

QUESTIONING THE CROWN
ENGLISH LIBERALISM, CANADIAN SETTLER COLONIALISM, AND
SOVEREIGNTY

by

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Abstract

Despite claims towards a process of reconciliation with Indigenous peoples, the Canadian state has made no attempt to reform its unilateral claim to sovereignty over the lands now known as Canada. This has direct consequences for any process of reconciliation, as it results in the Crown acting over Indigenous peoples, rather than with them. This thesis questions the Canadian state's liberal notions of state sovereignty, especially in relation to both colonization and the nation-to-nation relationship with Indigenous peoples. I start this research with a historical survey of the liberalism of John Locke and Thomas Hobbes, their conceptions of sovereignty, and the effects of this on colonization in Canada. These two writers discussed three similar principles of state sovereignty, which I define by: 1) the consent of the governed; 2) majority rule; 3) locating Indigenous political authority as outside the realm of sovereignty. I then take these principles and analyze their role in Confederation, and how they were institutionalized through the Canadian constitution. I then look towards Indigenous notions and critiques of sovereignty and how they interrupt the Crown's claim to unilateral sovereignty. Ultimately, I argue that the conflicts between the Crown and Indigenous peoples have to do with a clash of the first and third principles; Indigenous peoples never consented to unilateral Crown sovereignty, and it is now assumed over them through the third principle. I show how this necessitates a refusal of the Crown's unilateral claim to sovereignty, and the institutions that this idea created, namely the Canadian constitution.

Lay Summary

Reconciliation between Indigenous and non-Indigenous peoples is a process that addresses the colonial foundation of the Canadian state, as well as the historical, modern, and ongoing injustices faced by Indigenous peoples. In this paper, I explore the Canadian state's claim to sovereignty and the relationship of this claim to a process of reconciliation. To do so, I look at the theoretical and historical basis of this claim, including the works of English political theorists John Locke and Thomas Hobbes, and the process of Canadian confederation. I argue that the Canadian state's current unilateral claim to sovereignty is both unfounded, and a threat to any process of reconciliation. I conclude with a consideration of the work of Indigenous political theorists, and with a critique of the Canadian constitution as a document that consolidates the Canadian state's unilateral claim of sovereignty.

Preface

This dissertation is original, unpublished, independent work by the author, James Collie.

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“Fair and just instances of interaction between indigenous and non-indigenous peoples are legion; yet mythic narratives and legal understandings of state sovereignty in North America have consciously obscured justice in the service of the colonial project... the actual history of our plural existence has been erased by the narrow fictions of a single sovereignty” Taiaiake Alfred in *A Companion to American Indian History*, 460

Introduction

Reconciliation between Indigenous peoples and settlers has emerged as an increasingly common theme across Canadian society. The process of reconciliation confronts the violent, settler colonial foundation of the Canadian state that sought to usurp and replace the political authority of Indigenous peoples over the lands now known as Canada.¹ Despite the initiation of this process of reconciliation, conflicts between the Canadian state and Indigenous peoples have continued, with conflicts between the Crown and peoples from the Wet'suwet'en, the Mi'kmaq, and the Haudenosaunee Confederacy, all happening within 2020 alone.

These conflicts stem from a larger disagreement on the nature of political authority. This thesis seeks to examine one facet of such disagreement: sovereignty. Specifically, what role does the norm of liberal state sovereignty play in the role of the Crown-Indigenous relationship? I argue that this norm, as seen in the work of John Locke and Thomas Hobbes, was developed through three main principles. These principles are: 1) consent of the governed; 2) majority rule; 3) locating Indigenous political authority as outside the realm of sovereignty. I argue the first and third principles are in constant conflict with one another, as unilateral Crown sovereignty is assumed *over* Indigenous peoples, despite the latter never consenting to such an arrangement.

To show this, I first provide a literature review of the sovereignty of John Locke and Thomas Hobbes, building the paper's three principles of sovereignty. I then take these principles

¹ I have chosen to use the term the Crown synonymously with the Canadian state because it is the correct legal term, and to signify the Crown's relationship with Indigenous peoples that existed long before the creation of 'Canada'.

and examine their role in the Confederation of the Canadian state, and how they remain embedded within the Canadian constitution. I then conclude with a look towards the work of Indigenous political theorists on sovereignty, and the work of scholars rejecting unilateral assertions of sovereignty, in order to contend that any proper multinational sovereign relationship will require reinventing our collective understanding of institutionalized political sovereignty. Without questioning the highly problematic and inflexible norms of unilateral Crown sovereignty, I argue this prevents a true nation-nation relationship, leaving reconciliation to only ever be one of two things: a mistaken ideal, or a willful deception by the Canadian state.²

Part One – John Locke, Thomas Hobbes, and Sovereignty

Sovereignty is often regarded as the highest form of political power, albeit with significantly different understandings of it amongst contrasting political cultures. In this section, I will explore arguments of sovereignty, English liberalism, and settler colonialism. After doing so, I will review the definitions of sovereignty put forth by two political theorists, John Locke and Thomas Hobbes, each of whom had great impacts on English liberalism. I will then show how these ideas, while different, converge on three principles of state sovereignty. Taking these principles, I will then look at the role this sovereignty played in settler colonial developments, and survey literature on the relation of sovereignty to the development of the Canadian state.

Sovereignty, English Liberalism and Settler Colonialism

Sovereignty is a fraught term, contested by different political traditions to convey different manifestations of power. F.H. Hinsley argues that European notions of sovereignty developed out of the decentralization of the Catholic Church's claim to rule Europe; evolving

² To clarify my own positionality to the topic, I am a white settler.

towards a concept of internal sovereignty that has become “the ‘constitutional’ justification of absolute political power.” (1967: 243). Hinsley writes that the connection between sovereignty and absolute political power is one “that can arise and exist only when a final power is considered necessary in a body politic”, a sovereignty that becomes felt when it is most required (243-244). Hinsley appears to represent the standard interpretation of political sovereignty: the resting, ultimate right to govern a population and territory. Wendy Brown argues that this “sovereign model of power is the most common *political* notion of power”, in which power is understood through the “terms of ruling and being ruled” (2006: 68). Building on a Foucauldian analysis, Brown argues that the sovereign model “defines political power as a matter of rule, blinds us to the powers that organize modern polities and modern subjects” (68-69). I stretch this analysis to arguments that take Canadian state sovereignty for granted, as in doing so, they blind us to settler colonialism and Indigenous dispossession.

Liberalism is a broad political ideology, but often convenes around the rights-based freedoms secured by individuals limiting the powers of a state. Many of the ideas of contemporary liberalism were advanced by English political theorists, as the British Empire forced these norms throughout the world during its imperial rule. While many hold the ideas of liberalism and empire at odds with one another, Uday Singh Mehta argues that they are indeed complementary and that the ideas of liberalism developed through British imperialism (1999). Mehta looks towards the English liberal tradition as one that conflated terms of political power with imperial justifications, that “ever since Hobbes and Locke the use of political power was conceptually justified the instant it satisfied what were then deemed the directives of progress, namely a concern with the security of corporal life, the preservation of property, and the maintenance of public order” (1999: 78). It is in this way, that I look towards the impact of

Hobbesian and Lockean notions of sovereignty on the liberal tradition, and within Canadian settler colonialism. Hobbes and Locke are the focus of this paper, but I note that they were not the only prominent English political theorists who justified colonialism: John Stuart Mill actively justified English imperialism and settler colonialism (Bell 2010; Ince 2018; Pitts 2005).

