Abstract

This study offers a critique of the First Nations Property Ownership Act (FNPOA), a contemporary proposal to implement private property regimes on First Nations reserves in Canada. First, I examine the arguments used by proponents of the FNPOA to motivate support for this legislation. I demonstrate how, despite its similarity with past attempts to privatize First Nations reserve lands, the FNPOA represents a re-articulation of these older proposals as a type of recognition, where the implementation of fee simple property on reserves is cast as “restoring” pre-colonial property rights regimes. Second, I discuss how this legislation informs discussions within Geography and Indigenous Studies concerning Marx’s theory of primitive accumulation. I argue the FNPOA would provide a number of mechanisms to facilitate the dispossession of Indigenous peoples from reserve lands. Finally, I look at how conflicts over First Nations land and property rights provide an important site from which to analyze how both the formation of colonized subjects and the continued existence of Indigenous subjects are inseparable from relationships with land. Specifically, I argue the FNPOA points to the act of settler colonial subject formation as part of the continued Canadian project of genocide, whereby attempts to reconfigure Indigenous relationships with land must be understood as attempts to eliminate Indigenous people as a subject position altogether. I conclude by discussing the need for Indigenous intellectuals and activists to engage in our own critical rethinking of the role reserves play, or could play, as sites for advancing an Indigenous politics of resurgence.
Preface

This thesis, including the design, analysis, and presentation of research materials, is the original work of the author.
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List of Abbreviations

Assembly of First Nations (AFN)
Certificate of Possession (CP)
Cultural Political Economy (CPE)
Department of Indian Affairs and Northern Development (DIAND)
First Nations Property Ownership Act (FNPOA)
First Nations Tax Commission (FNTC)
Royal Canadian Mounted Police (RCMP)
Royal Commission on Aboriginal Peoples (RCAP)
Williams Lake Indian Band (WLIB)
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I acknowledge all the amazing people in my family: my late grandmother Clara and nonno Paolo; my generous and loving parents Mira and Greg; my sisters Diana, Stephanie and Andrea, especially for taking Emil when I needed extra time to work on this thesis; Andrea Lofquist for continuing to be an amazing mother to our child; Rodney Little Mustache and the rest of the extended Smith family in Piikani (especially Toogood, Nick (RIP), Ryan, Wynonna and Melissa). I especially thank Jodi Nippi-Blanchette for her love, brilliance and kindness, and for our beautiful, decolonial relationship that inspires me to move forward.

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Ni-Kso-Ko-Wa
Dedication

For my grandparents, the late Clara Fabris (Piikanaaki) and Paolo Fabris,

I still miss you both so much.
Chapter 1: Introduction

What’s particularly unsettling about recent treaty negotiations is that rights to broader geographic territories come with the stipulation that all First Nations land becomes “fee simple”—a form of private property that can be bought, sold, leased or dispossessed. While geographic span of control may increase in the short-term, there is for the first time a longer-term possibility that First Nations could become landless.
– Julian NoiseCat, “First Nations, Last Hope.”

On May 18th 2016, RCMP officers physically removed Sheldon Wycotte from his residence at Sugar Cane, a reserve of the Williams Lake Indian Band (WLIB) in British Columbia. Wycotte, his girlfriend and their child were living in a house formerly occupied by his late grandfather, a house Wycotte claimed to have lived in since he was in his early teens. This eviction was made possible due to changes in the band’s housing code, whereby, according to WLIB manager Marg Shelley, the band is now empowered to “end our tenancy relationship with individuals.” Eviction can occur if members fail to pay rent, in addition to other circumstances including “excessive disruptive behavior” and “refusal to resolve disputes.” According to April Thomas, a resident of the Sugar Cane reserve, “the band’s housing policy was imposed on the membership in 2010 without proper consultation and consent.” As a response to the eviction,


3 Quoted in Ibid.

4 Quoted in Ibid.

5 Ibid.
members of the WLIB – along with other Secwepemc people from neighbouring communities – occupied the band offices for 3 days.\(^6\)

The media reports covering this eviction raised questions around whether Sheldon Wycotte was evicted due to allegations of drug use and/or trafficking, framing the discussion in terms of whether or not the eviction was justified.\(^7\) However, I am more interested in this particular story for its broader implications: it provides a poignant example of how property rights are changing on several First Nations reserves in Canada. Under the Indian Act, Status Indians like Sheldon Wycotte historically had the right to reside on reserve as band members.\(^8\) Now, at least according to the WLIB manager cited above, Wycotte is only afforded the ability of entering into a “tenancy relationship” as an individual, and without this the band was in a position to remove him from both the house where he resided and the reserve. In fact, when the RCMP released Wycotte, one condition of his release was the promise to not return to the Sugar Cane reserve.\(^9\) Therefore, the changes in tenancy arrangements on the Sugar Cane reserve did not just affect Wycotte’s ability to stay in his late grandfather’s home, but also represent a shift in understanding how community membership is to be defined and determined.


\(^{7}\) Lamb-Yorski, “Family Evicted from Home at WLID.”


\(^{9}\) Lamb-Yorski, “Family Evicted from Home at WLID.”
1.1 The BC Treaty Process and Fee Simple

Only months prior to Wycotte’s eviction and the subsequent occupation of the band office, the Sugar Cane reserve was the site of a controversial vote over the community’s participation in the BC Treaty Process. Voting procedures were halted after opponents of the treaty reportedly smashed ballot boxes, resulting in a shut-down of the polling station.\(^\text{10}\) The BC Treaty Process was initiated by the government of British Columbia in 1993 to facilitate the negotiation of “modern” treaty agreements. With the intention of creating “certainty” over property title in BC, the process has been widely regarded by First Nations and other critics as a disaster: to date only a handful of communities have signed treaties, with 4 agreements reaching ratification stage as of 2016.\(^\text{11}\) Earlier this year, the Yale First Nation, which was nearing the final stages of the Treaty Process, opted to terminate negotiations, citing “critical flaws that cannot be resolved within the current BC Treaty Process.”\(^\text{12}\) Further, even treaties that have eventually been ratified often faced sustained opposition within the affected communities similar to what is happening within the WLIB. In 2014, for example, the ratification vote for the Tliammon Treaty was delayed when a group of band members opposing the Treaty Process used


vehicles to physically block the doors of the polling location.\textsuperscript{13} Though the vote did eventually proceed, it demonstrates the level of opposition happening in communities facing the reconfiguration of housing, land and property arrangements by way of the BC Treaty Process.

First Nations leaders, writers, activists and community members have raised numerous problems with the BC Treaty Process.\textsuperscript{14} One issue frequently cited by its critics, which is particularly relevant to my thesis, is the requirement that, under the terms of the Treaty Process, all existing and newly-added reserve lands will be held by the First Nation as fee simple property, making it easier to buy, sell, and lease reserve lands. This conversion of reserve lands to private property is stipulated in all “modern” treaties that have been established in BC to date. Under Section 7 of the Tsawwassen First Nation Final Agreement, for example, the First Nation now owns their lands in fee simple.\textsuperscript{15} This is also the case with the Nisga’a Final Agreement, which was not negotiated as part of the BC Treaty Process but is often framed by its supporters


as “paving the way” for future treaties negotiated in BC. Under the Nisga’a Final Agreement, the title to Nisga’a lands “is modified and continues as the estates in fee simple. Further, according to the regulations set out in the Nisga'a Landholding Transition Act, once a Nisga’a Citizen has obtained fee simple title to a residential lot, they are permitted to “transfer their lot to any other person, Nisga’a or non-Nisga'a.” Though these fee simple systems are rare for reserves in Canada, and for the most part confined to the province of BC, they are indicative of a trend towards redefining First Nations-state relationships in ways that implement or lean towards the establishment of private property regimes on reserve lands.

1.2 The Emergence of the First Nations Property Ownership Act

Beyond the province of BC, there has also been increased momentum to implement private property regimes on First Nations reserves in Canada. In 2006, the First Nations Tax Commission launched a new project to expressly advocate for federal legislation, the proposed First Nations Property Ownership Act (or FNPOA), which is the focus of this study. This project, known as the First Nations Property Ownership Initiative, is headed by Manny Jules, former chief of the Kamloops Indian Band, and received direct financial support from Aboriginal


Affairs and Northern Development.¹⁹ When the Initiative was first launched, the Conservative federal government was very supportive of its proposed FNPOA. In 2011, a pre-budget report from the House of Commons Finance Committee recommended the government “examine the concept of a First Nations Property Ownership Act as proposed by the First Nations Tax Commission.”²⁰ The legislation was further discussed in the Conservative government’s 2012 federal budget plan. Dubbed Economic Action Plan 2012, this budget plan stated some First Nations “have expressed an interest in exploring the possibility of legislation that would allow private property ownership within current reserve boundaries. Economic Action Plan 2012 announces the Government’s intent to explore with interested First Nations the option of moving forward with legislation that would allow for this.”²¹ The Conservative Party also mentioned the FNPOA in their 2015 election platform, and, had they been re-elected, planned to make this legislation a priority.²²


The FNPOA was also promoted through major media outlets in Canada by various commentators. In 2008, for example, the *National Post* ran a 5-part series entitled “Rethinking the Reserve,” a series which included an article called “Shackled by Red Tape.” In this article, author Kevin Libin discussed contemporary proposals to implement private property rights on reserves, proposals he argued would let “individual aboriginals on reserves enjoy the economic freedoms and opportunities non-natives do to buy, sell, mortgage, exploit or develop their own, privately owned land.” In a *Globe and Mail* article (rhetorically titled “Do Opponents of Native Property Rights Think Things are Okay Now?”), commentator John Ibbitson dismissed objections to the FNPOA by First Nations, remarking that the Harper government “will move slowly on the question of property rights on native reserves, but it will move.” Tom Flanagan and Chris Alcantara, prominent architects of the FNPOA that I will discuss shortly, were also both given regular column space to directly assist in popularizing arguments in favour of the legislation.

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24 Libin, “Shackled by Red Tape.”

25 Ibid., a11.


The proposed FNPOA faced strong opposition from First Nations communities and individuals. Leaders from the Assembly of First Nations, the national organization representing First Nations in Canada, condemned the legislation, and in July 2010 the organization passed a resolution to “[r]eject the proposed federal legislation for a First Nation ‘Property Ownership Act.’” Numerous Indigenous activists and writers also expressed concern and outright opposition to the legislation. Métis journalist Chelsea Vowel referred to the FNPOA as “White Paper Lite,” referencing the infamous 1969 legislative proposal that I discuss in detail in chapter 2. Others opposed the legislation as part of the Conservative government’s wider agenda towards Indigenous people in Canada, characterized by Russell Diabo as Stephen Harper’s “First


Nations termination plan.” I discuss further in my conclusion how this legislation was part of a legislative agenda that eventually gave rise to the Idle No More movement, and because of this widespread opposition, the legislation was never even tabled in Parliament.

As I mentioned above, two of the major advocates of the proposed FNPOA are Tom Flanagan and Chris Alcantara. Tom Flanagan is a prominent conservative political activist in Canada, retired Political Science professor at the University of Calgary, and former campaign manager for Stephen Harper’s 2004 election campaign. He is also a frequent writer on First Nations issues for both major newspapers in Canada and conservative think tanks such as the Frontier Centre for Public Policy and the Fraser Institute.

Chris Alcantara is currently a Political Science professor at Western University. Flanagan and Alcantara have authored and co-authored numerous pieces outlining their major arguments for private ownership on reserves. Their most comprehensive treatment of this subject, however, is Beyond the Indian


Act, a book they co-authored with André Le Dressay, which features a forward by FNTC head Manny Jules. Beyond the Indian Act was explicitly written to help motivate support for the FNPOA.

Taken on their own, Beyond the Indian Act and other writings advocating for the FNPOA might be easily dismissed as ideological libertarian right-wing diatribes, thus not warranting the sustained scholarly critique I provide in this thesis. However, as the aforementioned developments demonstrate, the previous federal government was seriously considering legislation to implement the proposals contained in Beyond the Indian Act; and for the Nisga’a, Tsawwassen First Nation, and other communities that have signed “modern” treaties through the BC Treaty Process, fee simple property on their reserves is already becoming a reality. It is therefore important to understand how FNPOA supporters are attempting to motivate support for the legislation, paying special attention to their attempts to differentiate this proposal from past, more overtly assimilationist attempts at privatizing reserves or reservations (such as the Dawes Act in the US and the 1969 White Paper, both of which I discuss in later chapters).

1.3 Thesis Objectives and Outline

Due to the real-world implications posed by the proposed FNPOA for Indigenous people in Canada, in this thesis I develop an in-depth critique of the arguments used to motivate support for the legislation. In addition, careful study of the FNPOA and opposition to private property

regimes on reserves provides a useful methodological entry point from which to explore a
number of questions concerning the workings of Canadian settler colonialism. As Haidi Geismar
argues, it is useful “to think about how property rights and relations are used to justify
sovereignty regimes and resistances, and how prevailing state property regimes are intrinsically
settler-colonial in nature.”36 As I demonstrate, the FNPOA therefore provides an important
avenue from which to explore questions of property, land, and dispossession specific to settler
colonial contexts.

I develop my critique of the FNPOA in conversation with scholars from three distinct but
overlapping academic fields: Geography, Indigenous Studies, and the relatively new field of
Settler Colonial Studies.37 I engage these works throughout the three main chapters of this thesis.
In Chapter 2, I argue the FNPOA represents the continued ascendancy of “recognition” politics
in Canada. As Glen Coulthard argues in *Red Skin, White Masks*, for “the last forty years, the self-
determination efforts and objectives of Indigenous peoples in Canada have increasingly been cast
in the language of ‘recognition.’”38 I illustrate how, despite its crucial similarities with past
attempts to privatize First Nations reserve lands, the FNPOA represents a re-articulation of these
older proposals as a type of recognition, where the implementation of fee simple property
regimes is framed as a “restoration” of pre-colonial property rights regimes. The role of the


ownership act as a potential tool for loss of reserve lands is the focus of the third chapter of my thesis. Pointing to the dynamic of dispossession as a permanent feature of Canadian settler colonialism, I draw from contemporary discussions of Marx’s theory of primitive accumulation. Within Geography, David Harvey’s interventions have figured heavily in these discussions, especially his concept of “accumulation by dispossession,” whereby “the features of primitive accumulation that Marx mentions have remained powerfully present within capitalism’s historical geography up until now.”

Intervening within this discussion, I demonstrate how the proposed FNPOA is a blatant example of primitive accumulation’s continued applicability, as the legislation is explicitly described by its supporters as essential for further incorporating First Nations lands into the capitalist market. In the fourth chapter, I analyze the relationship between property, land and subject formation in settler colonial contexts. Advocates of the FNPOA insist that this proposal is not motivated by assimilationist designs, but as I demonstrate, their assumptions about human nature and the virtues of private property place inherently narrow constraints on Indian subjectivity, constraints that are fundamentally at odds with Indigenous ways of relating to land. I argue the FNPOA therefore still embodies assimilationist forms of what Patrick Wolfe refers to as settler colonialism’s “logic of elimination.”

In my conclusion I return to discussing why the FNPOA legislation failed, and the possible implications of this defeat in understanding how similar proposals may be once again

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repackaged and reintroduced by the Canadian government in the future. Highlighting the concrete effects of Indigenous struggles, even in the context of decades of forced assimilation and appalling socioeconomic conditions in many reserve communities, I also hope to demonstrate how these struggles are informed and sustained by Indigenous land relationships. I suggest these land relationships are often at their strongest in reserve communities despite the fundamentally colonial nature of these spaces.

The main objective of this thesis is to provide a sustained critique of the First Nations Property Ownership Act, and the following chapters will demonstrate the many negative implications of implementing private property regimes on reserves. An additional goal of this thesis is to illustrate how the proposed FNPOA provides a key example of the Canadian state’s need to continuously redefine its settler colonial strategies against Indigenous people, and in turn the role Indigenous struggles play in forcing these redefinitions. Emphasizing the role of Indigenous struggle helps understand not only how the FNPOA emerged as a new articulation of previous attempts to privatize reserve lands, but also why this particular legislation failed. Finally, understanding the emergence of the FNPOA within the context of settler colonialism as a structure, I am unfortunately justified in predicting the eventual return of similar proposals for private property rights in slightly different form, and thus believe a sharp critique of the FNPOA will assist in identifying and challenging future attempts to implement private property regimes on First Nations reserves in Canada.
Chapter 2: Private Property Rights as Restoration?

Recognizing First Nations’ ownership of their lands is the single most useful reform of the aboriginal condition that is constitutionally and politically possible at the present time. – Flanagan, Alcantara, and Le Dressey, Beyond the Indian Act, p.8.41

I begin my analysis of the First Nations Property Ownership Act by challenging the arguments of its supporters on their own terms, which I develop through the three main sections of this chapter. First, I provide an overview of the FNPOA and the main arguments used by its proponents to motivate support for the legislation. Second, I identify the similarities and differences between the FNPOA and previous proposals to implement private property rights on reserves in Canada. Finally, I discuss some of the major gaps in the arguments used by proponents of the FNPOA, laying the groundwork for my overall critique of the FNPOA that I further develop in subsequent chapters. The main purpose of the chapter is to identify how the FNPOA must be understood as a rearticulation of previous proposals for private property rights, albeit in light of the contemporary trends in Canadian government policy towards recognition and reconciliation frameworks.

