

# The John Meisel Lecture Series

in Contemporary Political Controversies



## Canada's Oldest Controversy: The Pretense of Reconciliation

Hayden King

No. 2 • 2018



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Department of Political Studies  
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POLITICAL STUDIES

### **About the John Meisel Lecture Series in Contemporary Political Controversies**

In 2017, the Department of Political Studies at Queen's University established a lecture series to honour the legacy of scholarship and public service of Professor Emeritus John Meisel. Always engaged in current public affairs and never afraid to wade into the often choppy waters of political issues, The John Meisel Lecture Series in Contemporary Political Controversies provides a forum for meaningful conversation and deliberation of controversial political issues. Each year, the department invites a junior to mid-career scholar to Queen's University in Kingston, Ontario to deliver a major public lecture that addresses a timely political controversy, followed by a "town hall" style interactive discussion that is open to both the Queen's and Kingston community.

### **About John Meisel**

A professor at Queen's University since 1949, John Meisel has written extensively on the topics of political parties, elections, Quebec politics, broadcasting, and culture policy, and contributed significantly to public debate. His scholarship is noted as much for its breadth as it is for its elegance and accessibility. Meisel served as the founding editor of both the *Canadian Journal of Political Science* and the *International Political Science Review*, as well as chair of the Canadian Radio-television and Telecommunications Commission (CRTC), and president of the Royal Society of Canada. He became an officer of the Order of Canada in 1989, and was promoted to companion, the highest grade in the Order, in 1999.

Charming, engaging, optimistic, enthusiastic: John remains all of these things. As a member of the Queen's community, John is all of these and more.

He was a wonderful teacher, inspiring generations of students to engage in political and cultural life. As department head, he recruited stellar new faculty, helping to build the department into one of the strongest in the country. He was an enthusiastic mentor, supporting his younger colleagues and drawing them into national and international networks. Long retired but

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still highly visible on campus, and in the community, John remains a symbol of the best of the Queen's tradition.

**About Hayden King**

Hayden King is Anishinaabe from Beausoleil First Nation on Gchi'mnissing in Huronia, Ontario. The Executive Director of Yellowhead Institute and Advisor to the Dean of Arts on Indigenous Education at Ryerson University, Dr. King is also an adjunct professor (research) at Carleton University and senior fellow at Massey College as well as the co-founder of the Ogimaa Mikana Project. Previously he has served as senior advisor to the Ontario Government, Chair of the First Nations Technical Institute's Public Administration program and scholar-in-residence at the Conference Board of Canada. Dr. King's analysis on the Indigenous-state relationship is published widely.

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**Table of Contents**

About the John Meisel Lecture Series in Contemporary Political Controversies	i
Introduction	1
Indigenous Diplomacy: The Shade of the Same Tree	3
Reconciliation I: Rights by Proclamation (1763-1783)	7
Reconciliation II: Numbered Treaty Rights (1870-1908)	9
Reconciliation III: Post-war Civil Rights (1950-1969)	11
Reconciliation IV: Emergence of Aboriginal Rights (1982-1996)	15
Reconciliation V: The Rights Framework (2013-present)	19
In the Shadow of Shade: the New/Old Relationship	25
References	29

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**Canada's Oldest Controversy: The Pretense of Reconciliation***Hayden King*

Aaniin, boozhoo.  
Bidwewodem indizhinikaaz;  
migizi n'doodem;  
Gchi'mnissing n'doonjibaa;

Anishinaabe n'daaw.

When I introduce myself, I start with my name, Bidwewodem, or “he who comes speaking”; my clan, Migizi, the Eagle clan; and the place that I come from, Gchi'mnissing, or Beausoleil First Nation (sometimes called Christian Island). Gchi'mnissing is a little island in Southern Georgian Bay. We actually have three islands: Christian Island, Hope Island, and Charity Island, all named by the missionaries who accompanied my ancestors to the Islands in 1830. Now, when we introduce ourselves as Anishinabek people, it's important to talk about our clan relationships and the communities that we are from, because that introduction is effectively an obligation, which motions to my responsibilities to Eagle, my communities, our treaties, and to each other as Anishinabek people. Obligation and responsibility underwrite a political orientation and importantly a concept of reconciliation, the focus of this discussion.

