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#### The alt alone shuts down the only power we have to solve issues like climate change – individual orientation fails and trades off with broader solutions

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This short advisory paper collates a set of recommendations about how best to shape mass public communications aimed at increasing concern about climate change and motivating commensurate behavioural changes.¶ Its focus is not upon motivating small private-sphere behavioural changes on a piece-meal basis. Rather, it marshals evidence about how best to motivate the ambitious and systemic behavioural change that is necessary – including, crucially, greater public engagement with the policy process (through, for example, lobbying decision-makers and elected representatives, or participating in demonstrations), as well as major lifestyle changes. ¶ Political leaders themselves have drawn attention to the imperative for more vocal public pressure to create the ‘political space’ for them to enact more ambitious policy interventions. 1 While this paper does not dismiss the value of individuals making small private-sphere behavioural changes (for example, adopting simple domestic energy efficiency measures) it is clear that such behaviours do not, in themselves, represent a proportional response to the challenge of climate change. As David MacKay, Chief Scientific Advisor to the UK Department of Energy and Climate change writes: “Don’t be distracted by the myth that ‘every little helps’. If everyone does a little, we’ll achieve only a little” (MacKay, 2008).¶ The task of campaigners and communicators from government, business and non-governmental organisations must therefore be to motivate both (i) widespread adoption of ambitious private-sphere behavioural changes; and (ii) widespread acceptance of – and indeed active demand for – ambitious new policy interventions.¶ Current public communication campaigns, as orchestrated by government, business and non-governmental organisations, are not achieving these changes. This paper asks: how should such communications be designed if they are to have optimal impact in motivating these changes? The response to this question will require fundamental changes in the ways that many climate change communication campaigns are currently devised and implemented. ¶ This advisory paper offers a list of principles that could be used to enhance the quality of communication around climate change communications. The authors are each engaged in continuously sifting the evidence from a range of sub-disciplines within psychology, and reflecting on the implications of this for improving climate change communications. Some of the organisations that we represent have themselves at times adopted approaches which we have both learnt from and critique in this paper – so some of us have first hand experience of the need for on-going improvement in the strategies that we deploy. ¶ The changes we advocate will be challenging to enact – and will require vision and leadership on the part of the organisations adopting them. But without such vision and leadership, we do not believe that public communication campaigns on climate change will create the necessary behavioural changes – indeed, there is a profound risk that many of today’s campaigns will actually prove counter-productive. ¶ Seven Principles¶ 1. Move Beyond Social Marketing¶ We believe that too little attention is paid to the understanding that psychologists bring to strategies for motivating change, whilst undue faith is often placed in the application of marketing strategies to ‘sell’ behavioural changes. Unfortunately, in the context of ambitious pro-environmental behaviour, such strategies seem unlikely to motivate systemic behavioural change.¶ Social marketing is an effective way of achieving a particular behavioural goal – dozens of practical examples in the field of health behaviour attest to this. Social marketing is really more of a framework for designing behaviour change programmes than a behaviour change programme - it offers a method of maximising the success of a specific behavioural goal. Darnton (2008) has described social marketing as ‘explicitly transtheoretical’, while Hastings (2007), in a recent overview of social marketing, claimed that there is no theory of social marketing. Rather, it is a ‘what works’ philosophy, based on previous experience of similar campaigns and programmes. Social marketing is flexible enough to be applied to a range of different social domains, and this is undoubtedly a fundamental part of its appeal.¶ However, social marketing’s 'what works' status also means that it is agnostic about the longer term, theoretical merits of different behaviour change strategies, or the cultural values that specific campaigns serve to strengthen. Social marketing dictates that the most effective strategy should be chosen, where effective means ‘most likely to achieve an immediate behavioural goal’. ¶ This means that elements of a behaviour change strategy designed according to the principles of social marketing may conflict with other, broader goals. What if the most effective way of promoting pro-environmental behaviour ‘A’ was to pursue a strategy that was detrimental to the achievement of long term pro-environmental strategy ‘Z’? The principles of social marketing have no capacity to resolve this conflict – they are limited to maximising the success of the immediate behavioural programme. This is not a flaw of social marketing – it was designed to provide tools to address specific behavioural problems on a piecemeal basis. But it is an important limitation, and one that has significant implications if social marketing techniques are used to promote systemic behavioural change and public engagement on an issue like climate change. ¶ 2. Be honest and forthright about the probable impacts