and Mines and the Minister of Natural Resources and Forestry dodging his questions (Legislative Assembly of Ontario, 2018a: p. 1224), perhaps because they did not want their secretive art of the deal protected by cabinet privilege to be recorded in the Hansard. If a Liberal colleague could not get an answer, it is unlikely that I ever will. Therefore, while I cannot answer the first question, I can at least provide empirically based speculations on the second question and relate it to my governmentality analysis.

The fact that there were only three resource revenue sharing agreements might be attributed to a couple of factors. First, the concept of resource revenue sharing has been pursued by First Nations PTOs for decades by the time that these agreements were made public. As observed earlier in this chapter, the Grand Council Treaty #3 is a PTO whose leadership was on the IIPAC taskforce in which there were efforts to initiate discussions on how to advance resource revenue sharing. Given the fact that the Grand Council Treaty #3 sought to have resource revenue sharing implemented for some time, it is plausible that there was a willingness to work towards an agreement with the province. Meanwhile, the Mushkegowuk Tribal Council⁶⁴ and the Wabun Tribal Council are separate political entities that are affiliated with NAN, and as this chapter has shown, NAN's leaders and representatives have participated and pushed for revenue sharing in various settings over many long years. It is likely that through the Tribal Councils' association with NAN, the concept of resource revenue sharing had already received support within this PTO. It is also possible that some First Nations PTOs and their respective Tribal Councils may have been more receptive to working out an agreement with the provincial government.

⁶⁴ As noted in a footnote in Chapter 5, the Mushkegowuk Council had supported MPP Bisson's first attempt to introduce a bill calling for resource revenue sharing back in 2001. It is perhaps not a surprise that they would ultimately be part of the first wave of First Nations entering into a resource revenue sharing agreement with the provincial government.

A better, more concrete explanation might be that there are very specific legal and political factors which may have deterred Indigenous communities from entering into these agreements. As noted earlier, the Matawa Tribal Council and the provincial government had signed a Regional Framework Agreement to work on resource revenue sharing in relation to the Ring of Fire. However, developing the Ring of Fire has been tenuous and marked by a lack of consensus amongst the Matawa First Nations. Despite the province's promise to share their tax revenues, there is still no resource revenue sharing agreement with the Matawa Tribal Council as some of the Matawa First Nations are hesitant to move forward since developing the Ring of Fire will lead to permanent environmental destruction. Meanwhile, the Anishinabek Nation, which as a PTO has long pushed for resource revenue sharing, has refrained from entering into one until the court case involving annuities relating to the Robinson-Huron Treaty of 1850 is resolved ("Robinson-Huron Treaty Chiefs", 2014; Ross, 2022). These two examples may explain why resource revenue sharing ultimately had a limited application as there were several ongoing and particular legal, political and environmental reasons for why it was not more widely signed onto by First Nations PTOs and Indigenous communities. What this illustrates is that while the provincial government may have conceded on resource revenue sharing for reconciliation, and although this concept is in principle supported by a large assemblage of diverse actors, there are other unresolved issues and concerns which have limited the applicability of this reconciliatory technology. Thus, tensions remain within this network of actors, as the promise of sharing the province's tax revenues was not able to paper over competing interests for extraction projects.

Despite the fact that these agreements only ended up involving a smaller set of First Nations, public attention was directed towards how these agreements symbolized reconciliation as they included generous terms of sharing 45% of the annual revenue from contributing forest

management units, 40% of the annual mining tax and royalties from operating mines and 45% from future mines in areas covered by these agreements. Indeed, these agreements were immediately sanctified and celebrated through the language of reconciliation during this announcement by both Indigenous and state actors involved in their negotiations. For instance, the Minister of Northern Development and Mines, Michael Gravelle, mentioned, “Resource revenue sharing provides a sustained source of funding for First Nations that will be directed towards local community priorities. These agreements are a positive step forward and an important part of Ontario’s journey of reconciliation with Indigenous peoples” (Energy, Northern Development and Mines, 2018). Reconciliation is associated with economic development and prosperity for Indigenous communities through sharing the wealth from resource extraction.

Indigenous actors who were instrumental in these negotiations also framed these new resource revenue sharing agreements in relation to reconciliation. However, there was a slight difference in what was said. For instance, Ogichidaa Francis Kavanaugh of the Grand Council Treaty #3 made these comments:

The Anishinaabe Nation in Treaty #3 has long awaited to receive and become partners in resource revenue sharing, and moving towards acknowledging the Treaty - that we prosper as long as the sun rises and the water runs. The Forestry and Mining Resource Sharing Agreement with the Province of Ontario is an important step towards more meaningful discussions on reconciliation, economic prosperity, and continued improvement in relationship building between the Anishinaabe Nation and the Crown. (Energy, Northern Development and Mines, 2018).

From this comment, reconciliation is also discursively tied to economic prosperity, however, resource revenue sharing is once again presented as a key element within the treaties that has long been forgotten, and that these agreements symbolize reconciliation. This statement reflects how Indigenous actors within this assemblage have long called for rectifying the fact that the treaties

have not been honoured, that reconciliation requires the implementation of the treaties, and that resource revenue sharing would embody the spirit and intent of the treaties.

Extractive and market actors would also positively respond to these resource revenue sharing agreements. In an op-ed for *The Globe and Mail*, a senior figure at MLI and a vice president of the IAMGOLD Corporation would co-write about how these new agreements symbolized reconciliation in Ontario, their necessity for addressing slowed and uncertain resource extraction due to Indigenous opposition, and how these agreements support Indigenous self-determination (Coates & Crozier, 2018). PDAC would also praise the signing of these three resource revenue sharing agreements, further stating that it has advocated for the sharing of government revenues with Indigenous peoples for a long time (PDAC, 2018: p. 5). Of course, it is not surprising that these extractive and market actors, associations, corporations and thinktanks were supportive of resource revenue sharing agreements, as they have often conceived their theo-Lockean problems of uncertainty and profit loss being solved by having governments across Canada step in to financially incentivize Indigenous peoples to support extractive activities. Resource revenue sharing was always about buying the conditions for peace for extractive and market actors, but what is noticeable is how the ideas of certainty and security have now been implicitly attached to reconciliation by this section of the governmental assemblage.

It seems then that the political rationality of reconciliation had truly become hegemonic at this point, as Indigenous, state, extractive and market actors, groups, organizations, and institutions would start to use the language of reconciliation to renew efforts to install resource revenue sharing in the province to make progress towards reconciliation. Previously, their unique yet separate political, legal, economic, and social interests, alongside their aspirational goals and unsolvable problems had tied this assemblage together, in which it was widely believed that resource revenue

sharing was a necessary intervention into Indigenous-settler relations in Ontario which would benefit all. However, the consistent tensions and issues within this network had hampered any progress on inventing a resource revenue sharing mechanism. That is until the provincial government's response to the TRC's final report, in which *The Journey Together* inadvertently reconnected resource revenue sharing back to when the articulation of reconciliation as a new political rationality during the RCAP hearings envisioned a new relationship based on honouring the treaties and sharing the wealth. It seems that this document, in which the provincial government outlined its plan to materialize reconciliation, led to a renewed effort to negotiate some form of resource revenue sharing, with Indigenous, extractive and market actors also invoking their own reconciliation discourses in relation to their interests and to publicly rationalize the need for a provincial resource revenue sharing model or mechanism. After almost a decade and a half, resource revenue sharing went from a novel, radical and confusing idea that could lead to economic and legal uncertainties, to a new governmental technology meant to intervene into Indigenous-settler relations in Ontario's mining industry, with its first effect being that it would be indicative of reconciliation and certainty for resource extraction.

Conclusion

Through a careful governmentality analysis, this chapter has traced how resource revenue sharing went from being a novel concept that was associated with different sets of uncertainties to becoming a new technology instituted by the provincial government and reassociated with reconciliation in 2018. The key to this gradual perception in how resource revenue sharing was conceived can be attributed to the fact that after Bill 97's death, an assemblage of diverse Indigenous, extractive, market, and political actors, organizations, and institutions began to form in the mid-2000s. This assemblage can be chronologically traced across different spaces and

times, especially through instances that include the governmentalization of the province, such as during the Ipperwash Inquiry's hearings, Standing Committee meetings, and the formation of other government bodies like IIPAC and OMICC. Importantly, the formation of this assemblage would include moments that did not include the state, such as when Indigenous, market and extractive actors began to privately and publicly meet and discursively signal their shared interests and views that the province was responsible for sharing its tax revenues. Across this assemblage, it is evident that the particular, separate and disconnected interests, goals and problems of these competing Indigenous, extractive, and market actors were increasingly aligned over time, with a growing view that resource revenue sharing would benefit them all.

It seems that state actors were the only ones that were not completely convinced to implement a resource revenue sharing mechanism, likely because it would require the provincial government to share its own wealth with Indigenous communities. As such, Indigenous, extractive and market actors would continuously partner up and pursue strategies that would put pressure on the province to adopt resource revenue sharing. Some efforts may have had an effect, such as how market actors valorized this resource revenue sharing in their reports on the Ring of Fire, and how that yielded a response from the provincial government. However, the provincial government remained cautious about, and perhaps even against, sharing its tax revenues. It appears that the primary motivation for the provincial government to embrace resource revenue sharing came from yet another crisis in settler colonial legitimacy following the TRC's Final Report. Not only was the political rationality of reconciliation revitalized, but resource revenue sharing was offered up as a serious concession for reconciliation and renewed relationships between the provincial government and Indigenous communities.

The province was able to privately negotiate the creation of three resource revenue sharing agreements with the Grand Council Treaty #3, the Mushkegowuk Council, and the Wabun Tribal Council. However, for various reasons, this new governmental technology has not been widely instituted, leading to agreements with a smaller than anticipated number of First Nations in Ontario.

Nevertheless, the installation of these three resource revenue sharing agreements has been seen as a materialization of reconciliation from a political rationality into a political reality. In the next chapter, I will go beyond the beliefs that glued this assemblage together regarding the need to implement resource revenue sharing (i.e., that resource revenue sharing signifies “political stability” and “economic certainty”, demonstrates “reconciliation”, and marks a “return to the treaty relationship”) to outline how these new agreements can reshape Indigenous-settler relations and affect power within settler colonialism. This will involve an examination of how this governmental technology can leave in place tensions between Indigenous constitutional orders (such as Anishinaabe constitutionalism) and liberal constitutional orders, the limited economic benefits for participating First Nations and several other legal, political, social, and environmental consequences. Through a discussion of these resource revenue sharing agreements, it will be possible to better understand how reconciliation has a concessionary logic in that it can materialize concessions for Indigenous peoples from settler actors, but it does not end settler colonial relations.

Chapter 7: A New Relationship?

Introduction

As the last chapter observed, the signing of the three resource revenue sharing agreements between the provincial government and the individual First Nations who make up the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council was presented to the public as evidence that reconciliation with Indigenous peoples was being materialized. This public celebration of reconciliation, however, seems to be an instance where the cart has been put before the horse. While the signing of these agreements was truly paradigmatic (after all, these agreements would not have come to fruition when assimilation was the dominant political rationality) and possibly symbolic of a new relationship between the province and First Nations, how these agreements shape Indigenous-settler relations have yet to be studied. The lingering questions are: what have been the governmental effects of these resource revenue sharing agreements on Indigenous-settler relations? What do these effects tell us about reconciliation and settler colonialism? This chapter aims to unravel the effects of these agreements and to theorize what reconciliation does in changing the relationship between Indigenous peoples and settlers.

The first part of this chapter will examine how these resource revenue sharing agreements intend to shape Indigenous-settler relations using a governmentality perspective. As noted back in my second chapter, structuralist theories of power tend to presume that the exercise of power is wholly repressive and negative. In contrast, a governmentality perspective takes governmental power to be both productive and repressive. A governmentality approach also allows the researcher to identify the limits of governmental power and its unintended and contradictory effects. This analysis will help to hypothesize the various effects produced by these resource

revenue sharing agreements, including both their benefits to participating First Nations, and their role in sustaining settler colonialism as a structure that dominates Indigenous peoples.

Before proceeding, I want to acknowledge that the development of these resource revenue sharing agreements were hard-fought wins for Indigenous peoples, especially as many First Nations leaders and community members have been calling for the creation of resource revenue sharing since the early 1990s. The signing of these agreements between the provincial government and the Grand Council Treaty #3, the Mushkegowuk Council, and the Wabun Tribal Council should be seen Indigenous peoples exercising agency and their right of self-determination to enter into these agreements. Furthermore, as a settler who was unable to form research relationships with a First Nation participating in these agreements, my analysis of these resource revenue sharing agreements are wholly my own. This also means that my analysis is limited, as I did not have access to information and knowledge which informed their decision to sign onto these agreements with the provincial government.

This chapter will begin with my interpretation of what these agreements can do to support First Nations self-determination and how they relate to the materialization of reconciliation into a political reality. Next, I will consider how these agreements can reinforce unequal power relations between First Nations and settlers in Ontario. I theorize that the enduring possibility of conflict between Indigenous and liberal constitutional orders, the desired interpellation of Indigenous youth into settler capitalism and the potential for these agreements to be legally reinterpreted as “consent” for resource extraction may demonstrate how settler colonial power operates through resource revenue sharing. By looking at how these agreements can reflect both self-determination and settler colonial governance, I try to avoid an overly optimistic view that reconciliation and its technologies automatically leads to a new and better relationship between

Indigenous peoples and settlers, without necessarily resorting to the structuralist perspective that reconciliation ideologically shields asymmetrical settler colonial relations. It is possible that reconciliation and resource revenue sharing can improve Indigenous-settler relations, while also dictating the scope of actions that Indigenous peoples can take within the relationship. Through this chapter, I am interested in theorizing how there may be a more complicated relationship between settler colonialism, as a structure and not an event, and reconciliation, as a dominant political rationality meant to improve Indigenous-settler relations.

Following an assessment of these resource revenue sharing agreements, I will conclude this chapter with my analysis on what reconciliation does within the confines of settler colonialism. Since I was unable to partner with a First Nation to learn about how they exercised self-determination by assessing and then choosing to enter into a resource revenue sharing agreement with the province, I will instead focus on theorizing how reconciliation affects settlers, and how reconciliatory technologies like resource revenue sharing agreements may continue to reflect settler desires to reproduce colonial relations with Indigenous peoples. I will argue that while reconciliation may contain a concessionary logic which alters the behaviour of settlers, this does not mean that settler colonialism as a structure has ended. This theoretical framing of settler colonialism and reconciliation will be drawn from how resource revenue sharing agreements do provide some positive concessions for Indigenous peoples, but that these agreements do not exactly represent a new relationship, especially when examining how this technology of government can affect participating First Nations. To be more exact, while settlers may offer a package of concessions to a First Nation which signs onto a resource revenue sharing agreement with the provincial government, the contents and structure of these agreements reveal that an old settler colonial relationship remains in place in which settler governments continue to

govern the field of possible conduct that Indigenous peoples can make within a supposedly reconciled relationship. Reconciliation, and the technologies that are created to manifest it, may therefore change settler colonial governance, and can even yield concessions to Indigenous peoples from settlers, but it does not mean that settler colonialism is over. Rather, these governmental technologies may indicate that there is an intensified “politics of recognition” (Coulthard, 2014: p. 151) as settlers recognize Indigeneity but strive to extract on Indigenous territories.

Studying Governmental Effects

Initially, my research plan was to collaborate with a “participating First Nation” (the term used for a First Nation community that has signed onto one of the three resource revenue sharing agreements) and respectfully research how their participation in this new resource revenue sharing agreement has affected their community. My intention was to learn about why they decided to partake in this new type of legal and financial agreement with the province, which I would have situated within relation to their respective constitutional order, and to then highlight the political, legal, economic, social, and environmental effects that have since occurred for that community after they had signed onto an agreement. However, I was unable to enter into a research partnership with a First Nation community due to wider circumstances.

I believe that it is important to issue this reminder for two reasons now that I will be trying to account for what these resource revenue sharing agreements may accomplish. First, as a settler without any relationships with a First Nation community, this means that my perspective is limited. I cannot speak to why a First Nation community decided to sign onto a resource revenue sharing agreement and it would be wrong to make any assumptions. What is evident is that Indigenous leaders have pushed for resource revenue sharing since RCAP’s public hearings,

but that is all I can say; I cannot give any reason regarding why a First Nation in Ontario has signed onto a resource revenue sharing agreement with the provincial government. Second, I also cannot fully extrapolate the exact effects that have materialized for a particular First Nation community that has signed onto these agreements. As the next section will outline, not every First Nation is necessarily equal in the concessions that they can receive through these agreements (i.e., some First Nations are granted more economic benefits than other participating First Nations in the same agreement). I will not be able to speak to the specific effects that a First Nation community has experienced since entering into this legal and financial arrangement with the province. If a First Nation community wants to research the myriad and interconnected political, legal, economic, social, and environmental effects and outcomes that may have emanated from these new agreements, this could warrant a direction for future research.

Since I have not entered into a research relationship with a participating First Nation, I am limited in my analysis. In order to study how this reconciliatory technology can reshape Indigenous-settler relations and can reform how power is exercised within settler colonialism, I will do three smaller analyses. First, I will unpack and explore the contents within the three resource revenue sharing agreements, as their contents may recognize Indigenous constitutional orders while simultaneously unveiling how the provincial government is attempting to govern the conduct of participating First Nations. Second, I will examine the FOI disclosures from my first FOI request to the Ministry of Northern Development and Mines. The contents within these FOI disclosures may be useful in understanding the provincial government's intention behind these resource revenue sharing agreements, and may also help to understand the desired economic objectives of these agreements. Finally, I will try to situate these new agreements within the wider academic literature to try to explain how these new agreements can change

Indigenous-settler relations yet reproduce settler colonial power and governance. With humility, I accept that this analysis is limited and that I can only theorize what these agreements reveal about the relationship between reconciliation, as a political rationality, and settler colonialism, as a structure.

New Agreements, Old Relationships: Settler Colonialism, Reconciliation & Revenue

Sharing

Prior to discussing how these resource revenue sharing agreements can affect settler colonial governance, it is important to recall two facts from the previous two chapters. First, while the agreements signify that the provincial government was willing to share its revenues from forestry and mining, the agreements themselves are the result of Indigenous leaders unwaveringly calling for resource revenue sharing since the 1990s, if not earlier, at both the federal and provincial levels of governance. It was only once other non-Indigenous actors became convinced that resource revenue sharing would be a governmental intervention that would support their interests and goals and would solve their unique problems that those actors would partner with Indigenous peoples in demanding its implementation. As such, it is important to remember that resource revenue sharing was a hard-fought win for Indigenous peoples, particularly First Nations in Ontario, who had long called for it as a way to honour the treaties. Therefore, it would be inaccurate to claim that resource revenue sharing was created by the state for the sole purpose of manufacturing consent amongst Indigenous peoples for resource extraction and to primarily benefit settler Ontarians. The creation of these agreements may reflect how the state desires to consolidate Indigenous support for resource extraction (as will be seen through a discussion of the contents of these agreements). However, to make such a bold claim that the state was largely responsible for creating resource revenue sharing agreements would inappropriately render

Indigenous peoples as passive actors, rather than as active agents who demanded a new legal and financial arrangement that reflected the treaties.

Second, these new agreements were a result of reconciliation becoming the dominant political rationality, first across Canada and then Ontario. Given that a large grievance issued by First Nation Chiefs was that the treaty relationship had not been upheld by the Crown and its many bodies (provincial and federal governments) when assimilation was the dominant political rationality, it is unlikely that resource revenue sharing agreements would have ever been instituted as a governmental technology if assimilation had remained the dominant political rationality. Thus, this governmental technology has a specific history in that it was associated with a new and perhaps optimistic rationality for governing Indigenous-settler relations, and yet it would still take decades to actually implement this reconciliation-centric technology in Ontario.

These two points help to avoid the structuralist perspective that these agreements are meant to automatically re-entrench unequal settler colonial relations. The creation of resource revenue sharing agreements in Ontario was a victory for (some) First Nations who had long lobbied the provincial government for a decade and a half and strategically entered into alliances with other political, extractive, and market actors, groups and organizations to make resource revenue sharing real. Furthermore, a Liberal government that had taken up reconciliation as a political rationality, especially under Premier Wynne, had to actually convey and concede how they would mobilize this political rationality, which led to a formal acceptance that resource revenue sharing was intrinsically part of reconciliation in Ontario in *The Journey Together* and the announcement of these new agreements in 2018. That being said, the adoption of an optimistic political rationality and its translation through new governmental technologies does not necessarily mean that settler colonial relations have ended, even if these technologies seemingly recognize Indigenous agency.

Therefore, although the creation of resource revenue sharing agreements reflects the interests of some First Nations in Ontario, these agreements have the potential to reinforce settler colonial power and reproduce asymmetrical power relations under the guise of promoting reconciliation.