Before looking at the arguments of Locke and Hobbes, it is important to establish what this paper understands as settler colonialism. I understand settler colonialism to be, as Patrick Wolfe argues, a “structure rather than an event” (2006: 390). This structure is marked by the establishment of settler political authority over Indigenous territory, all the while displacing Indigenous political authority that has been in place since time immemorial. There are many dimensions to settler colonialism, but this paper will be concerned with the political. Wolfe described settler states as creating sovereignty through “dominion without conquest” (392). The point of this paper will be to trace such a concept of sovereignty from English liberalism to the development of settler colonialism within Canada, and then to the modern reality of settler colonialism in Canada. To do so, illuminates not just the problematic foundation of the state, but how the modern institutionalization of Canadian state sovereignty relies on an illegitimate basis.

The Sovereignty of John Locke

John Locke’s views have been utilized extensively by liberal democracies, especially by those premised on settler colonial foundations, such as Canada and the United States. This section will focus on John Locke’s conception of sovereignty and its relationship to colonialism. To do so, I will connect John Locke’s sovereignty to the principles of the consent of the governed, majority rule, and locating Indigenous peoples as outside the realm of political sovereignty.

The premise of the first treatise in *Two Treatises of Government* is to critique the work of Sir Robert Filmer. Filmer's work, *Patriarcha*, is a work devoted to justifying the divine right and supreme authority of monarchs. This piece attracted a lot of critiques from notable Whigs, including John Locke (Laslett, 1949: 36). This is important to note both as the premise of Locke's work, and the reason Locke begins to define sovereignty in relation to an Abrahamic notion of God. Locke vehemently rejects Filmer's assertion of divine sovereignty, finding that it relies on a "bare supposition of Adam's authority" all the while "without offering any proof for that authority" (2003: 13). The second point Locke makes on sovereignty and religion is that sovereignty can be possessed by a ruler, but that it must be legitimated by the people of a polity. Indeed, there is certainly a place for God in Locke's political theory, as Locke writes on who shall judge between society's magistrate and its people: "I answer, God alone; for there is no judge upon earth between the supreme magistrate and the people" (244). Locke's contention is that sovereignty, while not granted, can be conferred by God in conjunction with the people.

Using this religious aspect, Locke's conception of sovereignty begins to form. Locke argues that the absolute sovereignty presupposed by Filmer is fundamentally out of place; akin to "being a governor without government, a father without children, and a king without subjects" (16). Here, we see the formation of Locke's contention: sovereignty is given consent through the people, rather than solely bestowed by God through divine right. The point of sovereignty is to be then freely created by the people of a polity, as Locke argues, "for every man's children being by nature as free as himself, or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what commonwealth they will put themselves under" (130-131). Locke summarizes this point by concluding that political consent

“is that, and that only, which did or could give beginning to any lawful government in the world” (143). For Locke, the consent of the governed is key to the foundation of a political sovereignty.

Locke’s political community is inherently tied to the will, and the rule, of the majority.

The principle of the rule of the majority forms from the consent of the governed. Locke explains:

when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority... it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority... every one is bound by that consent to be concluded by the majority (142).

The last point is worth exploring, as while Locke argues for the consent of the governed, this same governed is to be made subject to the will of the majority. Locke argues that “And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it” or else the original compact of constitution of a society “would signify nothing” (142). Here we see that Locke’s political community relies on an adherence to the will of the majority, supported by the claim that a constitution’s utility relies on its enforcement of majority rule.

The connections between Locke’s conceptions of sovereignty and colonialism primarily come from combining the first two principles with a third principle: locating Indigenous peoples as outside the realm of political sovereignty. Locke defines the state of nature as “a state of perfect freedom to order their actions and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature; without asking leave, or depending upon the will of any other man” (101). For Locke, people leave the state of nature in order to create a commonwealth, where their interests are better secured. Locke claims these interests, namely property, are used as justification for a political commonwealth: “men unite into societies, that

they may have the united strength of the whole society to secure and defend their properties, and may have standing rules to bound it, by which every one may know what is his” (160).

Locke’s views of property and the state of nature have been defined as deeply connected to the promotion of English settler colonialism, as James Tully argues, “Locke constructed them in contrast to Amerindian forms of nationhood and property in such a way that they obscure and downgrade the distinctive features of Amerindian polity and property” (1993: 139). Tully’s argument is that Locke’s notions of the state of nature and property were constructed as such in order to both dismiss Indigenous political authority, and to dismiss Indigenous land use as “not a legitimate type of property” (139). Indeed, it is through this perspective that Locke describes Indigenous peoples as “rich in land, and poor in all the comforts of life”, and launches his argument for the application of European types of property and labour (117). Locke’s notion of commonwealth then rests on a series of Eurocentric concepts in order to justify both political society, and colonialism in the Americas.

Locke’s rule of the majority is restricted by the limits he puts on legislative power. Legislative power is inherently limited in its ability to affect the other members of the commonwealth, that for Locke, “nobody can transfer to another more power than he has in himself; and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another” (159). Locke concludes that the violence and sanctioning power of government is limited as a “power that hath no other end but preservation” (159). However, Locke earlier specifies that “the great and chief end” of government is “the preservation of their property”; meaning that such ‘preservation’ that justifies sovereignty could also justify dispossession in the name of settler colonial regimes, inspired by implementing Lockean principles of property and labour in the “wild woods and uncultivated

waste of America” (155, 116). Sovereignty then becomes a device in which settler polities can expand their own presumed authority on grounds of preservation, despite the flagrant displacement of rightful Indigenous political authority.

Sovereignty, for Locke, is a move out of the state of nature and into a codified political society. This sovereignty rejects divine absolutism and tyranny, placing great emphasis on the consent of the governed and majority rule. As Tully explains, Locke developed concepts of property and labour against Indigenous peoples in the Americas, and thus, these ideas helped to justify European settler colonialism. In this way, I extend this critique to the Canadian case, where sovereignty was constructed through the displacement of Indigenous political authority.

The Sovereignty of Thomas Hobbes

Thomas Hobbes’ views on sovereignty have been widely impactful, and I posit that they represent a key connection between liberalism and colonialism.³ For Hobbes, the sovereign is an almighty force that the people rely on in order to create a political commonwealth. To analyze Hobbes on sovereignty, I will explain his views on the three principles that I developed earlier.