of climate change, and the scale of the challenge we confront in avoiding these. But avoid deliberate attempts to provoke fear or guilt. ¶ There is no merit in ‘dumbing down’ the scientific evidence that the impacts of climate change are likely to be severe, and that some of these impacts are now almost certainly unavoidable. Accepting the impacts of climate change will be an important stage in motivating behavioural responses aimed at mitigating the problem. However, deliberate attempts to instil fear or guilt carry considerable risk. ¶ Studies on fear appeals confirm the potential for fear to change attitudes or verbal expressions of concern, but often not actions or behaviour (Ruiter et al., 2001). The impact of fear appeals is context - and audience - specific; for example, for those who do not yet realise the potentially ‘scary’ aspects of climate change, people need to first experience themselves as vulnerable to the risks in some way in order to feel moved or affected (Das et al, 2003; Hoog et al, 2005). As people move towards contemplating action, fear appeals can help form a behavioural intent, providing an impetus or spark to ‘move’ from; however such appeals must be coupled with constructive information and support to reduce the sense of danger (Moser, 2007). The danger is that fear can also be disempowering – producing feelings of helplessness, remoteness and lack of control (O’Neill and Nicholson-Cole, 2009). Fear is likely to trigger ‘barriers to engagement’, such as denial2 (Stoll-Kleemann et al., 2001; Weber, 2006; Moser and Dilling, 2007; Lorenzoni, Nicholson-Cole & Whitmarsh, 2007). The location of fear in a message is also relevant; it works better when placed first for those who are inclined to follow the advice, but better second for those who aren't (Bier, 2001).¶ Similarly, studies have shown that guilt can play a role in motivating people to take action but can also function to stimulate defensive mechanisms against the perceived threat or challenge to one’s sense of identity (as a good, moral person). In the latter case, behaviours may be left untouched (whether driving a SUV or taking a flight) as one defends against any feelings of guilt or complicity through deployment of a range of justifications for the behaviour (Ferguson & Branscombe, 2010). ¶ Overall, there is a need for emotionally balanced representations of the issues at hand. This will involve acknowledging the ‘affective reality’ of the situation, e.g. “We know this is scary and overwhelming, but many of us feel this way and we are doing something about it”.¶ 3. Be honest and forthright about the impacts of mitigating and adapting to climate change for current lifestyles, and the ‘loss’ - as well as the benefits - that these will entail. Narratives that focus exclusively on the ‘up-side’ of climate solutions are likely to be unconvincing. While narratives about the future impacts of climate change may highlight the loss of much that we currently hold to be dear, narratives about climate solutions frequently ignore the question of loss. If the two are not addressed concurrently, fear of loss may be ‘split off’ and projected into the future, where it is all too easily denied. This can be dangerous, because accepting loss is an important step towards working through the associated emotions, and emerging with the energy and creativity to respond positively to the new situation (Randall, 2009). However, there are plenty of benefits (besides the financial ones) of a low-carbon lifestyle e.g., health, community/social interaction - including the ‘intrinsic' goals mentioned below. It is important to be honest about both the losses and the benefits that may be associated with lifestyle change, and not to seek to separate out one from the other.¶ 3a. Avoid emphasis upon painless, easy steps. ¶ Be honest about the limitations of voluntary private-sphere behavioural change, and the need for ambitious new policy interventions that incentivise such changes, or that regulate for them. People know that the scope they have, as individuals, to help meet the challenge of climate change is extremely limited. For many people, it is perfectly sensible to continue to adopt high-carbon lifestyle choices whilst simultaneously being supportive of government interventions that would make these choices more difficult for everyone. ¶ The adoption of small-scale private sphere behavioural changes is sometimes assumed to lead people to adopt ever more difficult (and potentially significant) behavioural changes. The empirical evidence for this ‘foot-in-thedoor’ effect is highly equivocal. Some studies detect such an effect; others studies have found the reverse effect (whereby people tend to ‘rest on their laurels’ having adopted a few simple behavioural changes - Thogersen and Crompton, 2009). Where attention is drawn to simple and painless privatesphere behavioural changes, these should be urged in pursuit of a set of intrinsic goals (that is, as a response to people’s understanding about the contribution that such behavioural change may make to benefiting their friends and family, their community, the wider world, or in contributing to their growth and development as individuals) rather than as a means to achieve social status or greater financial success. Adopting behaviour in pursuit of intrinsic goals is more likely to lead to ‘spillover’ into other sustainable behaviours (De Young, 2000; Thogersen and Crompton, 2009).