In situating the FNPOA in historical context, while emphasizing how the discourse of private property rights on reserves has shifted since the 1969 White Paper up to the present, I find Ngai-Ling Sum and Bob Jessop’s approach to Cultural Political Economy (or CPE) useful for framing this chapter. According to Sum and Jessop, CPE is “a research programme that responds to the cultural turn without losing sight of the specificity of the economic categories

41 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 8.
and economic dynamics typical of capitalist formations."\textsuperscript{42} This includes an integration of what
they refer to as the mechanisms of “variation, selection, and retention” into the semiotic aspects
of the CPE approach.\textsuperscript{43} Sum and Jessop argue this attention to semiosis is critical in helping to
understand “why only some economic imaginaries get selected and institutionalized.”\textsuperscript{44} Using
the CPE research program to study advocacy for private property regimes on reserves, I trace
how actors such as think tank analysts, politicians, and newspaper columnists produce a shift in
the discourse around private property rights from one of “assimilation” to one of “restoration.”

The approach to CPE offered by Sum and Jessop is informative because it emphasizes the study
of economic formations at both the discursive and non-discursive levels, which is useful here in
my attempt to answer the following questions: First, what are the substantive differences
between the FNPOA and its predecessors, and second, what shifts have occurred in the discourse
used to motivate support for the legislation? On this second point, I will also address how the
problems facing First Nations reserve communities are defined, how these problems relate to
broadly defined “traditional” First Nations cultures, and why the reconfiguration of private
property rights towards a fee simple system is being repackaged as a “restoration” of Indigenous
systems of property tenure.

I contend the restructuring of property rights regimes on reserves is not a given,
predetermined manifestation based on the necessities of capital in the context of contemporary

\textsuperscript{42} Ngai-Ling Sum and Bob Jessop, \textit{Towards a Cultural Political Economy: Putting Culture in Its
Place in Political Economy} (Cheltenham, UK: Edward Elgar, 2013), viii.

\textsuperscript{43} Ibid., 473.

\textsuperscript{44} Ibid.
neoliberalism. Instead, as I demonstrate throughout this thesis, Indigenous land struggles in Canada have repeatedly blocked the implementation of private property regimes on reserve lands. Thus, in accounting for the material-discursive shifts in property rights proposals from the White Paper to the present, both Indigenous opposition and the resultant turn towards recognition as a response/means to contain resistance figure heavily into these shifts. As Shiri Pasternak argues in her own critique of the FNPOA, “the struggle between individual and collective rights comprises the politically contested terrain of settler-colonialism today.”

Therefore, as much as the struggle over implementing private property rights on reserves is over questions of land, jurisdiction, and the force of law, the discursive strategies also reveal much about this conflict, wherein proponents of fee simple regimes are forced to restate, hone, and clarify how they conceive of the relationship between collective and individual rights.

Broadly speaking, the Canadian government’s efforts (with the urging of think tank intellectuals) to facilitate increased capitalist accumulation on First Nations reserves have shifted discursively from a “property rights as assimilation” narrative to one of “property rights as recognition.” In evaluating the differences between the FNPOA and its predecessors, I will demonstrate two things. First, the FNPOA differs little in substance from the White Paper and previous proposals. Second, the discursive shift underlying the FNPOA reflects the failures of the previous forms due to sustained opposition by Indigenous communities, and is thus an attempt to reformulate private property rights regimes as a form of “recognition” and “restoration” of pre-colonial property rights.

In the third section, I identify the major holes in the logic of the arguments for the FNPOA, both on their own terms, and in the ways that the legislation is for the most part a repackaged form of previous proposals. This will include deconstructing one of the major fallacies underpinning *Beyond the Indian Act*, that pre-colonial property regimes are equated with capitalist property regimes. For supporters of the FNPOA, this false equation is essential for their argument that the FNPOA presents a restoration of these pre-colonial forms of property rights. My aim here is to lay the groundwork for the major critiques of the FNPOA which I further elaborate in the subsequent chapters.

2.1 The FNPOA as Explained by its Advocates

Here I provide a brief summary of the arguments used by supporters of the FNPOA to motivate support for the legislation. Though I draw from a variety of articles, press releases, government documents and news sources, for the most part I am focusing on how the legislation is represented in *Beyond the Indian Act*. As I mentioned in chapter 1, this book was explicitly written to help motivate support for the FNPOA, and provides by far the most comprehensive account of the legislation, its objectives, and the justification for it.

In *Beyond the Indian Act*, Flanagan, Alcantara and Le Dressay advocate for an arrangement whereby, under the proposed FNPOA, a fee simple regime is implemented on First Nations reserves that promotes the individual titling of reserve lands. This regime would involve using a Torrens style registry system, which the authors argue “makes real estate markets more efficient,” whereby “the government not only records the deeds of real-estate transactions but
also guarantees the validity of title.”

In making their case for the FNPOA, the authors characterize the numerous socioeconomic problems of First Nations reserve communities as stemming from the lack of the “legal, governmental, and fiscal framework” that other Canadians “take for granted.” They argue First Nations have the ability to become “potentially wealthy landlords,” and presently there is “almost an explosion of aboriginal entrepreneurship,” which includes “opening casinos, shopping centres, industrial parks, golf courses, and residential developments.” Elsewhere, they describe the present era as being defined by “almost an explosion of aboriginal entrepreneurship in the age of ‘red capitalism.’”

Unfortunately, however, for the authors of *Beyond the Indian Act*, all is not well with this picture. The potential economic opportunities for First Nations “are handicapped by an inadequate framework of property rights. Investors are deterred by uncertainty; legal work and litigation multiply; projects take longer than they should, and many potentially profitable developments never happen because all these factors raise the cost structure.” In an opinion piece for the *Globe and Mail* promoting the FNPOA, Flanagan summarizes what he sees as the two major “defects” in current First Nations property rights:


47 Ibid., 125.

48 Ibid., 3–4.

49 Flanagan, Alcantara, and Le Dressay, “Key to Prosperity Lies in the Land: It Is Time First Nations Have Right to Own, Sell and Mortgage Their Property.”

most First Nations do not own their lands; the federal Crown has legislative jurisdiction over Indian reserves and manages them for the use and benefit of their residents. In practice, this means many transactions involving reserve land have to be reviewed by the Department of Indian Affairs, adding layers of legal work and delay to an already cumbersome approval process… The second problem is the absence of individual ownership in the full sense. Many reserves are partially subdivided through some combination of certificates of possession, leases and customary landholdings. These three forms of individual rights are useful up to a point, but they are all seriously deficient for economic purposes. Certificates of possession can be transferred only to other band members, leases are temporary and customary rights are not enforceable in court.\(^{51}\)

The solution to this problem, according to the authors of *Beyond the Indian Act*, is to establish Aboriginal property rights that will create certainty over reserve land titles, along with eliminating what they refer to elsewhere as the “bureaucratic red tape” inherent to the current Indian Act regulations for development on reserve lands.\(^{52}\) First Nations communities “who combine these new powers to create secure land tenure with better infrastructure and governance systems that support a private sector will be better able to escape poverty, the Indian Act, and INAC [Indian and Northern Affairs Canada].”\(^{53}\) The authors of the FNPOA emphasize how Hernando de Soto’s ideas influence their work.\(^{54}\) A Peruvian economist and author of *The Mystery of Capital*, de Soto argues most poor people in third world countries “already possess the assets they need to make a success of capitalism.”\(^{55}\) However, in de Soto’s view, their assets

\(^{51}\) Flanagan, “First Nations Property Rights.”


are not represented by a formal, Western-style system of property rights, and unless they are granted title, poor peoples’ possessions will continue to constitute a form of what he calls “dead capital.”\footnote{Ibid., 7.} Applying this argument to the context of reserves in Canada, the authors of Beyond the Indian Act contend the FNPOA would give both First Nations people and potential investors the tools they need to unlock the economic potential awaiting on reserve lands that would ultimately benefit First Nations people.\footnote{Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 7.} They argue restoring “aboriginal property rights will enhance economic activity on reserves, create more jobs and business opportunities for First Nations people, and improve both the quantity and the quality of housing on reserves.”\footnote{Ibid., 8.}

As I mentioned in the introduction, to a certain extent there is nothing new about the proposals contained in Beyond the Indian Act, as there are a number of examples of previous legislative attempts to implement private property regimes on First Nations reserves. Perhaps the most notorious example is the experience of American Indian communities who faced the allotment of their reservations under the 1887 General Allotment Act, commonly known as the Dawes Act, which for many nations such as the Cherokee resulted in “extreme land loss.”\footnote{Rose Stremlau, “‘To Domesticate and Civilize Wild Indians’: Allotment and the Campaign to Reform Indian Families, 1875-1887,” Journal of Family History 30, no. 3 (July 1, 2005): 266, doi:10.1177/0363199005275793.} In the Canadian context, proposals to implement private property rights on reserves (or abolish
them outright) have come up repeatedly in the history of British and Canadian colonial policy towards Indigenous people, including the infamous White Paper of 1969.\textsuperscript{60}

The authors of \textit{Beyond the Indian Act}, however, insist there is a noteworthy difference between these previous privatization schemes and the FNPOA. Aware of criticisms of the Dawes Act and the resultant loss of Indian reservation lands in the US, the authors devote an entire chapter to their own assessment of why the Dawes Act was “a failed project”, and repeat several times throughout the book that the FNPOA is directly opposite to the Dawes Act “because it recognizes and protects the inalienable reversionary right to First Nations title.”\textsuperscript{61} They propose that under the FNPOA, the underlying title to reserve lands would be held by First Nations in what the authors describe as a new, third form of crown title in Canada (the other two forms being provincial and federal crown title).\textsuperscript{62} According to \textit{Beyond the Indian Act}, this “recognition” of underlying title is an important modification from previous proposals, including that previously advocated by Flanagan in his infamous book \textit{First Nations? Second Thoughts}.\textsuperscript{63} Referring directly to Flanagan’s previous book, they contend that anyone who read it “will realize that his views on aboriginal property have evolved since then. Mainly through discussions with Manny Jules… he [Flanagan] has come to realize that making property rights functional for

\begin{footnotesize}
\begin{itemize}
\item[61] Flanagan, Le Dressay, and Alcantara, \textit{Beyond the Indian Act}, 42, 177.
\item[62] Ibid., 161–62.
\end{itemize}
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First Nations requires recognition of their underlying title to their lands."\(^{64}\) The proposed FNPOA is thus packaged differently than previous proposals to privatize reserve lands insofar as it has been reframed as granting recognition of First Nations claims in the form of underlying crown title to reserve lands.

For the authors of *Beyond the Indian Act*, however, this isn’t just a matter of recognizing underlying title, but – as the subtitle of the book states – “restoring Aboriginal property rights.” On the surface, this also appears to make the FNPOA different from the justifications used for the Dawes Act, where private property was discursively framed as a civilizing, assimilationist mission on the part of colonial states. As Rose Stremlau argues, supporters of the Dawes Act “advocated for allotment… because they believed that this process would foster individualism, promote economic self-interest, defeat communalism, and instill the core values of Anglo-American culture in Native people.”\(^{65}\) Therefore, according to the authors of *Beyond the Indian Act*, because the FNPOA represents a restoration of pre-existing aboriginal property rights, it is unfair for potential critics of the legislation to suggest it might entail the same kinds of dispossession and loss of land as the Dawes Act.

To make the case, however, that the FNPOA is a “restoration” – as opposed to another colonial imposition – the authors of *Beyond the Indian Act* must first construct a very particular historical narrative of Canadian colonial practice. They start this narrative by projecting capitalist

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\(^{65}\) Stremlau, “To Domesticate and Civilize Wild Indians,” 266.
market forms back in time as essential components of pre-colonial societies. In the forward to the book, Manny Jules writes that, as Indigenous people, “[m]arket economies were not foreign to us,” arguing Indigenous trade relations are proof of the existence of finance systems, and, prior to contact, Indigenous societies “had individual property rights.”66 The main authors of the book proceed further with this line of argument in a chapter titled *The Panorama of Indian Property Rights*.67 Here they dispute arguments, which they attribute to Vine Deloria Jr. and other Indigenous rights advocates, that portray “Indians as natural collectivists, indeed proto-communists.”68 Instead, according to the authors of *Beyond the Indian Act*, “aboriginal people everywhere in North America practiced personal ownership of possessions,” and combined a “collective sense of territory… with specific use rights of families and individuals.”69 They consider it “both ironic and tragic that this originally European conception of Indians as natural communists has now been accepted by many aboriginal leaders and thinkers,” as it is now “a barrier to native participation in the modern economy.”70 According to this narrative, then, private property rights are not necessarily a colonial imposition on First Nations communities, but formed a significant part of pre-colonial Indigenous economic relations.


67 Ibid., 30–41.

68 Ibid., 30.

69 Ibid., 40.

70 Ibid., 31.
How, then, were these Indigenous private property rights lost? Continuing with their particular historical narrative, the authors of Beyond the Indian Act argue the main thrust of government colonial policy involved excluding First Nations people and their reserve lands from the capitalist free market, in part as a result of the European misunderstandings of the pre-existing property regimes discussed above. As Jules explains in the introduction to Beyond the Indian Act, First Nations “became the poorest of the poor because after contact the governments of Canada and the United States passed legislation that removed us from the economy.”\(^{71}\) Similarly, as he puts it in a press release expressing support for inclusion of the FNPOA in the 2012 Federal Budget, “[t]he 19th century Indian Act legislated us out of the economy and took ownership of our lands. It is time to leave the 19th century behind. It is time to legislate our way back.”\(^{72}\) This “exclusion” model of colonialism, and apparently only this, is what explains contemporary poverty on First Nations reserves.

Elsewhere, Beyond the Indian Act describes how, due to not understanding or recognizing existing property systems, “the British and Canadian governments intended the introduction of property rights to lead to the integration and assimilation of aboriginal peoples into mainstream society.”\(^{73}\) Originally intended as temporary measures, these governments created the reserve system and its associated forms of limited property rights, such as Certificates of Possession,

\(^{71}\) Ibid., x.


\(^{73}\) Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 71.
which has led to the present day situation, where “the basic reality of Indian reserves in Canada is government ownership of land.”\textsuperscript{74} For the authors of \textit{Beyond the Indian Act}, current property regimes are a matter of unfinished business, and in the current political climate there is now “an opportunity to make fee-simple ownership, both collective and individual, available to First Nations.”\textsuperscript{75} Therefore, an understanding of pre-colonial Indigenous societies as “proto-communist” constituted a form of misrecognition on the part of early European observations, and the proposed FNPOA is an attempt to correct this colonial mistake of excluding First Nations from active involvement in the Canadian capitalist economy.

It is worth noting that this argument of “private property rights as restoration” is not merely expressed within \textit{Beyond the Indian Act}, but has been taken up more broadly in both media accounts and by supporters of the legislation. According to one \textit{National Post} opinion piece discussing the release of the book, “Flanagan, Alcantara and Le Dressay make clear both that property rights have been key to economic development in all human societies and that native North Americans have a long tradition of such rights. Returning to that tradition can only help natives’ current way of life.”\textsuperscript{76} Michael Lebourdais, currently elected chief of the Whispering Pines Indian Band and supporter of the FNPOA, also deploys this rhetoric. As he argues in an editorial for the \textit{Star Phoenix}:

\textsuperscript{74} Ibid., 28.

\textsuperscript{75} Ibid., 72.

Before the Indian Act, we always owned our lands. The Supreme Court recently confirmed this. FNPO would restore our ownership. My community and others like ours would like the option to move away from the Indian Act and own our lands, just as all other Canadians do. This is not privatization. It is repatriation. It is restoration of our title and jurisdiction [emphasis added].

I will challenge this “restoration” story later in this chapter, but for now simply want to emphasize how key it is in terms of the private property rights discourse that is specific to present-day advocacy for the FNPOA.

To summarize, the proponents of FNPOA claim their approach to implementing private property rights on reserves is different from previous proposals because A) underlying title is guaranteed to the First Nation, and B) since pre-contact societies had their own systems of property, the establishment of these property rights regimes represents a restoration and moving beyond an “exclusionary” form of government colonial mismanagement.

2.2 From the White Paper to the FNPOA: the (d)evolution of Property Rights Discourse in Canada

Here, I evaluate the arguments in support of the FNPOA in light of some of the previous proposals to implement private property rights on reserves. I trace from the White Paper up to the present how the discourse around private property rights has shifted from an overtly assimilationist one to the present form of privatization as a form of “restoring Aboriginal property rights.” My analysis builds on a review of official government documents, publications from influential think tanks, and a comprehensive study of all articles from major Canadian news

sources from the 1970s up to the present wherever First Nations and property was discussed. Here, I hone in on a select number of reports and think tank publications that are emblematic of the consistencies and shifts that can be traced from the White Paper up to the FNPOA. Most of the texts are written by think tank researchers and not official government documents. As such, they tend to further elaborate on the underlying theories and assumptions guiding their policy proposals, making them highly valuable for the purposes of my analysis here.

2.2.1 The White Paper (1969)

In my chapter on primitive accumulation below, I address some of the more historical examples of attempts to implement private property rights regimes. Here, I start chronologically with the 1969 White Paper and detail how this document conceptualized reconfiguring property rights on reserves. I start here for a variety of reasons: first, the White Paper represents one of the most notorious examples of a previous attempt to implement private property on reserves. Second, this attempt is relatively close enough to the present, allowing me to trace the changes and continuities in the discourse concerning property rights. Third, the defeat of the White Paper, due to widespread opposition by Indigenous people, marks the point at which the government began a shift away from assimilation as official policy towards recognition frameworks. As Dale Turner puts it, the White Paper “is often cited as one low point among many in the political

78 “In Canada it has been argued that this synthesis of theory and practice has forced the state to dramatically reconceptualize the tenets of its relationship with Indigenous peoples; whereas before 1969 federal Indian policy was unapologetically assimilationist, now it is couched in the vernacular of ‘mutual recognition.’” Coulthard, Red Skin, White Masks, 3.
relationship between Aboriginal peoples and the Canadian state.”