Today in Canada, there are two competing visions of the country, two competing visions of Anishinaabe Aki, two competing visions of Turtle Island. Not a before and after, but two distinct ways of being in the world. There is the original political relationship espoused by Anishinabek and Haudenosaunee, among others, with the Dutch, the English

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and the French. And then the vision that followed it, led primarily by those European Settlers. These visions have clashed five times throughout our shared history and followed a starkly similar pattern: we came together, fell apart, tried to fix the damage, repeat. We think of reconciliation as a contemporary phenomenon, that it is something new and unique that flowed out of the Truth and Reconciliation Commission's work from 2013 onward. But the reality is that we have been here before. If that is the case, there are lessons and even prescriptions that we can glean from those previous experiences that apply to our contemporary situation.

While this is a contemporary discussion, it requires context. So, to situate modern First Nation-Canadian relationships within this broader trend, it is important for us to go back in time to consider Indigenous politics as well as the institutions and mechanisms to mitigate conflict. This is followed by an overview of the collapse of Indigenous models of peace, and the emergence of five eras of reconciliation led by colonial governments from 1763 through to the present and revolving around the language of "rights". Given that each of these eras has failed or is failing, largely due to an unwillingness to share power and responsibility, the era we find ourselves in today comes into focus as merely the latest attempt to rescue the concept of Canada and avoid any meaningful reconciliation.

## **Indigenous Diplomacy: The Shade of the Same Tree**

Exploring First Nation, and specifically Anishinabek and Haudenosaunee, forms of diplomacy (in the Great Lakes contact era) offers answers to some of the questions political scientists ask themselves daily: How can diverse people share the same territory? Anishinabek and Haudenosaunee have reflected on that to a great degree. Indeed, we teach our children about how to resolve those conflicts.

A common story is that of the Moose Thieves. The story goes that many, many generations ago, before there were Settlers, before there was a Canada, Anishinabek people lived in relative harmony with the land. But one fall they could not find the Deer and the Moose. They searched and searched throughout the fall, but the hooved creatures remained elusive. So they asked other animals. They asked the Muskrat if they had seen the Deer and the Moose, and the Muskrat shied away, refusing to answer them. They asked the Bear, and likewise, the Bear ran away. And so, the Anishinabek continued on this path, asking the Snake and asking the insects, and none of them would answer their questions until finally, weeks later, they came across the Deer and the Moose. They discovered that it was the Crows and the Owls who had kidnapped the hooved creatures.

So, the people decided to launch a war against the Crows and the Owls, and the war lasted many weeks. At the conclusion, the people reached the Deer and the Moose, and they said, "Come with us, we've freed you! Come back to our territory and we'll all live in harmony and be well fed." The Deer and the Moose responded, "No. You don't understand. We sought the Crows' and the Owls' protection, because you had forgotten your obligations to us. You weren't performing



ceremony when we were sacrificing ourselves to you. You were wasting our flesh. You weren't ensuring that our homes, and our territories would endure in perpetuity for our offspring and future generations" (Borrows, 2002; Simpson, 2008). And so, the people understood the lesson that the Deer and the Moose were teaching them and agreed to change their behaviour, creating one of the very first treaties for the Anishinabek: a treaty with the Land.

While a story, it is also an institution; a mechanism to reduce some of the conflict and violence that emerged from competing interests. The story of the Moose Thieves and its principles endured into some of the agreements that the Anishinabek made with other Indigenous peoples, and eventually, with Europeans. These agreements are often graphically represented, captured in a mnemonic device like a birch-bark scroll, mask, totem pole, pictograph, or wampum belt. All of these devices are used to pass on story; to codify agreements like treaties. The Dish with One Spoon is one such wampum, an agreement between the Anishinabek and the Haudenosaunee.

These two groups of people, the significant confederacies in the region, had been neighbours longer than anybody can remember. At one point, however, this relationship started to break down. Conflict emerged and endured in waves. And so the Anishinabek and Haudenosaunee came together under a very simple metaphor: the dish. We came to the understanding that we all live in the dish. Even as distinct political communities we can share the same geographic territory, as long as we abide by a few basic principles. First, there are no sharp objects at the table. There are no forks or knives with which we can stab each other but only a spoon that we share. But we also have an obligation to ensure that the dish never runs dry; an obligation we also share in perpetuity (Johnston, 2004).

The Dish with One Spoon was invoked many times throughout the relationship between the Anishinabek and the Haudenosaunee. Eventually, non-Indigenous people were welcomed into the Dish with One Spoon as well, notably in 1701 at the Great Peace of Montreal. But one of the first treaties that Settlers were invited into was the Two-Row Wampum, in 1609. The Two-Row is commonly known and used in Indigenous political discourse because it is the manifestation of an ideal relationship between Indigenous peoples and Settlers. When Europeans arrived, and it was the Dutch who arrived first in Haudenosaunee territory, the Mohawks greeted them and developed a trade relationship. As a longer-term relationship became likely, the Haudenosaunee presented the Dutch with terms.