¶ People aren’t stupid: they know that if there are wholesale changes in the global climate underway, these will not be reversed merely through checking their tyre pressures or switching their TV off standby. An emphasis upon simple and painless steps suppresses debate about those necessary responses that are less palatable – that will cost people money, or that will infringe on cherished freedoms (such as to fly). Recognising this will be a key step in accepting the reality of loss of aspects of our current lifestyles, and in beginning to work through the powerful emotions that this will engender (Randall, 2009). ¶ 3b. Avoid over-emphasis on the economic opportunities that mitigating, and adapting to, climate change may provide. ¶ There will, undoubtedly, be economic benefits to be accrued through investment in new technologies, but there will also be instances where the economic imperative and the climate change adaptation or mitigation imperative diverge, and periods of economic uncertainty for many people as some sectors contract. It seems inevitable that some interventions will have negative economic impacts (Stern, 2007).¶ Undue emphasis upon economic imperatives serves to reinforce the dominance, in society, of a set of extrinsic goals (focussed, for example, on financial benefit). A large body of empirical research demonstrates that these extrinsic goals are antagonistic to the emergence of pro-social and proenvironmental concern (Crompton and Kasser, 2009).¶ 3c. Avoid emphasis upon the opportunities of ‘green consumerism’ as a response to climate change.¶ As mentioned above (3b), a large body of research points to the antagonism between goals directed towards the acquisition of material objects and the emergence of pro-environmental and pro-social concern (Crompton and Kasser, 2009). Campaigns to ‘buy green’ may be effective in driving up sales of particular products, but in conveying the impression that climate change can be addressed by ‘buying the right things’, they risk undermining more difficult and systemic changes. A recent study found that people in an experiment who purchased ‘green’ products acted less altruistically on subsequent tasks (Mazar & Zhong, 2010) – suggesting that small ethical acts may act as a ‘moral offset’ and licence undesirable behaviours in other domains. This does not mean that private-sphere behaviour changes will always lead to a reduction in subsequent pro-environmental behaviour, but it does suggest that the reasons used to motivate these changes are critically important. Better is to emphasise that ‘every little helps a little’ – but that these changes are only the beginning of a process that must also incorporate more ambitious private-sphere change and significant collective action at a political level.¶ 4. Empathise with the emotional responses that will be engendered by a forthright presentation of the probable impacts of climate change. ¶ Belief in climate change and support for low-carbon policies will remain fragile unless people are emotionally engaged. We should expect people to be sad or angry, to feel guilt or shame, to yearn for that which is lost or to search for more comforting answers (Randall, 2009). Providing support and empathy in working through the painful emotions of 'grief' for a society that must undergo changes is a prerequisite for subsequent adaptation to new circumstances.¶ Without such support and empathy, it is more likely that people will begin to deploy a range of maladaptive ‘coping strategies’, such as denial of personal responsibility, blaming others, or becoming apathetic (Lertzman, 2008). An audience should not be admonished for deploying such strategies – this would in itself be threatening, and could therefore harden resistance to positive behaviour change (Miller and Rolnick, 2002). The key is not to dismiss people who exhibit maladaptive coping strategies, but to understand how they can be made more adaptive. People who feel socially supported will be more likely to adopt adaptive emotional responses - so facilitating social support for proenvironmental behaviour is crucial.¶ 5. Promote pro-environmental social norms and harness the power of social networks¶ One way of bridging the gap between private-sphere behaviour changes and collective action is the promotion of pro-environmental social norms. Pictures and videos of ordinary people (‘like me’) engaging in significant proenvironmental actions are a simple and effective way of generating a sense of social normality around pro-environmental behaviour (Schultz, Nolan, Cialdini, Goldstein and Griskevicius, 2007). There are different reasons that people adopt social norms, and encouraging people to adopt a positive norm simply to ‘conform’, to avoid a feeling of guilt, or for fear of not ‘fitting in’ is likely to produce a relatively shallow level of motivation for behaviour change. Where social norms can be combined with ‘intrinsic’ motivations (e.g. a sense of social belonging), they are likely to be more effective and persistent.¶ Too often, environmental communications are directed to the individual as a single unit in the larger social system of consumption and political engagement. This can make the problems feel too overwhelming, and evoke unmanageable levels of anxiety. Through the enhanced awareness of what other people are doing, a strong sense of collective purpose can be engendered. One factor that is likely to influence whether adaptive or maladaptive coping strategies are selected in response to fear about climate change is whether people feel supported by a social network – that is, whether a sense of ‘sustainable citizenship’ is fostered. The efficacy of groupbased programmes at promoting pro-environmental behaviour change has been demonstrated on numerous occasions – and participants in these projects consistently point to a sense of mutual learning and support as a key reason for making and maintaining changes in behaviour (Nye and Burgess, 2008). There are few influences more powerful than an individual’s social network. Networks are instrumental not just in terms of providing social support, but also by creating specific content of social identity – defining what it means to be “us”. If environmental norms are incorporated at this level (become defining for the group) they can result in significant behavioural change (also reinforced through peer pressure).