For Hobbes, the establishment of unilateral sovereignty is the establishment of a commonwealth. Hobbes prescribed a commonwealth to secure state sovereignty, ruled over by one sovereign who was able to “preform the wills of them all, to peace at home, and mutual aid against their enemies abroad” (1996: 114). The sovereign authority of a commonwealth was to be legitimated by the consent of the governed:

³ Defining Hobbes as a liberal thinker is a tricky endeavour. Hobbes is not strictly a liberal theorist, and many of his ideas appear to justify and defend absolute monarchy. However, Hobbes also wrote extensively on the concept of individual rights, majority rule, and consent of the governed. It is here that Hobbes contributed to the foundation of the modern state, and as a result, inspired the founders of settler colonial, liberal democratic regimes. For a slightly more market-focused argument of Hobbes as a precursor to liberalism and liberal democracy, see “The Roots of Liberal-Democratic Theory” in Macpherson, C. B. *The Political Theory of Possessive Individualism: Hobbes to Locke*. Clarendon Press, 1962.

A commonwealth is said to be instituted, when a multitude of men do agree, and covenant, everyone, with everyone, that to whatsoever man, or assembly of men... the right to present the person of them all (that is to say, to be their *representative*;) every one, as well he that *voted for it*, as he that *voted against it*, shall *authorize* all actions and judgements... to live peaceably amongst themselves, and be protected against other men (115).

Hobbes' vision for a highly patriarchal commonwealth had, like Locke, a highly religious justification. As Hobbes argues, that consent of the governed legitimated commonwealths, different from "the kingdom over men, and the right of afflicting men at his pleasure, belongeth naturally to God Almighty; not as Creator, and gracious; but as omnipotent" (237). Like Locke, the consent of the governed of Hobbes is only ever legitimated by a Christian view of God, a legitimation that is simply mediated through the creation of a political commonwealth.

Hobbes' powerful and absolute will of the sovereign remains true in both monarchies and democracies alike. *Leviathan* argues for monarchy, deeming it more suitable than democracy to obtain "riches, power and honour" (124). That being said, Hobbes still writes extensively on assembly democracy, and how sovereign will is the same whether it derives from a monarchy or a popular assembly. Hobbes argues that such sovereignty proceeds as follows: "sovereign power, whether placed in one man, as in monarchy, or in one assembly of men... is as great, as possibly men can be imagined to make it" (138). As long as the sovereignty is absolute and unbreakable, then the structure of the polity hardly matters: "Whether a commonwealth be monarchial, or popular, the freedom is still the same" (Hobbes 1996: 143). Majority rule then becomes the process of electing a Sovereign, in order to legitimate their claim to unilateral political authority.

Majority rule may choose the Sovereign, but Hobbes argues it does not stand in the way of the Sovereign. Hobbes argues that the liberty of an individual does not mean the sovereignty of a polity is modified, or even limited (141). In an illiberal fashion, Hobbes argues that "nothing the sovereign representative can do to a subject, on what pretence soever, can properly be called

injustice.... because every subject is author of every act the sovereign doth” (141). This extreme reading of sovereignty applies as well to the concept of property, in which Hobbes argues that property includes a right to exclude others but “not to exclude their sovereign, be it an assembly, or a monarch” (165). It is an easy transition from this idea to the displacement of Indigenous political authority of territory by the purported right of the ‘sovereign’. This almighty sovereign will is described by Hobbes as a beneficial notion, in which Hobbes argues “when subdued by the sword they promise obedience, that they may receive life” (177). The will of the sovereign for Hobbes is absolute, and decidedly so, in order to establish a political commonwealth.

Similar to Locke, Hobbes’ sovereignty is premised on the highly Eurocentric concept of moving from a state of nature and into a political society. Hobbes’ famous conception of the state of nature is where war is common as “every man is enemy to every man”, marked by “continual fear and danger of violent death” and results in life being “solitary, poor, nasty, brutish, and short” (84). Interestingly, Hobbes locates the Indigenous peoples of America to “have no government at all; and live at this day in that brutish manner”; representing how his ideas contributed to the locating of Indigenous political authority as outside the realm of sovereignty (85). Hobbes then posits this state of nature as requiring the establishment of a political commonwealth. Hobbes argues that a commonwealth without authoritative power is not much of a commonwealth at all, arguing that “covenants, without the sword, are but words, and of no strength to secure a man at all” (111). A Hobbesian commonwealth, similar to settler colonial regimes, prescribes the displacement of Indigenous political authority for the sake of one unilateral claim to sovereignty.

As I have established, Hobbes’ main tenet is that the sovereignty of a polity is the most important aspect of a polity. Appeals to the people within this polity mean little, as Quentin

Skinner argues, “Hobbes’s fiercely polemical message is that, since the people only transform themselves into a collective body by way of instituting a sovereign, it makes no sense to think of them as a collective body setting limits in advance to the exercise of sovereign power” (1999: 25). Taking this argument into a colonial context, it creates the settler colonial fixation on sovereignty, and defines itself in relation to those outside of the polity, which for Hobbes, is Indigenous peoples and their polities.

The Colonial Role of Sovereignty

Despite the established view of Locke and Hobbes as political opposites, I posit both their views of sovereignty as quite similar in relation to British settler colonialism, developing through three common principles. I now plan to show how their ideas contributed to the Crown’s unilateral claim of sovereign authority over the lands now known as Canada. Such a vision centered the political actions of the settler colonial state and illegitimately displaced existing Indigenous political sovereignty, authority, and autonomy. In this section, I will analyze the impact of such ideas on different concepts within the development of the Canadian state.

The relations between Indigenous peoples and settlers, as represented by the Crown, were originally premised on a nation-to-nation relationship. John Borrows argues that the 1764 Treaty of Niagara was highly symbolic of this, a gathering in which “a nation-to-nation relationship between settler and First Nation peoples was renewed and extended, and the Covenant Chain of Friendship, a multination alliance in which no member gave up their sovereignty, was affirmed” (1997: 161). The Covenant Chain was not built on terms of unilateral Crown claims; instead, the Chain focused on peace, co-existence, and a nation-to-nation relationship. Peter Russell uses this chain as an impetus for Indigenous representatives to sign the Royal Proclamation of 1763, as the Chain was the only basis in which these representatives “agreed to cease their military struggle

and become allies of Britain” (2017: 50). During this time, Indigenous peoples vastly outnumbered European settlers in both people and military strength; they were the majority. The settlers knew this, and as Jeremy Webber argues, pursued a peaceful and conciliatory approach because it was “impossible for such a tiny number of colonists to govern the Aboriginal nations by force, or indeed by any other means” (1995: 634). The original idea was for shared sovereignty under a nation-nation relationship, not for the unilateral sovereignty of settlers.

John Borrows has argued that the sovereignty of the Crown over many parts of Canada is akin to “magic” (1999: 562). Borrows notes that “Despite overwhelming [Indigenous] numerical strength” ‘British Columbia’ was created without Indigenous participation, engagement, or consent; showing how majority rule can be ignored by locating Indigenous peoples outside the realm of sovereignty (1999: 545). Once entered into Confederation, Indigenous peoples in British Columbia “continued to live within their own governments on their lands, as they had done for centuries, with little regard for British assertions of sovereignty” (Borrows, 1999: 543). The basis of a claim to sovereignty residing solely within the Crown and its institutions, especially *over* Indigenous peoples and polities, is confusing.