The Two-Row belt depicts a river of white beads, and on that river a row of purple beads that represents the path of the Haudenosaunee canoe. The other row of purple beads, running parallel, is the path of the Dutch ship. Inside the Haudenosaunee canoe is their culture, values, and institutions. Inside the Dutch ship are their culture, their values, their institutions, and so on. Neither should attempt to steer the other vessel, nor should they step foot in the other boat. That does not mean segregation. Rather, each party will be bound by those three rows of white beads in the middle that symbolize peace, friendship and respect. This is the wake. The wake of our vessels as they affect each other, and when they do, we have to come together to resolve those disputes. And we always have to be thinking about the river that we travel upon as well; the land that sustains us (Lyons, 1986; Mitchell, 1989).

These types of agreements dominated the early relationships between Indigenous people and Europeans, in the Great Lakes, at least for a time. But as the Settler population grew, and

competing colonial powers fought for Indigenous allies, as disease took a tremendous toll, wiping out 90 percent of the Indigenous population (Koch et al., 2018), power relations shifted, and peace gave way to war. There were the Beaver Wars, the Atlantic conflict, and King Phillip's War, all of which culminated in the Seven Years War emerging in 1756. This conflict, largely between the English and the French, grew into a global war for colonial supremacy. In North America, it was played out between the two colonial powers in the Great Lakes.

### **Reconciliation I: Rights by Proclamation (1763-1783)**

By the end of the Seven Years War, it was clear that most examples of good relations that existed between the English and Indigenous peoples were under tremendous strain. In fact, when the English won that war and expected Indigenous peoples to concede, Minavavana famously said, "Though you have conquered the French, you have not conquered us..." (Slattery, 1984). With the realization that the Anishinaabek, among others, would continue the war, the English embarked on the first era of reconciliation by creating the Royal Proclamation in 1763, followed by the Treaty of Fort Niagara in 1764. These efforts came after the peace negotiations with the French that would create a French region in North America (over time, becoming the province of Quebec). For Indigenous people, there was a similar demarcation, with King George drawing a line on the map west of the Thirteen Colonies and pledging to negotiate treaties before crossing the line (Parmenter, 1997).

By this time, the English had learned the language and diplomacy of Indigenous Peoples. To solemnize the Royal Proclamation, an Indigenous version was also created. William Johnson, the Superintendent of Indians, had a wampum belt commissioned, which included depictions of the familiar dish pattern and two figures holding hands. He presented it to 200 First Nation leaders that gathered at Niagara in 1764. Johnson promised military alliance, free trade, mutual autonomy, peace and friendship (Borrows, 2002). With many of those leaders accepting the treaty, there was a period of relative peace for about twenty years (though it is important to note Pontiac's War did immediately follow the Seven Years War). The English kept their word on treaty-making, establishing a number of

small scale treaties around the Great Lakes.

But by 1783, it was apparent that these early English-style treaties were problematic. The English were impatient with Indigenous people and their terms. Different languages of peace were being spoken and agreements were generally hard to negotiate. The Anishinabek wanted to share the land, and share jurisdiction over the land, and the English wanted to create one-time transactions where they could buy the land and re-locate Indigenous peoples out of the way of settlement and under the jurisdiction of the Crown.

Instead of negotiating through this impasse, the English changed their treaty-making techniques by approaching treaty-making with deceit. They agreed to all the First Nation demands during the negotiations but then drafted agreements that betrayed the spirit of the negotiations, effectively creating a system of land surrenders (Miller, 2009). So the first era of reconciliation melted away relatively quickly, reinforced by draconian policies that colonial Canada began to enact in 1830. These policies attempted to create the reserve system and have First Nation people pay for it themselves; the reserves were set up to be a place where Indigenous people could be Christianized and learn European style agriculture (Miller, 2000). The Gradual Civilization Acts followed quickly afterward, breaking down Indigenous governance structures, targeting the decision-making power of Indigenous women.

These strategies would result in a very quick close to the first era of reconciliation.