In providing historical context for the FNPOA and the arguments used by its supporters, a comparison with the White Paper is therefore a useful starting point.

The authors of *Beyond the Indian Act* explicitly differentiate their proposed FNPOA from the White Paper, stating the White Paper was fundamentally about transferring jurisdiction over First Nations reserves “to the Crown in the right of the province.”

Reading the text on its own terms, however, reveals that the similarities between the FNPOA and the White Paper are far greater than the differences. For example, the economic arguments used in the White Paper to justify reconfiguring property rights on reserves are strikingly similar are those contained in *Beyond the Indian Act*. In Part 6 of the White Paper (“Indian Lands”), the document states:

> The result of Crown ownership and the Indian Act has been to tie the Indian people to a land system that lacks flexibility and inhibits development. If an Indian band wishes to gain income by leasing its land, it has to do so through a cumbersome system involving the Government as trustee. It cannot mortgage reserve land to finance development on its own initiative. Indian people do not have control of their lands except as the Government allows and this is no longer acceptable to them.

Elsewhere, the Paper argues: “the separate legal status of Indians and the policies which have flowed from it have kept the Indian people apart from and behind other Canadians.”

In other words, the White Paper deploys a notion that government control inhibits economic

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82 Ibid., 4.
development, and further emphasizes previous government colonial policy as a form of “exclusion” in terms not far from those used by FNPOA advocates.

As a solution to the problem of government ownership of reserve land, the White Paper calls for “a number of intermediate states” in order to move from the present system to “the full holding of title in fee simple.”\(^83\) The implications of this transfer are very evident to the authors of the White Paper, clarifying that “[t]he Government believes that full ownership implies many things. It carries with it the free choice of use, of retention or of disposition.”\(^84\) Further, the Paper states “the present system under which the Government must execute all leases, supervise and control procedures and surrenders, and generally act as trustee, must be brought to an end,”\(^85\) and specifically stipulates “[c]ontrol of Indian lands should be transferred to the Indian people.”\(^86\) Finally, though without specifying a specific mechanism for how it is to be done, the Paper argues “Indian land heritage should be protected. Land should be alienated from them only by the consent of the Indian people themselves. Under a proposed Indian Lands Act full management would be in the hands of the bands and, if the bands wish, they or individuals would be able to take title to their land without restrictions.”\(^87\) Therefore, though even the White Paper didn’t explicitly advocate for the immediate, forcible dissolution of reserves, implicitly

\(^{83}\) Ibid., 22.
\(^{84}\) Ibid.
\(^{85}\) Ibid.
\(^{86}\) Ibid., 21.
\(^{87}\) Ibid., 22.
(under the rhetoric of ‘choice’) their dissolution into individual holdings wasn’t completely ruled out either.

In summary, while the White Paper lacked the stipulation of creating a new form of underlying crown title that the current FNPOA proposes, it still advocated for fee simple title, with some form of protection from complete alienation. It also presented this titling as a solution to the problem of government control, which it argued is the primary reason for the lack of economic development on reserves. The White Paper, however, never tried to imply that implementing fee simple title on reserves represented a “restoration” of pre-colonial property regimes, and taken as a whole is advocating a very assimilationist policy that would implicitly presume the inferiority of Indigenous cultures, forms of governance and systems of property tenure. For example, the forward of the White Paper stipulates that the role of “the Indian” in Canada must be “a role of equal status, opportunity and responsibility, a role they can share with all other Canadians.”\(^{88}\) Thus, according to the logic behind the White Paper, the formation of fee simple property regimes on Indian lands is part of a larger project of Indians assimilating into Canadian society as individuals.

2.2.2 The Ekos Report on Housing

Despite the eventual scrapping of the White Paper amidst widespread Indigenous opposition, advocacy for expanded property rights and market-based solutions to on-reserve poverty and housing conditions has continued from the 1970s up to the present day. A notable

\(^{88}\) Ibid., 3.
example is a 1985 report by Ekos Research Associates called *Evaluation of the On Reserve Housing Program*. The Ekos report was commissioned by the Department of Indians Affairs and Northern Development (DIAND), and was intended as a program evaluation to address “issues regarding the value for money achieved with the DIAND On Reserve Housing Program,” including the ways that reserve housing “is seriously inadequate in both absolute and relative terms.”

According to a *Globe and Mail* article discussing the report’s release and findings, the Ekos report “suggests the time may have come for Indians to consider such non-Indian concepts as private ownership, equity and debt retirement.”

Though the issue of property rights was not the main focus of the Ekos report, the need for individual property rights figures in heavily in both the report’s evaluation of on-reserve housing conditions and in its final recommendations.

The Ekos report encourages DIAND to develop “a system of house ownership or equity protection to encourage individual investment and commitment,” including “a long term tenure protection system” that will clarify the tenure relationship of individual home occupants.

However, rather than suggesting a complete break from the existing reserve system, the report argues “a system of private property rights and equity development (while still respecting collective ownership of land) should be encouraged on reserves.”

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92 Ibid., 48.
are numerous direct and indirect advantages to establishing private property rights systems on reserves:

Ownership, private property and equity imply certain obligations and duties such as debt retirement. It may be timely to take steps towards the inculcation of these concepts on reserve...[.] The values and images of the mass consumer society are already bombarding the on reserve population through electronic mass media and this trend will continue. Furthermore, the highly interdependent nature of the modern post-industrial world will not permit *a pristine maintenance of pure traditional cultures* [emphasis added].

I return to the Ekos report later, as many of its recommendations are pertinent to my discussion in chapter 4 on how the apparent virtues of individual home ownership are mobilized in settler colonial contexts in a way that fundamentally represents the continued advocacy of assimilation. For now, I emphasize that, while the Ekos report is carefully worded in a way that suggests a sensitivity towards the opposition to White Paper-esque proposals, it nonetheless upholds individual ownership as a virtue, and suggests the need for private property rights systems on reserves. Further, it presumes that reforms towards individual property rights and home ownership will instill modern, Canadian values which pose an inevitable threat to “a pristine maintenance of pure traditional cultures,” an argument far different than the “private property rights as restoration” narrative mobilized by FNPOA advocates.

### 2.2.3 Market Solutions for Native Poverty

Another notable analysis of property rights on reserves is a 1995 book published by the C.D. Howe Institute, an influential Toronto-based think tank, with the fairly straightforward title

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93 Ibid., 49.

94 Ibid.
Market Solutions to Native Property. At the time of publication, the book and its ideas were circulated in media outlets, including The Vancouver Sun, which ran an excerpt from the book by one of the editors, John Richards. Here he states:

As editor of the volume, I wrote an afterword - from which the following is excerpted. In it, I make two points. First, traditional aboriginal culture is dramatically at odds with the requirements for success in industrial society. Second, government policies have encouraged large-scale aboriginal unemployment and welfare dependency.

He continues:

Central to contemporary Western culture is the idea of individual private property rights that are exchanged in markets. After two centuries of failed socialist economics, it is fair to conclude that some set of private property rights is a necessary - if far from sufficient - condition for realizing the productive potential of industrial technology. In other words, a culture that legitimizes private property is efficient.

In advocating for private property regimes, the authors of Market Solutions for Native Poverty are holding both “aboriginal traditional culture” and “government policy” responsible for poverty in reserve communities. It is therefore not too different from its predecessors, while holding at least one major similarity with the arguments used in Beyond the Indian Act to advocate for the FNPOA.

95 According to their website, the C.D. How Institute “has laid the intellectual ground for such fundamental achievements as: The development of continental free trade; Ending the unsustainable deficits of the 1970s and 1980s; The development of rigorous inflation targets and tactically effective monetary policy; The reform of the Canadian and Quebec pension plans; Lower and more competitive tax rates; and the development of a key new saving vehicle, the Tax Free Saving Account.” “Policy Impact,” C.D. Howe Institute, accessed March 2, 2016, http://www.cdhowe.org/policy-impact.


97 Ibid., A17.
Perhaps the most notable similarities, however, between the proposal advocated in *Market Solutions for Native Poverty* and *Beyond the Indian Act* are found in a chapter by Brian Lee Crowley, a long-time researcher for various Canadian think tanks and current Managing Director of the Macdonald-Laurier Institute. Entitled *Property, Culture, and Aboriginal Self-Government*, Crowley dispels what he refers to as the “naive, romantic view” that property represented “an alien (Western) imposition on native peoples.”

He argues, “Canadian aboriginal and non-aboriginal cultures have many similarities in both the practice and the cultural significance of property,” and suggests “any attempt to ground aboriginal difference from Western society in the absence of a conception of property is doomed to failure.”

Crowley, however, is not using the existence of Indigenous property rights to argue that fee simple property would mark a restoration of pre-colonial systems. Rather, he suggests the compatibility of notions of property means there should be less opposition by First Nations to modern-day fee simple regimes.

Crowley is clear the private property proposals he advocates represent a colonial, civilizing imposition. Describing what he views as the inferiority of ‘traditional’ cultures, Crowley writes: “Isolated traditional cultures have little intellectual space in which to imagine


100 Ibid., 70, 63.
forms of life outside those of the community, let alone in opposition to them.”\textsuperscript{101} Crowley presents the process of colonization as fundamentally positive for Indigenous people; for example, he argues “[o]ne consequence of aboriginal contact with European cultures was to introduce choices that had been inconceivable before.”\textsuperscript{102} Therefore, according to Crowley, “[t]he institutions that Europeans brought with them did not introduce property but did make its dispersion into many hands possible, and, with it, increased choices.”\textsuperscript{103} The assimilationist bent to Crowley’s approach is thus no surprise: rather, he insists it is not “racist or culturally imperialist to suggest that aboriginal self-government is acceptable only if it is made compatible with liberal-democratic institutions.”\textsuperscript{104} Therefore, though Crowley makes similar arguments as those found in \textit{Beyond the Indian Act} concerning the existence of Indigenous property regimes, for him these regimes simply mean there should be less outcry from Indigenous people that private property is a “foreign” way of understanding relationships with land.

At the same time, Crowley’s proposal, similar to previous manifestations, doesn’t explicitly call for an immediate dissolution of First Nations reserves. Instead, he advocates for a new form of governance that he calls a “talking circle society,” a corporate body, which, rather than a type of governing body to address “questions of jurisdiction,” would “be used to vest

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\textsuperscript{101} Ibid., 76. \\
\textsuperscript{102} Ibid. \\
\textsuperscript{103} Ibid., 77. \\
\textsuperscript{104} Ibid., 82.
\end{flushright}
sovereignty in aboriginal individuals.” As part of this vesting of sovereignty, he advocates for the creation of fee simple property rights for reserves. This includes a stipulation that property would “[a]t the outset” be collective, but with the eventual goal of both individual titling and the ability “to sell or otherwise transfer” lands to both members and non-members. In sum, though Crowley’s formulation in Market Solutions for Native Poverty debunks the myth that the concept of property was foreign to pre-colonial societies, this book still concludes non-Western forms of property tenure are antiquated and incompatible with the demands of modern society. In addition, though he doesn’t advocate for an immediate breaking up of existing reserves, his proposals for property rights point to an implicit, eventual division of reserves into privately held lands.

2.2.4 FNPOA: Assimilationist Wolf in Reconciliatory Sheep’s Clothing?

In conclusion, the FNPOA is in some respects different from how private property rights were conceived of in the White Paper, yet the differences are far smaller than the proponents of this legislation claim. The mechanism FNPOA advocates propose is new (i.e. the transfer of underlying crown title), but the overall narrative of the virtues of private property rights has scarcely changed. The difference, however, in how FNPOA advocates frame this legislation as a “restoration” of aboriginal property rights, must be understood in light of what Coulthard refers to as the colonial politics of recognition. By the “politics of recognition,” Coulthard is referring to “the now expansive range of recognition-based models of liberal pluralism that seek to

105 Ibid., 90.
106 Ibid., 92.
‘reconcile’ Indigenous assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian state.” As a manifestation of recognition politics, the FNPOA should be understood as a deliberate strategy of attempting to contain and reframe contemporary aims and strategies of Indigenous political action. This strategy of containment is crucial to understanding the ascendency of recognition approaches to Indigenous struggles on the part of the Canadian state in general. In particular, it helps us understand how the “property rights as restoration” rhetoric is one still built around the necessary exclusions of other narratives concerning Indigenous struggles over land in Canada.

2.3 What’s Missing from the “Property Rights as Restoration” Narrative?

As Dempsey, Gould, and Sundberg argue, Flanagan and Alcantara’ arguments “rest upon a full-scale bracketing of history and geography.” As I have discussed, Beyond the Indian Act doesn’t so much completely ignore colonial history, but rather constructs its own peculiar historical imaginary (colonialism as “exclusion”). Nonetheless, there are several forms of “bracketing out” involved in constructing the central arguments of Beyond the Indian Act, four of which I explore here in greater detail. In drawing attention to the fundamental problems with the core arguments used to build support for the FNPOA, my goal is to lay the groundwork for the critiques that I develop in the following chapters.

107 Coulthard, Red Skin, White Masks, 3.

First, in *Beyond the Indian Act*, both Canadian sovereignty and present-day reserve boundaries are presented as fixed, legitimate, and not up for discussion. The authors are very clear that currently the underlying title to reserve lands in Canada – and all lands in Canada for that matter – were established under the “international-law doctrines of discovery and (sometimes) conquest,” whereby “Canadian sovereignty over the whole of Canada is recognized both internationally and by Canadian courts.” ¹⁰⁹ Though the authors of *Beyond the Indian Act* do briefly acknowledge the projection of Canadian sovereignty “happened without any consultation with the native people of North America [and] may be cause for regret,” they generally treat the history of colonial dispossession as a sequence of large real estate transactions, albeit potentially unfair ones. ¹¹⁰ Regarding reserve boundaries, the authors do not spend much time elaborating on how reserve lands were formed, be it as a type of property or in terms of their specific boundaries. The authors’ assertion that Canadian sovereignty underlies all lands in Canada does not address this gap, as underlying sovereignty doesn’t explain why some lands are First Nations reserve lands and some are not, nor how their boundaries came to be. The argument of the book is thus narrowly defined both spatially and discursively, reinforcing what Sarah Hunt refers to as the *colonialscape*, whereby “reserves become the natural space of ‘Indians’, as Indigenous territorialities are rendered an impossibility in order to facilitate the reception of Canadian sovereignty.” ¹¹¹ I argue the authors are proposing the FNPOA in order to achieve “certainty”


¹¹⁰ Ibid.

over title on First Nations land by a redrawing of property lines and forms within reserve boundaries, where much of the larger discussion and contestation in contemporary Indigenous struggles and scholarly works pertain to interrogating the very nature of these boundaries.\textsuperscript{112}

This leads me to the second major “bracketing out” found in Beyond the Indian Act: neither the historical narrative of the book nor any of the discussion around the benefits of the FNPOA contain any reference to gender. The gendered discrimination, however, within the Indian Act concerning how women historically had their Indian Status revoked (prior to the passing of Bill C-31 in 1985) has a distinctly spatial component: Indian women who married non-Status men were subsequently denied the right to live on reserves. Part of the proposed FNPOA involves converting existing forms of title over reserve lands as allowed under the Indian Act, such as Certificates of Possession, which the authors of Beyond the Indian Act argue were “meant to be the final step before the introduction of fee simple ownership.”\textsuperscript{113} As Joanne Barker points out, “by the 1960s, only 6 percent of elected council chiefs and council members were women; and certificates of possession, or the legal documents granting status Indians permission to live in reserve housing, were issued by bands and DIAND officials almost exclusively to men.”\textsuperscript{114} Thus, even if we were to accept that the conversion of these titles to fee

\textsuperscript{112} See also: Cole Harris, Making Native Space: Colonialism, Resistance, and Reserves in British Columbia, Canadian Studies Series (Vancouver: UBC Press, 2002).

\textsuperscript{113} Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 69.

\textsuperscript{114} Joanne Barker, “Gender, Sovereignty, Rights: Native Women’s Activism Against Social Inequality and Violence in Canada,” American Quarterly 60, no. 2 (2008): 263.
simple might create an economic benefit for those holding CPs (which is admittedly a dubious claim), this benefit would serve to reinforce already-existing colonial structures of heteropatriarchy. The reinforcement of these structures points to what Isabel Altamirano-Jiménez describes when analyzing the application of neoliberal policies to Indigenous communities, wherein its application directly affects “how indigeneity is defined, policies are framed, political possibilities are envisioned, and gender hierarchies are reproduced.”

However, to critique the FNPOA for not discussing gender is not simply a matter of recognizing the specific circumstances of Indigenous women in the legislation, especially when neoliberal strategies have proven a certain level of adaptability in accommodating claims for inclusivity. Rather, I suggest representation is inseparable from a gendered critique of private property rights. By this, I mean that the kinds of human-land relationships dictated and presumed by the ownership act are imbued with fundamentally patriarchal notions about how Indigenous people ought to relate to and utilize land: as property with value that is only commensurable in economic terms. These notions are in sharp opposition to what Mishuana Goeman refers to as “remapping discourses” within Native women’s geographies, discourses that mark a “move toward geographies that do not limit, contain, or fix the various scales of space from the body to nation in ways that limit definitions of self and community staked out as property.”

In Chapter


I further explore the gendered implications of the FNPOA on colonial *resubjection* in settler colonial contexts. Here, I argue the further enshrinement of private property regimes would directly undermine the remapping discourses of Indigenous feminism Goeman discusses.