The creation of a unilateral claim to sovereignty by the Crown was only made possible through the imposition of items like property structures. As Shiri Pasternak argues in her analysis of the colonization of the Algonquins of Barriere Lake, amongst “the strategies of perfecting settler sovereignty, the imposition of Western property rights onto Indigenous forms of landholding has been pivotal to colonization” (2017: 100). Pasternak makes a critical point about the creation of sovereignty, and how it informs the debate on the consent of the governed; the Canadian state learned to exert its sovereign claims through imposing foreign political structures

on Indigenous peoples. As a result, the sovereignty inherent to Indigenous peoples on their own territory, is displaced in the process.

Another foreign political structure was the creation of ‘modern’ settler colonial constitutions. James Tully points to this in *Strange Multiplicity*, writing that the “language of modern constitutionalism which has come to be authoritative was designed to exclude or assimilate cultural diversity and justify uniformity” (1995: 58). The danger of modern constitutionalism is its location of Indigenous authority as outside that of the sovereign polity, based on the ideas expressed by authors like Locke and Hobbes. Tully uses the expansionist, and ultimately genocidal, policies of Thomas Jefferson as an example, concluding that Jefferson employed “the language used to justify war since the time of Locke” (95). Tully specifically points to the influence of Locke’s ideas in serving “to dispossess the Aboriginal nations of their sovereignty and territory and to subject them to European constitutional nation states and their traditions of interpretation” (70). To return to Borrows’ arguments on sovereignty in British Columbia, the “Court’s invocation of Crown assertions, behind the cloak of sovereignty, endorses the infringement of Aboriginal rights” in furtherance of the settler colonial project; to validate the “appropriation of Aboriginal land for non-Aboriginal people” (1999: 567). In Tully and Borrows, we can see how these ideas contributed to the creation of the modern constitutionalism of settler colonial states, and the active dispossession of Indigenous political authority and autonomy over their own territories.

The harm of Hobbes and Locke is not only in their privileging of the sovereignty of the European polity, but in their direct location of Indigenous peoples and their societies as outside of, and thus somehow inferior, to the colonial polity. Pat Moloney builds on this idea by arguing that Hobbes located Indigenous peoples, and their political organizations, outside of the

commonwealth and thus as “both *before* sovereign states (in time) and *beyond* sovereign states in the anarchic periphery” (2011: 202). Hobbes’ views were directly inspired by Eurocentrism, colonialism, and for the reader of Hobbes, “a vast array of effective forms of social organization was erased” (Moloney, 2011: 202). As Duncan Ivison has argued, Locke’s vision “clearly entailed that, beyond the animals they catch, or the crops they sow, the indigenous peoples of America had no genuine property in their territories, and thus could not exclude Europeans from them, or demand negotiations over land use” (1996: 197). Further, the acknowledgement of Indigenous political authority that had existed for about two hundred years after the seventeenth century was then put aside by settler colonial authorities: “it was clear that by the nineteenth century it was rapidly disappearing, and the residual sovereignty of Aboriginal peoples was either flatly denied, ignored, or subsumed under ‘domestic dependent’ status” (Ivison, 1996: 205). The works of these authors show how the ideas of Locke and Hobbes worked to locate Indigenous peoples outside the purview of sovereignty; subjected to sovereign rule, but never granted the sovereignty inherent for self-determining peoples.

Through the work of Hobbes and Locke, we can see how the norm of sovereignty in liberalism emerges. Sovereignty for Europeans became the unquestioned, majority rule of a polity over rights-bearing individuals. After the advance of European imperialism, and later, settler colonialism, this sovereignty was used to unjustly dispossess Indigenous peoples of the political authority they possessed since time immemorial. This dispossession was enabled by theories like that of Locke and Hobbes, both of whom discriminated against the political bodies of Indigenous peoples and located them outside the realm of sovereignty. In the next section, I will analyze the role these ideas played within Confederation and the founding of the Canadian

state. If such ideas of sovereignty can be deemed as problematic, then it warrants analyzing the role in which these problematic ideas contributed to the foundation of the Canadian state.

Part Two – The Foundation of the Canadian State

The creation of the Canadian state furthered the ongoing dispossession of Indigenous political authority for the sake of settler political authority. In this section, I will focus on the development of sovereignty in relation to the process of Confederation which culminated in the creation of the Canadian constitution, the *British North America Act of 1867*. I plan to show how this sovereignty was influenced by Locke and Hobbes, and their three common principles of sovereignty. In doing so, I will illuminate how the concept of state sovereignty in Canada relied on illegitimately locating Indigenous political orders as outside the realm of sovereignty and led to the institutionalization of settler colonialism.

State Sovereignty and Confederation

The debate on sovereignty within the Confederation debates reproduced the arguments of Locke and Hobbes in two important ways. The first is that the participants repeated arguments on sovereignty that locate them well within the English political tradition, as influenced by Locke and Hobbes. The second is the notable impact of the American Civil War, which caused the participants to reevaluate arguments of sovereignty, and ultimately, side with calls for greater centralized sovereignty of the polity. This view of sovereignty has connections to both Locke and Hobbes, and forms the view of defaulting to Crown sovereignty, which was purportedly superior to the political authority of Indigenous peoples.

The concept of sovereignty, what it should be and should look like, was a key part of the debates on Confederation. The backdrop of these debates was the unilateral sovereignty enjoyed

by the Crown over British subjects. As Peter Waite notes, “The sovereign authority of Westminster simplified wonderfully the task of uniting British North America” (1962: 107).

Despite the already existing centralized sovereignty, the major debate on sovereignty was to have either a strong central government or to create a federation in which the different colonies could enjoy relative degrees of sovereignty. The pro-centralization side took their inspiration from the imperial mode of governance, arguing for a centralized sovereignty that mirrored colonial modes of governance. Indeed, this argument was laid out as a matter of fact, that for “many, sovereignty must reside somewhere and it ought to be at the centre where it belonged” (Waite, 1962: 113).

Others argued against such centralized sovereignty, and these arguments often read as arguments against the sovereignty of Hobbes and Locke. E.G. Penny, the Editor-in-Chief of the *Montreal Herald*, argued for the decentralization of sovereignty and against the role of an ‘imperial parliament’ deciding the face of the constitution (1867: 9). Penny specifically argued that sovereignty should not be based on “the British idea of a country where all sovereignty is one and indivisible” (1867: 15). Penny’s position was rare for an editor, as newspapers, “With some significant exceptions, ... did not believe that federation meant the fundamental recognition of sovereignty for both central and local governments” (Waite, 1962: 114).

An analysis of both sides of these debates reveals the influence of Locke and Hobbes on the sovereignty debate. In a passage reminiscent of the *Leviathan*, the *Canadian Quarterly Review and Family Magazine* argued “On the other hand, a sound system of government requires no checks and guarantees, for its head is supreme; so all true principles possess internal evidence to prove they are sound; *immutable* and *ultimate*” (1865: 350). The magazine’s views on sovereignty quickly transition into an outwardly pro-monarchy argument, similar to the rhetoric of Hobbes, arguing that the “overwhelming truth that will eventually crush out all Federal,

Confederate, and Republican systems of government”, concluding that “the only sound system of national government is the ‘Monarchial’” (1865: 350).