## **Reconciliation II: Numbered Treaty Rights (1870-1908)**

By 1870 a second attempt at reconciliation by the new Canadians was undertaken. Just a few years earlier, in 1867, four provinces had joined together in a confederation under the British North America Act. Canada began to look to the West at a vast territory ripe for settlement and colonization. But the Royal Proclamation of 1763 was still in force, even one hundred years later, and Canada embarked on a National treaty-making campaign to legitimize expansion. This mission was ostensibly guided toward righting the relationship with First Nations (though for many on the Plains and in the North, the relationship was really just beginning). In the early phase of this national treaty-making process, a lot of First Nation leadership accepted the invitation to formalize a relationship. Cree, Blackfoot, Dakota and Dene people welcomed a treaty. They welcomed a new relationship, because the buffalo were disappearing, disease was taking a devastating toll, and American traders were encroaching upon and exploiting indigenous communities (Carter, 1999). Consequently, those leaders and communities wanted a new deal. The Numbered Treaties, as they would become known, stretched across the country from 1870 to 1921.

Just as in the first era, the second attempt at reconciliation began to break down quickly. Just as had been the case with the pre-confederation era treaties, there were interpretation challenges. First Nation leaders, the Cree in Treaty #6 and Treaty #8 for instance, expected to receive education and healthcare, infrastructure and annuities. In exchange, Settlers could come onto the land and share it. Settlers could have land to use, grass to feed their cows, timber to build their homes, and they could live in peace and harmony with those First Nations people (Venne, 1997). For the Canadians, there was an

expectation that First Nations people would sign an Oath to the Queen to move onto reserve land, out of the way, and to surrender any title, or any rights they had to the land. Given the institutional and military power of Canada at the time, relative to the Plains First Nations, the Settler's view could be enforced, and the promise the Numbered Treaties represented was betrayed.

Complementing the breaking of the Numbered Treaties was the Indian Act and the Indian Residential School system. In fact, it is impossible to separate the creation of the Numbered Treaties from Indian policy. In retrospect, they appear to be dual prongs of the strategy to dispossess and contain First Nations. With First Nations on newly created reserves, the Indian Act coerced communities to assimilate. It did that by restricting movement: First Nation people could not leave a reserve, gather in numbers larger than three off-reserve, buy or sell anything to a non-Native person without a permit from an Indian agent (a government official that policed the reserve), visit a dancehall, drink alcohol, smoke cigarettes, play pool, and so on. Of course, the Indian Act had a number of other provisions for land theft by Settlers, allowing municipalities and provinces to expropriate reserve lands. If a First Nation reserve grew too large and was in proximity to a municipality, all of the inhabitants would be moved somewhere more remote. Of course, residential schools compelled by law First Nation children to attend, and of course, all manner of horror ensued (Royal Commission on Aboriginal Peoples, 1996).

The second era of reconciliation ended in genocide.

### **Reconciliation III: Post-war Civil Rights (1950-1969)**

It is important to note that First Nations did not accept all of the above without resistance; they pushed back against these policies. They created political organizations like the League of Indians in 1923, despite the Indian Act outlawing organizing (Barron, 2011). Indigenous women met in Homemaker's Clubs at the behest of nuns to make quilts and prepare recipes but used those opportunities to keep ceremony alive. It was really only in the late 1940s that resistance started to influence change at the policy level. Individuals like Fred Loft, the Six Nations war veteran, or Francis Pegahmagabow, who fought in WWII for Canada, returned to push for change. After honouring their side of treaties (military alliance) but realizing very little had changed for their communities - the same sort of oppression and discrimination was ongoing - they gathered new allies to push for change (Dickason, 2006).

In 1951, a Liberal government led by Louis St. Laurent was elected. As a response to the protests, the government consulted First Nation leaders for a new policy. By this point, most First Nations governance structures had been turned inside out and dismantled, replaced with an elected band council system in the place of clan systems, confederacies or hereditary systems. Nonetheless, the consultation revealed that communities wanted an end to oppression and a return to self-determination. The Liberals of the day agreed with the former, but not the latter. The Indian Act was amended wholesale, so that most of the prohibitions on culture and on movement were curtailed, and First Nations could, for the very first time, move to a city or leave the reserve (Smith, 2014). As they did, political organizing continued to emerge.

By the time that Pierre Trudeau was elected in 1968, the Red

Power Movement percolated alongside the demand by Black communities and women for civil rights. Trudeau extended St. Laurent's legacy by crafting a new Indian policy. And like St. Laurent, Trudeau's government spent a year, 1968-1969, on consultations. To the credit of Canadians, the 1950-1969 era represents the first time in one hundred years when Indigenous people are actually asked their opinions. Unfortunately, that consultation would be betrayed when the policy was unveiled by then Minister of Indian Affairs Jean Chrétien.