Third, *Beyond the Indian Act* brackets out any critical view towards the Canadian state as a credible enforcer of First Nations land and property rights. Instead, according to Flanagan, the FNPOA will mean that First Nations, “like other Canadians…, can be confident that their own governments will protect their land base while also protecting individual rights created on it.”¹¹⁷ The authors of *Beyond the Indian Act* emphasize the important role of state enforcement in the growth of modern individual property rights, where “the state created armies and police forces to protect property rights, court systems to settle disputes, and infrastructure such as roads, canals, and harbours to make property more valuable.”¹¹⁸ This literally reads as a laundry list of the various components of state powers, institutions and infrastructure that have been developed to infringe upon First Nations land and property rights much more readily than they have been used to protect them. Understanding the foundations of the Canadian state thus raises theoretically and historically informed questions about the type of security over property rights that First Nations could expect to be enforced by this same state. *Beyond the Indian Act* actually provides a telling example when discussing the Haldimand Tract, whose possession by the Haudenosaunee (Six Nations) was supposed to have been recognized through negotiation with the British. As the authors explain, “of the approximately 950,000 acres originally allocated to Six Nations under

¹¹⁷ Flanagan, “First Nations Property Rights.”

the 1784 Haldimand grant, only 47,374 acres remained under Six Nations control as of 2002.”¹¹⁹

The authors do not comment on how this came to be, and what it might say about the type of security the Canadian state is capable of providing where First Nations lands and property rights are concerned.

Fourth, returning to the notion that the FNPOA represents a restoration of aboriginal property rights, the authors of Beyond the Indian Act make a fundamental mistake in equating property rights with capitalism and the market. It is a huge stretch to equate 21st century, distinctively capitalist (if not specifically neoliberal) property rights with any of the Indigenous property rights regimes the authors discuss. Rather, the creation of private property regimes across the vast majority of non-reserve lands in Canada entailed a blatant, pervasive form of colonialism much more significant than the “exclusion” framework the authors of Beyond the Indian Act narrowly deploy. As Cole Harris argues regarding the projection of settler colonialism across what is now BC, “the rights of property embedded in the common law tangibly legitimated the dispossession and repossessing of land for which assumptions about civilization, savagery, and the progressive use of land had provided a more abstract justification.”¹²⁰ Thus the various tools of Canadian state administration, jurisdiction and power discussed in Beyond the Indian Act are built on a history of dispossession. At best, a large leap of faith on the part of First

¹¹⁹ Ibid., 93.

Nations is required in order to presume that land and property rights of First Nations would be protected by a state founded on achieving the exact opposite end.

Therefore, when one considers past and present manifestations of dispossession, the notion that colonialism has predominantly entailed the “exclusion” of Indigenous people from the capitalist economy really starts to break down. Rather, for Indigenous people, dispossession entails an intimate, “inclusive” experience with the workings of capitalism, its reconfiguration of human-land relationships, and the imposition of private property regimes vastly different from Indigenous, non-capitalist forms of property tenure. As a particular manifestation of recognition politics, then, the proposed FNPOA is inherently unable, and, by design, unwilling to reconcile this experience of dispossession.

2.4 Conclusion: Native Solutions to the Poverty of the Market?

According to Coulthard, “the politics of recognition in its contemporary liberal form promises to reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples’ demands for recognition have historically sought to transcend.” In the case of the FNPOA, as I have demonstrated, the legislation carries this promise while disingenuously presenting itself as the exact opposite. In light of sustained opposition by Indigenous communities to past proposals for private property regimes on reserves, advocates of private property on reserves have shifted their discourse towards a “property rights as restoration” narrative that constitutes an attempt to articulate advocacy of private property rights with

121 Coulthard, Red Skin, White Masks, 3.
Indigenous counter-discourses of continued jurisdiction. Returning to Sum and Jessop’s Cultural Political Economy, one important aspect of this approach is its emphasis on the ways that economic imaginaries go through processes of “variation, selection and retention.” According to Sum and Jessop, analyzing these processes can help explain “why only some economic imaginaries get selected and institutionalized.” With the FNPOA, despite the aforementioned discursive shift, the FNPOA clearly did not become institutionalized. Rather, the legislation has so far suffered the same fate as that of its predecessors: widespread opposition by Indigenous communities, leaders, and intellectuals, and characterized as yet another attempt to dispossess Indigenous people of our lands. How the FNPOA’s implementation would reproduce settler colonial hegemony by facilitating the continued dispossession of Indigenous people is the subject of the next chapter.

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Chapter 3: The FNPOA and Primitive Accumulation

First Nation socio-economic disparities are a direct consequence of the failure of the market for private investment on First Nation lands. Statistical inference suggests that the private investment rate on First Nation lands is between two and three times lower than in the rest of the country. There will be no fiscally sustainable or economically beneficial solution to disparities until this problem is addressed.


3.1 Neoliberalism in Canada, or Liberalism Uninterrupted?

Framing the proposed First Nations Property Ownership Act – and the arguments used to support it – within the context of neoliberalism is difficult to avoid. As Dempsey et al have pointed out, advocates of the legislation often “contextualize their enthusiastic embrace of private property rights on reserves in relation to the ‘end of history’ interpretations of Cold War geopolitics, which they also see as a triumph of private property.” Flanagan and his fellow advocates of the FNPOA are themselves quite forthcoming that their views are directly influenced by Hernando De Soto, Friedrich Hayek, and other thinkers associated with the neoliberal approach to economics. In his history of the rise of neoliberalism, Harvey emphasizes how advocates of neoliberalism “are particularly assiduous in seeking the privatization of assets. The absence of clear private property rights – as in many developing

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125 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 7,16.
countries – is seen as one of the greatest of all institutional barriers to economic development and the improvement of human welfare.”  

Therefore, the focus on the need for more established private property rights on reserves fits well with the general neoliberalization taking place at a variety of scales and sites worldwide.

However, I intentionally framed Chapter 2 strictly within the spatial and historical confines of Canada, because, as much as the neoliberal imprint on the FNPOA is clear, I argue the proposed legislation must primarily be understood in the context of Canada as a settler colonial society. To make this argument, I draw from Patrick Wolfe’s two key contributions to theorizing settler colonialism: first, settler colonialism is guided by a logic of elimination, and second, it should be understood as a structure and not an event. As Wolfe explains,

> elimination refers to more than the summary liquidation of Indigenous people, though it includes that. In its positive aspect, the logic of elimination marks a return whereby the native repressed continues to structure settler-colonial society. It is both as complex social formation and as continuity through time that I term settler colonization a structure rather than an event.  

In terms of understanding conflicts over property rights on reserves, then, though undoubtedly the FNPOA is expressed in a blatantly neo-liberal fashion, I characterize the legislation as only the latest chapter in a conflict over land in Canada that is foundational to Indigenous-settler relations. As I discuss below, the conflict over property forms on reserves can be traced back to at least the mid-19th century, when the British and Canadian governments first attempted to impose individual land tenure on Indigenous communities.


In trying to make sense of neoliberalism and its political implications, many scholars such as David Harvey, Jim Glassman, and Massimo De Angelis have found it useful to reassess Marx’s theory of primitive accumulation, questioning whether the processes of enclosures and colonization he described in *Capital Vol 1* should strictly be understood as historical phenomena. However, much of the current re-examination of primitive accumulation is based on the belief that the theory might help understand a wide range of “enclosures” that do not strictly involve land, but other neoliberal policies of privatization on a variety of fronts. As De Angelis explains, primitive accumulation “does not assume only the form of direct land enclosure as in the process of English primitive accumulation, but it also occurs through other means.” Here, however, in discussing contemporary acts of dispossession against Indigenous people in Canada, I am still talking about the classic colonial form, where the process of primitive accumulation has an explicitly territorial component. This form differs from the kinds of processes that Harvey is trying to encapsulate as types of enclosures which – important and significant as they are – include other types of non-landed common property, such as intellectual property rights, biopiracy, and privatization.

And yet, Harvey’s rethinking of primitive accumulation is important for our discussion of property rights regimes on reserves, where processes of dispossession don’t strictly involve a clearly defined frontier, but also include contestation over the very same physical space within the boundaries of Canada. As Pasternak argues, “Canada’s assertion of jurisdiction over all lands

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and resources within its national borders presumes the forms that law will take, despite the multiplicity of Indigenous governance systems embedded within their own ecologies of law.”

According to Pasternak, this means “new kinds of differentiated legal zones have emerged where Indigenous territorial jurisdiction forms lumps that betray patterns of partial and uneven state sovereignty.”

The continued purchase of the theory of primitive accumulation is thus partly due to the Canadian state’s inability to facilitate any and all types of capital accumulation without facing the threat of Indigenous counter-assertions of jurisdiction.

In this chapter I examine how the FNPOA must be understood as a contemporary tool of dispossession, an examination that unfolds in four sections. First, I provide some preliminary theoretical points concerning the workings of primitive accumulation in settler colonial contexts. Second, I demonstrate how the FNPOA points to the continued relevance of Marx’s theory of primitive accumulation. Proponents of the FNPOA are very clear that the legislation is necessary “to unlock the tremendous economic potential of First Nations land.”

For FNPOA supporters, then, the further accumulation of capital requires certain preconditions. Third, in conversation with theorists in and outside of geography who emphasize the role of struggle in determining the continuous character of primitive accumulation, I discuss key examples of Indigenous communities’ resistance to past attempts to implement private property regimes on reserve lands. I demonstrate how past opposition to these attempts to privatize reserve lands has played a role


131 Ibid.

in influencing present-day struggles against the FNPOA. Finally, I return to Marx’s initial treatment of primitive accumulation in *Capital Vol 1*, to explore the role of the law, the state, and property rights as key elements in Marx’s own description of the violent means by which capitalist accumulation comes into being.

### 3.2 Primitive Accumulation and Indigenous People: Some Theoretical Preliminaries

The proposed FNPOA points to the dynamic of dispossession as a permanent feature of Canadian settler colonialism. Further analysis of this dynamic entails drawing from contemporary discussions concerning Marx’s theory of primitive accumulation, which he defined in *Capital Vol. 1* as “nothing else than the historical process of divorcing the producer from the means of production.”\(^\text{133}\) Coulthard analyzes the continued relevance of this theory to the political economy of Canadian settler colonialism as part of his critique of the liberal politics of recognition. He points out, however, that Marx’s theory needs to be “transformed *in conversation* with the critical thought and practices of Indigenous peoples themselves.”\(^\text{134}\) Coulthard then identifies three problematic features of Marx’s primitive accumulation thesis: its rigid temporal framing, its normative developmentalism, and the ways “colonial relations of power are no longer reproduced primarily through overtly coercive means, but rather through the asymmetrical exchange of mediated forms of state recognition and accommodation.”\(^\text{135}\)


\(^{134}\) Coulthard, *Red Skin, White Masks*, 8.

\(^{135}\) Ibid., 8–15.
Coulthard also highlights the need to shift, where discussing settler colonial contexts, from focusing on the “capital-relation to the colonial-relation.” Crucially, this means “the history of dispossession, not proletarianization, has been the dominant background structure shaping the character of the historical relationship between Indigenous peoples and the Canadian state.”

This is a key point I explore here in my critique of the FNPOA, and one that suggests ways of applying Marx’s critique of capital to shed light on the workings of settler colonialism and other struggles outside the point of production.

Within Geography, David Harvey’s interventions figure heavily in contemporary discussions on the continued utility of the theory of primitive accumulation. Drawing primarily from Marx and Rosa Luxembourg’s writings, Harvey puts forth a theory of what he calls “accumulation by dispossession,” whereby “the features of primitive accumulation that Marx mentions have remained powerfully present within capitalism’s historical geography up until now.” Harvey, however, is at best ambivalent towards social movements on the receiving end of accumulation by dispossession. Maintaining what appears to be a teleological understanding of historical development, Harvey contends movements struggling against processes of primitive accumulation “must rise above nostalgia for that which has been lost and likewise be prepared to recognize the positive gains to be had from the transfers of assets that can be achieved through

\[136\] Ibid., 11.

\[137\] Ibid., 13.

limited form of dispossession." Further, Harvey calls on these movements to “discriminate between progressive and regressive aspects of accumulation by dispossession.” Harvey makes these statements while discussing the Indigenous Zapatista movement, going so far as to challenge the Indigeneity of this movement itself, suggesting that depicting the Zapatistas “as being purely about ‘indigenous peoples’ may have had more to do with claiming legitimacy with respect to the Mexican Constitution’s provision protecting indigenous rights than with an actual description of origins.” Strangely, Harvey then follows with a warning to the political left against the danger of replicating the problems in Marx’s own work by “failing to see the creative potential that resides in what some regard dismissively as ‘traditional’ and non-capitalistic social relations and systems of production.” In my view, Harvey has unfortunately not followed his own advice in his assessment of the Zapatistas, and thus misses some of the “creative potential” of contemporary Indigenous land-based struggle and practice.

To elaborate, Harvey’s assessment fails to recognize the “creative potential” that is central to understanding the implications of Indigenous struggles against contemporary manifestations of primitive accumulation. Coulthard refers to Indigenous forms of this potential as *grounded normativity*, which he defines as “the modalities of Indigenous land-connected practices and longstanding experiential knowledge that inform and structure our ethical

139 Ibid., 178.
140 Ibid., 179.
141 Ibid., 175.
142 Ibid., 179.
engagements with the world and our relationships with human and nonhuman others over
time.”\textsuperscript{143} For Coulthard, this grounded normativity is what is at stake in struggles against
dispossession. Not only do the so-called “commons” facing enclosure in Canada belong to
somebody, but they “also deeply inform and sustain Indigenous modes of thought and behaviour
that harbour profound insights into the maintenance of relationships within and between human
beings and the natural world built on principles of reciprocity, nonexploitation and respectful
coexistence.”\textsuperscript{144} Thus, Coulthard writes, ignoring the injustice of colonial dispossession “risks
overlooking what could prove to be invaluable glimpses into the ethical practices and
preconditions required for the construction of a more just and sustainable world order.”\textsuperscript{145} I
understand this to mean Indigenous struggles against dispossession are therefore important, both
for Indigenous people and others, to the extent that what is at stake is not strictly the immediately
material (i.e. substantive access to particular lands), but their potential in sustaining and even
furthering non-capitalist ways of relating and being.

As part of the theoretical framework of this chapter, I want to make an additional
intervention: in focusing on processes of class struggle outside the point of production, I argue it
is crucial to also look at \textit{why} full proletarianization has been a less important important factor
than dispossession for how Indigenous people in Canada have experienced the workings of
capitalism. As I discuss in the previous chapter, proponents of the FNPOA mobilize an

\textsuperscript{143} Coulthard, \textit{Red Skin, White Masks}, 13.

\textsuperscript{144} Ibid., 12.

\textsuperscript{145} Ibid.
“exclusion” narrative of colonialism to explain contemporary First Nations poverty. In many cases this kind of story has also been mobilized by activists and intellectuals associated with Marxism in Canada. For example, Métis activist and scholar Howard Adams mobilizes a Marxist-influenced variant of this “exclusion” story of colonialism in his influential book *Prison of Grass*. Applying the theory of primitive accumulation to Canada’s colonization of Indigenous people, Adams argues Indians were never “truly capitalistic,” and only after the defeat of the 1885 Northwest Rebellion, “when private ownership of property became the law in the Northwest, was land no longer held in common.”

During this time in mid-19th century, Adams argues, the struggle was essentially “a civil war between two economic orders. The new capitalist order had to overthrow the political institutions of the old order before it could develop its new society.” During this period, Indians and the Métis were reduced to “prisoners and beggars” after the killing off of the buffalo, and were not only denied “their land and economy, but they were also denied the right to participate in the mainstream agricultural and industrial activity of Canada.”

According to Adams, though colonialism is ultimately the cause of poverty among Indian and Métis communities, this poverty “is specifically the result of immediate issues such as the availability of jobs.” For Adams, then, in the contemporary period Indigenous struggles are fundamentally oriented around the ability to sell one’s labour.

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147 Ibid., 50.

148 Ibid., 61.

149 Ibid., 126.
I mention this because, in my view neither of these two variants of the “colonialism as exclusion” argument consider how the lack of full employment, which they cite as the source of poverty in Indigenous communities, might in some cases be a conscious strategy of Indigenous resistance and perseverance rather than strictly the result of racist exclusion. Here I am referring to instances where temporary, seasonal wage labour becomes one of several activities that provide subsistence, whereby many use values are still directly produced via hunting, fishing, and other acts of land-based labour. For example, in her account of the Indigenous migrant labourers who seasonally worked in the hops fields near Seattle in the late 19th / early 20th century, Paige Raibmon suggests this form of wage labour articulated with already existing subsistence patterns. She argues that the Aboriginal people who migrated from numerous communities throughout BC and beyond “spun themselves an economic safety net by moving between seasonal occupations. This strategy characterized Aboriginal subsistence and trade long before White settlement, and Aboriginal people put it to work under the economic certainty of colonial capitalism.”

Without collapsing and overgeneralizing the range of experiences of continued land-based subsistence – be it at different times or in different Indigenous communities – I think it is important to understand the possibility of these kinds of articulations as ways in which Indigenous people in Canada have not been fully integrated into the capitalist economy by way of wage labour. In addition, these non-capitalist modes of subsistence (such as hunting and trapping) point to both realized and potentially unrealized strategies of resistance, perseverance, and what Audra Simpson refers to acts of “refusal” in the place of settler colonial

capitalism, strategies that are missing from both the neoliberal version of the “exclusion” narrative as well as the Marxist variant.\textsuperscript{151}

With these theoretical points of reference established, I now return to the specifics of the proposed FNPOA and outline its implications for contemporary discussions of primitive accumulation. I first demonstrate how the proposed FNPOA is a form of primitive accumulation, and then suggest ways that this legislation might inform contemporary discussions concerning the continued role of dispossession as a form of accumulation outside of the capital-relation.