The bitter division between these two sides was not lost on the politicians set to debate Confederation. The side against centralized sovereignty was particularly strong, especially amongst representatives from Lower Canada (what is now Quebec), who sought to preserve their French language, identity, and culture. J.E.B. Dorion argued strongly against centralized sovereignty, fearing the majority rule aspects in which “all is strength and power, in the Federal Government; all is weakness, insignificance, annihilation in the Local Government!” (Parliament of Canada, 1865: 858). Others, in support of centralized sovereignty, turned their claims to the dangers of decentralized sovereignty. As Frederick W. Haultain argued, “the danger of collision between the governments, and the comparative division of sovereignty under the Federal system, I am decidedly in favour of the closer and more simple form of government secured by a legislative union.” (Parliament of Canada, 1865: 645). This latter claim is worth exploring more, as the supposed dangers of decentralized sovereignty were a consistent argument throughout the Confederation debates.

The American Civil War consumed a great deal of attention during the Confederation debates. Indeed, this event was discussed as a major impetus for the pro-centralization side of the sovereignty debate. Waite notes that such a view of sovereignty was seen to prevent the violence many of these writers were reading about in the American Civil War, a top-down sovereignty that “would reap the whirlwind of civil strife” (Waite, 1962: 113). The chaos and violence of this war were said to be avoided at all costs, the members of the Confederation debate blamed the sovereignty awarded to states as far too generous, and thus to be avoided.

In the Confederation debates, John A. Macdonald is noted as arguing strongly against the US system:

They declared by their Constitution that each state was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each state, except those powers which, by the Constitution, were conferred upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. (Waite, 2006:23).

Macdonald's view of sovereignty in 1865 was that the federal government should receive "all the principles and powers of sovereignty", resulting in "a powerful Central Government, a powerful Central Legislature, and a decentralized system of minor legislatures for local purposes" (Waite, 2006: 122). MacDonald's use of the American Civil War was to defend centralized sovereignty, all the while failing to mention the southern states' abhorrent commitment to racialized chattel slavery. MacDonald's failure to mention something so vital, and instead frame the debate in other terms, is revealing of Macdonald's views on race and tendency to center European worldview. Such views are important to consider when evaluating Macdonald's lead role in shaping the debate on sovereignty, and the debate's ignorance of Indigenous political authority.

The side who argued for greater autonomy for the 'colonies' had a hard time countering the arguments of those preoccupied with the American Civil War.⁴ As Waite notes, this side struggled to explain the significant powers given to the states: "American state governments were not any help either. They were sovereign. Most British Americans did not consider that sovereignty was an attribute of local governments" (Waite, 1965: 327). The influence of the war shows how the Confederation debates on sovereignty can largely be reduced to two opposing ideas: one central sovereign authority, or a federation of sovereign polities. However, as Robert

⁴ The 'colonies' in mention are the historical equivalent to today's provinces; those involved in the debate included, Province of Canada (Quebec and Ontario), Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and British Columbia; the first four of whom would assent to Confederation in 1867.

Vipond shows, “in either case the delegated power ultimately existed at the sufferance of the sovereign. Power could be withdrawn, supervised, influenced and controlled by the one supreme authority” (Vipond, 1989: 10). This deference shows the resting nature of Crown sovereignty; supposedly sovereign above all else. The critical point here is how such figures ignored the political authority of Indigenous peoples who had been self-determining since time immemorial. Further, through centralization arguments, we can see how the Crown sought to have no restraints from other political bodies, whether Indigenous or otherwise, on its sovereignty.

Indigenous Political Authority

Despite the exhaustive debate on sovereignty, the Confederation debates were notably silent on the rights or political authority of Indigenous nations. Throughout these debates, only scant references to Indigenous peoples are made. This appears to be rather bizarre, given the conception of this new state was entirely on the territory of Indigenous nations. I posit that this silence is because the debaters located Indigenous peoples as outside of the realm of sovereignty, that they somehow did not possess it. Instead, they falsely assumed that the political authority of Indigenous peoples was subordinate to the sovereignty of the Crown. To focus on this settler colonial view, I will look towards the Confederation debates, how these ideas are replicated by scholars, and how this view greatly contributed to the institutionalization of settler colonialism.

Throughout the numerous documents outlining the Confederation debates, there exist scant references to Indigenous peoples. One such reference by Premier Hugh Hoyles, using an ethnic slur, frames Indigenous peoples as a metaphor for the colony of Newfoundland: “Every savage entering society gave up a portion of his independence, but did he lose by the change?” (1865). Hoyles does not elaborate on the metaphor or what such ‘independence’ entails, but does show his belief that Indigenous peoples were outside the realm of political sovereignty.

Aside from racist remarks, there is hardly any mention of Indigenous peoples, or their political authority, during the debates. Gabrielle Slowey notes that this “striking, though not surprising” phenomenon can be explained through the ethnocentric, supremacist, and false assumptions of the debate attendees; that “settlers believed so firmly in their own superiority and civilization that they were unable to see the importance of the contributions of their Indigenous hosts” (Slowey 2016).

One example of this settler-colonial worldview would be the introduction of the document that would largely form the Canadian constitution. During the Quebec Conference of 1864, Oliver Mowat moved that “It shall be competent for the General Legislature to pass laws respecting” nine different policy items, including “1. The Indians.” (Browne 2009: 85). The subsequent debate did not mention the policy item of Indigenous peoples, and instead focused on the question of other colonies’ admittance to the union (Browne 2009: 86). On February 3rd 1865, Étienne-Paschal Taché introduced a motion with the text agreed upon at the Quebec Conference. In the motion was a description of the ‘General Parliament’ and its responsibilities of 37 different policy items, including “Indians and Lands reserved for the Indians” (Legislative Council 1865). Despite claiming authority over a massive population of diverse, self-determining peoples and their lands, the next thirteen days of debates never once questioned such a policy arrangement.⁵ The dispossession of Indigenous political authority, and the usurpation of said political authority by the federal government, was taken for granted by the debate attendees in a decisive turn away from the early foundations of the Crown-Indigenous relationship.

⁵ The published transcripts of the Confederation debates make no mention of Indigenous peoples after the inclusion of them in the ‘responsibilities’ of the federal government on February 3rd, 1865 (Legislative Council 1985). These records were accessed through the *Confederation Debates, 1865 – 1949*, edited by the University of Victoria.