For Trudeau and Chrétien, the civil rights era drove a push for a "just society" premised on integration. While that may have been applicable by degrees for other marginalized communities, for Indigenous peoples - in this latest era of reconciliation - it meant assimilation.

The Canadian government took an opportunity and squandered it by assuming that the best way forward was to remove treaty and Aboriginal rights, eliminate any inherent rights, privatize reserve lands, have the provinces take over responsibility for services and programs, and focus on economic development (Cardinal, 1999). Predictably, First Nation leaders reacted aggressively to this policy prescription in 1969, organizing around the country and offering counter-proposals.

These actions were followed very quickly by Frank Calder taking Canada to court on behalf of the Nisga'a in British Columbia. Calder argued that if Canada has never made a treaty, then the land still effectively belongs to First Nations, and a treaty must be made. In the same year, the James Bay Cree battled Quebec in court over a hydro development in their territory against their wishes. Both court decisions favoured Aboriginal rights. Finally, in 1980-1981, the culmination of the Red Power movement was the Constitutional Express. During

this very tumultuous time of institutional, legal, and policy change in Canada, First Nations boarded a train in British Columbia travelling across the country to Ottawa, making stops along the way, demanding recognition of their rights (Manuel and Derrickson, 2015). They demanded self-determination. They demanded a type of relationship that had existed prior to Canada, at least in principle.

This more formalized type of change, but also conflict, would lead to the fourth era of reconciliation.

## **Reconciliation IV: Emergence of Aboriginal Rights (1982-1996)**

Those on the Constitutional Express, as well as Inuk and Métis leaders who demanded change through the Red Power Movement, continued with these efforts. Aboriginal rights did, after all, make it into the 1982 constitution. This began the fourth era of reconciliation, one that Pierre Trudeau ushered in with his admission, “perhaps you have more legal rights than we thought you did” (Miller, 2000). Those rights would be encapsulated in Section 35: “the existing Aboriginal and treaty rights are hereby recognized and affirmed” (Constitutional Act, 1982). While vague, and the result of intense negotiation, the inclusion was a gesture that would forever change the legal landscape in Canada. To remedy the challenge around Section 35’s vagueness, the Constitution also mandated a series of conferences to further elaborate and even define Aboriginal rights. Between 1987 and 1992, three conferences were held. It was a remarkable undertaking and the first time in the Western hemisphere that a colonial government sat down with an Indigenous people and talked about the scope of their relationship and their obligations to each other. Moreover, they did it in front of Canadians, broadcast on the CBC.

It is difficult to compare the five eras chronicled here against each other or to determine which was the most impactful. Certainly, none have led to the structural change demanded by Indigenous peoples since Confederation. As far as incremental change goes, the era of Aboriginal rights has resulted in the emergence of Aboriginal law and all the corresponding legal hand-wringing that has ensued. But, like the previous three eras, this turned quickly, too. Ultimately, the constitutional conferences ended with provincial leaders and Prime Ministers Trudeau to Mulroney, unwilling to take Indigenous demands

for self-determination seriously. There would be no resolution to the question of Aboriginal rights. Both the Meech Lake Accord, which attempted to bring Quebec into the Constitution, and then the Charlottetown Accord, which attempted to elucidate Aboriginal rights, failed (Cairns, 2011). Conflict once again emerged.

Notable among the many conflicts on the land following the constitutional talks was the 1990 Oka Crisis. Brian Mulroney had sent 1,400 troops to a small community in Quebec called Oka, outside of Kahnésatake, all in support of that municipality building an extension onto a golf course that would infringe on Kahnésatake land. It resulted in a nine-month protracted conflict, in which many people were harmed and two killed (Gabriel-Doxtator and Van den Hende, 1995). This was followed by the 1993 Ipperwash Crisis outside of Kettle and Stoney Point First Nations, where again a violent confrontation ensued between a Canadian police force and an Anishinaabe group trying to reclaim land, ending in violence and the death of Dudley George. In B.C., there was the Gustafsen Lake conflict in 1999, where the RCMP deployed armed personnel carriers and landmines.