3.3 How Does the FNPOA Constitute a Form of Primitive Accumulation?

\textit{As much as the Indian Act system was an instrument of segregation and economic marginalization of our people, at least the Indian Reserve lands were inalienable and could not be alienated by non-natives.}

\begin{quote}
– Bertha Williams, open letter opposing ratification of the Tsawwassen Treaty.\textsuperscript{152}
\end{quote}

The proposed FNPOA is a blatant example of primitive accumulation’s continued presence, and is presented in \textit{Beyond the Indian Act} as essential for further incorporating First Nations lands into the capitalist market. The authors argue “[t]he success of an economy can be traced to its ability to provide secure and tradable property rights over land. A Torrens land-title system typically provides the private sector with both the requisite property rights and a 

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mechanism for their exchange.” The First Nations Property Ownership Initiative website explains in further detail why the inalienable nature of reserve land creates a “barrier” to economic development:

Because the land is held by the Crown for the use and benefit of Indian bands, a trust or fiduciary responsibility lies with the Government regarding its management of the land. The land itself is inalienable, and cannot be sold or mortgaged unless the Indian interest in it is yielded by the band to the government (“surrendered”)…[.] Reserve land falls under federal law and is therefore not governed by the vast body of provincial law that governs the normal conditions of property rights in Canada, creating an extensive ‘regulatory gap.’

According to advocates of the FNPOA, then, the inability to alienate reserve lands is a barrier to the full functioning of capitalist markets on First Nations reserves.

According to some proponents of the FNPOA, however, inalienable forms of property tenure don’t just stunt economic development, but, in line with the arguments of De Soto, represent a form of potential capital that must be ‘unlocked’ for its realization. This language was mobilized, for example, in a 2007 Canadian Senate report entitled Sharing Canada's Prosperity: A Hand up, not a Handout. The report, commissioned by the Standing Senate Committee on Aboriginal Peoples, quotes a submission to the Committee by Chief Emma Palmantier of the Lake Babine First Nation. According to the report, Palmantier remarked to the Committee that First Nations “cannot access capital locked in their homes to help finance their

153 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 171.
businesses [emphasis added].” According to the report, Palmantier further explained that due to “this barrier to accessing capital, many First Nations’ communities, individuals and businesses are unable to take advantage of economic opportunities.” The FNPOA is therefore presented by its supporters as a necessary precondition for further economic development of reserve lands. The utility always, however, lies in the ability to make reserve land alienable, as collateral, something that has been key in this discussion and past ones regarding the “problem” with current forms of property tenure. If there wasn’t the risk of the ability of a property (the land or the house) to be alienated, it wouldn’t be “unlocked.” Thus, the implementation of the FNPOA by design means the ability to alienate reserve lands. This holds true in situations where an individual, community (or at least the band council) chooses to sell portions of their reserve. More importantly, however, in my view, it also holds true in cases where a band member defaults on a loan and thus risks losing their home or property to a creditor. Or, if a First Nation embarks upon an economic development project that fails, the collateral protecting the outside investor would be alienable reserve land.

Aside from making reserve lands alienable, the FNPOA also aims to provide specific mechanisms for First Nations governments in enforcing property rights and attracting investment that would directly facilitate the dispossession of First Nations individuals from reserve land when applied. Despite the aforementioned claims by the authors of Beyond the Indian Act that

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155 Standing Senate Committee on Aboriginal Peoples, Sharing Canada’s Prosperity: A Hand Up, Not a Handout (Special Study on the Involvement of Aboriginal Communities and Businesses in Economic Development Activities in Canada). (Canada: Senate Committee, 2007), 32.

156 Ibid.
the FNPOA would recognize and protect “the inalienable reversionary right to First Nations title,” this only appears to hold true based on the very narrow definition of ‘First Nations’ implicit throughout the book. For example, under the FNPOA, First Nations governments would acquire increased powers to evict members who default on their housing mortgages or do not pay their housing charges. The authors of Beyond the Indian Act advocate for these powers by citing the current non-payment rates of housing charges on various reserves: “At Cowichan Tribes, fifty of four hundred members living in rental homes were not paying in 2002; at Siksika, the nonpayment rate was 60 percent; and at Blood, approximately 75 to 80 percent. At Piikani, 97 percent of members living in rental housing were not paying.” The inability to enforce payment of these housing charges is decried for not existing under current on-reserve property arrangements, creating problems such as diminishing “the amount of capital available to First Nations to build more housing and engage in repairs.” As Dempsey et al argue, advocating for greater eviction rights for non-payment of mortgages and rent payments is dismissive of alternate conceptions of reserve housing as a treaty right that might explain why members choose not to pay, not to mention “whether the people living in those houses actually can pay their mortgages and rent.” Ignoring these considerations, the proposed FNPOA instead provides what I refer to as the “right to evict” as an essential mechanism for the removal of First Nations members from reserves.

157 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 177.
158 Ibid., 89.
159 Ibid.
With investments and developments not related to housing, both the current realities and potential impacts of the FNPOA are even more troubling for First Nations members living on reserve. Throughout Beyond the Indian Act, the types of property developments upon which the authors bestow the highest praise include the Sun Rivers Golf Course on Tk’emlups (Kamloops) reserve land, and the Great Canadian Superstore on the Squamish Seymour Creek reserve. The authors of Beyond the Indian Act also praise the “economic success story” of the Westbank First Nation, where, as part of the Westbank implementation agreement, there are residential developments resulting in over 10,000 non-members living on Westbank reserve lands.161 The authors discuss these examples to demonstrate the numerous forms of economic development that are currently taking place on First Nations reserve lands, which implicitly could flourish more broadly under the FNPOA. What they don’t discuss are the implications for First Nations if much of what is already scarce reserve land is unavailable for occupation and use by its members. As Pasternak argues, the FNPOA “is discursively framed to acknowledge Indigenous land rights while the bill simultaneously introduces contentious measures to individualize and municipalize the quasi-communal land holding of reserves.”162 One of the implications of this “municipalizing” is the FNPOA only guarantees the collective jurisdiction of the First Nation as a government entity over its reserve lands. As for guarantees of physical occupancy of those lands by First Nations people and communities, under the proposed FNPOA it appears these would be subordinated to the forces of the newly established on-reserve private property markets.

161 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 156.
3.4 Why is Primitive Accumulation Not Strictly an Historical Phenomenon in Canada?

*Today the Indian Act is the repository of the struggle between Indian peoples and colonial and later Canadian policy makers for control of Indian peoples' destiny within Canada. The marks of that struggle can be seen in almost every one of its provisions.*
– Royal Commission on Aboriginal Peoples.\(^{163}\)

These above examples of creeping encroachment onto First Nations reserves by non-Indigenous commercial and housing developments are very significant for contemporary discussions concerning ongoing nature of primitive accumulation. As I explore next, the FNPOA also points to the role of struggle in determining the character and continued existence of processes of primitive accumulation. As Pasternak puts it, “Canadian assertions of sovereignty did not obliterate Indigenous governance authority, and as such, encounters between settler and Indigenous law reveal the unfinished project of perfecting settler colonial sovereignty claims.”\(^{164}\)

Further, the contemporary conflict over property rights on reserves must be understood in historical context, where past resistance to the alienation and individual allotment of reserve lands is a key factor in understanding why the workings of primitive accumulation continue to play out in Canada.

For Glassman, the role of struggle is central to help understand the continued workings of primitive accumulation. According to Glassman, class struggle provides “one basis for the


\(^{164}\) Pasternak, “Jurisdiction and Settler Colonialism,” 147.
likelihood… of primitive accumulation remaining a fixture within capitalist development.”\textsuperscript{165}

Similarly, De Angelis argues, “if original accumulation has to occur before capital accumulation, this is a continuous occurrence that is intrinsically tied to the movements of class struggle.”\textsuperscript{166}

Using Polanyi’s notion of ‘double movement,’ De Angelis argues,

> the continuous element of Marx’s primitive accumulation could be identified in those social processes or sets of strategies aimed at dismantling those institutions that protect society’s [sic] from the market. The crucial element of continuity in the reformulation of Marx’s theory of primitive accumulation arises therefore once we acknowledge the other movement of society.\textsuperscript{167}

This aspect of the contemporary discussion concerning primitive accumulation, whereby historical struggles against enclosures are key to understanding the continued operation of primitive accumulation, is extremely valuable in understanding the specific context within which the FNPOA arises.

Nicholas Brown provides an important contribution to the discussion on the role of Indigenous struggle in understanding the workings of primitive accumulation. He presents his own intervention as seeking to answer a set of related questions: “is the continuous character of primitive accumulation contingent on and enabled by the failure of settler colonialism? In other words, does failure allow processes of primitive accumulation to endure?”\textsuperscript{168} By failure, Brown


\textsuperscript{167} De Angelis, “Marx and Primitive Accumulation,” 13.

is referring to Audra Simpson’s characterization of settler colonialism as a “failed project,” where continued Indigenous presence in North America means having “survived this acquisitive and genocidal process and thus to have called up the failure of the project itself.” Simpson makes a similar point in her book *Mohawk Interruptus*, where she discusses the politics of “refusal” in her study of the Mohawk community of Kahnawake as generating what she refers to as “settler precariousness.” For Simpson, acts of refusal on the part of Iroquois people represent continued assertions of existence as nations, and in doing so “remind nation-states such as the United States (and Canada) that they possess this very history, and within that history and seized space, they possess a precarious assumption that their boundaries are permanent, uncontestable, and entrenched.” From the vantage point of Indigenous people, I worry it is setting the bar a bit low if the inability of the Canadian or US states to execute a 100% genocidal elimination is the criterion for declaring the “failure” of these settler colonial projects. Nonetheless, Brown and Simpson point to the role of Indigenous struggle in ways that imply the continued existence of non-capitalist spaces and relations. The continued existence of these spaces has important implications for theorizing contemporary processes of primitive accumulation, whereby the assertions of existence by Indigenous people are made as people who exist at least in part outside of both the political and economic spaces of Canada.


171 Ibid.
In terms of the FNPOA, the role of struggle is important insofar as the “unfinished business” of establishing private property rights on reserves points to past efforts by Indigenous communities to resist their implementation. Reflecting on Cole Harris’ depiction of the process of reserve-making in British Columbia, Dempsey et al argue “customary rights on reserves are not traditional as Flanagan and Alcantara would have it, but forms of tenure practices that have been densely articulated with the legal and normative frameworks of the colonial and later national administrations.”\(^{172}\) However, in what follows, I challenge the idea that the contemporary customary, communal, or at least non-individual property regimes on reserves are strictly a unilateral colonial imposition.

To clarify, I do not dispute the colonial nature of current property tenure systems on reserves. The role of assimilation as both ideology and official government policy in motivating the establishment of Indian reserves in Canada has been clearly documented. Richard Bartlett’s research on the legal history of reserves demonstrates that the first reserves were established in the 17\(^{th}\) century by French missionaries “who sought to Christianize the Indians and desired that they adopt a sedentary way of life to further that objective.”\(^{173}\) Bartlett further points out the analogy of Indian reserves with traditional lands is a false one, arguing “it was, and is, impossible to maintain a traditional way of life on the tiny fraction of traditional land set apart as


\(^{173}\) Richard H. Bartlett, Indian Reserves and Aboriginal Lands in Canada: A Homeland (Saskatoon: University of Saskatchewan, Native Law Centre, 1990), 8.
reserves.”174 As I discussed above, Flanagan and other advocates understand both reserves, and the specific forms of property tenure that exist under the Indian Act, as colonial impositions and temporary measures. If this is the case, though, why was it that private property systems weren’t imposed at the same time that reserves were initially established?

The Report of the Royal Commission on Aboriginal Peoples (RCAP) provides some interesting insights and historical background to assist in answering this question. In the chapter focused on the Indian Act, the authors of RCAP point out that, even though Indian people are usually the “harshest critics” of the Indian Act, they “are often extremely reluctant to see it repealed or even amended. Many refer to the rights and protections it contains as being almost sacred, even though they are accompanied by other paternalistic and constraining provisions that prevent Indian peoples assuming control of their own fortunes.”175 The authors of RCAP then provide key examples of what they describe as the Indian Act’s protective features:

[N]o one other than an "Indian of the band" could live on or use reserve lands without license from the superintendent general; no federal or provincial taxation on real and personal property was permitted on a reserve; no liens under provincial law could be placed on Indian property and no Indian property could be seized for debt. All these features of the original act are still present in the current version and are credited by most Indian people with preserving the reserve land base from gradual erosion [emphasis added].176

Therefore, as much as both the Indian Act and the reserve system are blatant colonial impositions, the current form of property tenure means that reserve land is both collectively held

174 Ibid., 65.
175 Erasmus and Dussault, Report of the Royal Commission on Aboriginal Peoples, 238.
176 Ibid., 256.
and inalienable, therefore providing a beneficial protection, however limited, for First Nations reserve communities.

At least as early as the Bagot Commission of 1844, representatives of the British Crown preferred to encourage individual property ownership of reserve lands. According to RCAP, the Bagot Commission “recommended that Indians be encouraged to adopt individual ownership of plots of land under a special Indian land registry system. They were to be encouraged to buy and sell their plots of land among themselves as a way of learning more about the non-Indian land tenure system and to promote a spirit of free enterprise.” ¹⁷⁷ This was opposed by Indigenous communities at the time, who, along with an overall opposition to the Commission’s assimilationist approach, exhibited “strong resistance to the notion of individual allotment of reserve lands, as many feared – rightly – that this would lead to the loss of these lands and to the gradual destruction of the reserve land base.” ¹⁷⁸ Despite opposition to individual allotment, however, the Bagot Commission proposals found their way into the Gradual Civilization Act of 1857. Baxter and Trebilcock characterize this act as “a direct attempt by the government of Upper Canada to dismantle the reserve system by granting private land holdings to First Nations individuals.” ¹⁷⁹ Thus, the struggle over privatization of reserve lands has deep historical roots from long before the ascendency of contemporary neoliberal economics.

¹⁷⁷ Ibid., 247.
¹⁷⁸ Ibid., 247.
As detailed in the RCAP report, the *Gradual Civilization Act of 1857* was an absolute failure: “Only one Indian, Elias Hill, was enfranchised between 1857 and the passage of the *Indian Act* in 1876.”¹⁸⁰ Part of this failure, according to the RCAP report, resulted from opposition by Indian bands, who “refused to permit their reserves to be surveyed for purposes of the 50-acre allotment that was to be the incentive for enfranchisement.”¹⁸¹ In the case of Elias Hill, J.R. Miller explains:

> the provision of the Gradual Civilization Act by which the state intended Hill to take his share of reserve land with him as a free-hold tenure was frustrated by the Council of Six Nations, which simply refused to agree to the removal of the tract from reserve status. *In this manner, at least part of the Gradual Civilization Act’s program was thwarted in the case of the first status Indian to avail himself of it* [emphasis added].¹⁸²

Opposition to individual titling was also clearly expressed by the Indigenous leaders who participated in the Conference of Orillia, a meeting organized by the superintendent of Indian Affairs to consult with official Chiefs in Eastern Canada in 1846. According to Miller, the chiefs in attendance “wanted no part of provisions that would allow the conversion of lands that bands held in common to individual plots held in freehold tenure.”¹⁸³ These examples of opposition are significant in understanding the complexities in how First Nations reserves and collective property rights are still defended by communities despite their colonial nature.

In drawing attention to how Indigenous opposition has played a role in determining

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¹⁸¹ Ibid.


¹⁸³ Ibid., 141.
established forms of property tenure on reserves, I don’t dispute the discursive force of reserve boundaries. Nor do I mean to downplay how colonial power has overwritten discourses within First Nations communities in ways that sometimes cause us to equate imposed property systems with ‘traditional’ forms of collective tenure. Returning to Hunt’s notion of the *colonialscape*, it is important to not run a risk similar to conflating reserves with ‘traditional territory,’ hence naturalizing both reserve boundaries and their specific property forms, exhibiting what Hobsbawm refers to as the “invention of tradition.”\(^{184}\) However, even if reserves are largely a colonial imposition (especially in the case of British Columbia, where communities were not afforded even the limited ability to negotiate their location and size that were key parts of treaty-making), the collective nature of reserve lands must be partly understood as the result of attempts by communities in Eastern Canada to negotiate and oppose government attempts at complete dissolution of reserve lands. Thus, historical opposition to individual titling played a role in the formal constitution of property rights on reserves, laying the literal and figurative groundwork for contemporary struggles to preserve both reserves and their collective property systems.

### 3.5 What is the Role of Property Titling as a Form of Primitive Accumulation?

The proposed FNPOA also points to the continued centrality of state intervention as a means of maintaining capitalist accumulation in Canada. Here, I am deploying a wider definition of primitive accumulation, in line with Glassman’s argument that “accumulation by extra-economic means” should be understood broadly to include “the entire panoply of forms of

accumulation by means other than expanded reproduction.” However, I want to address what the continued role of the Canadian state implies for understanding contemporary manifestations of primitive accumulation as forms of violence. To reiterate, one of Coulthard’s modifications to Marx’s original thesis on primitive accumulation is that “colonial relations of power are no longer reproduced primarily through overtly coercive means, but rather through the asymmetrical exchange of mediated forms of state recognition and accommodation.” If, however, we are specifically looking at the proposed FNPOA, the legislating of private property regimes on reserves entails the use of violence in both enforcing and implementing these regimes, or what Nicholas Blomley describes as the ways in which “violence, space and a property regime might be mutually constitutive.” Thus, even if contemporary accumulations of capital don’t require the types of violent intervention described by Marx in Capital Vol. 1 as characteristic of the “classic form” of primitive accumulation, the proposed FNPOA points to the central role of the state and its application of “extra-economic means” (in this case, legislative changes to property rights regimes on First Nations reserve lands) to maintain the Canadian settler colonial relation.