The exclusion of Indigenous peoples from the Confederation debates seems even more odd when taking into consideration the great emphasis on ‘race relations’ and ‘minority rights’ throughout the debates. As Martel et al. argue in their analysis of the Confederation debates, that the “interest in minority rights did not extend to Indigenous Peoples” (2018: 80). Martel et al. note how many attendees were involved in the Crown-Indigenous relationship and the direct colonization of Indigenous peoples, concluding that “Indigenous Affairs thus mattered to Canada’s founders, although these men obviously considered it self-evident that its supervision and management be vested in the “national” government” (82). The presumed sovereignty of the Crown over Indigenous peoples came from Eurocentric views rather than the voices of Indigenous peoples. Further, this meant that such sovereignty would later be extended over peoples and territories that had not engaged in a treaty with the Crown, that non-treaty Indigenous peoples “would also be integrated into the province without any treaty being negotiated for the acquisition of their lands” (Martel et al., 2018: 82). In this way, the presumption of sovereignty led to settlement in parts of Canada that was forbidden even according to the legal systems of settlers.⁶

The Hobbesian principle of sovereignty as indivisible and the Lockean notion of sovereignty rooted in the consent of the majority - white - population over Indigenous peoples was manifested in the constitutional outcomes of Confederation, through simple assumption by the debate attendees. This outcome, however, flies in the face of the first principle of the consent

⁶ *The Royal Proclamation of 1763* forbids settlement on Indigenous lands that have not permitted settlement through a treaty with the Crown: “We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves [...] upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements” (1763). The proclamation is subject to many interpretations but ultimately prevents settlement over unceded Indigenous lands. Despite this, settlement on unceded lands has occurred, particularly prevalent in what is now British Columbia. For further reading on interpretations of the proclamation, see Jim Aldridge et. al’s *Keeping Promises: the Royal Proclamation of 1763, Aboriginal rights, and Treaties in Canada* (2015).

of the governed put forth by Locke and Hobbes, with Indigenous peoples being unilaterally governed by a confederation they did not consent to. However, it is consistent with the third principle of excluding indigenous peoples from sovereignty. John A. McDonald remarked the project was to bring the five colonies into Confederation to make “one people and one government, instead of five peoples and five governments”; displaying blatant disregard of the peoplehood and governance structures of Indigenous peoples (Waite, 2006:27). The political authority of the Crown over Indigenous peoples and polities came to fruition merely through the imagination of men who did not even acknowledge the peoplehood or governance structures of Indigenous peoples.

Scholars writing on the time of Confederation have similarly recreated the views of Hobbes and Locke on Indigenous peoples. W.L. Morton writes in his acclaimed work *The Critical Years*, that in the “untouched wilderness” of what is now known as British Columbia, there was “powerful coastal tribes” consisting of “proud peoples” who had great success in fishing, furs, and other material goods (1962: 26). Confusingly, while praising their immense success, Morton concludes that “there was no government, not a single soldier nor a solitary policeman” (26). Morton’s analysis dismisses the political organization that such commercial success necessarily entails; instead, disregarding Indigenous forms of political authority because of their lack of Western institutions such as a standing army or a coercive police force.

While Morton wrote in 1964, this scholarly replication of the displacement of Indigenous political authority during Confederation is hardly a historical issue. Janet Ajzenstat argues in *The Canadian Founding: John Locke and Parliament* that Locke had a tremendous role in informing the ideas present at Confederation (2007). Ajzenstat argues that the concept of sovereignty used in Confederation was built on a Lockean concept of popular sovereignty, that government is

legitimated by “the entire population, all who are subject to the law and all who stand to benefit from it, every last woman and man without exception” (22). After surveying the Confederation debates on sovereignty, Ajzenstat positively concludes that the constitution is “an excellent example of an Enlightenment constitution” and thus argues against “mega-constitutional change” (47). Herein lies the problem; Ajzenstat champions the constitution for its political stability without considering how the establishment of such a constitution displaced the political stability of other polities, specifically those of Indigenous peoples. Further, Ajzenstat argues that the Canadian state is legitimated by the entire population of these lands, without considering how the political authority of Indigenous peoples was directly excluded at Confederation.⁷ Ajzenstat’s work then presents the crux of the issue this paper is addressing: Canadian ideas of sovereignty are inherently colonial, and thus, need to be fundamentally reimagined and reconstructed.

The formation of the Canadian constitution in 1867 proved to be the most codified institutionalization of settler colonialism by the Crown. Much like the aforementioned debates, the Canadian constitution would include an assertion of federal authority over Indigenous peoples: Part 24 of Section 91 of the Canadian constitution gives the federal government authority over “Indians, and Lands reserved for the Indians” (Canada, 1867). This section was the result of the idea, put forth by Locke and Hobbes, echoed in the Confederation debates, that the Crown should hold political sovereignty over Indigenous peoples. Nowhere in *The Constitution Act, 1867*, is a recognition of Indigenous political authority, representing the entrenchment of settler colonialism by the Canadian state.⁸

⁷ Ajzenstat is notably quiet on issues of colonialism and Indigenous peoples, mentioning neither throughout the entire book.

⁸ I would mention that the inclusion of Section 132 in 1867 seems puzzling given the absence of recognition of Indigenous political authority. This section entails “Treaty Obligations” and demands “The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of

The intentional exclusion of Indigenous peoples at Confederation meant the future of the Crown-Indigenous relationship was decided exclusively by the Crown. As the Royal Commission on Aboriginal Peoples (RCAP) notes on Confederation: “At no time, however, were First Nations included in the discussion, nor were they consulted about their concerns. Neither was their future position in the federation given any public acknowledgement or discussion. Nevertheless, the broad outlines of a new constitutional relationship, at least with the First Nations, were determined unilaterally” (1991:165). The missing involvement of Indigenous peoples at Confederation meant that the new Canadian state would assume considerable authority over the lives, polities, and economies, of Indigenous peoples. This political authority has had wide-reaching impacts as the result of sweeping legislation; as the RCAP documents:

In subsequent legislation — the Indian Acts of 1876 and 1880 and the Indian Advancement Act of 1884 — the federal government took for itself the power to mould, unilaterally, every aspect of life on reserves and to create whatever infrastructure it deemed necessary to achieve the desired end — assimilation through enfranchisement and, as a consequence, the eventual disappearance of Indians as distinct peoples. (166).

The exclusion of Indigenous peoples at Confederation was not just done because of colonial understandings; it was a colonial act in and of itself. The result has been a colonial constitution, and a misplaced, unilateral claim of sovereignty *over* Indigenous peoples by the Crown.

The views of sovereignty advanced by Locke and Hobbes were echoed during the debates on the Confederation of the Canadian state. These debates, on the centralization of political authority and the composition of Crown sovereignty, repeated the arguments of Hobbes and Locke in two ways. The first was that the attendees argued for the centralization of sovereignty in the federal government. The second was the illegitimate locating of Indigenous

any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries” (1867). The puzzling nature of this inclusion is the lack of mention of the treaties with Indigenous peoples; treaties of which legitimated European settlement in Canada in the first place.

peoples as outside of, and then ultimately under, the authority of the federal government. These views made possible the institutionalization of settler colonialism. In the next section, I will look towards how these views are contrasted by Indigenous theorists and critical theorists alike.

Part Three – A Sovereign Critique

The misplaced sense of Crown sovereignty that was established in 1867 continues into our present. As the assertion of sovereignty in 1867 was an inherently colonial concept that willfully ignored the presence and politics of Indigenous peoples, then modern Crown sovereignty ought to be understood as illegitimate in its current, unilateral form. Questioning the Crown's unilateral claim to sovereignty is to engage with Indigenous claims to sovereignty and political authority. As Audra Simpson argues in *Mohawk Interruptus*, concepts of Indigenous sovereignty “fundamentally interrupts and casts into question the story that settler states tell about themselves” (2014: 177). In order to engage with such interruptions, I will first look towards Indigenous critiques of sovereignty, and then look towards how these same critiques chart a path towards a different type of relationship between the Crown and Indigenous peoples.