During the 1990s, despite some conflict punctuating this era of reconciliation, there was an attempt to mitigate it. In 1991 Brian Mulroney launched the Royal Commission on Aboriginal Peoples (RCAP). Royal Commissions, of course, are inquiries that study issues of national importance to Canadians. This was yet another reconciliatory gesture to address the problems in the relationship between Indigenous Peoples and Canadians and prescribe solutions. Five years, 5000 pages, and 440 recommendations later, the Royal Commission charted the path forward. Unfortunately, by the time the RCAP was released, the Liberal government led by Paul Martin decided to largely

ignore the document and its emphasis on Indigenous self-determination, land rights, and substantial investment. Instead, Martin instituted a strict two percent cap on funding for First Nations in 1996 (Courchene, 2018). From 1996 until very recently, given population growth and inflation exceeding two percent a year, there has effectively been an annual cut.

In the era of reconciliation that saw both conflict and reproach repeatedly, Indigenous people once again were left without a comprehensive agreement on moving the relationship forward. Through the late 1990s and 2000s, the inertia would return.

## **Reconciliation V: The Rights Framework (2013-present)**

This brings us into the contemporary era of reconciliation. The resistance to successive Harper governments would lead to more protest, building on a very long history of activism all the way to back to Pontiac, and would culminate in the Idle No More movement in 2013. Originally a response to federal legislation that proposed changing laws around fisheries and navigable waters, the movement grew into a multi-dimensional, multinational protest about our very bad relationship generally, resulting in significant discursive and symbolic impacts. Followed quickly by the work of the Truth and Reconciliation Commission (TRC), the energy was enough to launch this latest era.

It has been fueled in part, by the election of Justin Trudeau and another Liberal government with aspirations of real change. After ten years of a Stephen Harper's adversarial approach, most First Nations were eager to have a more hospitable, accommodating, and even friendly federal government. Indeed, there were significant campaign and post-election promises made to Indigenous peoples. Everything from a veto on unwelcome development to implementation of the Declaration on the Rights of Indigenous People. Terms like "nation-to-nation," "decolonization," and yes, "reconciliation," were and are common. Justin Trudeau even claims that the relationship with Indigenous peoples is his "most important" relationship (Trudeau, 2017).

Given that we are living this era, it's important to break down some of the policy shifts we see happening beyond the general treatment afforded to each of the previous eras. Much of this analysis is drawn from Yellowhead Institute's "Canada's Emerging Rights Framework: A Critical Analysis" (King and Pasternak, 2018).



*A New Relationship?*

Underwriting the policy reform proposed or already being implemented regarding the current government's Indigenous policy is the Department of Justice's *Principles respecting the Government of Canada's relationship with Indigenous peoples*, released in July 2017 (Department of Justice, 2017). According to the Government, these "Ten Principles" are informed by Section 35 of the Constitution, the TRC Calls to Action, the United Nations Declaration of Rights of Indigenous Peoples (UNDRIP), and the Royal Commission on the Rights of Aboriginal Peoples (RCAP). Since July, the Ten Principles have appeared in government literature in reference to their role guiding the Cabinet Committee review of Canada's laws and policies, and the "Nation-to-Nation" MOUs with the Assembly of First Nations (AFN).

While the Ten Principles have supporters among some First Nation analysts, and they do represent a shift in rhetoric from previous governments, they nonetheless emphasize the supremacy of the Canadian constitutional framework and constrain the possibilities for self-determination among Indigenous peoples. An analysis of the Ten Principles reveals very little structural change to the existing relationship as the basis for this government's negotiating mandate, and even a potential threat to Indigenous rights and title.

Much of the Ten Principles document grapples with how best to incorporate Indigenous peoples into pre-existing Canadian legal orders (largely neglecting Indigenous preexistence). Principle 3 asserts that governments should "ensure that Indigenous peoples are treated with respect and as full partners in Confederation," (*Principles*, p. 8) while Principle 4 motions towards "cooperative federalism" and

supports "developing mechanisms and designing processes which recognize that Indigenous peoples are foundational to Canada's constitutional framework" (p. 9). Yet, it is remarkable how inflexible that constitutional framework is regarding Indigenous rights. The Prime Minister has repeatedly said that the Constitution will not be re-opened on this question.

On Aboriginal title, Canada insists in Principle 5 that it "is prepared to enter into innovative and flexible arrangements with Indigenous peoples... based on the recognition and implementation of rights and not their extinguishment, modification, or surrender" (p. 11). We see how flexible negotiations that focus on sectoral issues that are a priority to First Nations, such as fisheries, could bring about positive changes. That being said, these innovations will be constrained by Canadian sovereignty and tied to never-ending processes that do not resolve the underlying issues of territorial authority over traditional Indigenous homelands.