¶ Of course, for the majority of people, this is unlikely to be a network that has climate change at its core. But social networks – Trade Unions, Rugby Clubs, Mother & Toddler groups – still perform a critical role in spreading change through society. Encouraging and supporting pre-existing social networks to take ownership of climate change (rather than approach it as a problem for ‘green groups’) is a critical task. As well as representing a crucial bridge between individuals and broader society, peer-to-peer learning circumnavigates many of the problems associated with more ‘top down’ models of communication – not least that government representatives are perceived as untrustworthy (Poortinga & Pidgeon, 2003). Peer-to-peer learning is more easily achieved in group-based dialogue than in designing public information films: But public information films can nonetheless help to establish social norms around community-based responses to the challenges of climate change, through clear visual portrayals of people engaging collectively in the pro-environmental behaviour.¶ The discourse should be shifted increasingly from ‘you’ to ‘we’ and from ‘I’ to ‘us’. This is starting to take place in emerging forms of community-based activism, such as the Transition Movement and Cambridge Carbon Footprint’s ‘Carbon Conversations’ model – both of which recognize the power of groups to help support and maintain lifestyle and identity changes. A nationwide climate change engagement project using a group-based behaviour change model with members of Trade Union networks is currently underway, led by the Climate Outreach and Information Network. These projects represent a method of climate change communication and engagement radically different to that typically pursued by the government – and may offer a set of approaches that can go beyond the limited reach of social marketing techniques.¶ One potential risk with appeals based on social norms is that they often contain a hidden message. So, for example, a campaign that focuses on the fact that too many people take internal flights actually contains two messages – that taking internal flights is bad for the environment, and that lots of people are taking internal flights. This second message can give those who do not currently engage in that behaviour a perverse incentive to do so, and campaigns to promote behaviour change should be very careful to avoid this. The key is to ensure that information about what is happening (termed descriptive norms), does not overshadow information about what should be happening (termed injunctive norms). ¶ 6. Think about the language you use, but don’t rely on language alone¶ A number of recent publications have highlighted the results of focus group research and talk-back tests in order to ‘get the language right’ (Topos Partnership, 2009; Western Strategies & Lake Research Partners, 2009), culminating in a series of suggestions for framing climate-change communications. For example, these two studies led to the suggestions that communicators should use the term ‘global warming’ or ‘our deteriorating atmosphere’, respectively, rather than ‘climate change’. Other research has identified systematic differences in the way that people interpret the terms ‘climate change’ and ‘global warming’, with ‘global warming’ perceived as more emotionally engaging than ‘climate change’ (Whitmarsh, 2009).¶ Whilst ‘getting the language right’ is important, it can only play a small part in a communication strategy. More important than the language deployed (i.e. ‘conceptual frames') are what have been referred to by some cognitive linguists as 'deep frames'. Conceptual framing refers to catchy slogans and clever spin (which may or may not be honest). At a deeper level, framing refers to forging the connections between a debate or public policy and a set of deeper values or principles. Conceptual framing (crafting particular messages focussing on particular issues) cannot work unless these messages resonate with a set of long-term deep frames.¶ Policy proposals which may at the surface level seem similar (perhaps they both set out to achieve a reduction in environmental pollution) may differ importantly in terms of their deep framing. For example, putting a financial value on an endangered species, and building an economic case for their conservation ‘commodifies’ them, and makes them equivalent (at the level of deep frames) to other assets of the same value (a hotel chain, perhaps). This is a very different frame to one that attempts to achieve the same conservation goals through the ascription of intrinsic value to such species – as something that should be protected in its own right. Embedding particular deep frames requires concerted effort (Lakoff, 2009), but is the beginning of a process that can build a broad, coherent cross-departmental response to climate change from government.¶ 7. Encourage public demonstrations of frustration at the limited pace of government action¶ Private-sphere behavioural change is not enough, and may even at times become a diversion from the more important process of bringing political pressure to bear on policy-makers. The importance of public demonstrations of frustration at both the lack of political progress on climate change and the barriers presented by vested interests is widely recognised – including by government itself. Climate change communications, including government communication campaigns, should work to normalise public displays of frustration with the slow pace of political change. Ockwell et al (2009) argued that communications can play a role in fostering demand for - as well as acceptance of - policy change. Climate change communication could (and should) be used to encourage people to demonstrate (for example through public demonstrations) about how they would like structural barriers to behavioural/societal change to be removed.