Indigenous Critiques of Sovereignty

To question, or to reject, the Crown's unilateral claims to political sovereignty requires engaging with the unextinguished right of Indigenous peoples to political authority. Sovereignty however, as we currently understand it, has also come under critique from Indigenous peoples as a term that may not apply to their own understanding of political authority. To engage with this critique, I look towards the work of Indigenous political theorists on topics of sovereignty, including authority, gender, and refusal – focusing on their critiques of Canadian sovereignty.

Indigenous theorists have criticized the centering of Crown sovereignty. Dale Turner addresses the issue of sovereignty in his work, *This Is Not a Peace Pipe*. The first point Turner makes about Indigenous sovereignty in relation to the state, is that the existence of the former fundamentally questions the creation, existence, and legitimacy, of the latter. Indeed, Turner argues one reason for the disconnect between Indigenous peoples and settlers, is that most settlers “believe that the sovereignty of the Canadian state is a given”, an idea “so deeply embedded in Canadian society that its legitimacy is rarely questioned” (2006: 32). For Turner, this centering of Crown sovereignty is willful ignorance of the “colonial history of the political relationship, and in particular the significance of the treaty relationship” (42). Turner then contends that engaging with Indigenous sovereignty will require moving on from centering political debates “within Canada”, and in doing so, will “require us to renew our conceptions of Canada” (44). Turner’s contention shows how engaging with Indigenous notions of sovereignty will show how the Crown does not possess a unilateral claim to political sovereignty.

Taiiaki Alfred’s work has directly addressed Indigenous sovereignty in relation to the authority of the state. In *A Companion to American Indian History*, Alfred notes that any discussion on Indigenous sovereignty must be framed “within an intellectual framework of internal colonization” that is limited by two main caveats (2002: 460). The first is factual, that historical European claims of unilateral sovereignty over North America were “tenuous at best”; while the second is theoretical, framing the discussion in European terms “has limited the ways we [Indigenous peoples] are able to think” about sovereignty (2002: 461). Alfred’s project is to document a reality that “reflects a basic sentiment within many indigenous communities: “sovereignty” is inappropriate as a political objective for indigenous peoples” (2002: 464).

Through Alfred, we see a move towards a rejection of sovereignty and the notions it invokes, shifting discussions on political authority away from a state-led, Western-led discourse.

In *Peace, Power, and Righteousness*, Taiaiake Alfred's rejection of sovereignty is chartered towards a different type of politics for Indigenous peoples, a type of politics that has significant implications for a discourse on reconciliation. Alfred challenges calls to transfer power from the settler state to existing Indigenous governments, as it would reinforce Western ideals by failing to reject "the idea that there can be a permanent transference of power or authority from the individual to an abstraction of the collective called 'government'. The indigenous tradition sees government as the collective power of the individual members of the nation; there is no separation between society and state" (1999: 25). In charting a course for the future, Alfred turns towards settlers and their role in misunderstanding the moral, intellectual, and political foundations of colonialism that remain: "Non-indigenous people need to be brought to the realization that their notion of power and its extension over indigenous peoples is wrong by any moral standard" (1999: 144). In sum, Alfred leaves settlers with two powerful messages: projecting concepts like sovereignty, despite well-meaning intentions, can replicate colonialism; and that settlers and our governments need to provide space for Indigenous peoples to charter futures based on their own terms, meanings, and worldviews.

In *Therapeutic Nations*, Dian Million looks to sovereignty, or self-determination as she phrases it, in two separate ways. Million's book argues for the centering of gender in the path towards self-determination; recognizing the harm settler colonialism perpetrates against Indigenous women and crafting a self-determination in response to this. Million argues that normative violence is integral to the *Indian Act*, and that this violence is specifically gendered, resulting in a regulatory violence that targets "Indigenous women's constitutive power to inform

their own Indigenous nations” (2013: 6-7). Million contends that to recognize this violence is to register “more than an attack on individuals”, that it is “gender violence that marks the evisceration of Indigenous nations” (7). Million later shows that as a result of this target violence, “the state cannot also be a safe agent in ... reconciliation” because the state remains constituted in the “same nexus of racialization, heteronormativity, and gender violence that it was formed in” (162). At the intersection of gender and sovereignty, Dian Million’s analysis shows the great skepticism for the results of a state-centered reconciliation discourse, and the gendered dangers of the Crown’s unilateral claims to sovereignty.

The inadequate use of sovereignty for the authority and gender relations of Indigenous peoples, has led to the refusal of Crown sovereignty by Indigenous peoples. Leanne Simpson has described this as *generative refusal*; a refusal to center the state in the politics of Indigenous nations, and generative in that “it is organizing and mobilizing that takes place within nation-based grounded normativities” (2017: 178). In the article “Sovereignty and Critique”, Audra Simpson explains that ‘sovereignty’ has a fraught relationship with Indigenous peoples; it is a Western term that deserves resisting, and one deeply rooted in unilateral rule, violence, and dispossession (2020: 687). Ultimately, Simpson declares that sovereignty for Indigenous peoples ought to be understood as a “philosophical and governing system that is carried in the languages and experiences of people who had and *still* have political codes and commitments for life that predate settlement” (2020: 691). For the act of resistance, Simpson concludes: “‘Sovereignty’ remains as an active antagonist as long as there is a state that is predicated upon dispossession” (2020: 691). These two authors show that unilateral declaration of sovereignty by the Crown will be refused by Indigenous peoples, exemplified by three conflicts in 2020 alone, between the Crown and peoples from the Wet’suwet’en, the Mi’kmaq, and the Haudenosaunee Confederacy.

In engaging with these critiques, I do not attempt to define Indigenous sovereignty; this diverse concept must be defined by First Nations, Métis, and Inuit peoples themselves. These critiques do, however, converge on the dismissal of the unilateral claim of sovereignty held by the Crown. Further, they suggest that typical Western understandings of sovereignty may not readily apply to forms of political authority practiced by Indigenous peoples. The work of these authors also argues that in critiquing the Crown's understanding of sovereignty, there must either be a rejection or a renewal of the terms of sovereignty. Such a renewal must begin with Indigenous notions of sovereignty, especially as they contradict modern notions of sovereignty.

Against Unilateralism

The unilateral claim to political sovereignty on behalf of the Crown is inherently misplaced; the composition of such sovereignty ought to be revisited. Without fundamentally revisiting the norm of sovereignty, it leaves little room for the enhancement of Indigenous political authority and entirely undermines any attempt at reconciliation. To alter the Crown's unilateral claims to sovereignty has significant implications for the Crown-Indigenous relationship. These implications can best be interpreted through treaties and the constitution.