To assess how these agreements can lead to the recognition of participating First Nations while permitting settler colonial governance, I will begin with examining who is involved in the agreements and what effects that may produce. On the front page of each resource revenue sharing agreement, it reads that the agreement is between “Her Majesty the Queen in right of Ontario as represented by the Minister of Natural Resources and Forestry and the Minister of Northern Development and Mines” and either the Grand Council Treaty #3, the Mushkegowuk Council or the Wabun Tribal Council, along with the respective participating First Nations (The Forestry and Mining Resource Revenue Sharing Agreement, 2018a: p. 1; The Forestry and Mining Resource Revenue Sharing Agreement, 2018b: p. 1; The Forestry and Mining Resource Revenue Sharing Agreement, 2018c: p. 1). Referring to “Her Majesty Queen in right of Ontario” is the legally accurate way of listing the Crown in Right of Ontario as a party to the agreements, and so it is not surprising that this phrasing is used at the outset of each agreement. However, the act of entering into a new agreement with the Crown in Right of Ontario could be interpreted as symbolically resetting Indigenous-Crown relationships. First, as noted back in Chapter 3, the Crown represents a settler political community and holds the exclusive authority to engage in treaty-making with another “legal personality” (i.e., a distinct nation). Second, Chiefs from First Nations across Ontario have long argued that their treaty relationships with the Crown have been ignored and violated, which is why First Nations have experienced poverty while governments and extractive corporations have become prosperous. Resource revenue sharing had been suggested as a way to return to the treaty relationship and that the province has an obligation to do so since it represents

the Crown (regardless of the fact that the provincial Crown is different from the federal Crown). The signing of these new agreements between the Crown and participating First Nations may have the political effects of 1) participating First Nations being re-recognized as unique legal personalities with jurisdictional authority (i.e., laws, like *Manito Aki Inakonigaawin*, are practiced within their respective territories; see below) and 2) that the provincial government, as the representative of the Crown, is obliged to honour the treaties with these legal personalities through the sharing of its resource revenues. In other words, these new agreements may reflect what First Nations have always called for – a nation-to-nation relationship with the Crown.

The provincial government's recognition of the First Nations who make up the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council as distinct legal personalities is also emblematic of how reconciliation calls for a return to the treaty relationship. In fact, resource revenue sharing is taken to be a Crown obligation to First Nations in relation to reconciliation, so unsurprisingly, in each agreement, a portion of the preamble reads:

AND WHEREAS the Parties recognize that the implementation of this Agreement is an important step towards achieving improved relations on a government to government basis, reconciliation between the Parties, improved socio-economic conditions for the communities and an improved economic and planning climate in areas where mineral production and forest activities are proximate to the Participating First Nations; (The Forestry and Mining Resource Revenue Sharing Agreement, 2018b: p. 1).

There is once again an articulation that the sharing of resource revenues from forestry and mining is part of the province's commitment to reconciliation with First Nations. However, it is at this point within the agreement that it becomes evident that reconciliation and resource revenue sharing do not just reflect the perspectives of First Nations and can even lead to troubling relationships between participating First Nations and settler governments. Here, "reconciliation" is characteristically conceived as Christian and anthropocentric. As discussed in Chapter 3, the concept of reconciliation comes from Christian theology and centres on reconciling a human with

a human institution given that only humans are ascribed personhood within this worldview. In this part of the preamble, reconciliation is associated with improving government-to-government relations alongside the material socio-economic improvement of First Nation communities. This seems to firmly signify to First Nations that the agreements will hold a narrow anthropocentric notion that reconciliation is about improving human-to-human relationships. Reconciliation is assumed to occur through the sharing of resource revenues and the assumption that in doing so, this will address socio-economic issues First Nation communities are facing while increasing the likelihood of extracting resources deemed to be “non-persons” from First Nation territories.

However, while the inclusion of reconciliation in these agreements implicitly reflects a longstanding, theological and anthropocentric notion of repairing relationships, this does not mean that Indigenous legal perspectives and constitutional orders were completely excluded. In the agreement with the Grand Council Treaty #3, the next part of the preamble reads:

AND WHEREAS it is the Participating First Nations’ and GCT3’s perspective that they are engaging in resource revenue sharing in the forest and mining sectors further to *Manito Aki Inakonigaawin*, meaning the Creator’s law, that lies at the root of Treaty #3 First Nations’ and the Government of the Anishinaabe Nation in Treaty #3’s governance system; (The Forestry and Mining Resource Revenue Sharing Agreement, 2018a: p. 2).

Meanwhile, the agreements with the Mushkegowuk Council and the Wabun Tribal Council include this in their preambles:

AND WHEREAS it is the Participating First Nations’ perspective that fair and equitable participation in and sharing of benefits of resource development on traditional lands should be honoured according to Treaties and their relationship with the Crown and in accordance with the intent of the United Nations Declaration on the Rights of Indigenous People; (The Forestry and Mining Resource Revenue Sharing Agreement, 2018b: p. 1; The Forestry and Mining Resource Revenue Sharing Agreement, 2018c: p. 1)

The inclusion of *Manito Aki Inakonigaawin*, “an inherent law to Anishinaabe in Treaty #3 territory since time immemorial” (Grand Council Treaty #3, n.d.-b) in the agreement with the Grand Council Treaty #3, and mention of the treaties and international law in the agreements with the

Mushkegowuk Council and the Wabun Tribal Council are significant, especially as they recognize that participating First Nations are exercising self-determination and asserting Indigenous law. The explicit acknowledgement of *Manito Aki Inakonigaawin* means that there is a recognition of Anishinaabe constitutionalism in the agreement with Grand Council Treaty #3. The insertion of Indigenous law and international law within these agreements can therefore be interpreted as progressive. As mentioned previously in this dissertation and this chapter, the physical bodies of the Crown have a long history of ignoring the treaties or believing that Indigenous constitutional orders were non-existent, which resulted in federal and provincial governments instigating dishonourable, violent, and genocidal practices to dispossess Indigenous peoples. To include these statements in the preamble may signify that the Crown in Right of Ontario further recognizes the distinct legal personalities of participating First Nations, the existence and authority of Indigenous constitutional orders and new developments in international law.

That being said, it would be a mistake to presume that the incorporation of Indigenous law automatically translates into a deep understanding or respect for Indigenous laws or the treaties. While the agreement with the Grand Council Treaty #3 acknowledges *Manito Aki Inakonigaawin* and perhaps can even lead to the Crown more holistically engaging with Anishinaabe constitutionalism, it is quite possible that for the time being the most the Grand Council Treaty #3 can expect from the province is a harmonization of the administration of laws, and not the harmonization of law itself. In fact, this is an outcome that the Grand Council Treaty #3 has prepared for and expects. In an information package authored by the Grand Council Treaty #3 (2023) to provide instruction for the application of *Manito Aki Inakonigaawin*, it states:

Harmonization is a key principle to *Manito Aki Inakonigewin*. The law works by harmonizing the administration of Anishinaabe processes with Western law and processes. Harmonizing the two creates a greater understanding of processes, respects Anishinaabe

culture, and supports the ability to work within Treaty #3 with the least uncertainty. Treaty #3 does not want to harmonize the laws; however, the goal is to harmonize the administration of the law.

Harmonization is the possibility to have overlap and duplication of Anishinaabe and Western processes without conflict.

Harmonization does not mean making Anishinaabe processes change to become more like Western law; it means two systems beside one another working equally with the same amount of cooperation and authority. (p. 39).

Interestingly, the installation of a resource revenue sharing agreement between the First Nations in the Grand Council Treaty #3 and the provincial government is attributed to the application of *Manito Aki Inakonigaawin's* principle of harmonization:

In 2018, Treaty #3 First Nations and the Province of Ontario's forestry and mining sectors committed a historic Resource Revenue Sharing Agreement. This agreement was the first of its kind to occur within the Treaty #3 Territory and states the shared stumpage fees and mining royalties. This agreement is the operationalization of *Manito Aki Inaakonigewin*, which speaks to sharing the natural resources, and what the Creator has given us. Resource revenue sharing also provides economic independence for Treaty #3 and the relationship with the natural resources and land.

This example reminds us that it is not the laws of *Manito Aki Inaakonigewin* and the Western ones that harmonize – it is the administrative parts of both laws that must harmonize. When they do, ground-breaking agreements occur such as this one. (Grand Council Treaty #3, 2023: p. 41).

There is no doubt then that the creation of this resource revenue sharing agreement demonstrates self-determination amongst Treaty 3 First Nations and the application of Anishinaabe constitutional law in relation to federal and provincial law. However, the harmonization of the administration of laws may not equate into a richer understanding of Anishinaabe law on the part of the Crown.

It is possible that in exercising self-determination through the application of *Manito Aki Inakonigaawin's* principle of harmonization that there remains the potential for conflict occurring with the Crown, although this is not necessarily guaranteed. This can be hypothesized through the differences between how personhood is differently conceived within Anishinaabe and liberal

constitutional orders. According to Mills (2019), Anishinaabe constitutional orders are centred on radical interdependence in which nature, from plants, minerals, and animals, are ascribed personhood and autonomy and that humans are dependent on them (p. 79-81). In contrast, and as extrapolated in Chapter 3, liberal constitutional orders draw from Christian theology to assert an anthropocentric view of natural resources. Since Anishinaabe constitutional orders are acknowledged and harmonized with in this resource revenue sharing agreement but the lifeworlds of Anishinaabe law are perhaps not fundamentally understood by the provincial government, rather than creating economic certainty and political stability, these agreements may have the opposite effect. As argued by Mills (2010), conflicts between Anishinaabe peoples and settler Canadians are the result of two contrasting constitutional orders, liberalism and Anishinaabe constitutionalism, with their fundamentally differing conceptions of personhood and responsibilities, being imposed onto the same peoples (p. 114). While resource revenue sharing agreements may mention the treaties or Anishinaabe law, they do not actually grapple with how natural resources are conceived by participating First Nations in the Grand Council Treaty #3. This invites the possibility of conflict occurring, as participating First Nations will have to balance their own constitutional worldviews regarding the personhood of and the responsibilities to non-humans, with an anthropocentric liberal worldview in which non-humans are non-persons that can be unsustainably extracted without consent to achieve reconciliation. The harmonization of the administration of laws may reduce the likelihood of conflict and reflect self-determination, but there can never be a total guarantee of an absence of conflict.

This is important to note since a diverse assemblage of Indigenous, state, extractive and market actors had proposed resource revenue sharing as governmental intervention into Indigenous-settler relations to secure and protect their unique interests for over a decade. And yet,

now that resource revenue sharing agreements between the province and some First Nation communities have been created to materialize reconciliation from a rationality into a reality, the fundamental differences between liberal and Indigenous worldviews means that Indigenous-settler conflicts can still happen, even as there is a harmonization of the administration of laws. Governmental power may therefore seek to structure the field of possible actions, but it can never force or control what actions and effects end up transpiring. In this case, the desire for human-to-human reconciliation and the effort to make Ontario an attractive investment climate for resource extraction through redistributing resource revenues to First Nation communities may currently be preventing conflicts through buying peace. However, it is not outside the realm of possibility for conflicts to emerge or even resume given that liberal and Indigenous constitutional orders have different worldviews and responsibilities, and the fact that liberal conceptions of personhood, relationships and reconciliation are much narrower than the constitutional principle of radical interdependence found in Indigenous (i.e., Anishinaabe) constitutional orders. As strongly put by Corntassel (2023), “closing the gap in wealth does nothing to close the gap between Indigenous and non-Indigenous world views” (p. 151). Thus, resource revenue sharing agreements, as a new technology of reconciliation, can backfire and not secure economic certainty in Ontario. Of course, this is speculative as conflicts are not entirely inevitable, and the agreements do have in place guidance for resolving disputes between the participating First Nation, the province and extractive corporations.

While the political and legal ramifications of these agreements for Indigenous-settler relations are more hypothetical and theoretical than empirically observable, the real material wealth that participating First Nations have received through these agreements can be interrogated for what it shows about Indigenous self-determination and power within this structure. The FOI

request from the Ministry of Mines and Northern Development reveals that First Nation communities that signed onto these legally binding agreements have been given millions of dollars from the province. In 2019 alone, the provincial government (now under the Progressive Conservatives) transferred over \$8.2 million to the Grand Council Treaty #3, over \$3.1 million to the Mushkegowuk Council and over \$13.4 million to the Wabun Tribal Council. Therefore, participating First Nations can receive a significantly large amount of money from the province through these agreements over the course of several years. In comparison to when the treaties were undermined or ignored and were therefore not allowed to share in the wealth of resource extraction, this could be seen as a positive economic effect for First Nation communities.

However, despite millions of dollars being transferred from the province to First Nation communities, there are several reasons to be concerned. The terms of these agreements, that the province will share 45% of the annual revenue from contributing forest management units, 40% of the annual mining tax and royalties from operational mines and 45% from future mines, sounds impressive at first glance. Nevertheless, it is ultimately the provincial government which dictates the amount that can be shared in the first place, with First Nation communities unable to influence this outcome despite all the public statements of “reconciliation” and “partnerships”. For example, Ontario’s mining tax is currently at a measly 10% for non-remote mines and 5% for remote mines (Government of Ontario, 2022). The Government of Ontario’s very low mining tax rate reflects a trend where provincial governments set low taxes to attract extractive companies (Pasternak, 2020: p. 316). Consequently, this means that provincial governments, like the Government of Ontario, actually generate a small amount of resource revenues through taxes (Pasternak, 2020: p. 316). Therefore, participating First Nations may get 40% of the revenues accruing from the mining tax on operating mines, but this is only a fraction of a much smaller percentage. Moreover, since it is

the provincial government that gets to set the mining tax policy, there is no way or legal recourse that First Nations can take to ensure that the province does not lower the tax rate, especially since First Nations have no equity ownership in the mine. Thus, despite the rhetoric that revenue sharing will lead to autonomy and self-determination for First Nations, another effect of these agreements is that participating First Nations remain wholly dependent on the benevolence of the party governing through the state's apparatuses at the time that these agreements are in place. The Progressive Conservatives, as the governing party since May 2018 which holds a majority in the legislature, could decide tomorrow that the mining tax must be lowered to make Ontario a more attractive mining jurisdiction. If that were to transpire, there would be no secure legal avenue that participating First Nations could pursue to prevent this from happening (although with how these new agreements reference the treaties, it is theoretically possible that participating First Nations could claim that any reduction to these tax rates violates the duty to consult; however, this is untested). Therefore, participating First Nations may receive 40% of revenues accruing from the mining tax, but with the tax being so minimal and with no authority to influence it, the revenues received are smaller than what was alluded to in public (that is, the announcement that participating First Nations will receive 40% of the mining tax sounds amazing until factoring in how the mining tax in Ontario is kept very low, a fact that was not iterated in the announcement of these agreements). In addition, there is no guarantee that the mining tax will not be lowered, and that the resource revenues will not get smaller over time.

There is also the fact that mining and forestry activities are not always consistent each year and that this too will impact the amount of resource revenues that are shared with participating First Nations. Extractive industries are not immune to the boom-and-bust cycle of global capitalism, and financial woes from one sector of the economy will contaminate other sectors in

Canada and elsewhere (Fijorek et al., 2021: p. 9). This can be evidenced by the recent COVID-19 global pandemic. In Ontario, mining and forestry were classified as “essential” by the provincial government which allowed extractive companies to continue working; however, there were reports that operations had slowed, shuttered or closed down due to the COVID-19 pandemic (Brown et al., 2020; Government of Ontario, 2020; “Impala aims for late May”, 2020). While governments make way for extractive activities to occur, unpredictable and uncontrollable global and domestic factors means that the best laid governmental plans for more resource extraction do not always come to fruition. Consequently, this means that the number and the stages of extractive activities can be affected by issues beyond the provincial government’s control, which will affect the amount of revenues that the province can collect from extractive companies through its taxes and royalties. Participating First Nations, who are already made dependent on the province’s tax rate through these agreements, must contend with the fact that extractive activities are not certain and that the flow of revenues that they receive will fluctuate each year. For example, the FOI request shows that while the Grand Council Treaty #3 received around \$8.2 million in 2019, this amount shrank in 2020, with participating First Nations being given almost \$6.4 million. The only guarantee through these resource revenue sharing agreements is that if any extraction occurs, participating First Nations will receive a small portion of the revenues collected through taxes and royalties. This means that this revenue stream can be highly unpredictable and does not provide participating First Nations with complete certainty that they will have a stable amount of resource revenues flowing into their communities to fund or expand programs.

In addition, the revenues that are eventually passed onto each participating First Nation may not end up amounting to much money due to calculations which allocate funds based on proximity to either mining or forestry. For instance, an operational mine within the territories of

the agreements results in a “Sharing Formula” being applied, with the calculation being the total amount each participating First Nation receives. This Sharing Formula is the Sharing Percentage (i.e., 40% for operational mines before April 2018 or 45% for future mines) multiplied by the Total Attributed Revenue per Mine (which has its own complex calculations that need to be determined first) further multiplied by the Allocation Percentage (i.e., the total share allocated to each First Nation in proximity to the mine, which I am not sure how these total shares were decided). The application of this formula ends up resulting in participating First Nations perhaps receiving a less than satisfactory amount of money from the province. To give an example, the Rainy River Gold mine located in Grand Council Treaty #3 paid in taxes approximately \$3.7 million in 2020 (the Total Attributed Revenue per Mine), which was multiplied by 40% since it was in operation prior to April 2018, and then further multiplied by 10 proximal First Nations which each held an Allocation Percentage of 9.09%, leading to each First Nation receiving just \$134,872.66. While an argument can be made that this is better than nothing, it is still a lot less when comparing how the provincial government and mining companies have much larger revenue streams. The province ultimately pockets the difference for this mine’s taxes and royalties, while mining companies can make millions in revenue and only pay a small 10% mining tax. Meanwhile, other participating First Nations might garner more revenue due to their location to a mine, the valorization of the mine and the allocation percentage they are assigned. Thus, First Nations within these three agreements do not receive an equal division of these resource revenues due to formulas for mining and forestry being applied, and the distribution of revenues may not be much money anyways.

The resource revenue sharing agreements also predetermine how the monies received by First Nations can be spent. Participating First Nations must spend these revenues that they receive on at least one of five categories for “reconciliation” (The Forestry and Mining Resource Revenue

Sharing Agreement, 2018a: p. 2-3). This includes Economic Development, Community Development, Cultural Development, Education and Health. The categories are quite broad, and there is no strict requirement that a participating First Nation must spend funds on each category, just as long as they spend it in a way that correlates to at least one category (e.g., education). For example, Cultural Development, “could include the preservation, promotion and development of First Nations culture and language” (The Forestry and Mining Resource Revenue Sharing Agreement, 2018a: p. 3). From this description, almost any program or initiative regarding the practice and revitalization of Indigenous cultures can be seen as an acceptable use of the funds received from these agreements. That being said, each participating First Nation must comply with an annual accounting of how they used these funds and submit an audit report to the provincial government. Thus, not only do these agreements dictate to participating First Nations how the funds are to be spent, but then every year participating First Nations must render themselves financially transparent to the provincial government to show that they have used the funds in accordance with the provincial government’s terms and conditions. This hardly seems like there has been a new trusting relationship established between the province and participating First Nations.

Furthermore, the criteria for how monies should be spent for some categories reveals how the provincial government hopes that the agreements will effectively lead to the full interpellation of participating First Nations into settler capitalism. This can be seen through the definitions of two of the five categories:

Economic Development, which could include providing the Participating First Nations with direct economic benefits from forestry and mining and creating a more positive climate for investment and business partnerships, and enhancing the Participating First Nations’ involvement and readiness in regard to resource planning and development; (The Forestry and Mining Resource Revenue Sharing Agreement, 2018a: p. 3)

Education, which could include creating greater capacity and more meaningful and longer term participation by Participating First Nations in the forest and mining economies, including readying Participating First Nations' youth for participation in these economies; (The Forestry and Mining Resource Revenue Sharing Agreement, 2018a: p. 3)

Through these two definitions, it seems evident that the province is optimistic that the sharing of these resource revenues can create certainty for investment, produce future corporate partnerships and lead to educational initiatives and programs which will encourage Indigenous individuals to work with or seek employment within extractive industries. The hope then is that resource revenue sharing will not just buy peace but will integrate Indigenous peoples into a capitalist economy by normalizing liberal settler views of resource extraction through 1) the material wealth generated and 2) through the education of Indigenous youth, thereby leading to an increase in extractive activities and capitalist expansion on Indigenous lands. Furthermore, through sharing the wealth, it seems that there is an effort to influence Indigenous self-determination so that it works within the confines of capitalism. While Indigenous self-determination includes social and economic development, the concept of “development” has its roots in the ethnocentric “modernization theory” which posits that all societies will evolve to have political, economic and social institutions that resemble Western liberal democracies (Hamilton et al., 2021: p. 4). Such a theory seems to have its basis in worldviews originating from liberal philosophers, like John Locke, using biblical creation stories to racialize Indigenous peoples as “primitive” and evolutionarily behind supposedly “developed” liberal societies. Thus, the use of the term “economic development” within these agreements in which development is associated with participation in extractive economies seems to be indicative of this idea that Indigenous peoples will be able to economically develop to fit within “modern” liberalism once resource revenues are shared, thereby allowing for the extraction of natural resources and the flourishing of anthropocentric capitalist relations.

Moreover, there is something deeply unnerving about the province's desire to have Indigenous youth made ready to participate in mining and forestry economies through education in these agreements. As seen previously, the Ryerson report of 1847 mandated that the education of Indigenous children in manual labour and Christianity was necessary to assimilate Indigenous peoples and to create an Indigenous working class. To solely link "education" with the interpellation of Indigenous youth into extractive industries (and not spending these funds to increase education for other types of careers) seems to imply that the province is still attempting to make an Indigenous working class, albeit now under the political rationality of reconciliation instead of assimilation. Between the definitions for economic development and education, it seems that while the provincial government sought to chart a new relationship through the sharing of resource revenues, it has re-entrenched liberal notions of economic development and the settler goal of educating Indigenous youth to become workers with Ontario's extractive economies.