#### Anti-domination is compatible with and essential to decolonial goals – settlerism is produced through contingent and redressable exertions of power over native people – anti-domination constitutes reformulating the relationship between settler govts and native people by eliminating the trust conception of governance in favor of indigenous self-determination

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Seth Davis, “American Colonialism and Constitutional Redemption,” *California Law Review*, vol. 105, 14 June 2017, pp. 1788-1799, https://www.californialawreview.org/wp-content/uploads/2017/12/6-Davis-34.pdf.

Some strains of religious and political theology treat this sort of skepticism as a necessary feature of redemption. In this register, "redemption" is relational. Applied to constitutionalism, relational redemption aims to transform unjust relationships and asks what any particular constitutional faith means not only for those who hold it, but also for those who hold other faiths.

Redemptive rhetoric, George Shulman has argued, can be dangerous politics. "God's messengers presume there is one right way to view and live in the world," he wrote, which can lead them to treat other faiths as "false prophecy dooming the nation." 237 At the same time, redemption can be relational, in which different communities of faith turn towards history and each other. When it comes to racism, for example, "we too want whites to acknowledge and overcome - why not say repent of and redeem? - a history of racial domination." 238 In that sense, "faith is ubiquitous and political theology is inescapable." 239 But perhaps there can be relational stories of redemption, ones in which different communities of faith "can engage rather than demonize the differences on which their identities depend." 240

For Reverend Powell, recognizing the problem of cheap grace was also a call for relational redemption. Cheap grace in the face of injustice does not disturb "the very societal structures responsible for oppression in the first place." 241 Redemption, by contrast, depends upon whether "the quest for justice brings about salvation and liberation for the oppressed and their oppressors." 242 On this view, redemption is relational; it begins with recognition of the injustice of a relationship and requires a transformation of that relationship.

This relational idea of redemption draws inspiration from relational theories of rights within feminist legal theory. Jennifer Nedelsky, for example, argued for an "understanding of rights as relationship and constitutionalism as a dialogue of democratic accountability." 243 Rights, in this relational approach, constitute (and are constituted out of) particular relationships "of power, of responsibility, of trust, of obligation." 244 Designing rights involves choices about basic values and how law structures (and is structured by) relationships, with lawmakers seeking to foster certain kinds of relationships. 245

To say the state is a fiduciary is to tell a story about the relationship between political elites and those subject to the public power they wield. In Socrates' telling, this story seemed beyond belief: "All of you in the city are brothers," his story went, "but the most precious are the ones fit to rule, because when the god formed you at birth he mixed gold into them, silver into the auxiliaries, and iron and bronze into the farmers and the craftsmen." 246 This is a sacred story of guardians bound to the terms of a public trust 247 and a profane tale in which some citizens dominate others. 248

Today's public fiduciary theorists seek to work this sort of myth pure of its profaneness. 249 Mutual trust and the rule of law, not elitism and paternalism, are at the heart of this modern trust conception. For more than four centuries, however, the trust conception of government has been associated with relationships of European and American imperialism and colonial domination. It seems implausible to think that the association is a mere accident, that this history of fiduciary domination tells us nothing important about the fiduciary conception. And it is beside the point to say that imperialism and colonialism would have been worse without the trust conception. Perhaps it would have been. Even so, the trust conception may perpetuate or foster relationships that we should reject. Historically, the discourse of fiduciary government became "saturated" with "images" of racism and domination, particularly in settler colonial states. 250 The persistence of the plenary power doctrine in U.S. law should make clear it is not easy to split the sacred trust from the profane tale.