Some Marxists emphasize the specific role of property titling in theorizing primitive accumulation. For example, Maurice Dobb’s somewhat critical take on the theory includes questioning whether primitive accumulation should be “conceived as an accumulation of means

186 Coulthard, Red Skin, White Masks, 15.
of production themselves or an accumulation of claims or titles to wealth, capable of being converted into instruments of production.”¹⁸⁸ He is rather cynical concerning the first possibility, arguing there is no evidence of “capitalists having hoarded spinning machines” or other productive equipment “in gigantic warehouses over a period of decades until in the fullness of time these warehouses should be full enough for factory industry to be started.”¹⁸⁹ Rather, he argues for the latter interpretation:

If any sense is to be made, therefore, of the notion of a “primitive accumulation” (in Marx’s sense of the term) prior in time to the full flowering of capitalist production, this must be interpreted in the first place as an accumulation of capital claims – of titles to existing assets which are accumulated primarily for speculative reasons; and secondly as accumulation in the hands of a class that, by virtue of its special position in society, is capable ultimately of transforming these hoarded titles to wealth into actual means of production.”¹⁹⁰

Dobb still presumes that primitive accumulation describes a distinct, historical phase that exists separate from the “full flowering” of capitalist markets. Nonetheless, his approach illuminates the role of private property rights, and by extension their enforcement through the state, in understanding the continued operation of primitive accumulation in Canada. As De Angelis argues, the historical character of primitive accumulation “is revealed not so much by the fact that primitive accumulation occurs before the capitalist mode of production – although this is also the case – but that it is the basis, the presupposition, the basic precondition which is necessary if accumulation of capital must occur.”¹⁹¹ Therefore, in the case of First Nations

¹⁸⁹ Ibid.
¹⁹⁰ Ibid., 178.
reserves, where formalized private property titling has yet to be established, this particular interpretation of primitive accumulation is useful in demonstrating how the struggle for prior accumulation remains operative.

In my view, the conceptualization of primitive accumulation as taking a “panoply of forms”, including the use of law, is reflected in Marx’s own presentation of the theory. Though Marx pointed out that the discussion of primitive accumulation in Capital Vol. 1 was only meant to address “the violent means employed” during the agricultural revolution in England, the role of law and the reconfiguration of property rights in facilitating dispossession is apparent. For example, Marx describes an escalation in the enclosure of agricultural lands following the Stuart restoration, whereby “the landed proprietors carried out, by legal means, an act of usurpation which was effected everywhere on the Continent without any legal authority.” According to Marx, this act included the abolishment of feudal tenure of land, and landed proprietors establishing “the rights of modern private property in estates to which they had only a feudal title.” Further, in discussing communal property in England, Marx argues there is a shift from the fifteenth and sixteenth centuries, when “the process was carried on by means of individual acts of violence against which legislation… fought in vain. The advance made by the eighteenth century shows itself in this, that the law itself now becomes the instrument by which the people’s

\[192\] Marx, Fowkes, and Fernbach, Capital, 883.

\[193\] Ibid.

\[194\] Ibid., 884.
land is stolen [emphasis added].”\textsuperscript{195} I draw two conclusions from these passages. First, even if Marx was not emphasizing the centrality of law in facilitating primitive accumulation, he nonetheless illustrates its role in facilitating capitalist enclosures. Further, once the contradictions within the law concerning the protection of the commons were overcome in favor of the landowning class, primitive accumulation was able to manifest on an exponentially higher scale and at a faster rate. Property rights and their enforcement through law are thus key components in even the classic form of primitive accumulation. I therefore argue the FNPOA represents a blatant example of primitive accumulation in the contemporary context, but, in many ways, it is also closer to the “classic” form of this process as described by Marx. Attempts to implement private property regimes on reserves are therefore an instance where the role of state violence in maintaining Canadian settler colonialism has not retreated in lieu of other, less-coercive means.

\subsection*{3.6 Conclusion}

The proposed FNPOA provides an important example of how primitive accumulation operates in the context of settler colonialism. Though clearly articulated with and through contemporary neoliberal strategies of privatization, the Act also points to the ways that land dispossession has continuously structured settler-Indigenous relationships since at least the 19\textsuperscript{th} century. Thus, in addition to providing what its proponents describe as a tool “to unlock the

\textsuperscript{195} Ibid., 885.
tremendous economic potential of First Nations land,” the FNPOA must also be understood as another tool to facilitate the further dispossession of Indigenous people from these lands.  

The discussion earlier in this chapter concerning dispossession and proletarianization points to an aspect of class struggle that I have not addressed so far: how processes of dispossession foreground struggles over subject formation. As Jessop and Sum argue, class struggle “is first of all a struggle about the constitution of class subjects before it is a struggle between class subjects.”  

According to Brown, though De Angelis correctly highlights the role of class conflict in understanding the continuous nature of primitive accumulation, he insufficiently addresses “how modes of resistance are constrained by colonial power,” which for Brown means that “resistance is likewise shaped to a certain extent by the structures it opposes.”  

Thus, Brown concludes, in struggles against processes of primitive accumulation, it is not just “the forms of resistance transformed in this process but also the subjects of resistance.” I suggest struggles over subject formation are inseparable from struggles over different forms of jurisdiction. In other words, the question of property forms on reserves doesn’t point to strictly a struggle over control of particular parcels of land, but the kind of relationships that are at stake in the further entrenchment of private property regimes within First Nations communities. These communities are thus also the site of a struggle between assertions of

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197 Sum and Jessop, Towards a Cultural Political Economy, 187.
199 Ibid.
Indigenous identity and attempts by the Canadian state at colonial *resubjection*, a struggle to which I turn in the next chapter.
Chapter 4: The FNPOA and the (re)Formation of Colonial Subjects

We have been decimated by disease, warfare, and most recently the good intentions that created our dependency. We have begun to rebuild the legal and administrative foundation to support markets on our lands. Once we restore our property rights to our lands, I believe we will unleash a wave of First Nations creative and entrepreneurial spirit.

– Manny Jules, forward to Beyond the Indian Act.

In this chapter, I focus on the relationship between property, land and the formation of colonial subjects. As I explore here, for both the Canadian settler state and Indigenous people, the struggle over subjects is inherently spatial: in conflicts over land and property rights there is a direct connection between land, property forms, and subject formation. Responding to Sundberg’s call for research analyzing “how race articulates with environmental formations to constitute subjects, determine their social and geographical place, and organize space,” I also explore how race and racialization continue to play a role in the formation of Indigenous subjects in Canada.

In “The Subject and Power,” Foucault suggests the term subject can have two meanings (“subject to someone else by control and dependence; and tied to his own identity by a conscience or self-knowledge”). Foucault argues both definitions “suggest a form of power which subjugates and makes subject to.” Here, Foucault defines struggles against subjection as

200 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, xii.


203 Ibid.
struggles “against forms of subjectivity and submission.”\textsuperscript{204} I use the term \textit{resubjection} to describe the ways the proposed FNPOA involves a reconfiguration of the kinds of colonial subjects that have already been produced through the Indian Act, whereby, as Gord Hill describes it, “the Indian Act made Indians act like Indian Act Indians.”\textsuperscript{205} This reconfiguration is consistent with the understanding of settler colonialism as a structure that reproduces itself over time. Drawing from Fanon’s notion of “colonized subjects,” Coulthard argues “the maintenance of settler-state hegemony requires the production of… the specific modes of colonial thought, desire, and behaviour that implicitly or explicitly commit the colonized to the types of practices and subject positions that are required for their continued domination.”\textsuperscript{206} Shifts towards politics of reconciliation and recognition therefore mean the structures of domination change over time, but also along with them the colonizer’s preferences for the reconstitution of Indian subjects. Thus, the ideal Indian subject is no longer one that is presumed to assimilate and disappear, but joins and prospers within Canadian society guided by an “Indigenous entrepreneurialism,” or what Dempsey \textit{et al} refer to as “property-owning entrepreneurial subject-citizens.”\textsuperscript{207} As I explain, the FNPOA thus presumes a very narrow subjectivity for Indigenous people, one that excludes the possibility for Indigenous ways of relating to land. If taken to its logical conclusion, _______________________

\textsuperscript{204} Ibid.


\textsuperscript{206} Coulthard, \textit{Red Skin, White Masks}, 16.

\textsuperscript{207} Dempsey, Gould, and Sundberg, “Changing Land Tenure, Defining Subjects: Neoliberalism and Property Regimes on Native Reserves,” 239.
this vision still embodies an assimilating, disappearing subject.

In this chapter, I first examine the theorization of property rights underpinning the arguments for the FNPOA. As I demonstrate, the theory of property mobilized by FNPOA supporters is inseparable from a very narrow approach to human subjectivity. I then address how supporters of the legislation mobilize a particular “dependency” theory to explain the psychological effects of colonialism on Indigenous peoples. According to advocates of this theory, the proposed solution to dependency entails an attempt to articulate Indigenous approaches to decolonization with neoliberal policy. Third, I look at the specific kinds of subjectivities mobilized by supporters of the FNPOA, paying special attention to how they deploy an idealized notion of individual home ownership. I then turn to past attempts to implement private ownership on First Nations reserves and US reservations. I demonstrate that desires to reformulate Indian subjectivities have always been central motivators to these past attempts. Therefore, subject formation should be included in any critical assessment of contemporary proposals to privatize reserve lands. Finally, I argue that the resubjection inherent to the FNPOA illustrates how the legislation is still a policy of assimilation, rendering clear how settler colonialism’s logic of elimination manifests at the level of subject formation. Here, assimilation operates strictly at the negative, genocidal level, a false promise that undermines Indigenous land relationships and existence. Meanwhile, as I discuss below, the appeal to Indigenous people to become “just like other Canadians” is both undesirable and impossible at the same time.
My central argument is that property regimes presume certain forms of subjectivities, and in this case, rather than a ‘panoply’ of property rights systems such as those discussed in *Beyond the Indian Act*, the FNPOA calls for a very specific form of individual rights. Thus, the FNPOA is incapable of representing a restoration of Indigenous property rights, as Indigenous ways of relating with land would be directly undermined if the FNPOA were to be implemented.

4.1 Theories of Property and the FNPOA

I begin my analysis of the relationship between land and subject formation with the theories of property and human nature utilized by supporters of the FNPOA. The authors of *Beyond the Indian Act* discuss their understandings of property and human nature very early on in the book, stipulating their assumptions about people and proper relationships with land that underlie their advocacy for private property rights on reserves. Although *Beyond the Indian Act* is specifically about property rights on First Nations reserves, the authors state: “First Nations people are human beings, and the principles of biology and economics apply to them as much as they do to any other group of people.” 208 The authors of *Beyond the Indian Act* claim their theorizing of property “is not rooted in the Lockean idea of natural rights.” 209 Instead, they characterize the development of private property as “consistent with what biology teaches us about human nature.” 210 They cite Richard Dawkins’ notion of “selfish genes,” which suggests organisms are driven by “a competitive struggle for survival and reproductive success,” causing


209 Ibid., 16.

210 Ibid., 17.
them to “make use of the world around them for foraging, protection, and breeding.” Further, and again drawing from Dawkins, the authors argue “property is part of the extended phenotype of human beings.” Thus, according to Flanagan et al, human relationships with property stem from human nature itself, and since this nature is presumed to be understood as fundamentally about individuals and their “selfish” drives, private property is that which naturally corresponds with our biological composition.

Despite their claims to the contrary, supporters of the FNPOA espouse a property theory underpinned by a Lockean view of the world. By this I mean their distinction – that property relations flow from biological drives rather than natural rights – completely misses the more substantive critiques of Locke for how his theory of property developed within the context of settler colonial dispossession. As Barbara Arneil argues, before Locke’s time the English defined property in terms of occupation, a definition that “became a problem in America when the Amerindians and their English defenders claimed, by virtue of their occupation, proprietorship in certain tracts of land coveted by the English.” Arneil argues that this necessitated a new definition of property, and Locke’s Two Treatises provided an answer, whereby agricultural labour, “rather than occupation, would begin property.” For Arneil, the “two fundamental aspects of Locke’s argument regarding property – namely, the right of the individual through

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211 Ibid.
212 Ibid.
214 Ibid.
labour to claim land, and the definition of labour on land as agricultural cultivation – were
indeed used to justify both the appropriation of land by the English and the conversion of
Amerindians to agrarian labour.” Rather than address these aspects of Locke’s theory, the
authors of Beyond the Act merely supplant “natural rights” with a particular variant of social
Darwinism rooted in so-called “selfish genes,” in essence providing a different origin story of
individual property rights that leads to the same conclusion. The major problems of Lockean
property theory Arneil identifies are thus left intact.

Writings by FNPOA supporters frequently demonstrate the survival of colonial forms of
Lockean thought. For example, in “Shackled by Red Tape,” a National Post article advocating
for the FNPOA, Kevin Libin starts with a description of the Tsuu T’ina Nation reserve which
conjures up notions of the reserve as empty space. He explains, “it would be hard to mistake this
rugged, 300-square-kilometre plot, shouldered deep into Calgary’s southwest, for much else”
than a reserve, describing it as “a conspicuous bald spot, a largely barren expanse of yellow hills
and groves.” Libin thus reinvigorates the Lockean notion that Indigenous land is sitting idle
and unproductive, and is therefore a waste of that land compared with developing it for economic
benefit. According to Libin, “[t]here is something pleasant about seeing such unspoiled
wilderness literally across the street from a metropolis where bulldozers, cranes and cement
trucks seem never to rest. Unless, of course, you are a young Sarcee trying to get ahead, in which

215 Ibid., 207.
case, serenity comes at a steep price.” According to Libin then, the act of leaving the Tsuu T’ina reserve as a “largely barren expanse” is ultimately the root of the socioeconomic problems facing the reserve’s residents.

Flanagan et al’s theory of property and its relation to “selfish genes” doesn’t deny the social nature of humans, but only insofar as “society is a survival vehicle of the individual.” Similarly, the authors of Beyond the Indian Act don’t discount the need for both individual and collective forms of property rights, but they do presume that the default form of ideal property is that which is individually held. They argue, “individual ownership tends to put property to its highest economic use because it unites knowledge and motive to create incentive.” Further, collective property is only understood to provide a larger framework for the flourishing of individual private property. As they explain when providing their particular account of how property rights evolved over time, “collective title of the community became identified with the territory of the state under the jurisdiction of sovereign authority. Ownership became identified with property, held by individuals, families, or corporations under laws created and enforced by the state.” This distinction is important because, as I discussed earlier, advocates of the FNPOA often insist that they uphold the importance of individual and collective property regimes, both in general terms and specifically as they could be utilized on First Nations

217 Ibid., A10.
218 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 17.
219 Ibid., 19.
220 Ibid., 24.
reserves. However, once they stipulate collective rights are only recognized at the level of state sovereignty, Flanagan et al are by default advocating individual private property as the ideal “extended phenotype” for humans.

Joseph Singer has written an extensive critique of this approach to theorizing property, which he refers to as the “ownership model,” wherein one assumes that a property owner has the “full bundle” of rights over their property.221 For Singer, this worldview assumes that, wherever limits are placed on full individual ownership, “we imagine those limits to be exceptions to the general rule that owners can do whatever they want with their property.”222 Though the ownership model is pervasive, Singer argues it is “misleading and morally deficient,” because this way of understanding property encourages owners “to consider their self-interest alone – to act as if no one existed but themselves.”223 Thus, according to Singer, the ownership model provides “a framework for thinking about property that privileges a certain form of life – the life of the owner.”224 Singer points to more nuanced theories of property rights, such as those of 20th century legal realists and the “bundle-of-rights” approach, but notes, “for all the sophistication of the legal-realist conception of property, we in fact remain mired in an absolutist paradigm. Scholars, lawyers, and judges all revert to the ownership model with surprising frequency.”225

222 Ibid.
223 Ibid., 6.
224 Ibid.
225 Ibid.
Understanding this tendency to revert to the ownership model is important because the authors of *Beyond the Indian Act* make claims that their theory of property flows from a bundle-of-rights approach. However, according to Singer, early 20th century proponents of the bundle-of-rights model were concerned with how the classic ownership model “left a great deal of inequality in the distribution of both property and power.” The authors of *Beyond the Indian Act*, on the other hand, draw their “bundle-of-rights” approach from Harold Demsetz’ theory of property rights, a theory which is more concerned with “the role of property rights in the internalization of externalities” and their disaggregation for the purposes of maximizing economic efficiency. Thus, I argue the distinctions Singer makes between the ownership model and the bundle-of-rights approach are of little relevance to either Demsetz or the authors of *Beyond the Indian Act*, for whom concerns over “inequality in the distribution of property and power” do not appear to be of major concern. The “bundle-of-rights’ approach advocated by Demsetz (and mobilized by FNPOA supporters) is essentially a variation of the ownership model, where human relations with land stem from an individual, self-regarding motivation that is rooted in human biology, and individual property rights over land are an inevitable outgrowth of this human nature.

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226 Ibid., 12.

Blomley suggests the ownership model constrains the possibilities of human subjectivity. As he puts it, the ownership model “shapes understandings of the possibilities of social life, the ethics of human relations, and the ordering of economic life.”  

Under the ownership model, he writes,

private ownership is seen as good to the extent that it fosters valued behaviors, including responsible citizenship, political participation, and economic entrepreneurship. By extension, people who do not own property (insofar as the ownership model is concerned) are treated with a good deal of ambivalence, suspicion, and even hostility.”