Another related concern is that even if these participating First Nations decide to accept the liberal clauses in these agreements and use the monies to fund programs and initiatives that meet the above spending categories, there is no guarantee that this will lead to a source of long-term funding. Part of this is due to how the agreements were set to expire in 2023, however, there is another reason related to the inherent nature of resource extraction. In her overview of the literature on IBAs, Scott (2020) explains that revenues from these agreements do not generate future revenue streams, as they are short-term projects and lead to profits for distant owners and not the communities affected by resource extraction (p. 280). As a consequence, First Nations who sign onto these IBAs with mining companies may become dependent on resource extraction to fund their members basic needs, and the revenues from these agreements are likely to decline over time as natural resources are removed from these territories until there is no reason for extraction

and an environmentally compromised homeland (Scott, 2020, p. 280). A similar argument could be made for resource revenue sharing agreements. While they may at first share the wealth between the provincial government and participating First Nations, with participating First Nations then using the money to fund programs, the revenues from resource extraction is ultimately a short-term funding solution. As explored above, there are several reasons for why resource revenues are not guaranteed or will shrink over time. Meanwhile, the creation, maintenance and expansion of new or older programs and initiatives due to the revenues from resource extraction may induce First Nation communities to become dependent if not supportive of the exploitation of natural resources. This is perhaps why Taiaiake Alfred (2009b) warns that economic development is ineffective for tackling the legacy of settler colonialism and may actually make First Nations more dependent on the state (p. 47). Therefore, participating First Nations may become dependent on more resource extraction and the provincial taxes and royalties emanating from extractive activities to fund programs that meet one of the five categories in these agreements, and there is a serious risk that these unstable revenue streams will one day dry up, which would leave communities in a serious financial predicament.

Besides placing clauses on how the funds must be spent, there are also restrictions on how the monies from this temporary revenue stream cannot be used. According to the agreements, participating First Nations are not allowed to use any of the funds for per capita distributions, cannot provide funds to any Indigenous community outside of Ontario, cannot use these funds for the costs of litigation and cannot invest these funds for a financial return without first spending it on the five categories listed above (The Forestry and Mining Resource Revenue Sharing Agreement, 2018a: p. 4). In my view, these restrictions can undermine Indigenous self-determination and relationship building. For example, if a participating First Nation wanted to

show solidarity with a First Nation outside of Ontario, such as donating money to Wet'suwet'en First Nation, its land defenders and their legal defence, it would be considered a breach if any funds from this agreement were used. However, a more serious and likely consequence might be that any monies from the agreements cannot be used on any litigation. If a participating First Nation wanted to litigate against the province for an unrelated non-extraction matter, or even against a prospecting or mining company, they would not have access to the funds from this agreement. Therefore, if a situation like KI First Nation versus Platinex Inc. arose, in which KI First Nation spent copious amounts of time and money to go through the courts to prevent exploratory drilling in accordance with their laws, the affected participating First Nation would not be able to use the funds from these agreements to hire a law firm. As such, these legally binding restrictions can have the detrimental effect of preventing First Nations from accessing all available monetary resources that could be used to litigate against state and extractive actors if a conflict between these groups of actors were to manifest. Given that the agreements are based on an anthropocentric notion of reconciliation and do not really account for Indigenous legal perspectives of natural resources, if a legal conflict did arise in the future, the monies from these agreements cannot be used for litigation. A restriction preventing these funds from being used for litigation is reminiscent of how the amendment to the *Indian Act* in 1927 included Section 141, which restricted Indian bands from hiring lawyers and pursuing a claim (Department of Indian and Northern Affairs, 1978: p. 301). Thus, it can be perceived that similar to the 1927 version of the *Indian Act*, these resource revenue sharing agreements also place a limitation on Indigenous self-determination, as they prevent participating First Nations from litigating against the Crown.

There could also be other consequential legal implications from these resource revenue sharing agreements. Signed contracts, such as IBAs, are frequently taken to be expressions of

“consent”, which is why IBAs are negotiated, as they can preclude an Indigenous community from later blocking a project (Isaac & Hoekstra, 2020: p. 253; Scott, 2020: p. 274). This logic that any contract signed by a First Nation signals that consent has been acquired (or that at the very least the First Nation has been consulted and their needs accommodated) has subsequently become an argument presented to the courts, such as in *Yahey v. British Columbia*, albeit with little success (Amatulli, 2022: p. 166-167; Scott, 2020: p. 278-279). However, if legal precedents are established in which contracts or agreements are reinterpreted as an Indigenous community’s consent for an extractive project, this can lead to severe legal repercussions. That is, participating First Nations that have signed onto these resource revenue sharing agreements may have consented to sharing the wealth according to the formulas within these agreements, but it could be argued by the Crown that a participating First Nation has also consented to all stages of the mine life cycle by the courts. This may be troubling, as O’Faircheallaigh (2020) notes that every stage of the mine life cycle, from exploration to mine rehabilitation, involves decisions made by state and extractive actors that can adversely affect Indigenous peoples, such as damage to cultural sites and a measurable impact on a community’s livelihood, like hunting of game (p. 64). This can be a source of conflict between Indigenous communities, extractive corporations and state authorities. Consequently, consent for just resource revenue sharing with the province has the potential to be legally misinterpreted as consenting to all stages of mining. After all, the Crown may put this question before the courts: why would a First Nation sign an agreement which would provide them with economic benefits from resource extraction if they were against any extractive activities from occurring in the first place? The signing of these agreements could be used by the Crown to pre-emptively undermine the legal credibility of a First Nation if a legal dispute was to happen whenever contracts are viewed as an indication that Indigenous consent has been obtained.

There are also potentially harms that can materialize against Indigenous women and girls through these agreements. In studying the lead up to these resource revenue sharing agreements, I have noticed that gender does not make an appearance, as the overall concern revolves around honouring the treaties, creating economic certainty and political stability and growing Ontario's economy. Thus, the intertwining discourses of reconciliation and certainty have largely been degendered in conversations about resource revenue sharing. In fact, almost all of the participants within this governmental assemblage of Indigenous, state, extractive and market actors, corporations, associations and institutions were men who claimed that resource revenue sharing will secure their unique and intersecting political, economic and legal interests. This is quite alarming, given the identified link between racialized and gendered violence within extractive economies. The National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) has written in its final report that resource extraction projects often lead to a large influx of transient men with no connection to the local Indigenous communities setting up hypermasculine "man camps" (p. 584-585). These non-Indigenous heterosexual male workers have been responsible for perpetrating physical and sexual violence against Indigenous women and girls, which they have often downplayed or euphemized as simply "blowing off steam" (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019: p. 585-586; Seck & Simons, 2019: p. ii-iii). As succinctly put by Hania & Graben (2020), "The introduction of an extractive industry into a territory places Indigenous women more at risk of marginalization and violence than Indigenous men, non-Indigenous women, and non-Indigenous men" (p. 319). Given that resource revenue sharing agreements are designed with the goal to increase business certainty for resource extraction by encouraging Indigenous communities to support extractive activities, there is a possibility that the overwhelming focus on producing certainty might come at the cost of compromising the safety

of Indigenous women and girls. This may be especially true if the leadership of First Nation communities, hoping to benefit from these new agreements, become actively supportive of exploratory activities in their territories. Therefore, there is an increased potential for gender violence towards First Nation women and girls in First Nation communities. The gendered implications of resource revenue sharing agreements must therefore be studied in the future.

Through assessing the contents and available information about these resource revenue sharing agreements, it can be said that while these agreements are fairly progressive, they ultimately reimpose a settler colonial relationship between the participating First Nations and the state. There is no denying that these resource revenue sharing agreements do recognize First Nation constitutional orders and jurisdictions and redirect government revenues and royalties back to communities. This is a process that should have been occurring since the signing of the treaties between the Crown and First Nations in the nineteenth and twentieth centuries. Thus, participating First Nations have the ability to attain some sort of material wealth (or financial compensation, depending on your perspective) from resource extraction that they were previously unable to obtain in earlier settler colonial periods. When assimilation was the dominant political rationality across Canada, there was no attempt to honour the spirit and intent of the treaties by sharing the wealth, and so there would never have been a legally binding agreement between First Nations and the provincial government in which the province would freely and willingly pass along tax revenues from mining and forestry. Once reconciliation became the dominant political rationality, with the Liberal government being committed to make reconciliation a political reality, resource revenue sharing was created as a new progressive technology of governance, one which was advocated by a whole assemblage of Indigenous, state, extractive and market actors, organizations, corporations and institutions. These agreements, inspired by reconciliation, have led to some First Nations being

able to acquire resource revenues and use these funds for projects, programs and initiatives which can benefit their respective communities and address complex socio-economic issues due to settler colonialism. Arguably, this can allow for some degree of self-determination. However, these new agreements seem to be settler colonial in nature.

This is because, despite millions of dollars being transferred by the provincial government to First Nations, there is still an asymmetrical power relation between Indigenous peoples and settlers. While the agreements came through private negotiations between First Nations and the Liberal government, from following the money it seems that the state still structures the scope and nature of this “new” relationship with Indigenous peoples. The province ultimately dictates the tax policy for mining and forestry, which means that the state determines the maximum amount of funds that participating First Nations can receive from these seemingly progressive arrangements. In addition, these agreements place strict conditions and restrictions on how participating First Nations can use these monies, so even once a First Nation community receives a small amount of funds after the sharing formulas have been applied, the funds must be spent in accordance with five categories. Moreover, the inability to properly engage with Indigenous constitutional perspectives within the agreements alongside some of the descriptions for how the monies are to be used, such as educating Indigenous youth to participate in mining or forestry economies, reveals how not only has the province imposed a liberal conception of natural resources and an anthropocentric view of reconciliation, but that the province also hopes that resource revenue sharing will normalize liberal worldviews on resource extraction and produce economic certainty for extractive industries. While the provincial government may be supportive of reconciliation with Indigenous peoples, as evidenced by the fact that it created resource revenue sharing agreements, it does not mean that the province has relinquished its attempts to govern Indigenous

peoples. If anything, the province has sought to govern participating First Nations through these agreements so that self-determination is more closely tied to the whims, successes and taxation of extractive actors, companies and organizations, thereby structuring the field of possibilities, conducts and actions of First Nations to fit within settler capitalism.

So, what does the structure of these resource revenue sharing agreements and their corresponding effects say about “reconciliation”? Does reconciliation only have an ideological function within settler colonialism? I.e., does it only benefit settlers or does this political rationality produce concessions for Indigenous peoples? These are questions I intend to continue to answer over the next chapter, however, perhaps a few concluding thoughts on reconciliation and revenue sharing are warranted here before proceeding. Reconciliation can be a troubling political rationality, especially when reconciliation discourses are wielded to normalize liberal, settler colonial worldviews of repairing human relationships at the cost of marginalizing Indigenous worldviews and legalities. Nevertheless, it would not be helpful to imagine reconciliation as only having an ideological function, one which veils the reality of settler colonialism and convinces Indigenous peoples to participate in capitalism and environmentally harmful extractive activities. It can have an ideological function as seen with how the province intended for this governmental technology to lead to the interpellation of First Nations as proponents of resource extraction. However, it must be remembered that Indigenous peoples had long argued for resource revenue sharing as a way to honour the spirit and intent of the treaties and to accumulate wealth in order to address complicated socio-economic issues within their communities.

It might be more useful to take on a governmentality perspective to account for what reconciliation does in relation to settler colonialism. That is, the emergence of reconciliation as a dominant political rationality in the 1990s led to the proposal and adoption of new governmental

technologies meant to manifest this political rationality (although as the last two chapters has shown, this can be a drawn out and convoluted process). Furthermore, now that governing through reconciliation has achieved universal acceptance, it appears that settler colonial power is not wholly repressive but can also be somewhat productive in that it induces change and concessions from dominant settler actors. State actors who promulgate their support for reconciliation must be willing to show that they are committed to improving the lives of Indigenous peoples, lest they risk public criticism for not truly engaging in reconciliation. This led to a concession that the provincial government would share millions of dollars from the taxes and royalties of mining and forestry for reconciliation (as indicated in the Liberal government's *The Journey Together*), although it did not mean that this led to the provincial government ending its attempts to govern First Nations to meet settler colonial ends. Several clauses within the agreements showcase how the provincial government sought to influence the scope of the outcomes and the structure of the relationship with participating First Nations. Meanwhile, this governmental technology itself can produce complexities and messiness for participating First Nations. Although resource revenue sharing agreements can help to address the socio-economic issues affecting participating First Nations, these agreements can also produce or reinforce repressive settler colonial governance affecting First Nation communities. Reconciliation may therefore produce concessions for First Nations, but the settler colonial relationship between the Crown and First Nations remains in place as the province seeks to structure the possibilities of conduct that First Nations can make in this relationship through new reconciliation-based technologies.

How can we make sense of why reconciliation and resource revenue sharing agreements has led to the reestablishment of an asymmetrical relationship between Indigenous peoples and settlers in Ontario despite providing some concessions to participating First Nations? To answer

this question, it is important to historicize these new agreements within a larger history of Indigenous-Crown relations in Canada. In Chapter 3, I discussed how the Crown has been imagined as Christlike, immortal and inherently honourable despite the fact that colonial governments of the Crown have perpetrated violence to Indigenous peoples across Canada for generations. In trying to understand this paradox, I argued that the Crown has a metaphysical body which has been elevated to the heavens and remains untouched, and many physical bodies who hold theo-Lockean worldviews about only humans having personhood and are invested in settler colonial outcomes. It appears that these resource revenue sharing agreements fit within this centuries-long historical pattern of treaty-making between representatives of the Crown and First Nations. While the provincial government, acting under the authority of the Crown, is honourably recognizing the legal personalities of First Nations and complying with a return to the treaty relationship through signing these new agreements, it does not negate the fact that theo-Lockean stories and worldviews regarding land and natural resources are still held onto by state actors or that the provincial government is any less interested in reimposing an asymmetrical relationship with Indigenous peoples over land. As such, it is not too surprising that these resource revenue sharing agreements include provisions that seem to reflect this theo-Lockean worldview and would govern First Nations to be more supportive and involved in the extraction of non-persons. Reconciliation may lead to new agreements between the Crown and Indigenous peoples, but these agreements are structured and negotiated in relation to the beliefs held by the settlers representing the Crown, who have a continued interest in accessing Indigenous lands and securing the political and economic interests of a broader settler society.

What can also be surmised through studying these agreements is that reconciliation is a distinct political rationality that can positively recognize Indigeneity while negatively reinforcing

settler colonialism. As Coulthard (2014) explains, the politics of recognition attempts to reconcile Indigenous assertions of nationhood with settler claims to sovereignty (p. 151). He further argues that reconciliation is “colonial insofar as it remains structurally committed to the dispossession of Indigenous peoples of our lands and self-determining authority” (Coulthard, 2014: p. 151). Similarly, this can also be observed when examining the three resource revenue sharing agreements. Participating First Nations may have their constitutional orders acknowledged and they may be able to share in some of the wealth from resource extraction, both of which were the result of First Nation leaders fighting for the treaties to be recognized. Yet, recognition as an end in itself does not necessarily translate into long-term positive structural transformations, as these new resource revenue sharing agreements may adversely affect participating First Nations and may even reproduce an unequal relationship with the Crown. At most, these resource revenue sharing agreements have led to minor concessions in the name of reconciliation, while continuing to allow settlers to structure Indigenous-settler relations for their own interests, and possibly at the cost of further harm for First Nation communities.

Conclusion

When the three resource revenue sharing agreements were announced in May 2018, they were publicly celebrated as an example of reconciliation within Ontario and that there was a new relationship emerging between the province and First Nations. There is no doubt that these new agreements can be positive for participating First Nations. They are also the result of Indigenous leaders working tirelessly in Ontario to call for the provincial government to return to the treaty relationship, as the previous chapters have documented, and so it would be inaccurate to claim that these agreements are just an ideological attempt by the province to induce Indigenous support for settler colonialism. Moreover, the language used within these agreements do allow

for the recognition of Indigenous constitutional orders and do provide participating First Nations access to funds that can be used for multiple purposes within their communities. An optimistic assessment of these agreements may lead to the conclusion that a First Nation community signing onto a resource revenue sharing agreements can be seen to be engaging in self-determination.

However, an assessment of these agreements demonstrates that this story of reconciliation, resource revenue sharing, and Indigenous self-determination is much more complicated and that there is not necessarily a “new” relationship between the Crown in Right of Ontario and participating First Nations. The contents of these agreements seem to reveal that the provincial government ultimately maintains control over the amount that gets shared as it has the power to set taxes. The provincial government also subjects participating First Nations to a yearly audit to ensure that the small amount of funds is used in accordance with the province’s goals to encourage the full interpellation of First Nations into capitalism through the creation of an Indigenous working class and by incentivizing access to Indigenous lands. Furthermore, it appears that while the agreements may acknowledge Indigenous constitutionalism, the starting point within these agreements comes from a Christian liberal worldview in which natural resources are non-persons that can be extracted, sold and taxed so that reconciliation through sharing tax revenues can occur. This anthropocentric worldview leaves open the chance of Indigenous-settler conflicts emerging. Self-determination may also become contingent on tax revenues and royalties shared by the province, which itself is a short-term funding arrangement dependent on the activities of extractive industries and can vary each year due to global and domestic factors. Additionally, the “certainty” produced by these agreements for resource extraction has the potential to cause harm to participating First Nations, such as by encouraging

extractive activities that are harmful to the environment and Indigenous women and girls. Therefore, while the agreements are progressive in the sense that they invoke reconciliation, honouring the treaties and the sharing of wealth, the terms and conditions of these agreements demonstrate that the province has re-established a settler colonial relationship with participating First Nations in the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council.

Through exploring the creation of these agreements and their effects, it is also possible to consider what this means about settler colonialism, as a structure and not an event, and reconciliation, as a dominant political rationality meant to improve Indigenous-settler relations. While it is tempting to say that reconciliation is a new ideology which helps to ensure an asymmetrical relationship between settlers and Indigenous peoples, it seems that it is a bit more complicated. State and extractive actors who invoke reconciliation discourses must be seen to do something which contributes to the manifestation of reconciliation as a political reality in Ontario, otherwise, they risk being criticized as not being truly committed to improving the lives of Indigenous peoples. This may explain why the Liberal government not only made speeches about reconciliation, but also created an action plan for reconciliation which would implement the recommendations from the TRC's final report and the Ipperwash Inquiry, and also participated in several events and meetings with Indigenous organizations covering topics like revenue sharing (as seen in the previous chapter). Reconciliation, therefore, is not exclusively ideological or even a vacuous discourse, as it can produce concessions from dominant actors, such as resource revenue sharing agreements. At the same time, there is no guarantee that the installation of governmental technologies for reconciliation will radically alter or fundamentally transform the relationship between settlers and Indigenous peoples, as seen with these

agreements. In fact, it can be argued that these agreements can negatively affect participating First Nations, as that settlers still exert a large degree of influence over Indigenous peoples, including Indigenous self-determination. Reconciliation may therefore modify how interventions into Indigenous-settler relations are conceived, but this does not mean that settler colonial governance over Indigenous peoples is abandoned or constrained, as settlers attempt to fit Indigenous self-determination within colonial and capitalist objectives.

In the next chapter, I will continue to examine the concessionary logic within reconciliation by looking at how Indigenous-settler relations have been governed since the election of the Progressive Conservatives as the governing party. This chapter will build on this theorization of settler colonialism and reconciliation by noting how other political actors often utilize reconciliation to hold the Progressive Conservative government accountable. In addition, this chapter will look at how the Progressive Conservative government's erasure of reconciliation from its diction has allowed it to de-Indigenize its resource revenue sharing policies, while still relying on resource revenue sharing with Indigenous peoples as part of its efforts to encourage the mining of "critical minerals". This analysis will contribute to this chapter's discussion that reconciliation was instrumental for creating resource revenue sharing agreements with Indigenous peoples, and that the refraining from this discourse can lead to benefits from settlers at the cost of conceding exclusive economic benefits to Indigenous peoples.

Chapter 8: Mr. Ford Goes to Queen's Park

Introduction

On May 9th, 2018, the electoral writ was issued, officially marking the start of Ontario's 2018 election campaign ("Election 101", 2018). Just six days earlier, the Liberal government announced that it had signed onto three resource revenue sharing agreements with the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council. This would turn out to be the final major governmental technology created by the Liberal government to intervene into Indigenous-settler relations, one which they had closely associated with reconciliation. On June 7th, 2018, the provincial election would result in the Progressive Conservatives being elected to form their first government in nearly fifteen years, with its newly minted and populist leader Doug Ford becoming Premier. The Liberal party, which had been instrumental in adopting reconciliation as a political rationality for the province, would be decimated to the point that it lost official party status in the legislature. This chapter asks, what happens to reconciliation when a new party is elected, takes control of the state's apparatuses and assumes its executive and legislative functions? How does this affect how Indigenous-settler relations are governed in Ontario?

In my previous chapters, I showed how resource revenue sharing emerged through an assemblage of Indigenous, state, extractive and market actors coming together to propose resource revenue sharing as a governmental solution to their problems which would also improve Indigenous-settler relations in Ontario. I have also discussed how these agreements could improve Indigenous-settler relations in certain ways while also reforming settler colonial power over Indigenous communities under the guise of reconciliation. However, rather than proposing that reconciliation is just an ideology which legitimates settler colonial governance, I theorized

that reconciliation as a dominant political rationality produces complex and messy discourses and changes within Indigenous-settler relations through its inherent concessionary logic, as seen through the multiple positive and negative logics, discourses and settler colonial shifts that have occurred since the signing of the three resource revenue sharing agreements. However, I ultimately concluded that reconciliation does not equate to an end to settler colonialism.