This issue is reflected, for instance, in Principle 6: the Government recognizes the need to "consult and cooperate in good faith with the aim of securing their free, prior, and informed consent" (p. 12). Further, "[it] will ensure that Indigenous peoples and their governments have a role in public decision-making as part of Canada's constitutional framework" (p. 13). Aspirational in phrasing, this principle commits Canada only to attempting to honour free, prior and informed consent (FPIC). Indigenous consent is also mentioned in the draft Bill C-69, though it is restricted to the reserve, and UNDRIP is never mentioned in the Act.

Related, Principle 7 states that, "any infringement of Aboriginal or treaty rights requires justification in accordance with the highest standards established by the Canadian courts and must be attained in a manner consistent with the honour

of the Crown and the objective of reconciliation" (*Principles*, p. 14). Regardless of the high standards referenced here, Canada is clear that infringement can and will happen, as it already has, even in the likely face of First Nation (and Inuit) community opposition. Muskrat Falls, Site C, and the Kinder Morgan Trans-Mountain pipeline expansion are all contemporary examples of so-called "justifiable infringement."

Considering all of this, it is remarkable how little the Ten Principles (and all the policy that follows) deviate from previous articulations of the relationship. If there is an appetite to create innovative and novel approaches to rights and title, Principles 8, 9 and 10 all reflect that appetite. Yet, they are innovative insofar as they do not stray far from pre-existing institutions and structures, which entrench the authority of the federal and provincial governments.

#### *Indian Policy Inertia*

Predictably, much of the policy that flows from these principles reflects an age-old attempt to capture or contain Indigenous peoples within the legal and political frameworks they have been seeking to break out of since the first era of reconciliation ended.

The Indian Act is on its way out; the land claims regime and self-government policies are being broken down and re-packaged; and changes to fiscal relations ultimately focus on accountability and avoid addressing questions of land and resources. Indeed, Yellowhead found that nearly all of Canada's proposed changes to its relationship with First Nation peoples neglect issues of land restitution and treaty obligations. Instead, whether relational, policy or legislative reform, they focus on the creation of self-governing First Nations with administrative responsibility for service delivery on limited land bases. Decision-making powers are constrained to the local (including

any notion of free, prior and informed consent). Provincial, territorial and federal governments will continue to patronize and intervene in the lives and lands of First Nations peoples.

All of this is despite Trudeau's rhetoric on reconciliation, UNDRIP, the nation-to-nation relationship, or the commitment to "breathing life" into Section 35 of the Constitution. And while there are some welcome changes including resources for program and service delivery, there is also a clear attempt to maintain a modified version of the status quo, and as such, an effort to mislead First Nations on the transformational nature of these changes. This has consequences. As the Auditor-General remarked, "there are so many discussions about the need to close the socio-economic gaps between Indigenous people and other Canadians in this country and we don't see those gaps closing" (Sholey, 2018).

The danger of accepting government messaging in this latest era of reconciliation, and the Rights Framework, as it is currently articulated, is entrenching these gaps for the long-term and settling for a very narrow vision of Indigenous jurisdiction over lands, resources and self-determination generally. In the late fall of 2018, First Nations mounted a campaign against the Rights Framework legislation and process, which intensified into the winter. Political organizations, Indigenous youth, and communities challenged the government's approach. In turn, the federal government announced that the Rights Framework legislation that would hold all of these changes together would be delayed until after the 2019 election (Barrera, 2018).

Given the uncertainty of that election, it is fair to say the process is indefinitely stalled. It is a subject of debate in what phase of the reconciliatory arc of this era we currently find ourselves.

### **In the Shadow of Shade: the New/Old Relationship**

While it is difficult to predict how the relationship will proceed from here, if the trends that I have sketched, in the most terse and general ways, hold, then we can expect it to end badly. This is where all the contextualization comes to bear, because in each of the examples we see the following: a period of conflict that leads to attempted resolution; the resolution period often lasts a decade (never more than twenty years) and culminates in new policy(ies) or law(s). Policy changes generally coalesce around the notion of rights — rights being *bestowed* or *granted*. We also see an appropriation of First Nations language and diplomacy to sell those narrowly interpreted rights. But in each iteration, the changes are largely rejected by First Nations. This leads to a period of stasis in dialogue and action, then growing anger and conflict, ushering in a new cycle or era.