Indigenous interpretations of treaty cast a fundamental interruption in the Crown's claim to unilateral sovereignty. Gina Starblanket explains how the interpretation of the numbered treaties led to unilateral claims of Crown sovereignty, created through an 'end' of Indigenous sovereignty: "treaties represented political agreements insofar as they would promise to uphold claims to Crown sovereignty, it also needed treaties to represent an endpoint for Indigenous peoples' political authority and jurisdiction" (2019: 448). Thus, Starblanket argues that "while the Canadian state requires the continuity of treaties to legitimate its claims to sovereignty and jurisdiction, it also requires the ongoing subordination of Indigenous political orders." (453).

Heidi Stark argues for examining treaties in order to question how the Crown and its institutions have altered, and misused, the treaty relationship to solidify Crown sovereignty at the expense of Indigenous sovereignty. Stark uses the example of the courts for this point: “judges... struggle to envision treaty signatories as having reserved their sovereignty in their treaty relationships with the Crown while putting forward a vision for coexistence across a multinational terrain in which Indigenous nations and Canada are bound by their obligations and treaty commitments” (2017: 273). These two interpretations argue against unilateral claims of sovereignty built on interpreting treaties as contracts, and rather, towards interpreting treaties as obligations between co-existing political bodies.

The interventions made by Stark and Starblanket invite us, as settlers, to rethink our conceptions of Crown sovereignty, Indigenous sovereignty, and the treaty relationship. Engaging with such interventions means listening to stories that contradict the foundation of Crown sovereignty, in order to live according to the original tenets of the nation-nation relationship. As Kiera Ladner argues, Indigenous interpretations of the nation-nation relationship hold immense potential for the future of the relationship: “Our treaties set forth an understanding of how Indigenous nations and the Queen’s people would live together, as separate nations within a shared territory, in a mutually beneficial, mutually agreeable, and mutually respectful manner” (2018: 260). For settlers and our understanding of political theory, we need to also understand that engaging with these interruptions is to engage with a call to alter the institutions on to which they are addressed. As James Tully argues, “the post-imperial injunction to listen to the voices of others must involve listening not only to what they say, but also to the way or language in which it is said, if the imperial habit of imposing our traditions and institutions on others in both theory and practice is to be abjured” (1995: 57). In this case, listening to such voices requires

understanding them as arguments for the interruption of, rather than the continuation of, current institutions.

There exists perhaps no greater interruption to the Crown's institutions than the revisiting of the Canadian constitution. However, a true engagement with illegitimate, unilateral Crown claims to sovereignty, and engaging with Indigenous notions of political authority, requires just such an interruption. The rights-based approach towards Indigenous political authority, deriving from the current constitution, seems to uphold the resting nature of Crown sovereignty rather than sovereignty existing as a political authority shared between the Crown and Indigenous peoples. Rob Nichols writes on how "rights based frameworks may perpetuate colonialism", as they "proceed without upsetting the non-recognition of indigenous sovereignty because in a case where the land entitlement was granted by the colonial power, this was viewed not as a reversal of its relationship of rule over indigenous peoples but as an extension of this rule" (2013: 176). Indeed, rights-based discussions constrain legal and intellectual understandings of Indigenous political authority, centering the role of the state and placing the burden on Indigenous peoples to prove their own unextinguished right(s) to political authority. As Dale Turner argues, this works through creating "a tension between the forms of knowledge that are embedded in Aboriginal communities and the legal and political discourse of the state – discourse that are used to express the meaning and content of Aboriginal rights, sovereignty, and nationhood" (2006: 119). Thus, to properly engage with claims that interrupt the Crown's unilateral claim to sovereignty, is to turn towards the source of such authority: the constitution.

The Canadian constitution is the centerpiece of the Crown's unilateral claim to sovereignty over the lands now known as Canada. Aaron Mills argues for a turn away from the constitution in order to allow Indigenous legal and political orders to stand on their own. As

Mills argues, treaties are an invitation to revisit Indigenous legal orders as existing outside of the Canadian constitution, not just existing because of it: “We have to transform that very structure to allow Indigenous legal traditions to stand within their own constitutional worlds, not contain and re-express them post-fact within the existing terms of the settler contract” (2016: 229). A much larger call, directed at the settler body politic, would be for large-scale constitutional reform. Rewriting a constitution is a way to express new political beginnings, such as post-apartheid South Africa, or the recent refusal of the Pinochet-era Chilean constitution.

While such reform is certainly outside the scope of this paper, there does exist literature in how to proceed. Tully in *Strange Multiplicity* lays out one such vision that incorporates Indigenous views of constitutionalism. Tully’s argument is about the institutionalization of a nation-nation relationship through a constitution: “Constitutions are not fixed and unchangeable agreements reached at some foundational moment, but chains of continual intercultural negotiations and agreements in accord with ... the conventions of mutual recognition, continuity and consent” (1995: 183-184). Such a constitution would necessarily involve a degree of shared sovereignty between Indigenous peoples and settlers. Audra Simpson refers to this as the idea that “sovereignty may exist within sovereignty” albeit with considerable normative, jurisdictional, and institutional challenges (2014: 10). These arguments chart a different future for the Crown-Indigenous relationship; one in which the Crown does not have a unilateral and exclusionary claim to sovereignty, and one in which sovereignty remains open for mediation, negotiation, and renewal.

To move towards a rejection of the Crown’s unilateral claim of political sovereignty requires engaging with Indigenous interruptions of such a claim. These interruptions, often based in the original spirit and intent of treaties and in Indigenous nationhoods, both condemn the past

and also chart a different future. To return to Leanne Simpson's argument, these interruptions both refuse and generate; charting a course for a decentered, mutual, and renewed sense of political coexistence.

Conclusion

Understanding the historical foundation of the state can better equip us to understand the inequities it produces in the current days. I have argued that the theoretical and historical foundation of the Crown's unilateral claim to sovereignty casts doubt on the legitimacy of this modern claim. Instead, I suggest we need to understand that the Crown's claim to sovereignty relies on its adherence to three principles: 1) the consent of the governed; 2) majority rule; 3) the location of Indigenous peoples as outside the realm of political sovereignty. I argue that the first and third principles are in constant conflict, as the Canadian state has historically made claims *over* Indigenous political authority (third principle), while now seeking to reconcile with Indigenous political authority (first principle). The second principle also means that Indigenous peoples often find themselves to be a minority group in a body politic that was created over them; rendering majority rule a harmful principle for expressions of Indigenous political authority. Moreover, majority rule often implies Indigenous inclusion *within* the Canadian politic, rather than recognizing the political legitimacy, authority, and autonomy, that is inherent to Indigenous nations.

Reconciliation would then necessitate a proper questioning and reorganizing of the Crown's claim to sovereignty, which must include an observance of the unextinguished right of Indigenous peoples to political authority over their own territories. Without doing so, reconciliation will only further solidify the Crown's unilateral claim, and the conflicts between the Crown and Indigenous peoples are likely to persist. More importantly, without addressing

claims of sovereignty and the constitution that these claims created, reconciliation appears to only ever be one of two things: a mistaken ideal, or a willful deception by the Canadian state. If, however, colonial notions of unilateral Crown sovereignty were abandoned in favour of a nation-nation relationship anchored by Indigenous views of treaty and co-existence, the process of reconciliation could begin anew.

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