Further, according to Blomley, viewing property “as a spatialized thing, rather than a bundle of relationships, locates its central relationship as that between the owner and the thing owned. The effect is to suppress our understanding of the undeniable and often differential relations between the owner and other people.”

Cohen and Hutchinson also critique the constraining effect of world-making as it is enacted through what they refer to as the “normative authority of law.”

For Cohen and Hutchinson, this means the “essential and creative act of world-making” always occurs with “the equally unavoidable act of world-ending. To make one world is to abandon, at least temporarily, other potential worlds. Sight and blindness are simultaneously experienced. A way of seeing is always a way of not seeing.”

Extending this, if other worlds are precluded by certain views of property relations, we can also presume the same dynamic concerning their

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229 Ibid., 4.

230 Ibid., 6.


232 Ibid., 23.
corresponding forms of subjectivity. And, as I will explore, the notion that the FNPOA represents a “restoration” of Indigenous land relations is difficult to sustain when such narrow limits on property forms and subjectivities are inscribed.

4.2 On the so-called “Dependency” of First Nations

Another aspect relevant to property rights and subject formation concerns arguments used by supporters of the FNPOA that colonialism has produced forms of dependency, both economic and psychological, among Indigenous people in Canada. Interestingly, in what is perhaps an understood intellectual division of labour made among Indigenous and non-Indigenous advocates of private property rights on reserves, it is Indigenous authors like Calvin Helin and Manny Jules who more directly point to the problem of “dependency” and the kinds of negative traits this has produced within First Nations subjects. Jules frequently advocates for private property rights by pointing to the problem of “dependency,” where the proposed FNPOA “speaks of our efforts to create new choices that free us from dependency and the Indian Act.”

Calvin Helin, however, has written much more extensively on issues of ‘dependency,’ albeit from a perspective very similar to that of Jules. Helin is a Tsimshian lawyer, businessman, and President of Eagle Spirit Energy, a company most notable for its attempts to establish a “greener, Aboriginal alternative” to the controversial Northern Gateway pipeline through northern British Columbia. Ranked by

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233 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, xii.

Canadian Business Magazine as “One of Canada’s Most Powerful Business People,” Helin is also the author of Dances with Dependency, in which he advocates for the FNPOA as an example of “how to innovatively allow more individual ownership of indigenous land,” and is a prominent advocate of market-oriented approaches to addressing socio-economic issues in Indigenous communities.

In Dances with Dependency, Helin argues Indigenous people are caught in a “welfare trap.” For Helin, this trap “has created an artificial environment which has led to a dependency mindset that has slowly percolated into indigenous psyches over many generations.” He explains that the “welfare trap” doesn’t just mean “individual reliance on social assistance,” but also includes Aboriginal governments that are “financially dependent on transfers from the federal government.” Therefore, according to Helin, both individual and band council reliance on assistance work together “to reinforce dependency and have directly resulted in a complex web of social and political pathologies.” On the surface, there is a resonance between Helin’s discussion of the “social and political pathologies” among Indigenous

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237 Ibid., 104.

238 Ibid.

239 Ibid.

240 Ibid.
people and Fanon’s arguments concerning the “inferiority complex” among the colonized that results from both economic structures of domination as well as the internalization of inferiority.\textsuperscript{241} In overcoming dependency, Helin argues Indigenous people “have to shake off the mantle of apathy that has descended on us…[.] The welfare trap will never lead to basic human fulfillment or happiness, a state of existence that at one time did not cost a cent.”\textsuperscript{242} Helin advocates “self-reliance” as a solution to economic dependency, which I argue entails an approach where neoliberal economic restructuring would not only be consistent with Indigenous ways, but embody acts of economic and psychological decolonization.\textsuperscript{243}

There are major problems with Helin’s “welfare trap” theory, two of which are especially relevant to this discussion. First, Helin’s theory represents the same problems as the “exclusion” model of colonialism I discussed before. According to Helin, economic and psychological problems amongst Indigenous people like “dependency” are primarily the result of exclusion from Canadian society, as opposed to other processes like land dispossession, the intentional deterioration and destruction of land-based practices for subsistence, and decades of official polices towards assimilation such as the residential school system. A clear understanding of these processes is thus precluded in mobilizing the very narrow understanding of “dependency” promoted by Helin, Jules, and other supporters of the FNPOA. Second, Helin’s dependency argument tries to present “psychological and political pathologies” among Indigenous people as


\textsuperscript{242} Helin, \textit{Dances with Dependency}, 107.

\textsuperscript{243} Ibid., 86.
the result of government policy, attempting to avoid the racist practice of locating these problems as stemming from Indigenous culture. In my view, however, Helin’s “welfare dependency” argument doesn’t actually negate racist stereotypes of Indians as lazy and a financial drain on Canadian taxpayers, rather it reinforces them, rearticulating old forms of racism with neoliberal ideas. This is most clear at times where Helin bemoans the problems of economic dependency in terms of their effects on the rest of Canadian society. As he explains, if the “rapidly-growing Indigenous population in Canada” remains economically dependent on taxpayer dollars, the result will be “an immense demographic tsunami capable of swamping the finances of the country.”

Thus, he concludes, “the very prosperity and competitiveness of Canada is at stake.” Interestingly, Helin also frequently cites works like the aforementioned Market Solutions for Native Poverty when demonstrating the apparent workings of the “welfare trap.” As I discussed in chapter 2, the authors of this book are quite forthcoming in advocating for assimilation, giving Helin the difficult task of making legislative proposals typically associated with the conservative right wing in Canada compatible with Indigenous resurgence.

Instead, the contradictions in Helin’s work point to the impossibility of reconciling these positions. Discussing Fanon and the politics of resentment, Coulthard characterizes psychological manifestations of decolonization as embodying “the externalization of that which was previously internalized: a purging, if you will, of the so-called “inferiority complex” of the

244 Ibid., 17.
245 Ibid.
colonized subject.” Put another way, Fanon’s identification of psychological dependency among colonized subjects is to inform an emancipatory project that rejects the gaze of the colonizer. Instead, Helin’s dependency theory mobilizes the very images emanating from this gaze, thus reinforcing their internalization by Indigenous people.

Therefore, in presenting property rights as necessary to address a very particular definition of “dependency,” I argue the FNPOA still rests upon what Anne Stoler refers to as a “fundamental paradox of racial discourse.” According to Stoler, racial discourse “invariably draws on a cultural density of prior representations that are recast in new form.” Thus, racial discourse “is not opposed to emancipatory claims; on the contrary, it effectively appropriates them.” Jules and Helin do not dispute that Indians have a particular “mindset” and “Indigenous psyche” which contributes to our inability to properly participate in the Canadian economy, but they are locating the source of this in government policy rather than our own cultures.

The two key assumptions of supporters of the FNPOA that I have outlined above are crucial to understand in exploring the relationship between land, property and subject formation in settler colonial contexts. To reiterate, according to FNPOA advocates individual property

246 Coulthard, Red Skin, White Masks, 114.


248 Ibid.

249 Ibid.
rights are superior because they best correspond to a “selfish” human nature, and for Indigenous peoples, the lack of formalized property rights on reserves contributes to forms of economic and psychological dependency on the government for assistance. It is thus very unsurprising that FNPOA supporters presume and elevate an extremely narrow form of Indian subjectivity: the “Indigenous entrepreneurial subject.”

4.3 The FNPOA and the “Virtues” of Individual Ownership

Having looked at the general theory of property rights underlying support for the FNPOA, I now examine the specific types of subjects that are upheld, presumed, and prescribed by supporters of individual property rights on reserves. For example, the authors of Beyond the Indian Act discuss a legal case involving one couple, the Johnstones, who had acquired control over roughly 1/6th of the entire Mistawasis First Nation reserve land base in a combination of CP and ‘ad hoc’ holdings. Despite a court ruling stating that the Johnstones had “improved, maintained, nurtured and sustained the lands in their occupation and possession,” Flanagan et al decry that the Johnstones were forced by the band council to give back the lands for which they had not acquired any sort of CP. These kinds of anecdotes are mobilized throughout Beyond the Indian Act to provide examples of the ideal entrepreneurial First Nations subject whose individual aspirations for personal advancement are thwarted by existing property regimes.

The role of private property in the formation of ideal Indian subjects, however, is most apparent where advocates of fee simple ownership focus on the virtues of individual home

250 Flanagan, Le Dressay, and Alcantara, Beyond the Indian Act, 73–74.
ownership on reserves. According to the authors of Beyond the Indian Act, “[i]t is difficult to maintain the quality of housing stock without the pride and incentives of homeownership.”

They explain:

Only a housing market, based on a combination of rental and home ownership as exists in the rest of Canada, can balance supply and demand and keep the housing stock in good repair. In short, it is a question of property rights – there must be owners who take pride in their own homes and see them as a savings vehicle, as well as landlords for whom housing is an investment to yield a profitable return.

Similarly, the aforementioned EKOS report on reserve housing discusses the importance of individual home ownership. The report advocates “greater involvement of individual households through consultation in housing design, sweat equity,” and “greater occupancy responsibility for property maintenance.” According to the authors of the EKOS report, private responsibility for housing on reserves “engenders greater pride in ownership and a greater willingness to maintain higher levels of housing quality.” Aside from improving housing quality, the authors of the EKOS report see the need to promote the values and concepts of “mass consumer society” through private property ownership. Therefore, according to this logic, in addition to apparent economic benefits of ownership, Indians who own their own homes will also attain virtues such as pride and individual responsibility, along with the greater absorption of values attributed to “mass consumer society.”

251 Ibid., 15.
252 Ibid., 6–7.
254 Ibid., 24.
255 Ibid., 49.
What is most noteworthy, however, in the arguments used to support private home ownership on reserves, is how regularly Canadianness is mobilized: private property rights are presented as providing First Nations what all other Canadians apparently enjoy. For example, in “Shackled by Red Tape” Libin argues that the FNPOA would let “individual aboriginals on reserves enjoy the economic freedoms and opportunities non-natives do to buy, sell, mortgage, exploit or develop their own, privately owned land.”

Similarly, Flanagan writes that the FNPOA represents legislation that will “facilitate an escape from the Indian Act by allowing those First Nations people who wish to own land in fee simple to have the same opportunity as other Canadians.” Further, as Chief Lebourdais of the Whispering Pine First Nation puts it, the FNPOA provides “the option to move away from the Indian Act and own our lands, just as all other Canadians do.” Thus, for advocates of the FNPOA, one of the virtues of home ownership is it provides an avenue for formal equality between First Nations and “all other Canadians.”

As Dempsey et al argue, this appeal for sameness thus elevates not only an idealized neoliberal subject, but specifically “a white subject who embodies the national capitalist values upheld by white Canadian settler society [emphasis added].” They characterize the FNPOA as

256 Libin, “Shackled by Red Tape,” a11.

257 Flanagan, “First Nations Property Rights.”

258 Lebourdais, “Band Proposal Seeks to Regain Land Ownership, Restore Value.”

informed by a type of “multi-cultural neo-liberalism,” which they define “as a project of economic rather than cultural assimilation.”\textsuperscript{260} For Flanagan and Alcantara, appropriate land management regimes “are those that facilitate the acquisition of credit, and the ideal Canadian subject is one who is self-sufficient and enterprising, and who never makes special demands based on history/geography/culture,” meaning that their “appropriate” subject is inseparable from their ideal forms of property rights.\textsuperscript{261}

\textbf{4.4 Subjectivity, Assimilation and Genocide}

As a project of resubjecting Indigenous people through the adoption of “appropriate” land management regimes, Dempsey \textit{et al} also characterize Flanagan and Alcantara’s argument as “one that seeks to place rigid boundaries around both Aboriginal land management and subjectivity.”\textsuperscript{262} However, using Wolfe’s “logic of elimination,” I want to expand on the analysis of relations between land and subject formation in settler colonial contexts. In chapter 2, I use Wolfe’s logic of elimination to help explain dispossession as a continuous process in settler colonial contexts. However, this theory is also important to help understand the fundamental relationship between land and subject formation. I argue the FNPOA points to the act of settler colonial \textit{resubjection} as part of the larger, continued Canadian project of genocide. For Nelson Maldonado-Torres, the eliminating tendency is an ever-present aspect of what he refers to as “coloniality,” whereby “[t]he imperial attitude promotes a fundamentally genocidal attitude in

\textsuperscript{260} Ibid., 251.

\textsuperscript{261} Ibid., 235.

\textsuperscript{262} Ibid., 241.
respect to colonized and racialized people. Through it colonial and racial subjects are marked as dispensable. Audra Simpson also points to this genocidal tendency in her critique of the politics of recognition. She argues “settler colonialism structures justice and injustice in particular ways, not through the conferral of recognition of the enslaved but by the conferral of disappearance in subject. This is not seeing that is so profound that mutuality cannot be achieved [emphasis added].” Therefore, in settler colonial contexts, the process of producing colonial subjects isn’t just about the creation of “rigid boundaries” around Indian subjectivity, but is also about eliminating Indigenous people as a subject position altogether.

Since the FNPOA was not passed in its present form, there are some challenges to elaborating on the concrete implications of the legislation at the level of subject formation. Further, supporters of the FNPOA tend to focus on the apparent economic benefits of implementing private property regimes. Though supporters of the FNPOA do put forward the Indigenous entrepreneurial subject, guided by their own traditions of self-reliance, the “property rights as restoration” argument implies that Indian subjects aren’t assimilated through this process, whereby full participation in neoliberal capitalist economics is compatible with Indigenous ways of relating with land. However, past attempts to implement individual land holdings in Canada and the US always entailed the reconfiguration and undermining of


264 Simpson, Mohawk Interruptus, 23.

Indigenous subjectivity. The authors of the RCAP report discuss this when analysing the objectives of the *Gradual Enfranchisement Act of 1869*. They argue that one goal of policies to subdivide reserves into individual plots “was to establish a bond between Indians and their individual allotments of property in order to break down communal property systems and to inculcate attitudes similar to those prevailing in mainstream Canadian society.”\(^{266}\) Further, the RCAP report suggests this policy was possibly “inspired by similar efforts in the United States, where individual allotments had always been used as a method of terminating tribal existence.”\(^{267}\) Thus, the Canadian and US governments’ past attempts to private reserve and reservation lands were not just about mobilizing economic arguments to justify individual titling, but were also about cultural assimilation, even to the point of termination.

Stremlau argues the reconstitution of Indigenous communities away from communal land arrangements was key to the Dawes Act. According to Stremlau, because the Act “resulted in extensive land loss, most of the secondary literature on allotment has focused on the pressures on Indian land and the schemes to defraud Indian people. But to the reformers responsible for allotment legislation, land was of interest only because tribes owned it communally.”\(^{268}\) Similarly, Eric Olund argues many Dawes Act supporters were evangelical Christians “appalled both at the violent treatment of Native people by settlers and government troops and also by the cultural practices of Natives themselves, which they felt the reservation system perpetuated


\(^{267}\) Ibid.

\(^{268}\) Stremlau, “To Domesticate and Civilize Wild Indians,” 266.
Therefore, for these Dawes Act supporters, reservations “were no longer the solution to the ‘Indian problem’; they were the cause.” As with contemporary advocates of the FNPOA, supporters of the Dawes Act believed government policy was to blame for the continued existence of collective property on reservation lands.

More importantly, however, the key “problem” identified by Dawes Act supporters was the perception that communal forms of land tenure provided a space for Indigenous traditions to persist. Olund argues the role of individual titling under the Dawes Act implied certain forms of Indian subjectivity that were laden with both racialized and gendered notions of ‘civilized’ relationships with land. He writes advocates of the Dawes Act

adopted an environmentalist argument: namely, that by changing Native land tenure from communal land to fee-simple property, Indians by virtue of having an individual interest in property would respond ‘rationally’ and develop the habits of self-reliance, discipline and foresight needed to maintain and ‘improve’ the land.

For Stremlau, the gendered dimensions of allotment were also clear: supporters of the Dawes Act “concluded that kinship systems, especially as they manifested in gender roles, prevented acculturation by undermining individualism and social order, and they turned to federal Indian policy to fracture these extended indigenous families into male-dominant, nuclear families, modeled after middle-class, Anglo-American households.” Or, as Olund puts it, “property and

269 Eric N. Olund, “Public Domesticity during the Indian Reform Era; Or, Mrs. Jackson Is Induced to Go to Washington,” *Gender, Place & Culture* 9, no. 2 (June 2002): 154, doi:10.1080/09663960220139662.

270 Ibid.

271 Ibid.

272 Stremlau, “To Domesticate and Civilize Wild Indians,” 265.
family were twinned to produce the patriarchal domestic space idealised by white middle-class reformers of the nineteenth century, the spatial configuration that was seen as the necessary underpinning of American civilisation."\textsuperscript{273} Dawes Act supporters therefore did not strictly use arguments about “economic efficiency” in support of individual property rights, but presumed a reformation of Indian subjectivities along very specific, interconnected lines of race, gender and class.

In his own discussion of the Dawes Act, Wolfe identifies the inherently eliminatory component of allotment, where, for supporters of the Act, “tribes and private property did not mix.”\textsuperscript{274} The breakup of tribal estates demonstrated what he refers to as “assimilation’s Faustian bargain— have our settler world, but lose your Indigenous soul. Beyond any doubt, this is a kind of death. Assimilationists recognized this very clearly.”\textsuperscript{275} The Dawes Act therefore provides an important historical precedent for understanding the implications of the FNPOA in terms of Indigenous identity. First, it demonstrates that a variety of property forms imply a variety of forms of subjectivity, a far cry from the ways that supporters of the FNPOA anachronistically project the “Indigenous entrepreneur” as a constant across time, space, and without any reference to the context of settler colonialism. Rather, the reforming of property relations is inseparable from the remaking of social relations and identity. Second, the privatization of reserves and reservations has historically always implied the assimilation of non-Indigenous values at the

\textsuperscript{273} Olund, “Public Domesticity during the Indian Reform Era; Or, Mrs. Jackson Is Induced to Go to Washington,” 154.