In this chapter, I want to further explore this analysis by looking at what has happened to Indigenous-settler relations since the Progressive Conservatives have become the governing party in Ontario. During the first term and under the leadership of Premier Doug Ford, the Progressive Conservatives erased the language of reconciliation from their vocabulary and government policy. At the same time, the governmental technology of resource revenue sharing was not abandoned by the Progressive Conservative government but was effectively de-Indigenized and expanded to “northern communities” in general. I will argue that because reconciliation has a concessionary logic to it, in that individuals and organizations that promote reconciliation may become open to political pressure to create programs or enact laws and policies that should technically lead to benefits for Indigenous peoples (regardless of their eventual outcomes and messy effects), the attempted abandonment of this political rationality by this new government was meant to marginalize Indigenous communities within policymaking. That is, divorcing reconciliation from the governmental technologies meant to materialize reconciliation has allowed the Progressive Conservative government to create policies within Ontario’s extractive economy that primarily benefits settlers, such as a new resource revenue sharing fund for municipalities which excludes Indigenous communities. However, since reconciliation has become a dominant political rationality, it is still relied on by Indigenous organizations and other political parties to try to hold the Progressive Conservative government

to account. Reconciliation is discursively deployed to evaluate, moderate and push against governmental policies that can harm Indigenous peoples. I will also analyze how the Progressive Conservatives have since reluctantly contended with “economic reconciliation” in their efforts to make Ontario a jurisdictional leader in mining “critical minerals”. I will conclude by noting that reconciliation will remain the dominant political rationality for intervening into Indigenous-settler relations for the foreseeable future. Ultimately, this chapter will show that reconciliation is a dominant political rationality that has been embraced by competing (settler) political actors, and that how settler politicians discursively engage with or frame reconciliation affects the material concessions that are provided to Indigenous peoples.

Doug Ford’s Progressive Conservatives: Open for Business and Closed for Reconciliation

When the Progressive Conservatives were campaigning and then sworn in following the 2018 provincial election, the party appeared to actively avoid using the word “reconciliation”. As far as I can tell and as observed by others, the Progressive Conservatives did not have anything on their election platform regarding reconciliation or “Indigenous issues” (Newhouse, 2018). Instead, they focused their campaign on economic prosperity with the populist slogan of keeping Ontario “open for business” (Ontario PC, 2018a), with little to no consideration for what the economic implications would mean for Indigenous peoples and reconciliation. This refusal to even acknowledge the idea of reconciling with Indigenous peoples in Ontario seems to have been the result of Doug Ford taking the reigns of the Progressive Conservative party just months prior to his election as Premier. After all, the Progressive Conservatives have not always been entirely against reconciliation and have even embraced it in the past. As seen in a previous chapter, former leader John Tory first spoke of the need for reconciliation following the release of the Ipperwash Inquiry’s final report. Several years later, when *The Journey Together* was released by

the Liberal government in May 2016 in response to the TRC's final report, former leader Patrick Brown stated in the legislature, "I look forward to working towards the 94 calls to action as a parliamentarian, Ontarian and Canadian, and towards bringing truth and reconciliation between our nations" (Legislative Assembly of Ontario, 2016: p. 9624). Therefore, the decision by the Progressive Conservatives to not speak about reconciliation or have any policy recommendations meant to make reconciliation a political reality seems to have stemmed from Doug Ford taking over as its new leader given that its previous leader publicly stated that he would lead his party to implementing the TRC's 94 Calls to Action.

When Premier Ford and his cabinet were sworn in, the new government's immediate actions showed that it did not intend to govern Indigenous-settler relations based on reconciliation. Indeed, there seems to have been a desire to erase this word. The previous Liberal government had renamed the "Ministry of Aboriginal Affairs" as the "Ministry of Indigenous Relations and Reconciliation" in order to emphasize the province's commitment to reconciliation as a normative political goal. Under the new government, this ministry was renamed the "Ministry of Indigenous Affairs". Not only was the word "reconciliation" removed, but the word "relations" was also replaced with "affairs". Whereas "relations" is at least consonant with a nation-to-nation approach to engagement with Indigenous peoples, "affairs" has a more sinister, Kafkaesque and bureaucratic ring to it. There have been various ministries and departments historically known as "Indian Affairs" across Canada and in Ontario, which have had the explicit purpose of controlling every aspect of the lives of Indigenous peoples. To rename the ministry the "Ministry of Indigenous Affairs" may harken back to this earlier settler colonial history, one in which Indigenous peoples' affairs are to be managed by the state. From this change alone, it seems apparent that the new provincial government had implicitly suggested that it was not

interested in forming or maintaining partnerships with Indigenous peoples or even vaguely committed to implementing any recommendation associated with reconciliation.

The Progressive Conservatives' disregard for reconciliation would be even more pronounced with the opening of the 42nd Parliament. The Speech from the Throne did not make a single passing reference to Indigenous peoples and the treaties, nor did it mention reconciliation. This contrasts with how the governing Liberal party would occasionally reference in the legislature the historical relationship between Indigenous peoples, settlers and the treaties. In fact, it appears that Indigeneity as a whole was to be outwardly disregarded. An excerpt from the speech reads:

We must look beyond our differences — in race, region, language, gender, religion, lifestyle, sexual orientation or creed — and recognize that all of us are Ontarians and Canadians first. Because no matter where any of us come from, or how long we have lived here, it should be clear that when Ontarians work together, there is no challenge that cannot be overcome. Together, we can create unprecedented jobs and prosperity — and send a message to the world that Ontario is open for business. (Office of the Premier, 2018).

Here, the factual existence of Indigenous peoples and the treaty relationship is simply ignored.

Furthermore, through an effort to “look beyond our differences”, there appears to be an assimilation of Indigenous peoples as “Ontarians and Canadians first”. Rather than honouring the treaty relationship or working towards reconciliation, the primary goal for the new Progressive Conservative government was to create “jobs and prosperity” for blank slate, deracialized and degendered Ontarians and to make Ontario “open for business”. The Speech from the Throne strongly suggested that the Progressive Conservatives were uninterested in reconciliation.

Immediately, the Official Opposition, now predominantly made up of the NDP, lambasted the Speech from the Throne, the rebranding of the ministry and other indicators of the stance that the new Progressive Conservative government was taking towards Indigenous peoples once the

42nd Parliament was opened. For example, NDP MPP Sol Mamakwa (who is also a member of Kingfisher Lake First Nation) questioned Premier Ford in the first full parliamentary session after the Speech from the Throne about his government's direction by asking, "Why did the government drop reconciliation from the mandate of the Ministry of Indigenous Affairs, and what is behind the decision to have the minister share his time between northern affairs, mining, energy and Indigenous affairs?" (Legislative Assembly of Ontario, 2018b: p. 13). The erasure of reconciliation was therefore a huge point of contention for the new Official Opposition as it was understood that this meant that the new provincial government did not care to sustain and improve Indigenous-state relations. Everything else that the Progressive Conservatives did was also taken to be evidence that the new government was not just uncommitted to reconciliation but did not prioritize the needs of Indigenous peoples in general. For instance, the above question by MPP Mamakwa referred to the dismay that Greg Rickford, the Minister of Indigenous Affairs, would dually serve as the Minister of Energy, Mines and Northern Development (which itself was an amalgamation of two separate ministries under the previous Liberal government).

In response to MPP Mamakwa's questions, the new "part-time minister" (as the Official Opposition would dub him) would make these comments:

We appreciate that truth and reconciliation represents a dark chapter in Canada's history. Moving forward, we as a government intend to honour the principles of truth and reconciliation, but to focus on the things that Indigenous communities are asking for: a piece of the prosperity that all Ontarians have come to expect in their communities. Moving forward, whether it's resource revenue sharing for municipalities in Indigenous communities in this province, particularly in northern Ontario—we're going to make sure those Indigenous communities have access to the kind of prosperity that we all expect from government. (Legislative Assembly of Ontario, 2018b: p. 13).

What is interesting is how Minister Rickford acknowledges reconciliation (possibly as a slip of the tongue given the censoring of this word amongst Doug Ford's Progressive Conservatives) while stating that this new provincial government was more interested in producing economic

prosperity for all, which includes Indigenous communities. Thus, there is an acknowledgement of Indigenous peoples and increasing wealth, but there is no indication that Indigenous communities will be treated any differently than settler Ontarians or that there are policies distinctly based on reconciliation. Curiously, this seems to be exemplified through how resource revenue sharing is randomly brought up here, with Minister Rickford implying that while this policy will continue to benefit Indigenous peoples, it will also be de-Indigenized by being expanded to municipalities and will no longer be an exclusive agreement with Indigenous peoples (this will be discussed elsewhere in this chapter). This first exchange between the Official Opposition and the new Progressive Conservative government illustrates how reconciliation is discursively deployed to try to hold the Progressive Conservative government accountable to Indigenous peoples, with the government attempting to avoid or minimally engage with reconciliation discourses.

Other members of the Official Opposition would also criticize the new government's approach to Indigenous-settler relations over the next few days in the legislature. For instance:

Nathalie Des Rosiers (Liberal): I want to use this statement to say a couple of things about the disappointment of some of my constituents about some of the issues that were missing from this speech from the throne. There was little mention about the power of reconciliation with the Indigenous peoples of this land, and many of my constituents noticed that. Governing is certainly about giving people what they want, but it's also about ensuring that we do right by history. It's also about inspiring us to lead by example and reflect the best instincts of human beings. (Legislative Assembly of Ontario, 2018c: p. 89).

Michael Mantha (NDP): It is truly shameful that the word "reconciliation" was taken out of the name of the ministry, because we still need to work towards reconciliation. I don't know how any of us can accept that so many communities on this land live through crisis after crisis without the help that First Nations people need and deserve. (Legislative Assembly of Ontario, 2018c: p. 98).

Gilles Bisson (NDP): There are real issues to be dealt with. We understand they are complex and we understand that for some it's going to take a bit of a path, a journey, to get to reconciliation on both sides. But when you hear a government talk about their

throne speech and there's no mention of the continuing process of reconciliation and how we're able to deal with the real issues that affect the communities not only on the James Bay but across this province when it comes to First Nations—it certainly was a discouragement not to hear that even referred to in the throne speech. As one who has represented those communities over the years, there are plenty of issues to be dealt with: child welfare, issues of housing, lack of water, lack of potable water, lack of infrastructure in the community, and the list goes on. I just hope that this government understands that was an error and corrects its ways. (Legislative Assembly of Ontario, 2018c: p. 99).

Suze Morrison (NDP): I would like to remind all of my colleagues that we have a responsibility to do our work in a way that advances reconciliation and that works to address centuries of colonization and genocide. (Legislative Assembly of Ontario, 2018d: p. 119-120).

The fact that the word “reconciliation” was missing from the Speech from the Throne and scratched off the ministry’s name therefore became an issue for the Liberals and NDP, and there was increasingly a concern that the disuse of this discourse would lead to a worsening of Indigenous-Ontarian relations. Furthermore, by not including this discourse, the Official Opposition recognized that the new government would give less attention to Indigenous communities, which was especially concerning since some communities were already experiencing ongoing and interrelated crises. In an attempt to call out and apply pressure on the new majority government to take a different direction, NDP MPP Bhutla Karpoche tabled a petition on the first full session of the 42nd Parliament which beseeched the Legislative Assembly to implement the TRC’s recommendations, reinstate the Ministry of Indigenous Relations and Reconciliation, work with First Nation leaders to sign government-to-government accords and to support Indigenous communities (Legislative Assembly of Ontario, 2018b: p. 23). Although the new Progressive Conservative government refrained from using and operationalizing this word, amongst the Official Opposition, reconciliation remained a dominant political rationality as there was not only criticism against the new government, but a desire to use their positions to continue to push for reconciliation with Indigenous peoples.

The confrontational statements in the first few days of the 42nd Parliament are revealing about the dominance of reconciliation as a political rationality across the province and its effects. While it is impossible to enter the cranium of Doug Ford to know why he and his Progressive Conservatives suddenly dropped the discourse of reconciliation, what can be theorized is how reconciliation has a concessionary logic within it that can constrain governmental power within settler colonialism. That is, proper and meaningful state apologies and commitments to reconciliation have the potential to force the state to govern in a way that should symbolically and materially benefit Indigenous peoples who have been wronged through settler colonialism, such as restoring the respect and dignity of Indigenous peoples and repairing past harms (Lightfoot, 2015: p. 19-20). Otherwise, using reconciliation discourses without meaningful actions to accompany these discourses can open up governments to being criticized for hypocrisy. Reconciliation, therefore, is not just an ideology that legitimizes settler colonial relations or instructs settlers that settler colonialism was a series of past events that can be relegated to the dustbin of Canadian history. It can definitely have this effect as a dominant political rationality, but it can also encourage settler governments to govern in a manner that is at least slightly beneficial to Indigenous peoples, either by producing particular outcomes related to reconciliation or by constraining harmful settler conduct. This may explain why the previous Liberal government under Premier Wynne not only spoke of the need for reconciliation, but then created an action plan of how the province would make reconciliation real through the implementation of programmes and policies. As seen in a previous chapter, the readoption of reconciliation as a political goal, the association of resource revenue sharing with reconciliation and the public distribution of *The Journey Together* revitalized efforts to make resource revenue sharing real and thus produce economic benefits for Indigenous peoples.

In contrast, governments that issue an apology and purport to be committed to reconciliation but then proceed to sanction harms against Indigenous peoples are then criticized as not meaningfully engaging in reconciliation or must address strong claims that “reconciliation is dead” (Ballingall, 2020; Lightfoot, 2015: p. 33; Starblanket and Green, 2020). It is therefore not a vacuous discourse since it can challenge settler actions. Moreover, if it only produced effects that benefitted settlers, the notion of reconciliation would not be so widely believed in, spoken of, or even discursively contested, as seen in previous chapters in which a vast number of Indigenous and settler actors and organizations referred to this discourse, even just to a small and inconsequential degree. Its ascendancy as a dominant political rationality in Ontario also means that provincial governments are regularly evaluated and critiqued for how they make or falter in producing reconciliation between Indigenous peoples and Ontarian settlers. It is therefore not uncommon for opinion pieces in the media that examine governmental interventions into Indigenous-settler relations and evaluate what those interventions mean for reconciliation (for examples of op-ed articles, see: Anderson, 2018; Fiddler, 2018). This is not to say that the invocation of reconciliation always ends up constraining the actions of the state or benefitting Indigenous peoples. Furthermore, as the previous chapter has examined, the governmental solutions based on reconciliation can still lead to the reimposition of settler colonial relations through their effects, such as normalizing theo-Lockean liberal worldviews and the attempted interpellation of Indigenous peoples into capitalism. However, like how the “honour of the Crown” is used within the courts to induce governments to act in accordance with the treaties, the deployment of reconciliation discourses in public settings has the very serious potential to provoke changes in law and policy that shifts how settler colonial governance is practiced and may even end up serving the interests of Indigenous peoples.

If reconciliation has a concessionary logic within it, then it seems that the Progressive Conservatives rejected using reconciliation discourses during their election campaign because they rejected its logic of concessions directed at Indigenous peoples. By choosing to not publicly discuss reconciliation and by erasing it from its government mandate and its ministry, the new provincial government signalled that it was not interested in creating new laws or policies specifically for the benefit of Indigenous peoples. The new government sought to free itself from any concessions it must yield for reconciliation, and to govern without being concerned with how their laws, policies, technologies and programmes would affect Indigenous peoples or the treaty relationship. Once this new government was sworn in, several initiatives that were operationalized through the political rationality of reconciliation were instantly scrapped. Most notably, the “TRC curriculum”, an initiative to meant to revise Ontario’s educational curriculum on Indigenous peoples through summer writing sessions with Elders and knowledge holders, was abruptly cancelled by the new government before the first parliamentary session was held (Johnson, 2018). This move was criticized by members of the Official Opposition for hindering reconciliation (Legislative Assembly of Ontario, 2018b: p. 20; Legislative Assembly of Ontario, 2018c: p. 98). Governments that support reconciliation are beholden to its logic of creating or conceding compromises to Indigenous peoples, thus, the decision by a government to ignore reconciliation makes it possible for that government to have a more cavalier attitude for how it will intervene into or withdraw from Indigenous relations since they do not feel bound to this political rationality.

However, as the dominant style of thinking, the abandonment of reconciliation without proposing an alternative state rationality for intervening into Indigenous issues and relations ended up reinvigorating calls for reconciliation. While it is easy to be cynical and to claim that

the Official Opposition was grandstanding in their criticism of the government, from reading the transcripts it appears that many NDP and Liberal MPPs were sincerely passionate about reconciliation and improving the quality of life for Indigenous peoples, with some even having professional if not personal relationships with Indigenous communities. Reconciliation had been the dominant political rationality in Ontario for over a decade, and with the release of the TRC's final report a few years prior, there was a better public awareness of how the devastating legacy of settler colonialism (specifically residential schools) for Indigenous peoples. As such, it was not surprising to read these types of remarks in the Hansard:

Sandy Shaw (NDP): It would have been encouraging for them to have heard at the very least a simple acknowledgement in the throne speech. But to be clear, true and meaningful reconciliation will take more than symbolic gestures. It will require a commitment to establishing a true government-to-government relationship, and it will take real action in implementing the 94 recommendations of the Truth and Reconciliation Commission. The petition that we saw here today is evidence that this is something that the people of Ontario want, and it's way past time. (Legislative Assembly of Ontario, 2018e: p. 251).

This statement suggests that the political landscape in Ontario has changed, and that not only is reconciliation accepted as a political rationality, but the TRC's 94 Calls to Action (which provide some guidance for turning reconciliation into a reality) have been increasingly supported by settler politicians. Therefore, Premier Ford's attempt to be like Mike Harris by ignoring reconciliation, skipping over the treaty relationship and pretending that Indigenous peoples do not exist is out of date. It is at odds with the fact that reconciliation had become the dominant way of thinking about how to govern Indigenous relations since the release of the Ipperwash Inquiry's final report back in 2007.

Despite the Official Opposition's best efforts, the new Progressive Conservative government remained unconvinced. However, over the course of the 42nd Parliament, "reconciliation" would be brought up in relation to numerous issues within the legislature, from

cleaning up decades-old mercury poisoning affecting Grassy Narrows First Nation, to resolving the urgent and stark issue of youth suicide, to implementing UNDRIP (Legislative Assembly of Ontario, 2018c: p. 74; Legislative Assembly of Ontario, 2018h: p. 2580-2581; Legislative Assembly of Ontario, 2019b: p. 3720). Former Premier Wynne even attempted to gift Premier Ford two books by Indigenous journalist and author Tanya Talaga in the legislature, which Premier Ford did not accept (Legislative Assembly of Ontario, 2018f: p. 2043). Meanwhile, the petition against the government would continue to grow in the number of signatures, and would later be titled, “Stop the Cuts to Indigenous Reconciliation” (Legislative Assembly of Ontario, 2018g: p. 2580-2581). MPP Mamakwa would also try to hold the government to account by stating that “reconciliation is dead” and that “governments are killing it” (Legislative Assembly of Ontario, 2020: p. 8320). Members of the Official Opposition, who had little political influence over the Progressive Conservatives’ majority government and were subsequently limited in their ability to articulate their own particular version of reconciliation, were therefore using reconciliation discourses strategically in their marginal position to try to force the new government to address issues affecting Indigenous peoples.

Nonetheless, in each parliamentary debate, the Progressive Conservatives would carefully refrain from using the word “reconciliation” in their responses to the Official Opposition. The only exception seems to be Minister Rickford, who when directly pressed on the issue of whether he and his ministry believed in reconciliation or asked how his government was demonstrating it, he would sometimes make reference to this discourse by making statements such as, “We certainly are committed to reconciliation” (Legislative Assembly of Ontario, 2019a: p. 3027). Thus, even as the Progressive Conservative government sought to downplay or ignore reconciliation, at times they would feel obliged to respond through the language of reconciliation

thereby showing that dominance of reconciliation as a political rationality and the fact that since the Progressive Conservatives did not issue an alternative rationality for governing Indigenous peoples, they would still be held accountable to reconciliation by conceding how they remained committed to it (even if they were truly not invested in reconciliatory efforts and results).

In the next section, I will trace how the minimization or refusal to acknowledge and engage in reconciliation discourses has led to distinct policy shifts in how the province now seeks to govern Indigenous peoples in relation to resource extraction. Specifically, I will return to examining resource revenue sharing agreements and how the Progressive Conservative government has both been supportive of this legal and financial arrangement while also trying to decouple it from reconciliation discourses. Through this analysis, it will be possible to expand upon how reconciliation as a political rationality has a concessionary logic, and that by setting reconciliation aside, governments are able to institute policies that marginalize Indigenous peoples by redistributing benefits to settlers. This will also shed light on how reconciliation is productive in changing Indigenous-settler relations, and how its abandonment de-Indigenizes policymaking and changes how settler colonial power governs Indigenous peoples.

Repressing Reconciliation: New Revenue Sharing Policies for Resource Extraction

If reconciliation is a dominant political rationality with a built-in concessionary logic, what happens when reconciliation is displaced by a new set of state actors? How does this discursive trajectory essentially rework state power within settler colonialism? To answer these questions, it would be helpful to examine how the Progressive Conservatives under Doug Ford remade resource revenue sharing and the subsequent initiation of their own non-reconciliation resource revenue sharing fund. Two days before the Liberal government announced their three resource revenue sharing agreements, Doug Ford had publicly promised that if he were to be

elected as Premier in the yet to be announced 2018 election, he would install a resource revenue sharing system in which “northern Ontario communities, including Indigenous communities⁶⁵” would receive provincial revenues from aggregate licenses, stumpage fees and the mining tax (“Ford promises revenue-sharing”, 2018; Ontario PC, 2018b). This promise is revelatory in that “northern communities” in general would be able to receive resource revenues, with Indigenous communities being somewhat of an afterthought. His party’s campaign website, which briefly cites MLI’s *Sharing the Wealth*, further clarifies that revenues would be redirected back to “host municipalities or Indigenous groups” (Ontario PC, 2018b). Nowhere in his discussion of resource revenue sharing was there any mention of reconciliation, which is incredible since resource revenue sharing has its origins in how reconciliation was first articulated, a connection that had recently been re-established through the Liberal government’s *The Journey Together* a couple years earlier. It can be reasonably speculated that if the Liberal government had not announced that it had entered into three resource revenue sharing agreements prior to the electoral writ being dropped, those agreements would either not have been finalized or would

⁶⁵ Now, there is no explanation for why the new leader wanted to expand resource revenue sharing to northern municipalities, although a likely answer is that for a long time, northern municipalities had petitioned the Liberal government to share its tax revenues from resource extraction with them. This has come up in numerous Standing Committees. For instance, back in 2008 a representative of the Timmins Chamber of Commerce stated to the Standing Committee on Finance and Economic Affairs that despite the enormous contributions to Ontario’s economy, northern Ontario cannot make decisions on how federal and provincial money is used, and that it would only be fair that resource revenue sharing is instituted in northern Ontario to rectify this issue (Standing Committee on Finance and Economic Affairs, 2008b: p. F-97). The same individual then explains that “the chamber would like to see a structure created to ensure that a fair portion of the tax revenues generated from the De Beers project is reinvested in the infrastructure of northern Ontario” (Standing Committee on Finance and Economic Affairs, 2008b: p. F-97). It had even come up when the three resource revenue sharing agreements were announced in May 2018, with the president of the Northwestern Ontario Municipal Association stating that it would be fair to include municipalities in resource revenue sharing due to how municipalities are struggling to maintain their infrastructure (Ross, 2018). From these examples, it is apparent that municipalities have been advocating for resource revenue sharing since around the time that the Liberal government was considering how it could implement it with Indigenous communities to improve relations. My hypothesis is that once Ford won the Progressive Conservative leadership race, he somehow became aware of the popularity of resource revenue sharing with northern communities and decided to de-Indigenize revenue sharing as part of his populist “For the People” campaign.

have not been an exclusive arrangement between the province and participating First Nations in the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council.