Last year at the Meisel Lecture, Debra Thompson (2017) gave an insightful talk on race and politics, where she asked why the changes that we see in Aboriginal policy haven't resulted in racial equality in Canada. She answered that question by arguing that those policies come from a place of whiteness. They come from a particular space and time, an intellectual tradition that serves really to benefit white people. The policies take the shape of integrating difference, casting Black or Indigenous people as somehow different and in need of integration. While I find Thompson's argument persuasive, another explanatory framework must also be applied. Whiteness, yes, the politics of difference, yes; but those are also *technologies* enabled by settler colonialism.

A phenomenon, but also field of study, settler colonial approaches of the relationship have been around at least since at least 1923. Then, the Cayuga leader Deskaheh or Levi

General, effectively articulated a theory (Monture, 2015), one that Patrick Wolfe (2006) picked up in more substantial form.

In traditional theories of colonialism, a colonial power or foreign invader comes to new lands inhabited by Indigenous people, exploits the land, and puts those people to work extracting resources and labour to send back to the colonial center. When the resources are exhausted, or the colonial power is physically removed or kicked out, then the colonizers leave, and there is a period of decolonization. (Of course, there is argument about whether or not decolonization in those instances ever actually took place). But settler colonialism is different, because Settlers do not depart. In places like Canada, Australia, New Zealand, the United States, the Settlers endure.

This explains, at least partially, why change is so stubborn. The drive of settler colonialism is to remove Indigenous people from the land and liquidate their political difference and institutions. Liquidation is critical, because they represent a threat and a reminder of the artificiality of colonial claims to sovereignty. Those Indigenous societies are then replaced with Settler institutions, appropriating Indigenous symbols and iconography from the vanquished people along the way to distinguish themselves from their mother country and establish a "new world." While there are still clear institutional and symbolic links between Canada and England, there is also increasingly an adoption of Indigenous symbols and icons.

It is against this backdrop that we have to consider reconciliation. Eve Tuck and K. Wayne Yang (2012) argue that reconciliation is part and parcel of settler colonialism in the sense that reconciliatory efforts are really only designed to rescue colonialism by repairing the image of the settler state without the corollary restitution or real change. I believe that

the trends described here reflect this process. There is superficial co-opting of Indigenous demands into an articulation that changes nothing fundamental about Canadian institutions or culture.

It must be said that there is a certain nihilism in this approach, and I think that settler colonial scholars do a very poor job when considering the success of Indigenous resistance through these eras of reconciliation, instead assuming that we as Indigenous people are doomed to elimination by a genocidal state. Of course, that's not true. Instead, in taking inspiration from Shiri Pasternak's work *Grounded Authority: The Algonquins of Barriere Lake Against the State* (2017), I argue that settler colonialism and Indigenous resistance are co-constitutive. That means that both processes change and shape-shift in response to one another. Indigenous people resist, and Canada reacts, absorbing that resistance and reflecting it back in very minor policy shifts.

It would be disingenuous to say that things today are the same as they were in 1854. No, the

model that I am describing is an incremental one, an agonistic one. As settler states try to "perfect" territorial jurisdiction (Ford, 2010), so there is a challenge or "threat" from Indigenous people; a sabotage to "perfection". This is the space in which we exist, where conflict is sometimes modestly productive. Still, despite any gains that result from the shape-shifting and incrementalism, every institution in Canada continues to discriminate against Indigenous people, and dispossession continues unabated by industry and provinces. We are trapped.

So how do we right these relations and end this particular transit of reconciliation?

The only way to do so is to reflect deeply and challenge fundamentally the very institutions of this country, of our political economy, of our legal orders, and move towards an equitable sharing. A move from rights and entitlement back towards obligation and responsibility, and maybe, most importantly, acknowledgement of the agency of the land – basically towards the principles that I outlined at the outset.

The Anishinabek have a number of prophecies that were given to us at the time of our creation, eight prophecies in fact. These also correspond to our linear history: cataloging our creation, migration, the arrival of newcomers, etc. The keeper of the Eastern Door of the Midewiwin Society, Jim Dumont (1996), asserts that we are in the seventh of those prophecies or epochs. The Seventh Fire is a time when we go back on the trail and we pick up the things that were lost, or were taken from us during colonization, and we use them to fashion a future. The Eighth Fire, yet to come, is the final prophecy where we succeed and find that right relationship, or, we fail and there is tragedy and devastation for us all.

It is the hope, for me and I think for many of my colleagues and my friends and family, Indigenous people who are campaigning for changes to the political relationship across the country, that we get back to this place, to those metaphors; we get back to these simple but sophisticated ways of being with each other in the world and doing so for the long-term. Or, as Chief Yellowhead once said, “as long as the world stands.”

Ghi-miigwech kena weya. Ahaaw.

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