\textsuperscript{274} Wolfe, “Settler Colonialism and the Elimination of the Native,” 397.

\textsuperscript{275} Ibid.
expense of Indigenous values. It is therefore disingenuous at best for modern-day proponents of individual titling to insist that this particular version of privatization is somehow a “restoration” of Indigenous property rights while simultaneously giving First Nations the “same kinds of rights” as other Canadians.

Third, and most importantly, the historic examples of privatizing reserve and reservation lands shows that the results of economic assimilation are negative for Indigenous people whether or not proposals for incorporation actually manifest as promised. For example, the Dawes Act didn’t just negatively impact communities because of its intention to “civilize” American Indians: it also failed to deliver the economic benefits it promised. Thus, whereas Wolfe describes assimilation as a Faustian bargain, I argue that ongoing structures of racial exclusion actually preclude assimilation, whereby the logic of elimination means Indigenous people are assimilated out of their own cultures but never truly in to the broader Canadian society.

4.5 Conclusion

Focusing on the kinds of Indian subjects – and their corresponding relationships with land – that would be produced through the enactment of the FNPOA serves to clarify the negative implications of the legislation for Indigenous people. I argue the proposed FNPOA is an example of the continued applicability of the “logic of elimination” because it seeks to reconfigure Indigenous relationships with land and place that are central to the continued existence of Indigenous people and Indigeneity itself. As Coulthard argues, “[p]lace is a way of knowing, of experiencing and relating with the world and with others; and sometimes these relational practices and forms of knowledge guide forms of resistance against other
rationalizations of the world that threaten to erase or destroy our sense of place.”

For Aileen Moreton-Robinson, land relations are essential to Indigeneity, where the ontological relationship to land, the ways that country is constitutive of us, and therefore the inalienable nature of our relation to land, mark a radical, indeed incommensurable, difference between us and the non-Indigenous...[.] Indigenous people may have been incorporated in and seduced by the cultural forms of the colonizer but this has not diminished the ontological relationship to land...[.] There is always a subject position that can be thought of as fixed in its inalienable relation to land.”

The shallowness of “property rights as restoration” advocated by FNPOA supporters is truly revealed when considering Indigeneity as constituted by an “ontological relationship” to land. Despite the claims that a Torrens fee simple system represents a restoration of Indigenous property forms, the FNPOA presumes a form of Indian subject that is not only a far cry from how most Indigenous scholars understand Indigeneity and land, but represents the same kinds of partial assimilations as before.

In the worldview of FNPOA supporters, land is reduced to its value as property and the collective to territory, leaving little room to consider the role land relationships play in sustaining First Nations communities, both within and beyond reserve boundaries. This worldview is what generates the concern among First Nations people regarding the BC Treaty Process, which as I discussed above also mandates the establishment of fee simple title on reserve lands. According to Brian Thom, First Nations communities in BC oppose fee simple regimes because

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“the bilateral kin group as a significant and powerful social order will be dismantled and replaced by a patchwork of municipal-like self-governments with limited jurisdictions over their lands and territories.” With this form of dispossession, Indigenous forms of life are precluded, meanwhile full integration and “economic development” is far from guaranteed. As an attempt to resubject Indigenous people living in reserve communities by further extending colonial forms of private property rights, the proposed FNPOA threatens Indigenous land relationships, pointing to the inherent limits of the liberal politics of recognition, whereby for Canada the agenda is still ultimately an assimilationist one. Coulthard argues that the era of recognition has been characterized by “a significant decoupling of Indigenous ‘cultural’ claims from the transformative visions of social, political, and economic change that once constituted them.” I would add this decoupling is only possible by eliminating aspects of our “cultural claims” that are incompatible with capital accumulation. Therefore, by further entrenching colonial notions of land as private property, perhaps the greatest threat that the FNPOA poses to Indigenous people in Canada isn’t just the further dispossession of Indigenous land, though clearly this is a very real danger. Rather, I suggest the greatest threat of the FNPOA is it represents an enactment of new forms of partial assimilation even more insidious than previous forms, albeit just as impactful.


Chapter 5: Conclusion

Throughout this thesis I elaborate a critique the First Nations Property Ownership Act and its potential implications for Indigenous people in Canada. Using Coulthard’s critique of the colonial politics of recognition, I begin by comparing the similarities and differences between the FNPOA and past attempts to implement private property regimes on First Nations reserves in Canada. I deconstruct the “property rights as restoration” narrative that is central to arguments by FNPOA supporters, demonstrating the impossibility of equating precolonial forms of Indigenous land relations with contemporary neoliberal property rights. I then analyze the FNPOA as a tool for dispossession, drawing from contemporary discussions of Marx’s theory of primitive accumulation. I explore how the FNPOA demonstrates the continuous character of dispossession in settler-colonial contexts. Finally, I examine the relationship between land, property rights and the (re)formation of colonial subjects, showing how the FNPOA represents a blatant form of assimilation despite the claims of its advocates to the contrary.

Throughout this thesis, I also emphasize the role of Indigenous struggle against dispossession, both in understanding the emergence of the proposed FNPOA, as well as more broadly in influencing how the Canadian state must continuously adapt its own strategies and tactics for perpetuating colonial domination. The role of Indigenous struggle is crucial in understanding the specific form the proposed FNPOA takes in the current era of recognition politics, wherein supporters of the legislation have repackaged past forms of reserve privatization in response to Indigenous opposition that is informed, among other experiences, by the results of the Dawes Act in the US and historic resistance to the white paper. The proposed FNPOA also
helps us understand that dispossession and genocide, two of the historically definitive characteristics of Canadian settler colonialism, remain very much on the agenda as fundamental threats to the continued existence of Indigenous people, even in the era of recognition and reconciliation politics. Thus, the settler-Indigenous relationship in Canada continues to be fundamentally defined by struggle. Centering the role of struggle also helps to explain why, at the time of this writing, there has been no move towards tabling, let alone implementing, the proposed FNPOA at the legislative level.

**Why the FNPOA Failed**

*Is it really true you are the father of the Ikea Monkey?*

– Levi Little Mustache, question asked of Tom Flanagan after presentation at University of Lethbridge.\(^{281}\)

In February 2013, Tom Flanagan was subjected to immense scrutiny over comments he made regarding the possession of child pornography during a presentation he gave at the University of Lethbridge, and the comments eventually led to Flanagan losing a number of his political and professional positions. University of Calgary president Elizabeth Cannon issued a statement condemning Flanagan’s comments, and announced that he would be on leave until

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\(^{281}\) Arnell Tailfeathers, *Tom Flanagan Okay with Child Pornography*, 2013, https://www.youtube.com/watch?v=LqS4qKkE_SY; As Flanagan explains in his account of the incident that led to his professional downfall, the question regarding the Ikea monkey “stemmed from a recent appearance on Evan Solomon’s Power and Politics, on which I had worn my most prized possession – a winter coat made from a buffalo robe. The enormous coat caused a lot of hilarity, including questions about whether I was related to Darwin, the Ikea monkey, a baby Japanese macaque who was found wandering in the parking lot of an Ikea store in Toronto in a shearling coat.” - Thomas Flanagan, *Persona Non Grata: The Death of Free Speech in the Internet Age* (Toronto: Signal, 2014), 47.
June 30th 2013, when he would officially retire from his professorship.\textsuperscript{282} CBC News fired Flanagan from his position as a regular guest commentator on the TV network’s \textit{Power and Politics} program.\textsuperscript{283} The Wildrose Party of Alberta, with which Flanagan was closely affiliated, also severed ties with him, and Andrew MacDougall, then-spokesperson for Stephen Harper, condemned Flanagan’s comments on child pornography as “repugnant, ignorant, and appalling.”\textsuperscript{284}

Though Flanagan’s comments were of course not specifically about the FNPOA or even First Nations issues, it was activists from Idle No More that filmed and publicized his comments, and therefore played a key role in this downturn in his career. In some ways, then, Flanagan’s personal fate mirrors that of the FNPOA legislation which he played such a pivotal role in crafting and promoting. During the time the Federal Conservatives formed the majority federal government, the FNPOA was only one of several pieces of legislation they either passed or attempted to pass, including the omnibus Bill C-45 and the First Nations Education Act.\textsuperscript{285} The

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  \item \textsuperscript{284} Ibid.; Andrew MacDougall, “Tom Flanagan’s Comments on Child Pornography Are Repugnant, Ignorant, and Appalling. #cdnpoli,” microblog, \texttt{@AGMacDougall}, (February 28, 2013), https://twitter.com/AGMacDougall/status/307169930896347136?ref_src=twsrc%5Etfw.
  \item \textsuperscript{285} Flaherty, \textit{Jobs Growth and Long-Term Prosperity}, 149.
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Idle No More movement was initially launched by its founders as a specific response to Bill C-45.²⁸⁶ The Idle No More movement also mobilized opposition to the Education Act, and after years of negotiation between the Harper government and then-AFN leader Shawn Atleo, the Education Act faced strong opposition by First Nations and was never passed.²⁸⁷ The FNPOA was thus part of a larger legislative agenda of the Conservative government that was ultimately thwarted due to Indigenous opposition. Flanagan himself later credited Idle No More for halting the FNPOA, suggesting the legislation was never introduced “because of opposition from the Idle No More movement.”²⁸⁸

However, I think it is important to note that opposition to the FNPOA did not just emanate from Idle No More and similar grassroots initiatives in Indigenous communities. I cited above the opposition of the AFN, including the resolution adopted by the organization in 2010. Among the many reasons cited for opposing the FNPOA, the AFN resolution argues the proposed legislation “will lead ultimately to the individual privatization of indigenous collective lands and resources and impose the colonizer’s model on our Peoples.”²⁸⁹


FNPOA, however, also came from some of the very communities cited by Flanagan et al as “economic success stories” and positive examples which might be replicated elsewhere under fee simple regimes. As I discuss in chapter 3, *Beyond the Indian Act* frequently refers to the experience of the Westbank First Nation and their approach to using reserve lands for large-scale commercial and residential developments. In an interview regarding the FNPOA, however, Westbank First Nation chief Robert Louie called the legislation “ridiculous.” Louie argued “all of the work that we’re doing right now under First Nations Land Management accomplishes everything that needs to be accomplished, except we don’t transfer land to fee simple. We don’t want to and don’t have to.”

In my own critique of the FNPOA I focus on the dangers posed by capitalist forms of property rights and development to Indigenous ways of knowing and relating with land. However, as this statement by Robert Louie shows, even some First Nations leaders who are firmly on board for capitalist economic development on their reserves remain wary of the risks of fee simple.

Thus, despite the attempts by FNPOA to frame the legislation as representing a “restoration” of Indigenous forms of property tenure, the proposal has very little support from First Nations communities, and at the time of this writing it is fair to say the momentum for the FNPOA is gone. Interestingly, while nearing the end of my research for this thesis, I discovered many of the links to reports on the *First Nations Property Ownership Initiative* website were

dead. After writing to the website administrator I was able to attain the reports, but as of July 2016 the fnpoa.ca website was completely offline. Fortunately, I had already downloaded copies of the site’s pages before they disappeared, but the website’s disappearance is a rather telling indicator that the FNPOA legislation has lost momentum, at least for now.

At the same time, since the FNPOA was itself a re-articulation of previous proposals to implement private property regimes, it is unfortunately safe to predict the legislation will return in a different, repackaged form. With the continued ascendancy of “reconciliation” politics in Canada, especially since the formation of the Truth and Reconciliation Commission in Canada, advocates of neoliberal economic policies are likely to craft new narratives whereby these policies could be represented as “reconciliation” policies. A poignant example of this is found in the work of the Gemini Power Company. Headed by Michael Dan and Bernie Farber, Gemini Power seeks to develop private partnerships with First Nations to develop what they refer to as “sustainable hydro power projects.” 291 Though Gemini Power’s claims regarding developing hydro projects that are sustainable certainly warrant careful criticism and scrutiny, what is more interesting to me is how they mobilize the politics of reconciliation in promoting the company and its hydro dam partnerships. In an editorial for the Ottawa Citizen, Bernie Farber provides background information about Gemini Power founder Michael Dan and the company’s corporate philosophy:

Dr. Michael Dan, a former neurosurgeon, is today a progressive philanthropist and businessman. His father Leslie Dan was a Holocaust survivor who founded the drug

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company Novopharm. And Michael Dan's own maternal family benefited from the friendship of the First Nations when the family first settled in the St. Boniface area of Manitoba. He has, over the years, parlayed his personal wealth towards helping First Nations create sustainable industries on their reserves. His idea that sustainable, multigenerational wealth can be leveraged into greater economic development for the First Nation is beginning to take hold.\textsuperscript{292}

As Farber explains further, Gemini Power’s aim is to partner with First Nations to develop “small hydro plants in partnership with the private sector.”\textsuperscript{293} According to Farber, however, these partnerships aren’t strictly motivated by economic imperatives, but provide a way for non-Indigenous investors to help atone for Canada’s historic crimes against Indigenous people. As he explains:

\begin{quote}
We have driven First Nations from their traditional lands, kidnapped and experimented on their children, poisoned their waters and trampled their rights. It is time to find ways to compensate for past wrongs by partnering with aboriginal reserves in helping them to build sustainable industries. Such actions will lead to healthy and long needed changes.\textsuperscript{294}
\end{quote}

I outline these statements concerning Gemini Power because, even though this example doesn’t directly pertain to reconfiguring property rights regimes, it shows the extent to which promoters of so-called development projects are able to mobilize the discourse of reconciliation in an attempt to find First Nations customers for their projects. My critique of the discursive strategies used by FNPOA supporters to recast the legislation as “restoration” is thus instructive in understanding contemporary strategies for dispossession even within existing property rights regimes.

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\textsuperscript{292} Bernie Farber, “Partnering with First Nations to Come to Terms with Past Neglect,” The Ottawa Citizen, July 18, 2013, sec. Arguments, a11.
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\textsuperscript{293} Ibid.
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\textsuperscript{294} Ibid.
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The implications of my critique of the FNPOA are also important because, even without the FNPOA, fee simple regimes are becoming a reality on reserves through the BC Treaty Process. Further, the new Liberal government has also discussed ways it might seek to eliminate the Indian Act. Recently, new Justice Minister Jody Wilson-Raybould delivered a speech to the AFN, where she referred to the new Liberal government’s “renewed Nation-to-Nation relationship with Indigenous peoples,” a relationship based on “recognition of rights, respect, cooperation and partnership.”

According to Wilson-Raybould, this renewed relationship includes mechanisms to negotiate modern treaties under new mandates as well as other constructive arrangements that will provide a clear and predictable path for Indigenous peoples and governments for the exercise of decision-making and governance. It means supporting Nation building in the context of historic treaties and, where there are no treaties, respecting the proper title-holders. It means creating new mechanisms to facilitate self-government beyond the Indian Act band.

As I previously outlined, in the current framework “modern treaties” all stipulate the conversion of reserve lands into fee simple. Though Wilson-Raybould specifies the need for new mandates in treaty negotiations, it is not clear from this speech whether this might include removing the requirement for fee simple from future treaty negotiations. I think it is thus very possible that the return of a repackaged FNPOA will happen even during the era of the current Liberal government, and if not is very likely to return in the future.


296 Ibid.
Therefore, I hope my critique of fee simple private property rights for First Nations reserves is of value even if the immediate object of this critique is a failed legislative proposal. Further, with or without the FNPOA, the dynamics of dispossession, colonial resubjection and other forms of elimination continue to structure Indigenous-setter relations in Canada, and the struggle over property forms is but one of them. Therefore, the larger theoretical questions I explore using the FNPOA as an entry point are still important to analyze given their political implications for Indigenous people in Canada.

To conclude, I want to note that, if it is important to advance critiques of the FNPOA and other avenues to facilitate the dispossession of Indigenous people currently living in reserve communities, further work needs to be done by Indigenous intellectuals and activists to clarify the role reserves play, or could play, in advancing an Indigenous politics of resurgence. As Hunt illustrates with her concept of colonialsapes, the colonial foundation of existing reserves is clear, as are the multitude of problems in reserve communities. What is it, then, Indigenous communities seek to protect, preserve and extend in opposing the FNPOA and other attempts to implement private property regimes on reserves?

As a modest contribution towards an answer, I want to point to a section from Dancing on Our Turtle’s Back, where Leanne Simpson talks about Nishnaabeg sovereignty entailing boundaries that, while much more fluid than those of modern states, still reflect part of an inherently territorial form of sovereignty. According to Simpson, while “someone moves away from the centre of their territory – the place they have the strongest and most familiar bond and
relationships – their knowledge and relationship to the land weakens.” Though I doubt Simpson was referring to any particular reserve as constituting the “centre” in this passage, I argue there are many Indigenous communities where either a reserve or series of reserves have come to serve as these centres. In these cases, reserves serve as nodes where non-colonial relationships both with land and between people are at their strongest, be it for those living on reserves permanently or for those who move to and from their reserves. They can also serve as sites for engaging in Indigenous land-based practices in the immediate area and beyond. It is admittedly difficult to generalize exactly what the meaning and function of reserves can and could be for different Indigenous communities, given the vast differences of experience that exist within and between different reserves. Fundamentally, however, in advancing opposition to the FNPOA and similar overtures by the Canadian government to modify land and property regimes that further incorporate them into the process of capitalist accumulation, it is inevitable that as Indigenous people we engage in our own critical rethinking of the reserve.

Bibliography