Ford's campaign promise suggests that the decision to either invoke or reject reconciliation discourses can facilitate radical governmental shifts in policymaking. This can be observed when comparing Ford's campaign promise to the actions of the previous Liberal government, and to the NDP's own campaign promise. When resource revenue sharing became tied to reconciliation in the mid-2010s, the previous Liberal government had to move towards implementing resource revenue sharing as a material concession to First Nations, or risk facing criticism as not being invested in reconciliatory goals. Similarly, in the lead up to the 2018 election, NDP leader Andrea Horvath publicly promised that if the NDP formed the next government, it would share all of the estimated \$41 million dollar revenue from the mining tax with First Nations in order to take reconciliation "seriously" (White, 2018). In both of these instances, reconciliation discourses had a determinable effect on how the Liberals and NDP viewed resource revenue sharing with First Nations, with the Liberals offering resource revenue sharing as a concession and with the NDP claiming that they would make this concession larger if elected. Political actors who make reconciliation part of their party platform are compelled to either govern or explain how they would govern reconciliation in relation to resource extraction, which often means providing real or potential material concessions to Indigenous peoples.

In contrast, by not using reconciliation discourses to frame his campaign promise, Ford signalled that Indigenous peoples in Ontario would no longer be the sole beneficiaries of resource revenue sharing. This runs counter to the original purposes of reconciliation through resource revenue sharing, which was to honour the spirit and intent of the treaties and to address the socio-economic issues Indigenous communities are experiencing. Therefore, under Ford's

non-reconciliation vision of resource revenue sharing, less provincial money would actually be conceded to Indigenous communities, as Indigenous communities would be forced to share revenues and royalties with surrounding local municipalities in northern Ontario.

To give another example of this shift in governance, it would be helpful to return to the Ring of Fire, in which the Liberal government had established a Regional Framework Agreement with the Matawa Tribal Council. As discussed in the previous chapter, this agreement was meant to be an avenue for which the province and the Matawa First Nations could work towards opening up the Ring of Fire for extraction, and included provisions that the two parties would explore ideas such as resource revenue sharing. In March 2018, the new populist leader boldly claimed that he would “hop on that bulldozer myself” to develop roads to the Ring of Fire (“Progressive Conservatives outline plan”, 2018). This comment would be later criticized in the legislature as inappropriate since it would adversely affect efforts at reconciliation and would undermine Indigenous partnerships in the region (Legislative Assembly of Ontario, 2018b: p. 13-14; Legislative Assembly of Ontario, 2018c: p. 98). It is no surprise then that when Ford became Premier, he would undercut prior efforts to improve relationships with First Nations located near the Ring of Fire. In 2018, provincial money for the Regional Framework Agreement ran out and Lead Negotiator Frank Iacobucci stepped aside in the summer (Prokopchuk, 2018), signalling that the new Progressive Conservative government would no longer be holding active talks with the Matawa Tribal Council on how to proceed with opening up the Ring of Fire. Over the course of a year, the province would be accused of “playing favourites” and employing a “divide and conquer” strategy by working with individual Matawa First Nations who were interested in road developments to the Ring of Fire while ignoring broader consultation with all Matawa First Nations, before ultimately cancelling the Regional Framework Agreement in August 2019

(Barrera, 2018; Prokopchuk, 2019). By eschewing reconciliation within its mandate, the Progressive Conservative government was not constrained, and was perhaps even emboldened, to use a more hostile strategy for how it dealt with the Matawa First Nations, with the chance of instituting another new Indigenous-exclusive resource revenue sharing agreement for the Ring of Fire being one casualty in this governmental shift away from reconciliation.

What is peculiar is that this change in governmental direction had not been endorsed by any of the other actors, groups, organizations and institutions that made up an assemblage governing Indigenous relations in the context of resource extraction. As far as I know, none of the conservative-libertarian thinktanks or mining associations had written about how reconciliation should be avoided or that Indigenous peoples should be totally ignored. These conservative-libertarian thinktanks and mining associations (whose politics would presumably line up with the Progressive Conservatives) continued to author publications about how to increase Indigenous participation in mining and the importance of collaboration. For instance, MLI published a report titled “Pathways to Indigenous Economic Self-Determination”, in which it made recommendations for how to increase resource extraction on Indigenous territories through partnerships between Indigenous communities, industry and governments (Exner-Pirot, 2021: p. 26-28). Similarly, MAC (2018) reasserted how governments had a fundamental role in fostering positive relationships with Indigenous peoples. While these publications diminish and frame Indigenous self-determination within the confines of the full participation of Indigenous peoples into settler capitalism, nowhere do these actors and organizations suggest that Indigenous communities should be marginalized or selectively partnered with in the pursuit of increasing extractive activities. The Progressive Conservative government’s actions of ending negotiations on revenue sharing and cutting off communications with some Indigenous

communities goes against what extractive and market actors suggested as necessary for producing economic reconciliation and certainty for extractive projects.

Furthermore, it appears that there was still an interest on the part of Indigenous political organizations to establish more resource revenue sharing initiatives across the province. When the Progressive Conservatives were elected, this desire to figure out resource revenue sharing did not subside. In an article in the Chiefs of Ontario's (COO) quarterly magazine *The Advocate*, one author reiterated this idea that connected resource revenue sharing with the implementation of the treaties, and even quoted from conservative-libertarian thinktanks such as MLI and the Fraser Institute to argue that governments must share revenues and resolve the issue of annuities within Robinson Huron Treaty (Miskonoodinkwe Smith, 2019: p. 16-17). Therefore, Indigenous-led organizations, such as COO, were continuing to align with extractive and market actors to push for resource revenue sharing between the province and Indigenous communities. Indigenous, extractive and market actors and organizations continued to write in favour of partnerships and resource revenue sharing. Interestingly, this reflects the discursive signalling between these sets of actors seen earlier in this dissertation, as Indigenous, extractive and market actors continued to reiterate each other's points. Thus, a "Baptist and Bootlegger" alliance re-emerged, except instead of trying to pressure the Liberal government to implement resource revenue sharing, these actors were now trying to convince the new Progressive Conservative government to expand revenue sharing and produce partnerships.

In fact, through many other actions at the beginning of its term, the Progressive Conservatives established tense relationships with Indigenous peoples. There was skepticism about how devoted the new government was towards resource revenue sharing with Indigenous communities. In the legislature on February 19th, 2019, the former Liberal Minister of Natural

Resources and Forestry Nathalie Des Rosiers (who helped to privately negotiate the province's three resource revenue sharing agreements) stated to Minister Rickford, "I understand that the minister has decided to fight in court Indigenous communities and that he has also decided to postpone the promised revenue-sharing. I want to ask, does the minister believe in reconciliation?" (Legislative Assembly of Ontario, 2019a: p. 3027). While Minister Rickford claimed that he believed in reconciliation and that the government wanted to increase economic activities and prosperity for Indigenous communities, the former Liberal minister retorted, "The postponement of revenue-sharing is hardly conducive to improving prosperity" (Legislative Assembly of Ontario, 2019a: p. 3027). Through this combative exchange, there was an attempt to use a loaded question about reconciliation to interrogate the government's recent actions, including the lack of progress on transferring resource revenues, and to compel the government to respond to how they will produce prosperity for Indigenous communities. It seems then that while the Progressive Conservatives campaigned on resource revenue sharing that would somewhat involve Indigenous communities, there were doubts that the Progressive Conservative government would even uphold the agreements put in place by the previous Liberal government. Reconciliation was thus strategically used by a member of the Official Opposition to try to embarrass the government, score political points, and get an answer from the new Minister of Indigenous Affairs on the state of resource revenue sharing.

However, while the Progressive Conservative government was outwardly uncommitted to both reconciliation and resource revenue sharing with Indigenous communities, within government, civil servants were also capable of pressing for these reconciliatory goals. The internal documents I obtained from my first FOI request to the Ministry of Energy, Northern Development and Mines, included a "Decision Note" to the Deputy Minister recommending the

approval of resource revenue sharing transfer payments for 2019-2020. The Decision Note points out that the payments are the province's contractual obligation under these three resource revenue sharing agreements, however, it also explains that the payments "advance reconciliation" and are "positively received by industry" as they have the "potential to improve business certainty". The Decision Note also mentions how OMA, PDAC and the OCC all support resource revenue sharing. Thus, within government, there was at least some institutional awareness as to how revenue sharing can contribute to political stability and create the capitalist conditions for exploration and extraction. In doing so, public servants sought to ensure that the Progressive Conservative government would continue to align the province's interests with the interests and goals of Indigenous, extractive and market actors and organizations within this wider assemblage by advising the government to issue its transfer payments.

Despite this, the government would push forward with its promise to de-Indigenize the province's resource revenue sharing framework. Again, this appears to be partially a result of the Progressive Conservative government's rejection of reconciliation discourses. In fact, the disassociation between reconciliation and resource revenue sharing would become more pronounced over their first term. Whenever resource revenue sharing was brought up, there was a notable discursive shift in how the government would articulate it as a governmental technology that should benefit "northern communities". These remarks would barely acknowledge resource revenue sharing with Indigenous peoples and would not contain any reference to reconciliation or the treaties. This can be seen through several occasions in the legislature, in which different Progressive Conservative MPPs would speak about how their government was working on resource revenue sharing to open up the Ring of Fire for extraction. For instance, on November 21st, 2018, Minister of Finance Vic Fedeli made this statement:

To help the municipalities and the First Nations, we will introduce revenue sharing for forestry, mining and aggregates from the province of Ontario. What that means—I think about Sudbury, where the mine is on one end of town and the smelter is on the other. The trucks get loaded up, they roar down and they rip up the streets. They put the ore in the smelter—the nickel, in Sudbury’s case. The province gets all the money, and Sudbury’s municipality gets all the bills. There’s never anything fair about that. So it will be resource revenue sharing. (Legislative Assembly of Ontario, 2018g: p. 2457).

A few days later, Government Chief Whip Lorne Coe also spoke of the government’s intention to install a revenue sharing policy for northern Ontario:

First and foremost, working directly with First Nations partners, the government will end the delays for the development of the Ring of Fire and will promote resource revenue sharing agreements between First Nations and northern communities, as well as mining and forestry companies, so that the benefits of northern development will be shared. (Legislative Assembly of Ontario, 2018i: p. 2627).

Both of these government leaders do not use the word “reconciliation”, which instructively helps to decontextualize the fact that resource revenue sharing has its origins and renewed basis in this political rationality. This discursive manoeuvring then makes it possible to insert “northern communities” (i.e., settler Ontarian municipalities) as potential recipients of the province’s revenues and royalties from mining and forestry. Funnily enough, the argument presented by Minister Fedeli seems to share discursive similarities with older arguments for resource revenue sharing. That is, the argument that the province reaps all the rewards from resource extraction without sharing with municipalities is similar to how Indigenous leaders argued that it was unfair that the province did not share its resource revenues despite signing the treaties. It even appears that municipalities are construed by the Progressive Conservative leadership as deserving of this money, as they are not just located near a mining operation but must deal with the costly physical aftermath of extractive activities within their jurisdiction⁶⁶. In short, the Progressive Conservative government was able to reframe the narrative to claim that settler municipalities

⁶⁶ I found this a peculiar argument to make given that Indigenous communities must deal with permanent environmental consequences from resource extraction within their jurisdictions.

are the real victims who do not monetarily benefit from resource extraction, and that they should be able to share in the province's wealth out of the principle of fairness.

In order to materialize “fairness” for settler communities, the Progressive Conservative government would work behind the scenes on a new resource revenue sharing framework. Spearheaded by Minister Rickford⁶⁷, the new fund was discussed in public as a plan to share monies from mining and forestry with cities and towns and would supposedly cover First Nations and Metis communities that do not have a resource revenue sharing agreement with the provincial government (White, 2020). Unsurprisingly, neither Premier Ford nor Minister Rickford would use the word reconciliation in their discussions or updates about the creation of this fund. Eventually, in late November 2021, the Progressive Conservative government made good on their campaign promise and announced the Northern Ontario Resource Development Support (NORDS) fund, a resource revenue sharing initiative with northern communities (Legislative Assembly of Ontario, 2021: p. 1407-1408; White, 2021). The decision to not say “reconciliation” in relation to updates for this new resource revenue sharing fund would therefore reinforce how the government was actively working to de-Indigenize this type of

⁶⁷ Out of fairness to Minister Rickford, he seemed to have expressed some hesitancy towards calling this fund a form of “resource revenue sharing”. At a Standing Committee on Estimates, he stated “to your municipal piece, Judith, as I said, that was a campaign promise. We continue to take this very seriously, and I told you earlier through another question asked by your colleague about the careful attention to not confuse and possibly not refer to what we’re looking at for municipalities as actual resource revenue-sharing, because it’s an instrument that Indigenous communities understand to be something preserved and protected for their own interests” (Standing Committee on Estimates, 2021: p. E-1212). This implies that Minister Rickford may have had differing opinions about the exclusivity of resource revenue sharing compared to other members in the Progressive Conservative cabinet, such as Premier Ford and Minister Fedeli, who discursively expanded resource revenue sharing to northern municipalities. Nevertheless, even in this statement to the Standing Committee in which he admits that there is a difference between the campaign promise and resource revenue sharing with Indigenous communities, Minister Rickford still abstains from using the word reconciliation. Moreover, despite his position, he still toed the party line by creating this fund for northern municipalities which was promoted as resource revenue sharing, so his clarification of the difference between resource revenue sharing with Indigenous communities versus municipalities amounted to nothing.

financial arrangement to let settler municipalities access monies that were originally envisioned as being exclusively shared with Indigenous communities for reconciliation in Ontario.

The NORDS fund was designed to marginalize Indigenous communities by limiting the number of positive socio-economic outcomes that they could receive under this new resource revenue sharing scheme. The Progressive Conservative government's NORDS fund splits \$15 million dollars of funding across 144 municipalities in northern Ontario over a five-year period, with each municipality receiving a different amount (Northern Development, Mines, Natural Resources and Forestry, 2021). Not a single First Nation community was selected to share in any of the province's tax revenues or royalties under the NORDS fund, despite how Ford had campaigned that his version of resource revenue sharing would be open to both Indigenous and northern communities, and despite the fact that Minister Rickford indicated that the new fund would cover Indigenous communities that were not subject to a resource revenue sharing agreement. This is also in complete contrast to how the previous Liberal government's resource revenue sharing agreements were negotiated between the province and First Nation PTOs and councils, with participating First Nations receiving funds over a five-year period for reconciliation. Thus, despite campaign promises and speeches in the legislature about how the new Progressive Conservative government would share resource revenues with both northern communities and Indigenous peoples in order to produce "fairness", this did not seem to transpire with the creation of the NORDS fund. The only way an Indigenous person could technically "share" in the province's wealth would be if they resided in one of the designated northern municipalities.

Furthermore, the purpose of the NORDS fund is conceptually distinct from the Liberal government's resource revenue sharing agreements. The notion of reconciliation had been built

into those agreements and were associated with five diverse objectives meant to address and improve the socio-economic status of participating First Nations. Despite the potentially complex problems stemming from these agreements, they aim to address important socio-economic issues within First Nation communities. Since the NORDS fund is unconcerned with reconciliation, there are no objectives which pertain to the betterment of Indigenous peoples nor any recognition that resource revenue sharing can signify the fulfilment of the treaty relationship. Instead, the NORDS fund divides a total of \$15 million dollars between 144 municipalities to fund local infrastructure projects (Northern Development, Mines, Natural Resources and Forestry, 2021). Even if the NORDS fund was geared towards improving socio-economic outcomes for Indigenous communities, it seems unlikely to be impactful, as the limited budget and timeline pale in comparison with those of the three resource revenue sharing agreements. Therefore, not only does the separation of reconciliation discourses from resource revenue sharing make it permissible for settler Ontarians to share in the province's tax revenues and royalties, but the NORDS fund demonstrates that this can result in new government revenue sharing initiatives that do not produce any positive outcomes for Indigenous communities. This seems to once again confirm that reconciliation has a concessionary logic, as the disappearance of this discourse makes it possible to rework governmental technologies so that they no longer reflect the interests of Indigenous communities affected by resource extraction.

So, what does this all mean about reconciliation? This empirical story suggests that the relationship between reconciliation as a political rationality and settler colonialism as a structure is full of complications and contradictions, and that reconciliation cannot simply be reduced to an ideology that reifies a settler colonial structure in Ontario. Instead, it appears that settler colonial governance changes according to how the concessionary logic of reconciliation is either

espoused or abandoned when trying to intervene into Indigenous-settler relations. If reconciliation is a dominant style of thinking about governing, then the acceptance or rejection of this political rationality, especially by actors who have won the ability to govern through the state's executive and legislative mechanisms, will subsequently shift how settler colonial governance is executed.

Moreover, when reconciliation is taken up as a political rationality, this can coincide with concessions being made to Indigenous peoples in the future, but this does not mean that settler colonialism is over. The previous Liberal government's resource revenue sharing agreements conceded a substantial amount of provincial tax revenues and royalties from mining and forestry to some participating First Nations compared to the NORDS fund, but this left in place an unequal relationship in which the state and extractive actors could still dictate the terms of Indigenous-settler relations and attempt to induce Indigenous peoples to participate within this structure. And yet, the abandonment of reconciliation by the successive Progressive Conservative government led to the remarginalization of Indigenous communities within the province's governmental mandate, the cancelling of bilateral agreements and de-Indigenizing of reconciliation-based technologies so that settler Ontarians can increase their own wealth. The main difference then between how the Liberal and the Progressive Conservative governments engaged in settler colonial governance is that the former sought to influence Indigenous communities to participate in resource extraction under the guise of reconciliation through revenue sharing while the latter decided to not concern itself with reconciliation, thereby neglecting Indigenous peoples and limiting their ability to access funds from resource revenue sharing. Reconciliation therefore underlines how the state (i.e., the political actors who have been voted to be in charge of its executive and legislative functions) seeks to govern Indigenous

peoples, and its embrasure or dismissal will consequently lead to a different and unique set of effects coming to fruition and affecting Indigenous-settler relations under settler colonialism.

“Righting” The Relationship: Economic Reconciliation and Critical Minerals

The Progressive Conservatives therefore pretended in its first term in office that reconciliation with Indigenous peoples was unnecessary in order to create and advance policies that would trivialize the treaty relationship, marginalize Indigenous peoples and undermine reconciliatory initiatives, programmes, and goals. However, that terrain shifted and in the final year of his majority government, Premier Ford began to acknowledge and speak of the need for reconciliation with Indigenous peoples. Given that members of the Official Opposition, especially the NDP, had been strategically iterating reconciliation discourses in the legislature to try to hold the Progressive Conservative government to account with limited success, this decision by Premier Ford himself to finally recognize that his government should work closer with Indigenous communities for reconciliation would seemingly occur overnight.

Following the discovery of unmarked graves of Indigenous children on the grounds of former residential schools across the country in the summer of 2021, Premier Ford announced that the province would earmark \$10 million over three years to identify burial sites and stated that, “There is painful but necessary work ahead, and we must confront what happened for reconciliation to be achieved” (Carter, 2021). This seems to have been the first time that Premier Ford publicly invoked the word “reconciliation”, which was used to pledge that the province would provide a monetary investment in helping Indigenous communities locate cemeteries at former residential schools across Ontario. Moreover, his statement is emblematic of when concrete, observable harms towards Indigenous peoples are made known to the wider settler Canadian public, this often leads to a crisis in the legitimacy of settler colonial governance and

the introduction of reconciliation discourses, an argument I made in Chapters 4 and 6. The unassailable fact that residential schools produced cemeteries of Indigenous children led to global attention and a national reckoning in the summer of 2021, one which the provincial government had to also acknowledge, accept, and address.

This public acknowledgement of the violence integral within residential schools would mark a new discursive paradigm shift amongst the Progressive Conservative government. A couple months later, Premier Ford and Minister Rickford jointly released a statement on the first National Day of Truth and Reconciliation, a portion of which reads:

Indigenous peoples have endured the harsh realities and have felt the impact of residential schools for generations. It is long past time for all Ontarians to acknowledge this dark stain on our history and to take action. We encourage everyone to attend a local event today, whether in-person or virtual to learn more about the impact of residential schools. This is an opportunity to reflect and strengthen our relationships with Indigenous peoples and to play an active role in supporting healing and reconciliation.

This long and difficult journey cannot be completed in one day; we must pledge to undertake it — together — each and every day. (Office of the Premier, 2021).

This statement by the Progressive Conservative leadership is problematic in how it does not mention “colonialism”, instead preferring to use phrases such as “harsh realities”. This seems to reflect a discursive trend amongst actors who share a conservative habitus where euphemistic language replaces any acknowledgement of settler colonialism is replaced (as seen with conservative-libertarian thinktanks like MLI). Nevertheless, this statement largely embodies ideas and opinions found within other statements made by other opposing political actors, such as statements by former Premier Wynne. Like previous statements and apologies, settler colonial violence is ideologically relegated to the past and narrowly associated with the residential school system. Reconciliation is conceived as a historic break from this dark chapter in Canadian history. Another similarity with other political actors and governments across Canada is how the

Progressive Conservative government problematizes the survivors (rather than their own actions) and focuses on initiating reconciliation by healing Indigenous communities (Coulthard, 2014: p. 121-122). However, despite these issues the Premier's statement nevertheless shows how the Progressive Conservative government was slowly starting to integrate reconciliation within its governmental mandate.

The Progressive Conservatives would more fully embrace reconciliation within their governmental mandate after they won a second majority government in June 2022. This occurred from the outset of their new government. Whereas the Speech from the Throne in 2018 was criticized for not mentioning reconciliation nor even acknowledging Indigenous peoples, the Speech to the Throne in 2022 was markedly different. First, the opening of the 43rd Parliament began with a land acknowledgement (Office of the Premier, 2022). The speech also emphasized the importance of partnering with First Nations, especially in the context of building a stronger economy. It noted how Ontario holds an abundance of "critical minerals", a term in which some minerals have been promoted and redesignated as essential for growing and transitioning to a "green economy" and maintaining global supply chains⁶⁸ (Northern Development, Mines, Natural Resources and Forestry, 2022: p. 9; Office of the Premier, 2022). The speech states that the Ring of Fire is central to the mining of critical minerals (Office of the Premier, 2022), thereby reproducing this idea that mining the Ring of Fire is a necessary and urgent priority for Ontario's economy. The speech argues that developing the Ring of Fire depends on partnership and cooperation with First Nations and that this will also entail construction of a new road linked

⁶⁸ I am truly baffled as to when this discursive process of elevating everyday minerals, such as nickel, to "critical minerals" began. Unfortunately, it is beyond the scope of this chapter and this project to deeply investigate the origins of this process. What I can say is that the term "critical minerals" has become pervasive over the past five years, and that numerous governments, thinktanks and other organizations in Canada and throughout the world have frequently referenced this term and have also produced publications regarding the mining of critical minerals.

to the region, to be named the “Corridor of Prosperity” (Office of the Premier, 2022). Finally, towards the end, the speech proclaims that “Realizing the promise and potential of Ontario will require all hands on deck” which “will involve working side-by-side with Indigenous leaders and communities toward meaningful reconciliation” (Office of the Premier, 2022). With this closing remark, the Progressive Conservative government had publicly and authoritatively accepted reconciliation as a legitimate political rationality.

The opening of the 43rd Parliament would lead to the Progressive Conservatives more openly speaking of reconciliation in the legislature, especially in relation to resource extraction. Over several parliamentary sessions, the Progressive Conservative cabinet would further clarify what they wanted to accomplish through reconciliation:

George Pirie (Minister of Mines): We talked about how economic developing the critical mineral deposits in the Ring of Fire would advance reconciliation, creating prosperity for their communities and high-qualify (sic) local employment for their people. (Legislative Assembly of Ontario, 2022a: p. 30).

Ross Romano (Chief Government Whip): Indigenous youth will be a major part of our Ontario economic success now and into the future, and we know that Indigenous people are one of our fastest population growth sectors across the entire country of Canada. We know that economic prosperity for our Indigenous people is a key component of reconciliation. (Legislative Assembly of Ontario, 2022b: p. 223).

George Pirie (Minister of Mines): Timmins is a vital economic engine of northeastern Ontario, but we can do better. We need to continue to open more mines and create opportunities for all people to enter the workforce and succeed, and for the Indigenous people to participate in economic reconciliation. (Legislative Assembly of Ontario, 2022c: p. 304).

George Pirie (Minister of Mines): Our government stands shoulder to shoulder to shoulder with the First Nations partners. During my recent visit to Webequie First Nation, I offered our government’s full support to assist with consultation. When we consult the right way, we get things done, and we will make real progress on economic reconciliation. (Legislative Assembly of Ontario, 2022d: p. 494).

George Pirie (Minister of Mines): Speaker, the results have been fantastic. First Nations-led environmental assessments are now under way for two road projects in the Ring of Fire. By working in partnership with First Nations, we are building momentum

on this project and charting a plan forward to economic reconciliation. (Legislative Assembly of Ontario, 2022e: p. 557).

What is noticeable about these statements is that “reconciliation” is closely paired with “economic prosperity”, with the Progressive Conservatives generally preferring to use the phrase “economic reconciliation”. Compared to the previous Liberal government, in which reconciliation was attached to many types of political, legal, social, cultural and economic outcomes for Indigenous peoples through *The Journey Together*, the decision to use “economic reconciliation” indicates how the Progressive Conservative government is primarily concerned with producing economic outcomes for Indigenous peoples. Thus, even though the Progressive Conservatives accepted reconciliation as a political rationality, here reconciliation is narrowly linked to creating economic prosperity for Indigenous communities and mainly associated with resource extraction such as opening up the Ring of Fire for mining so-called critical minerals.

If reconciliation has a concessionary logic within it, this means that the Progressive Conservative government had to provide concessions framed as economic benefits to Indigenous communities for “economic reconciliation” to take place. Interestingly, in order to materialize economic reconciliation, the Progressive Conservative cabinet turned to a previously discussed governmental technology. At a parliamentary session held shortly after the Speech to the Throne, the new Minister of Mines George Pirie⁶⁹ succinctly stated, “I know the tremendous potential of revenue-sharing agreements and the power of economic reconciliation” (Legislative Assembly of Ontario, 2022c: p. 303). In this moment, resource revenue sharing, which had been divested of

⁶⁹ Minister Pirie was elected in 2022, replacing MPP Bisson who had held that parliamentary seat for the NDP for 32 years. However, this would not be his first foray in governing the province’s mining sector. In 2004, when he was still President of Placer Dome Canada, he was selected by the McGuinty government to be a co-chair for OMICC (Energy, Northern Development and Mines, 2004b). It is likely that he oversaw most work by OMICC, including how the Aboriginal Working Group started to study the potential for resource revenue sharing. This also goes to demonstrate how an assemblage continues to evolve as actors who helped to governmentalize the state by recommending changes to laws and policies can then be elected to become state actors in which they have final authority over changes to laws and policies.

reconciliatory language for years, was once again reunited with reconciliation, albeit the narrower version of economic reconciliation. This reconnecting of resource revenue sharing with reconciliation was confirmed elsewhere. In *Ontario's Critical Minerals Strategy 2022-2027*, a roadmap for how the provincial government would increase the extraction of critical minerals, the government outlines how “Collaborating on resource development projects can advance reconciliation with Indigenous communities” before discussing how resource revenue sharing is conducive of reconciliation (Northern Development, Mines, Natural Resources and Forestry, 2022: p. 36). The document further explains how since 2021, the province has been engaging Indigenous organizations to expand resource revenue sharing agreements to other Indigenous communities before finally stipulating in a textbox that they would be “measuring success” by the number of resource revenue sharing agreements in place (Northern Development, Mines, Natural Resources and Forestry, 2022: p. 37-39). In fact, it appears that the Progressive Conservatives were committed to expanding resource revenue sharing with First Nations, as in March 2022, the provincial government had entered into negotiations with the Temagami First Nation and the Teme-Augama Anishinabai for a resource revenue sharing agreement related to forestry, mining, and aggregate activities in their territories (Temagami First Nation and Teme-Augama Anishinabai, 2022). This new agreement was quickly concluded in April 2022 and mirrored the language and format of the three original resource revenue sharing agreements, although there were acknowledgements meant to address the ongoing legal matter regarding the interpretation of the Robinson Huron Treaty of 1850 (Temagami First Nation, 2022: p. 28-35). Resource revenue sharing was therefore relinked to reconciliation, with the Progressive Conservatives more willing to use resource revenue sharing agreements as governmental tools and concede the revenues of extraction as part of their new critical minerals’ strategy.

What caused the Progressive Conservative government to change course? Well, it seems that it is unlikely that the Progressive Conservative cabinet decided one day to recommit to reconciliation through resource revenue sharing out of the goodness of their hearts. The NORDS revenue sharing scheme showed that the Progressive Conservative government had no qualms about marginalizing Indigenous communities. I hypothesize that it was a combination of other actors within this Indigenous-extractive alliance which convinced the Progressive Conservatives to chart a new governmental direction. In the legislature, Minister Rickford mentioned that he was part of a “wealth creation table” involving Indigenous business and political leaders (Legislative Assembly of Ontario, 2022b: p. 214). He further discusses how the government took advice from these Indigenous leaders, including COO’s then Regional Chief RoseAnne Archibald, and “It’s why we’ve advanced and built on resource revenue-sharing agreements between Indigenous communities in the province” (Legislative Assembly of Ontario, 2022b: p. 214-215). In addition, OMA (2022) claims that it provided instructive advice for *Ontario’s Critical Minerals Strategy*. In a separate publication, OMA (2022) problematizes how “difficulties working with local communities and First Nations” were one type of unique risk faced by mining companies in Ontario (p. 35). At the 2020 PDAC convention, OMA (2020) welcomed the news that the province had signed an agreement with two Matawa First Nations to construct a road to the Ring of Fire, believing that this was a necessary step in forming a partnership and “unlocking jobs and opportunity in Northern Ontario”. It seems likely that Indigenous leaders and individuals within mining associations played a key role in convincing the Progressive Conservative government to see the utility of resource revenue sharing agreements, and perhaps even reconciliation, especially since the Progressive Conservatives

wanted to grow Ontario's economy through Indigenous participation in the mining of critical minerals within the Ring of Fire.

In its first term, the Progressive Conservatives government sought to withdraw the province from the governmental assemblage that had come together to govern Indigenous-settler relations within Ontario's extractive economies. However, in its second term, this government reversed its position and decided to more closely work with this assemblage to promote resource extraction under the guise of economic reconciliation. This narrower interpretation of reconciliation was not universally accepted by all actors within this assemblage. In response to the 2022 provincial budget, NDP MPP Mamakwa condemned the government in the legislature, in which a portion of his response reads:

When the government speaks of reconciliation, the only type it wants to engage in is economic reconciliation. That's the easy part—jobs. We must look at the government's intentions critically and ask, is it economic reconciliation the government is after, or is it the exploitation of our lands and the resources that are in our traditional territories? We see the government using the divide-and-conquer approach, the divide-and-conquer strategy, to develop the Ring of Fire. It has been done time and time again, over and over. That's what colonialism does. That's what colonizers do. They do this rather than seek the consent of all First Nations that are affected. They are working selectively, with only those who support the mandate. (Legislative Assembly of Ontario, 2022f: p. 611).

MPP Mamakwa's criticism of economic reconciliation is fascinating for a couple of reasons.

First, it appears that there is a renewed discursive struggle over how reconciliation is defined, and that the scope of this definition will ultimately determine how Indigenous-settler relations in Ontario are governed. Whereas the previous Liberal government loosely used reconciliation discourses in relation to many complex issues affecting Indigenous peoples, this stricter definition proposed by the Progressive Conservatives seems to imply that the government would only intervene into Indigenous-settler relations if it would accrue economic benefits for Indigenous peoples and Ontarians alike. As such, reconciliation with Indigenous peoples is

reduced to its economic dimension. Second, the notion that the Ring of Fire would symbolize “economic reconciliation” was notably criticized as resembling settler colonialism. MPP Mamakwa attacks economic reconciliation for not being a purported historic break in Indigenous-settler relations, but rather a return to how settlers have traditionally sought to govern Indigenous peoples through sowing division. By connecting economic reconciliation with settler colonialism, MPP Mamakwa subverts the supposed benevolence of the Progressive Conservatives government’s goals and actions to open up the Ring of Fire for the extracting of critical minerals.

There is another conclusion that can be drawn from this statement by MPP Mamakwa. Now that the Progressive Conservatives have developed their own version of reconciliation, it can be reasonably predicted that reconciliation will remain the dominant political rationality for intervening into Indigenous-settler relations for the foreseeable future. This means that governmental interventions meant to materialize reconciliation will continue to be proposed by a wide array of distinct Indigenous, state, extractive and market actors, organizations and institutions. That being said, it is apparent with the Progressive Conservatives taking hold of the state that there will be fierce discursive contests over how reconciliation is articulated. When reconciliation as a political rationality is given a qualifying adjective, such as “economic reconciliation”, there is a narrowing of how reconciliation is conceived, a reduction of the goals attached to this version of reconciliation and a change in the types of governmental technologies that are proposed and created.

Of course, this is not necessarily a new feature of reconciliation. The settler colonial studies literature has analyzed how reconciliation discourses shape and limit how settlers understand settler colonialism and how the primary intervention into Indigenous-settler relations

is to mainly focus on healing Indigenous peoples from colonial trauma (for example, see: Coulthard, 2014: p. 120-121). However, it seems that when reconciliation is prefaced with a qualifying term, like “economic”, “environmental” or “political” (to give a few examples), there is both a clarification of what “reconciliation” should mean, but also a minimization of the type of outcomes that are desired through the supposed reconciling Indigenous-settler relations. Thus, the purposeful and selective use of “economic reconciliation” by the Progressive Conservative government is revelatory in the sense that there may be a renewed emphasis on producing and conceding economic benefits to Indigenous communities through revenue sharing, but it does not mean that this government would also provide concessions to materialize other reconciliatory ideals. For instance, the Liberal government’s *The Journey Together*, which was concerned with broadly materializing reconciliation by implementing the TRC’s 94 Calls to Action, meant that the previous government was not just concerned with economic outcomes, and therefore held several types of objectives such as addressing systemic racism, reforming the criminal justice system, updating Ontario’s educational curriculum and celebrating Indigenous cultures (Ministry of Aboriginal Affairs, 2016: p. 13). Therefore, there is still an observable difference in how the Progressive Conservatives govern reconciliation in contrast to the Liberal government, which had conceived and invoked a much broader conception of reconciliation⁷⁰.

As long as reconciliation persists as an influential political rationality, this means that the deployment of reconciliation discourses will theoretically equate to some form of concessions to

⁷⁰ At the time of editing this chapter, it has come to my attention that the Progressive Conservatives have renamed the Ministry of Indigenous Affairs to the “Ministry of Indigenous Affairs and First Nations Economic Reconciliation” in June 2024, further illustrating that the Progressive Conservatives are narrowly interested in economic outcomes related to reconciliation. In contrast and as noted in a previous chapter, the Liberals had named this ministry the “Ministry of Indigenous Relations and Reconciliation”, which had a broader conception of reconciliation, and a larger set of governmental objectives, goals, and outcomes attached to this interpretation of reconciliation.

Indigenous peoples in Ontario. However, it seems that there is and will continue to be disputes between competing actors surrounding how reconciliation is discursively constructed, especially as the widening or narrowing of its definition ultimately corresponds to the number and types of concessions that are extrapolated for Indigenous communities. As seen in this section, “economic reconciliation” led to the Progressive Conservative cabinet finally uttering the word reconciliation and reinstituting governmental technologies exclusively tied to it, like resource revenue sharing agreements, in order to concede economic benefits to Indigenous communities. And yet, this particular invocation of “economic reconciliation” has been criticized for allowing the recolonization of Indigenous territories located around the Ring of Fire (after all, economic reconciliation does not correspond with an implicit recognition that Indigenous governments hold jurisdiction in these territories).

It is my prediction then that reconciliation will remain a hegemonic political rationality across Ontario’s extractive economy for a very long time (perhaps even the next few decades), but that Indigenous, political, extractive and market actors within this assemblage will fiercely contest its discursive meaning in an attempt to produce a certain set of goals or concessions. Moreover, as I have previously argued in the last chapter about reconciliation and the politics of recognition, regardless of how reconciliation is eventually defined, it does not mean that settler colonialism is over. Rather, how reconciliation is envisioned and engaged with will predetermine the types of effects and range of concessions that occur, but that some of these effects and concessions are sure to re-legitimize settler colonial governance, such as how economic reconciliation permits settler colonial expansion onto Indigenous territories, albeit with a promise of there being monetary concessions for Indigenous communities. Future research, therefore, must be directed at studying the moments in which reconciliation discursively changes, the

intended purpose of these definitional shifts and how they affect the potential concessions to Indigenous peoples, and the other consequent settler colonial effects from governing through reconciliation.

Conclusion

The election of the Progressive Conservatives in 2018 led to a governmental shift in how the province understood and intervened into Indigenous-settler relations. Whereas the previous Liberal government had made reconciliation part of its governmental mandate, for the first three years of their first term, the Progressive Conservatives made it clear that they intended to abandon reconciliation as a political rationality. As I have theorized in a preceding chapter, reconciliation may reimpose settler colonial relations between the state and Indigenous peoples, however, it is not wholly negative as it creates opportunities for Indigenous peoples to press for concessions from settlers. By avoiding the word reconciliation, even renaming the Ministry of Indigenous Relations and Reconciliation to the Ministry of Indigenous Affairs, the Progressive Conservatives sought to diminish the sense of public obligation to Indigenous peoples and decentre Indigenous concerns from policymaking in relation to resource extraction in northern Ontario. During the election campaign, this made it possible for the Progressive Conservatives to disentangle the concept of reconciliation from the governmental technologies associated with it, such as resource revenue sharing. Once the Progressive Conservatives formed a government, they followed through by enacting a de-Indigenized version of resource revenue sharing. If reconciliation was such an empty discourse or just an ideology that legitimates settler colonial relations, then the Progressive Conservatives would not have been so aware of why they needed to eschew reconciliation discourses in their everyday language and description of policies.

Yet, despite their efforts to not use reconciliation discourses, the irony is that this did not insulate them from criticism. They were inevitably confronted and vociferously criticized by other political actors for abandoning reconciliation, as the Official Opposition was able to frame the new government as anti-Indigenous. The Progressive Conservatives may not have been willing to say the word reconciliation, however, the NDP and Liberals would use reconciliation to hold the new government accountable and try to influence its governmental direction, such as through a petition or loaded questions. Occasionally, the Progressive Conservative government would be forced to state how they were committed to reconciliation, with Minister Rickford seemingly slipping up through questions directed at him during heated parliamentary debates.

The Progressive Conservatives would only start to iterate reconciliation in the final year of their first term. Premier Ford's turn towards reconciliation was the result of a national reckoning in the summer of 2021 in which the Canadian settler public was made aware of hundreds and possibly thousands of unmarked graves located on the grounds of former residential schools. This reversal on the part of Premier Ford reflects a pattern in settler colonialism in Canada that once the settler public is shown how settler colonialism has harmed to Indigenous peoples and there is a crisis in the legitimacy of settler colonial governance, there are calls to move towards reconciliation. The second term of this Progressive Conservative government would lead to these state actors finally accepting reconciliation as a desirable political rationality, although this led to a fluctuation of discourses around "economic reconciliation" especially within the context of the Ring of Fire and the extraction of critical minerals. This selective invocation of "economic reconciliation" denoted that the Progressive Conservatives were narrowly interested in reconciliation in the sense that they were mainly concerned with providing economic concessions for Indigenous communities across Ontario.

While this did lead to the reunification of reconciliation with governmental technologies meant to manifest this political rationality, as seen with resource revenue sharing agreements, this has opened up contentious debates amongst political actors about how reconciliation is defined, with accusations of economic reconciliation being the same as settler colonialism emerging within the legislature.

The saga of how the Progressive Conservatives first chose not to embrace reconciliation before partially accepting its concessionary premises through the fluctuation of “economic reconciliation” discourses is revealing. It reinforces that when political actors make public promises to govern in accordance with reconciliation, they may face political pressure to then communicate how they would materialize reconciliation, often by stating a concession that they would yield to Indigenous communities, such as the province’s revenues from the mining tax and stumpage fees. The act of trying to erase reconciliation was therefore a concerted effort to not be constrained by reconciliation’s concessionary logic, or to be at all invested in producing changes within Indigenous-settler relations. Now, the narrowing of reconciliation to economic reconciliation is still an effort by the Progressive Conservatives to choose how they wish to engage with reconciliation, as their sole focus is producing economic prosperity and certainty through resource extraction. This is in contrast to how the Liberal government publicly spoke of and published plans about reconciliation that were broader in definition and thus had included several other types of concessions in their version of reconciliation. What this means is that going forward, there will likely be discursive contestations over how reconciliation is defined, especially since the widening or narrowing of the contents within reconciliation discourses will essentially determine the number and types of concessions that settlers are committed to providing for Indigenous peoples.

Furthermore, the eventual conceptualization of reconciliation does not negate how this may lead to settler colonial effects or the re-legitimation of settler colonial governance. That is, the acceptance of reconciliation as a political rationality and broader uses of reconciliation discourses by state actors may surely mean that there is a higher chance that more concessions to Indigenous peoples are procured. However, as seen in a previous chapter, governmental technologies, techniques, tools, strategies, laws and policies that try to manifest reconciliation seemingly result in an unpredictable mixture of positive and negative outcomes for Indigenous communities. The adherence to reconciliation by the Liberals, and the selective advancement of economic reconciliation by the Progressive Conservatives, led to the reassociation and implementation of resource revenue sharing agreements. While resource revenue sharing agreements concede tax revenues and royalties from mining and forestry to participating Indigenous communities, both the Liberal and Progressive Conservative governments seem to desire the full interpellation of Indigenous communities into Ontario's extractive economies in order to produce the conditions of economic certainty and political stability that would arguably make Ontario an attractive mining jurisdiction. The main difference then between the Liberals and the Progressive Conservatives in how they materialize reconciliation is that the Liberal government was more willing to provide additional types of concessions beyond economic benefits (e.g. criminal justice reform) through its wider definition of reconciliation, whereas the Progressive Conservatives have sought to limit the types of concessions that they are interested in producing through their promotion of economic reconciliation. Both governments are therefore committed to settler colonial governance. Thus, how "reconciliation" is narrowly or broadly conceived will affect the types and number of concessions that can be produced through different governmental technologies based on this political rationality, but regardless of how

reconciliation is defined and the concessions offered for it, settler colonial governance is practiced and possibly re-legitimized.

What may explain why these two political parties, with their distinct political opinions and sharp differentiations in how they envision reconciliation, ultimately cannot shake their desire to govern Indigenous peoples? In the final chapter of this dissertation, I will provide some concluding thoughts about settler colonialism, reconciliation, and resource extraction. I will situate these political actors, alongside extractive and market actors, within Canadian liberal constitutionalism. I shall conclude that our Canadian liberal constitutional order, which has its roots in a theo-Lockean worldview that views natural resources as non-persons combined with how reconciliation is also theologically anthropocentric, leads to settler Ontarians already having a narrow conception of what reconciliation should mean. As such, the will to govern Indigenous peoples to become proponents of Ontario's extractive-based economy remains central amongst state and extractive actors, organizations and institutions, as evidenced through the creation and expansion of resource revenue sharing agreements. However, from conducting this research and seeing how Indigenous leaders and communities have exerted influence of what reconciliation should mean since RCAP's public hearings, including how resource revenue sharing should be instituted to honour the spirit and intent of the treaties, I cannot conclude that reconciliation just ideologically sustains settler colonialism. Rather, the meaning of reconciliation will be highly contested amongst Indigenous, state, political, extractive and market actors seeking to assert their vision of reconciliation, especially since their version of reconciliation will predetermine and affect the number and types of concessions that are provided to Indigenous peoples. That being said, this contestation does not necessarily undermine settler colonialism given that concessions, such as government resource revenues, can lead to other settler colonial effects. Through the

final chapter, I will explain that reconciliation will remain a messy but dominant political rationality for the foreseeable settler colonial future.

Chapter 9: Concluding Thoughts on Settler Colonialism, Reconciliation & Resource Revenue Sharing

Introduction

In this final chapter, I will endeavour to tie together any loose threads about settler colonialism, reconciliation, and resource revenue sharing. This will begin with a discussion of how the Liberals and Progressive Conservatives, both of whom have been able to form government and govern reconciliation, are two sides of the same settler coin. That is, while they may have divergent political opinions on what settler commitments to reconciliation should involve, their conceptions of reconciliation are fundamentally anthropocentric and are rooted in Canadian liberal constitutionalism. As such, a liberal worldview which conceives natural resources as non-persons remains in place, and there continues to be a desire amongst these settler actors and organizations to govern Indigenous peoples to produce economic certainty for extractive projects. However, it would be mistaken to suggest that settlers hold a monopoly over what reconciliation means or that they are the chief architects of the governmental technologies that are produced in relation to reconciliation. While the political rationality of reconciliation is narrowly envisioned and has its anthropocentric roots in liberal constitutionalism, it appears that Indigenous actors, communities, and political organizations are just as interested in defining reconciliation and proposing technologies that would make this political rationality real. This can lead to new technologies coming to fruition as concessions to Indigenous peoples. Reconciliation, therefore, is a competitive discursive terrain in which Indigenous, political, extractive, and other actors will attempt to assert their vision for reconciliation, and this will produce both new governmental technologies and unpredictable effects for Indigenous-settler relations.

Two Sides of the Same Settler Coin: Liberalism, Liberals and Progressive Conservatives

An initial impression would be that the Liberals and Progressive Conservatives in Ontario have nothing in common in terms of their politics. When the Liberals were the governing party between 2003-2018, they mandated the Ipperwash Inquiry, they spoke about reconciliation frequently in the legislature, and after years of political pressure and persuasion by other non-state actors, they eventually announced three resource revenue sharing agreements, which was linked to how they conceived reconciliation in *The Journey Together*. In contrast, the Progressive Conservatives ignored calls for an inquiry into the so-called Ipperwash crisis under Premier Harris, and under Premier Ford, they had scrapped the word reconciliation from their diction in order to prioritize the sharing of resource revenues with settler municipalities instead of Indigenous communities. As noted in Chapter 8, the Progressive Conservatives only adopted reconciliation in response to a crisis in settler legitimacy related to the discovery of unmarked graves at former residential schools. Another note of distinction between these two governing parties is how the Liberals had a very expansive description of reconciliation with several goals attached to it (such as improving the socio-economic status of Indigenous peoples, reforming the criminal justice system, etc.) whereas the Progressive Conservatives only cared for “economic reconciliation”, which has been heavily criticized by the Official Opposition. These parties seem to be worlds apart in how they view, understand, interpret, and govern reconciliation.

Despite their political differences regarding reconciliation, it seems that these political parties still have a lot in common. Both the Liberals and the Progressive Conservatives have sought to structure the field of possibilities for Indigenous peoples in Ontario, albeit in different ways. For the Liberals, who seemingly had a more positive relationship with Indigenous peoples across Ontario, the negotiations around resource revenue sharing reveal that there was still an

effort to normalize and incorporate participating First Nations into extractive projects to ensure political and economic certainty and to attract investments into Ontario's extractive economies. For the Progressive Conservatives, they first tried to avoid using the word "reconciliation" so that they were not beholden to its concessionary logic. The effect was that the Progressive Conservative government marginalized Indigenous peoples when they created their own resource revenue sharing scheme, as they shared the province's resource revenues with municipalities while excluding Indigenous peoples (despite previous statements that they would include Indigenous communities). When re-elected, the Progressive Conservative government began to use the phrase "economic reconciliation" to state that their commitment to reconciliation is limited to procuring economic benefits for Indigenous peoples, namely in the form of sharing resource revenues in order to open up the Ring of Fire for the extraction of so-called "critical minerals". This was demonstrated through new resource revenue sharing agreements, which largely mirrored the original three agreements between the previous Liberal government and the Grand Council Treaty #3, the Mushkegowuk Council and the Wabun Tribal Council. In both cases, these two political parties have shown that they are interested in sharing the province's tax revenues to govern Indigenous peoples to elicit support for and acceptance of extractive activities on their respective traditional territories.

What can explain why these two parties, with their contrasting views on reconciliation, engage in similar forms of settler colonial governance? To understand this phenomenon, it would be helpful to return to a tree model of a liberal constitutional order, as outlined earlier in this dissertation, as the theo-Lockean stories of liberalism may elucidate the similarities between these political actors. In Chapter 3, I discussed how Christian creation stories, such as the Fall of Man, were repurposed by liberal philosophers like John Locke to produce an anthropocentric

rationale for turning land that was held in common into private property. Under this theocratic Lockean perspective, only humans had personhood and agency, and as such they were commanded by God to dominate nature, which included minerals, plants, and animals. This retelling of Christian theology was often used by settlers in the Americas to justify the dispossession of Indigenous peoples and the assertion of settler sovereignty, even if it meant resorting to violence. The Crown, which has been imagined as Christlike and perpetually honourable, has had many generations of dishonourable Crown servants who believe in this theocratic Lockean assumption that only humans have personhood and that Indigenous peoples were not using the land. This has often led to governmental actions which violate the spirit and intent of the treaties by federal and provincial governments.

Neither the Liberal nor the Progressive Conservative governments of the twenty-first century have conducted themselves in a manner that would resemble the worst settler colonial excesses of how Crown servants in the nineteenth and twentieth centuries acted in their desire to assimilate Indigenous peoples. However, it appears that the stories of Canadian liberal constitutionalism continue to structure the larger worldviews of both governing parties, both of whom have served as “the Crown in Right of Ontario”. They both regard natural resources as non-persons that can be extracted without consent. They also both seek to maintain growth in Ontario’s economy through the widescale removal, sale, and taxing of natural resources⁷¹. For

⁷¹ Technically speaking, the NDP also hold this liberal worldview of natural resources. In the legislature, they have spoken favourably of the extraction of natural resources for growing Ontario’s economy. For instance, at the annual Meet the Miners lobbying event at Queen’s Park, MPP Bisson stood in the legislature and expressed how mining was essential for the entire Ontarian economy, although he did use this moment to call for resource revenue sharing (Legislative Assembly of Ontario, 2017: p. 6134-6135). Nowhere have the NDP stated that they view natural resources as “persons”. However, since they have not served as the representative of the Crown since their one-term government in the early 1990s and have therefore had a limited influence on how provincial governments craft policies that intervene into Indigenous-settler relations, I have elected to exclude them from this discussion of how anthropocentric liberal worldviews affect law and policy. Nonetheless, it seems that the NDP, like every political party with representatives elected in Canada, has held this view of economic growth through resource extraction and that this worldview has been structured by liberalism.

their part, the Liberals became interested in the utility of resource revenue sharing agreements not just because of the Ipperwash Inquiry's final report or their participation in IIPAC, but due to how these agreements could signal to extractive actors that there was economic certainty and political stability within Ontario's mining and forestry economies. This pressure to grow Ontario's economy through the extraction of non-person resources was a sticking point, as the Progressive Conservatives, mining associations and companies, and conservative-libertarian thinktanks would criticize the Liberal government for its handling of major extractive projects, such as the Ring of Fire, and would call for technologies like resource revenue sharing agreements to help promote largescale extraction projects. Although the resource revenue sharing agreements would end up acknowledging the treaties and Indigenous constitutional orders, such as the Grand Council Treaty #3's *Manito Aki Inakonigaawin*, the agreements are still premised on the theo-Lockean notion that natural resources are non-persons that can be extracted for economic certainty and socio-economic outcomes for Indigenous peoples, and that in doing so, this produces reconciliation. The objectives for the agreements also reveal that there is still a settler dream of the full interpellation of Indigenous peoples into extractive economies through the sharing of economic benefits, which would potentially normalize liberal worldviews on natural resources within Indigenous communities.

Meanwhile, the Progressive Conservatives have more brazenly shown their disregard for Indigenous constitutional orders through how they relate to and interact with Indigenous peoples. For most of their first term, the Progressive Conservative government under the direction of Premier Ford did not care for reconciliation, as demonstrated through the disappearance of this discourse. This resulted in a de-Indigenized version of resource revenue sharing under NORDS, in which municipalities would be granted provincial funds to support the development and

revitalization of infrastructure that would enable further resource extraction in northern Ontario, and which was designed to totally exclude Indigenous communities from accessing these same funds. Thus, this liberal worldview that natural resources can be extracted without consent led to governmental technologies that would exclusively support settler Ontarians in their quest to acquire wealth through the extraction and sale of non-person resources. Even when the Progressive Conservatives recommitted the province to reconciliation, it was minimized to just “economic reconciliation” through the participation of Indigenous peoples in resource extraction. This seems to demonstrate that, like the Liberals and their resource revenue sharing agreements, the Progressive Conservatives also wish to impose a liberal worldview of natural resources onto Indigenous peoples in Ontario. The main difference seems to be that the previous Liberal government was more willing to engage in a politics of recognition by acknowledging the Indigenous constitutional orders whereas the current Progressive Conservative government has not cared to, but both seem to be willing to govern Indigenous peoples to become proponents of resource extraction under the guise of some discursive variation of reconciliation.

The Liberals and Progressive Conservatives are therefore two sides of the same coin. That is, when these political parties form governments and govern on behalf of the provincial Crown, the laws and policies that they craft are derived from the same theo-Lockean stories deeply rooted in Canadian liberal constitutionalism. Only humans are ascribed personhood in these stories, which further fits within this theologically informed narrative that reconciliation is exclusively performed between humans (or humans and institutions). Thus, no matter the results of an election (or a coin flip, to continue the analogy), there will be a provincial government which will seek to govern Indigenous-settler relations in relation to both humancentric reconciliation and for expansion of a capitalist economy predicated on the exploitation of non-

person natural resources. This liberal worldview is also shared with other non-state actors and organizations seeking to influence the provincial government, like mining executives or libertarian thinktanks, who also believe that natural resources lack personhood and agency and must be extracted for the good of the economy. The spectrum of political opinion is thus based within liberalism and so while there may be disagreements amongst political, corporate and market actors, the end goal still seems to be a shared determination to envelop Indigenous peoples within settler capitalism by conceiving reconciliation as a way to promote resource extraction. The primary difference between these two governing parties is how they decide to act towards Indigenous peoples in Ontario.

Redefining Reconciliation: Indigenous Activism, Liberal Mysticism and Revenue Sharing

A discussion of Canadian liberal constitutionalism may be helpful in explaining why political parties with differing conceptions of reconciliation are somewhat united in their attitudes and desires to fully integrate Indigenous peoples into Ontario's extractive economies. However, to end on this note would be to render Indigenous peoples, communities, and political organizations as passive actors who just react to settler colonial governance. From conducting this research, it is wholly evident that this is not the case. In fact, Indigenous peoples have largely featured into how reconciliation emerged as a political rationality, have helped to shape the contents of reconciliation discourses, and have proposed governmental technologies that would materialize reconciliation into a political reality. As such, it is crucial that in this conclusion on reconciliation, the agency of Indigenous actors is emphasized in order to produce a more holistic understanding of the state of Indigenous-settler relations in Ontario.

As explained earlier in this dissertation, the concept of reconciliation is found within Christian theology. Its adoption by state institutions operating within Canadian liberal

constitutionalism marks a longstanding tradition of Christian concepts being borrowed and repurposed to address the legal issues of the day. As noted in Chapter 3, this tradition includes how the theological notion of Christ's Two Natures was borrowed by English jurists to proclaim that the English king had a natural body and a metaphysical body, which helped to mystify and elevate the Crown to be imagined as above us and thus always honourable. Given the fact that there is a long history of Christian creationism and theological principles being reused to resolve issues in law, it is perhaps not surprising that reconciliation, which was originally about reconciling a sinner with the Church, was also borrowed. The first usage of this word could be traced back to Chief Justice Dickson in his ruling in *R. v. Sparrow*. As observed in Chapter 3, the Supreme Court of Canada and RCAP, two branches of a Canadian legality tree, would end up having opposing views on reconciliation in 1996. The Supreme Court would articulate that reconciliation meant the curtailing of Aboriginal rights in Section 35 of the *Constitution Act, 1982* for the economic interests of Canadians. Meanwhile, Indigenous sovereignty and the return to the treaty relationship was equated with reconciliation by RCAP, thereby showing that there was a disjuncture between these two state institutions about what reconciliation should mean.

This discrepancy can be understood now as the result of two state institutions holding two contrasting mandates, with one being more open to hearing Indigenous perspectives. In Chapter 4, it was noted how in the post-patriation of the *Constitution Act, 1982*, the Supreme Court was left with the responsibility of interpreting the applicability of Aboriginal rights. This culminated in a jurisprudential doctrine of reconciliation in which justifications can be made to limit the applicability of Aboriginal rights. In contrast, RCAP was instituted in 1991 following several crises in settler colonial governance across Canada in the summer and fall of 1990 (this included the Kanesatake Resistance or the so-called "Oka crisis", the failure of the Meech Lake Accord

and allegations by Chief Fontaine of physical and sexual abuse in residential schools). Notably, RCAP's scope, mandate and commissioners were influenced by former Chief Justice Dickson, and its objective was to study Indigenous-settler relations and to propose a new relationship based on reconciliation. Unlike the Supreme Court, which would set precedents on reconciliation following its hearing of cases, RCAP heard from many Indigenous communities across Canada and would conclude that assimilation must be disavowed.

This difference in objectives between state institutions seems to explain why reconciliation ended up holding different conceptions of Indigenous-Crown relations. As seen in Chapters 5 and 6, Indigenous peoples had been instrumental in determining what reconciliation should mean in RCAP, which included defining "reconciliation" as a return to the spirit and intent of the treaty relationship. In fact, the summaries of RCAP's public hearings make it clear that Indigenous actors, communities, and organizations had an overwhelming influence on how RCAP's commissioners thought of and wrote about reconciliation. The suggestions put forth by Indigenous participants at these hearings regarding a treaty relationship and self-government were then turned into recommendations by the commissioners. Many Indigenous leaders and representatives from political organizations had called for resource revenue sharing as a mechanism to finance Indigenous self-government, an idea which was not embraced by extractive organizations participating at these hearings, like PDAC. Despite the concern from those extractive organizations, RCAP's commissioners would propose resource revenue sharing as a governmental technology linked to reconciliation in Recommendation 2.4.3(b), the result of Indigenous participation at RCAP's public hearings. There is no doubt that the etymology of reconciliation originally comes from Christian theology, and thus its meaning is limited to repairing human relationships. However, the formation of reconciliation as a political rationality

based on improving human-to-human relations arose out of Indigenous activism against assimilation in 1990, and Indigenous participation at RCAP's public hearings led to governmental technologies, like resource revenue sharing, being recommended to make this political rationality real.

Indigenous peoples across Canada were therefore highly influential in determining what reconciliation should mean and how it should be manifested at RCAP's public hearings. At the provincial level, this trend was also notable, especially in regard to the concept of resource revenue sharing. First, Indigenous peoples (primarily Chiefs of First Nations across northern Ontario), participated at various Standing Committees in which they advocated for the installation of resource revenue sharing to address some of the injustices of settler colonialism. Interestingly, one of the discursive strategies used by Indigenous participants was to rely on the Christian liberal mysticism of the Crown as being intrinsically "honourable" as a way to compel the provincial government to commit to sharing its resource revenues. For instance, at several Standing Committees, Chiefs of First Nations explained how the Crown was supposed to share the wealth as required in the treaties, and that the Crown's decision to ignore the treaties over several generations of governments has resulted in poverty amongst Indigenous communities across the province. Thus, the Crown's dead physical bodies were discussed by Indigenous actors as being in discord with the Crown's metaphysical and always honourable body in an attempt to induce the province to return to the treaties by installing resource revenue sharing. Curiously, some of these Chiefs would use the mysticism and indeterminacy of "the Crown" to explain how they had an agreement with "the Crown" as an indivisible entity. By summoning "the Crown" in their testimonies, they had argued that the provincial government, as the "Crown in Right of Ontario", has a fiduciary duty to uphold the treaty relationship through sharing its

wealth from resource extraction. Thus, accusing the province as not upholding “the honour of the Crown” became one strategy that was used over several years by Chiefs of First Nations to call for the implementation of a resource revenue sharing mechanism in Ontario.

Indigenous actors also participated at the Ipperwash Inquiry in order to put further pressure on the province to adopt resource revenue sharing. Occurring five years after the Kanesatake Resistance, the so-called “Ipperwash crisis” had its origins after the federal government displaced the Stoney Point First Nation in World War II and refused to return the land even after several decades. When Indigenous protestors occupied Ipperwash Provincial Park, the new Progressive Conservative government under Premier Harris, escalated tensions by calling for the Ontario Provincial Police to criminalize Indigenous dissent. The aggressive police response led to the death of Dudley George, an Indigenous man partaking in the protest. While the Progressive Conservative government chose not to create a public inquiry, the new Liberal government under Premier McGuinty did in 2003. Through the Ipperwash Inquiry, numerous Indigenous actors and organizations provided oral testimony and written submissions, which like RCAP, would end up having some influence on its summary of events and recommendations. While there was no direct recommendation for resource revenue sharing, the Ipperwash Inquiry did write positively about it within their final report, which seemed to be influenced by the Union of Ontario Indians, a PTO also known as the “Anishinabek Nation”. The Ipperwash Inquiry also led to the formation of IIPAC made up of representatives from the provincial government and the COO, and this political body did explore resource revenue sharing. Moreover, the Ipperwash Inquiry’s final report called for reconciliation (albeit a combination of the Supreme Court and RCAP’s competing definitions) and the release of its final report led to reconciliation becoming a political rationality in Ontario. Once again, Indigenous dissent and

activism led to the adoption of reconciliation as a political rationality, this time at the level of provincial governance.

Besides participating at state bodies and institutions, Indigenous actors and organizations in Ontario and across Canada also strategically entered into alliances with extractive and market actors and organizations. Following an earlier attempt to institute resource revenue sharing in Ontario in 2004 that was unsuccessful due to its “uncertainties” perceived by extractive organizations and some First Nations, it appears that Indigenous and extractive actors started to more closely communicate their interests, goals and problems to one another, at both the provincial and national levels. This led to unexpected encounters and strange bedfellows, such as when the AFN, a prominent First Nations political organization, signed a Memorandum of Understanding with PDAC because they both believed in the utility of resource revenue sharing, although for distinct reasons. Extractive organizations like PDAC, MAC or OMA publicly expressed support for resource revenue sharing in Ontario once they were in alignment with First Nations regarding how to frame the issue: that resource revenue sharing is the exclusive responsibility of the provincial government, as the representative of the Crown. It is also evident that Indigenous and extractive actors and organizations would discursively signal each other’s interests at provincial Standing Committees. Thus, a “Bootlegger and Baptist” alliance emerged, in which both Indigenous and extractive actors made sustained calls for the province to implement resource revenue sharing.

The eventual creation of resource revenue sharing agreements in Ontario can therefore be traced to Indigenous political activism over three decades. First, the challenge to settler colonial governance led to the emergence of reconciliation as a political rationality, in which Indigenous participants at RCAP took this theological concept and inserted their vision of how reconciliation

should mean a return to the treaty relationship. This also led to governmental technologies, like resource revenue sharing, being linked to reconciliation. Furthermore, Indigenous activists used unique discursive strategies invoking liberal mysticism to convince the provincial government to explore and implement a resource revenue sharing mechanism. Finally, within this larger governmental assemblage, Indigenous actors would become acquainted with extractive and market actors in an effort to address uncertainties and put the pressure on the province to commit to sharing the tax revenues and royalties it receives from resource extraction. The creation of resource revenue sharing agreements, and their announcement in which the provincial government linked these technologies to reconciliation, therefore cannot be separated from the legacy of Indigenous activism, both at the national and provincial levels of governance.

Intertwining Interests: Settlers Assembling on Resource Revenue Sharing

As seen in Chapter 6, there was a formation of an assemblage of Indigenous, state, extractive and market actors, organizations, communities and institutions interested in improving Indigenous-settler relations within Ontario's extractive industries, namely through the creation of a resource revenue sharing technology. However, each set of actors had their own particular reasons for entering into this assemblage. First Nation communities, affected by the harmful legacy of settler colonialism, viewed resource revenue sharing as a way to get the province to honour the treaties, but to also address socio-economic issues within their communities. Meanwhile, the Liberal government saw resource revenue sharing as leading to a political win, as it would increase extractive activities in the province (such as opening the Ring of Fire for development) and would therefore attract investments into the Ontario economy. Mining associations and companies, often concerned with the "uncertainties" for prospecting and mining, held that resource revenue sharing would lead to political stability and economic

certainty by minimizing the likelihood of conflicts between Indigenous peoples, the provincial government and mining companies. Finally, conservative-libertarian thinktanks called for the redistribution of the province's wealth through resource revenue sharing as a way to bleed the state dry and enlarge Ontario's capitalist economy. This coalescing of diverse interests for the improvement of Indigenous-settler relations thus led to widespread support for having the provincial government share its resource revenues.

The alignment between these political, extractive and market settler actors is not surprising since their political spectrum of opinion fits within Canadian liberal constitutionalism as these actors share a theo-Lockean worldview on natural resources, and all perceive benefits from capitalist extraction based on accessing Indigenous territories. Amongst these state, extractive and market actors, corporations, institutions and organizations, resource revenue sharing would be an indicator demonstrating peace, political stability and economic certainty for extractive projects occurring on Indigenous territories. Although Indigenous peoples were largely responsible for suggesting resource revenue sharing at multiple times and within different spaces across this assemblage, it would likely not have been instituted without the support of these other non-Indigenous actors whose theo-Lockean worldviews justify extraction. After all, when resource revenue sharing was proposed in NDP MPP Bisson's Private Member's Bill in 2004, the perceived "uncertainties" of this mechanism led to concerns among lobbyists from the mining and forestry industries (and some Chiefs of First Nations) being expressed to the Standing Committee, and the Liberal government proceeded to kill this bill. In contrast, when resource revenue sharing was rearticulated as the government sharing its tax revenues, extractive and market actors and organizations became more interested in the potential of this concept. This could be seen with how extractive and market actors repeatedly wrote about how resource

revenue sharing was a necessary financial arrangement between the government and the Matawa First Nations in order to open up the Ring of Fire. Ultimately, it was through the intersection of multiple interests, goals and problems, and a reconfiguring of resource revenue sharing as a financial mechanism that could benefit both Indigenous and non-Indigenous actors within this governmental assemblage, that provided the momentum and political pressure for the province to create these agreements.

Settler Colonialism, Reconciliatory Concessions and Revenue Sharing Agreements

However, it appears that the provincial government had another reason for why it needed to install resource revenue sharing, one which is tied to the concessionary logic of reconciliation. In 2015, the TRC released its final report in which it documented the widespread and various types of abuse within the residential school system, along with the legacy of these church-run state institutions for Indigenous peoples. It was in this timeframe that the provincial government, now under the leadership of Premier Wynne, signed a new political accord with COO and also recommitted the province to the political rationality of reconciliation. The following year, the provincial government released *The Journey Together*, its response to the TRC's final report, in which it made numerous declarations of how it would manifest reconciliation within Ontario. This included another mention about how the provincial government would work towards implementing resource revenue sharing to close the socio-economic gap between Indigenous peoples and Ontarians.

As argued in Chapter 7, reconciliation has a concessionary logic, in that settler actors who willingly use this discourse make themselves vulnerable to public criticism and are somewhat compelled to then articulate how they will improve Indigenous-settler relations. The Liberal government, which had chosen to incorporate reconciliation within their public

vocabulary, would go on to outline how they planned to materialize reconciliation. It is within this political climate that resource revenue sharing was relinked to reconciliation and became offered up as a concession for reconciliation with First Nations in Ontario. This led to further negotiations for how to adopt resource revenue sharing, such as at COO's leadership events and through backroom negotiations between the cabinet and some PTOs, culminating in an announcement of three resource revenue sharing agreements in May 2018.

The price of reconciliation for state and political actors (and other types of actors too) is that if they choose to utter this discourse in their public speeches on Indigenous-settler relations, they oblige themselves to make some sort of governmental concession. Otherwise, they risk being criticized as speaking of reconciliation but not actually governing in a way that materially improves the lives of Indigenous peoples. This can be seen when statements such as "reconciliation is dead" are made to convey disdain in how governments have acted in their relationships with Indigenous peoples. Moreover, it is clear that reconciliation has been politicized amongst these actors. Whereas the Liberal government gave almost half of its annual tax revenues and royalties from forestry and mining to participating First Nations within the three agreements, the NDP, under its then leader MPP Andrea Horwath, publicly stated that an NDP government would concede all of its tax revenues and royalties from forestry and mining to make reconciliation real. Thus, settlers publicly committing to reconciliation increases the likelihood that there will be some set of concessions offered up to Indigenous peoples. This may also explicate why some political actors, such as the Progressive Conservatives under Premier Ford, may be less willing to publicly mention "reconciliation", as they would no longer have to perform in accordance with this script of reconciliation and can more freely make political decisions that affect Indigenous peoples.

However, from conducting this research into resource revenue sharing, it is also abundantly clear that this model of settler-sponsored reconciliation is not fully transformative. That is, settler concessions delivered as reconciliation do not upend settler colonialism. Nor do they lead to the renouncing of settler colonial attitudes and desires – in fact, quite the opposite appears to happen as seen with how resource revenue sharing advances settler colonial projects. While state actors may publicly endorse reconciliation and stipulate how they would govern Indigenous-settler relations, including what they would concede for reconciliation, it does not mean that the theo-Lockean worldviews that structure their habitus, and which inform their decision-making on reconciliation have suddenly been evaporated. In the case of resource revenue sharing agreements, it became apparent that this governmental technology of reconciliation was intended by the provincial government to ensure economic certainty, political stability and access to Indigenous lands by sharing the tax revenues and royalties to First Nation communities impacted by forestry and mining activities. Thus, there was a settler desire on the part of the Liberal government to condition participating First Nations to be supportive of resource extraction, especially as this government had sought to increase extractive activities to grow the Ontarian economy.

In addition, this type of reconciliatory concession may not have radically altered Indigenous-settler relations or substantially and positively affected participating First Nations. Resource revenue sharing agreements have provided economic benefits to participating First Nations through the transfer of tax revenues and royalties from mining and forestry and they have recognized Indigenous legal orders. However, there are many issues related to these agreements that may eclipse these positive effects, as seen in Chapter 7. This includes how the agreements may lead to the harmonization of the administration of laws but may still produce

Indigenous-settler conflicts, that the wealth shared with participating First Nations is small and is influenced by global and domestic factors, that First Nations may become economically dependent on environmentally harmful activities, that the agreements dictate how the funds are to be used, that there are restrictions placed on these funds, that the agreements have the potential to be interpreted as Indigenous “consent” to mining and forestry projects, and that encouraging these projects for a share of the resource revenues could increase gendered violence. In fact, it appears that there is an effort by the province to negotiate with Indigenous peoples and to structure Indigenous self-determination so that it fits within the confines of settler capitalism, as seen with how the agreements hope for the full interpellation of Indigenous peoples as proponents of resource extraction.

Thus, reconciliation may lead to settlers providing concessions to Indigenous peoples, and some of these concessions may even be governmental technologies that Indigenous peoples had called for since their participation at RCAP’s public hearings as a way to return to the treaty relationship. However, when the province finally conceded to institute resource revenue sharing and subsequently negotiated with Indigenous political organizations on what the terms of these new agreements would include, it did not necessarily equate to a withdrawal of settler colonial governance. State and political actors ultimately remain committed to governing Indigenous peoples through these agreements to produce certain settler colonial ends, such as economic certainty for resource extraction, due to how the roots of Canadian liberal constitutionalism are storied around the extraction of natural resources. Furthermore, concessions granted under the discourse of reconciliation can lead to the re-legitimization of settler colonial relations. As such, it is important to see that governmental technologies for reconciliation are conceded through

constant negotiations between Indigenous peoples and settlers, but that these reconciliatory concessions can change Indigenous-settler relations in ways that are worthy of further study.

The Foreseeable Future: Reconciliation as a Competitive Discursive Terrain

Although reconciliation may not prevent settler actors from trying to govern Indigenous peoples, it is unlikely that there will be a new dominant political rationality which would displace reconciliation. There are other political rationalities that seem to predate or are born out of the criticism towards reconciliation, such as Indigenous resurgence and decolonization⁷², which view reconciliation as recolonization (Alfred, 2017: p. 11-13). Given what resource revenue sharing has shown, there is validity to these perspectives. However, there does not seem to be any indication that these rationalities will lead to the widespread abandonment of reconciliation, especially as settlers attempt to situate these more radical rationalities within the discursive framework of reconciliation, such as by using phrases like “cultural resurgence” in relation to reconciliation (Simpson, 2017: p. 48-49). Reconciliation will likely be the dominant political rationality for intervening into Indigenous-settler relations for the foreseeable future, unless an effective discursive campaign is mounted and is able to discredit settler conceptions of reconciliation. Furthermore, even when the Progressive Conservatives under Doug Ford sought to ignore this political rationality, numerous Indigenous and political actors wielded reconciliation discourses in an effort to prevent cuts to Indigenous programs and to force the

⁷² Discussing both Indigenous resurgence and decolonization is beyond the scope of this dissertation. Moreover, as a settler academic, I do not feel that it is appropriate for me to fully outline either Indigenous resurgence and decolonization, as they centre Indigenous knowledges, experiences and resurgent practices (for examples, see: Alfred, 2017; Corntassel, 2012; Manuel, 2017; Palmater, 2017; Simpson, 2017). As stated by Tuck and Yang (2012), decolonization is not accountable to settlers or settler futurity (p. 35), and as such, I do not want to risk writing about resurgence and decolonization in a manner that diminishes their radical revisioning of the world. That being said, from a governmentality perspective, they both seem to be political rationalities that challenge the dominant rationality of reconciliation – they have a matrix of discourses, they problematize Indigenous-settler reconciliation and they propose governmental solutions that seek to make resurgence and decolonization real.

Progressive Conservative government to not abandon the province's commitment to Indigenous peoples. When there was the discovery of unmarked graves at former residential schools and a crisis in the legitimacy of settler colonial governance, the Progressive Conservative government responded by iterating the need for reconciliation. As such, reconciliation is hegemonic in the sense that it is the automatic political rationality that most actors (especially settlers) think through in governing Indigenous-settler relations, especially when dealing with crises over the legitimacy of settler colonial governance.

However, the dominance of this political rationality does not mean that there are not differing political perspectives in how reconciliation is governed and made real. Reconciliation, for better or worse, leads to governmental technologies that are theoretically supposed to concede varying types of changes and benefits for Indigenous peoples, although this also seems to reconfigure settler colonial governance. As such, there are political differences amongst settlers as to what types of concessions they are willing to give up to Indigenous peoples, as briefly noted earlier in this chapter. This seems to correspond with how reconciliation is defined, including if there are any qualifiers in front of the word reconciliation. The Liberal government under Premier Wynne seemed to have a more holistic interpretation of what reconciliation should mean as seen in *The Journey Together*, in which these political actors had acknowledged that reconciliation includes producing several types of outcomes that would benefit Indigenous peoples, such as reforming the criminal justice system, addressing systemic racism, teaching about Indigenous peoples in Ontario's school curriculum and closing the socio-economic gap between Indigenous peoples and Ontarians (which meant instituting resource revenue sharing).

In contrast, the Progressive Conservative government narrowed what concessions they were committed to through their invocation of "economic reconciliation" since the start of their

second term. This is a version of reconciliation in which the primary objective is economic development through the folding of Indigenous communities into the province's goal of extracting so-called "critical minerals" in regions like the Ring of Fire to make Ontario an attractive mining jurisdiction and grow a "green economy". In this effort, resource revenue sharing has once again been taken up as a governmental technology that could make economic reconciliation possible. Both the Liberal and Progressive Conservative governments have tried to govern Indigenous peoples to become supportive of extractive activities for reconciliation through concessions like resource revenue sharing for similar theo-Lockean reasons. However, it appears that unlike the previous Liberal government, the Progressive Conservative government is uninterested in providing other types of concessions linked to governmental technologies christened under the political rationality of reconciliation.

This narrowing of reconciliation to just mean economic benefits has not been without staunch and vociferous criticism, often by other political actors in Ontario's legislature. While reconciliation concessions are not necessarily transformative or indicative of an equal relationship between Indigenous peoples and settlers, the successful discursive linking of governmental technologies with reconciliation increases the possibility that they will eventually be conceded to Indigenous peoples. Without their discursive association with reconciliation, it may be harder to institute or justify a governmental technology. Thus, by foreclosing reconciliation to just economic concessions through discourses of "economic reconciliation", the Progressive Conservative government has demonstrated that they will only install governmental mechanisms or extend concessions that will lead to economic certainty and prosperity (especially if those concessions fit within their wider goal of attracting domestic and foreign investments into Ontario's extractive economies). This may also explain why the Official Opposition has

been quick to condemn “economic reconciliation”, as it leaves open the real likelihood that other issues that need to be addressed due to settler colonialism, such as systemic racism, will not be tackled by this provincial government.

Reconciliation is therefore a competitive discursive terrain within Ontario. That is, the majority of Indigenous, state, political, extractive and market actors, organizations, apparatuses, communities and institutions have discursively invoked it, thereby signifying that it is the dominant political rationality governing Indigenous-settler relations in Ontario. However, while there is a whole assemblage that seems to be invested in materializing reconciliation through new governmental technologies like resource revenue sharing, it does not mean that there is a universally shared understanding of reconciliation. As seen within Ontario’s legislature, the politicization of reconciliation demonstrates that there is quite a large number of diverging opinions on what reconciliation means, the goals linked to it and the governmental technologies that are needed to turn reconciliation into a political reality. In addition, wider conceptualizations of reconciliation appear to necessitate a larger range of governmental technologies and concessions for Indigenous peoples, whereas narrower interpretations of reconciliation correspond with a decline in the number and types of concessions that Indigenous peoples can obtain through reconciliation. It is within this discursive terrain that these competing Indigenous, state, political, extractive and market actors will continue to mobilize and assert their version of reconciliation in their efforts to influence how Indigenous-settler relations are governed, often in relation to their own interests, goals, and problems. Since reconciliation will likely be the dominant political rationality for the foreseeable future, more scholarly attention is needed to study how reconciliation is conceived amongst several competing actors, the governmental

technologies that are proposed and conceded for reconciliation, and the effects of these governmental technologies.

Conclusion: The Messiness of Reconciliation

What I hope to have shown in this dissertation is that reconciliation is messy, convoluted and complex, from its hybridized discursive construction, the strange partnerships that emerge through it, and how reconciliatory technologies can enable Indigenous self-determination and settler colonial power. As such, it is necessary to go beyond an assumption that reconciliation is just an ideology that hides the reality of how settlers exercise a form of totalizing power over Indigenous peoples. While there may be an element of truth in this assessment (the contents of the resource revenue sharing agreements reveal that the province seeks to encourage participating First Nations to become proponents of resource extraction), this dissertation has examined how there is much more complexity regarding reconciliation and settler colonialism. For instance, how reconciliation has been envisioned has always been messy. Not only was one of its earliest conceptualizations in RCAP the result of Indigenous peoples inserting their perspectives and suggestions into a theological word, but even at RCAP's public hearings, there was a discrepancy and a contestation between Indigenous participants and extractive actors regarding how to improve relations (the RCAP commissioners seem to have sided with Indigenous participants by making resource revenue sharing a minor part of its recommendations). The translation of reconciliation, from a political rationality into a political reality, has also been messy, since governmental technologies of reconciliation are not necessarily created right away, especially if they provoke "uncertainties" amongst settlers.

Moreover, in studying the formation of a governmental assemblage, it cannot be assumed that this had been a straightforward or seamless process. Nor can it be presupposed that

Indigenous peoples are passive actors responding to settler colonial governance. In examining the normalizing of resource revenue sharing in Ontario, it is apparent that a governmental assemblage started to take shape through the messy attempt and ultimate failure to install resource revenue sharing in the province. Oftentimes, Indigenous actors exercised agency by entering into relationships with extractive and market actors to ease some settler anxieties that Indigenous peoples were opposed to resource extraction and to strategically press on the province to institute resource revenue sharing. This sometimes led to messy, tenuous and unexpected alliances, which could not have been predicted, and a fraught governmental assemblage that could have fallen apart when some Indigenous PTOs were upset with how the province treated KI First Nation.

Lastly, the three resource revenue sharing agreements are messy through how they include a hybrid version of reconciliation and how they reshape Indigenous-settler relations for participating First Nations. On the former point, although they are a reflection of how Indigenous peoples have tirelessly advocated for a return to the treaty relationship through the sharing of resource revenues for “reconciliation”, they are also an attempt by settlers to govern participating First Nations to exercise self-determination within settler capitalism, which is also linked to “reconciliation”. On the latter point, although these agreements provide positive economic, legal, and political gains for participating First Nations, they also allow for the reformation of settler colonial power and the reproduction of unequal Indigenous-settler relations along legal, political, social, economic and environmental lines. Additionally, these agreements can be seen as messy in the sense that may produce future disputes, especially as they may acknowledge Indigenous constitutional orders but do not respect the responsibilities that participating First Nations must uphold, which could potentially result in direct action against the provincial government. Thus,

the implementation of resource revenue sharing may contribute to the instability of settler colonial governance.

To presume then that reconciliation automatically reifies and entrenches powerful and unequal settler colonial relations between settlers and Indigenous peoples is not necessarily wrong. However, this presumption may miss how reconciliation is a competitive discursive terrain in which what reconciliation means is challenged and negotiated, both between and amongst Indigenous and settler actors, communities, organizations and institutions. A presumption that settlers exercise totalizing power over Indigenous peoples may brush over the fact that there are strategic partnerships formed between some Indigenous and settler actors, sometimes initiated by Indigenous actors and organizations to garner concessions from state actors. In this case, to assume that resource revenue sharing was meant to placate Indigenous peoples risks glossing over how Indigenous actors and political organizations were instrumental in introducing and normalizing resource revenue sharing across the province. It would therefore be inaccurate to claim that First Nations were “tricked” by settlers into signing a resource revenue sharing agreement, when Indigenous peoples had long fought for its implementation, and are generally trying to figure out how to promote Indigenous interests amid settler colonialism. Moreover, a presumption that reconciliation only works to ideologically sustain settler colonialism may fail to recognize that new governmental technologies, like resource revenue sharing agreements, are a hybridization of Indigenous and settler perspectives of reconciliation, and that there is no guarantee how those technologies will affect, change (and possibly constrain) the exercise of power and Indigenous-settler relations. Moreover, assuming a totalizing view of power makes it difficult to see the limits of governmental power, such as how some Indigenous peoples, like the Matawa First Nations, have chosen to not sign a resource

revenue sharing agreement, thereby showing that settler colonial power is still limited in forcing Indigenous peoples to partake in settler capitalism. Governing Indigenous-settler relations in accordance with a political rationality of reconciliation is therefore not straightforward, as reconciliation can lead to complex arrangements, and while concessions made in relation to this political rationality do not end settler colonial governance, they can modify, challenge and destabilize settler colonial power.

It is due to this messiness of reconciliation that there is a need for future scholarship to be attentive to the complex and unwieldy nature of reconciliation, from its discourses, its technologies, and its effects. In this dissertation, I have mainly relied on governmentality to understand how reconciliation emerged as a political rationality and how it operates in relation to settler colonialism. However, there is more work to be done, and other theoretical perspectives and methods to turn to in order to enhance our understanding of what reconciliation does. In my original research proposal, I had hoped to partner with a Treaty 3 First Nation to learn why they had signed onto the resource revenue sharing agreement in relation to Anishinaabe constitutionalism and how their participation in this type of reconciliation technology has affected their community. I therefore believe that rooted constitutionalism is an important theoretical framework that can help shed light on how diverse Indigenous constitutional orders grapple with the concept of reconciliation, which a governmentality perspective cannot automatically do since this theoretical framework was not designed to appreciate Indigenous worldviews. In addition, partnering with an Indigenous community, such as a First Nation that has signed onto a resource revenue sharing agreement, can lead to a fuller understanding of how Indigenous constitutional orders are then affected by these new technologies of reconciliation.

Moreover, as I mentioned early in this dissertation, much of the literature on settler colonialism and reconciliation seems to pertain to what is going on at the federal level of governance and is mainly interested in Indigenous-state relations. From studying reconciliation in Ontario, in which I discovered that while reconciliation was accepted as a political rationality at the federal level it would still be over a decade before it became a political rationality in the province, it seems that there are empirical stories of reconciliation at other scales of governance that should be studied. These empirical stories are especially worth telling when they involve non-state actors, groups and organizations exercising authority, discursively constructing their version of reconciliation, or partnering with Indigenous peoples to protect their own interests or to solve their unique problems. By conducting this future research, it will be possible to further capture the messiness of reconciliation, including how reconciliation is a competitive discursive terrain involving a series of competing Indigenous, state, political, extractive and market actors, how reconciliation changes, reforms or even delimits settler colonial governance through its concessionary logic, and how Indigenous-settler relations is potentially different depending on how reconciliation is conceived and governed within their federal, provincial, or local contexts.

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