"Metaphors in law," Justice Benjamin Cardozo once mused, "are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it." 251 Some private fiduciary relationships are patently paternalistic. The law entrusts guardians with authority over their wards' affairs based upon the (purported) incapacity of the ward. Other fiduciary relationships, such as the private trust, entail paternalism because the law directs the fiduciary to decide what's in the beneficiary's best interests. There is a strong argument that fiduciary duties "build a measure of paternalism into every fiduciary relation." 252 The fiduciary metaphor may keep us from focusing on the ways in which the people are not (and should not be) passive beneficiaries of public laws made and enforced by political elites. 253

Where the people are defined as beneficiaries and the state as a fiduciary, perhaps we should expect political elites to assert a "paramount power" 254 to define the law, the right, and the just. Instead of asking why Western colonial governments dominated Indigenous Peoples "in spite of" 255 their fiduciary ideals, we might ask why the trust conception lends itself to relationships of domination.

Three features of the trust conception stand out as particularly conducive to relationships of domination. 256 First, consent need not be the source of public authority, as the law itself may entrust the state with fiduciary authority over a people. This idea of authority by operation of law lends itself to the law of the conqueror unilaterally declaring its own supremacy. In Cherokee Nation v. Georgia, Chief Justice Marshall declared it, and it was so: Indian Nations "occupy a territory to which we assert a title independent of their will … . Their relations to the United States resemble that of a ward to his guardian." 257

Second, under the trust conception, the state's authority is explicable less in terms of what the people can do, but more in terms of what they are incapable of doing. Indian Nations "are the wards of the nation," the Supreme Court reasoned in Kagama, and "their very weakness and helplessness" subjects them to the authority of the United States. 258 The problem, in other words, is that the trust conception lends itself to paternalistic justifications of relationships of domination.

Third, we do not expect fiduciaries to leave their beneficiaries alone. To the contrary, fiduciaries are authorized to interfere in their beneficiaries' affairs. Private trustees, for example, manage the trust property for the beneficiaries. Transposed to the colonial context, this idea has supported policies to restrict Tribal self-government.

Nothing in what I have argued thus far "proves" that it is impossible to tell a story of constitutional law based upon trust or the trust conception of government. 259 But what I have argued should cast doubt on trust law (much less the law of guardianship) as a device for thinking about relationships of mutual respect among self-governing peoples. That's not to deny the "unique obligations" of the United States "toward the Indians" 260 or to call into question the government-to-government relationships among Indian Nations and the federal government. These government-to-government relationships are distinct from the relationship between an individual and the government. But, as public fiduciary theorists have shown, the relationship between state authority and anyone subject to it can be described in terms of a trust. Like private fiduciaries, public officials have discretionary power to act on the interests of others. And like the beneficiaries of private fiduciary relationships, the people depend upon public officials to exercise their discretion fairly and with care. Entrusting discretionary authority to public officials makes the people vulnerable to self-dealing, carelessness, and other abuses of power. For this reason, we might view public officials as fiduciaries who owe duties of loyalty and of care to anyone subject to their authority. 261 There is nothing in the formal idea of government authority as a trust that distinguishes Indigenous Peoples from others subject to government power without their consent. 262 Therefore, the unique government-to-government relationship between an Indian Nation and the United States does not arise from the trust form alone. Instead, we have to explain this unique relationship based on something other than trust law itself.

Such stories of relational redemption cannot be told by "We the People" alone. We the People's veneration of the Constitution, their trust in its institutions, their confidence that constitutional government can be washed of the wrongs it has committed - ultimately, their faith in themselves 263 - cannot by itself transform their relationships with other peoples. Within a multinational and multicultural world, a world in which many people are excluded from "We the People" or choose not to join them, redemption should mean something that's more demanding, more radical, and more important. It should mean sharing stories among "We the Peoples."

C. The Consent of We the Peoples

1. Stories of Relational Redemption

Fiduciary theorists have told a story about colonial rule that focuses on how "Western nations framed their authority to govern territory in fiduciary terms." 264 Other stories of the relationship between settler governments and Indigenous Peoples do not depend upon the fiduciary principles that settler governments invoked to legitimate conquest and colonial rule. Whether founded on human rights claims or Indigenous visions of diplomacy, such stories involve recognition of a "mutual … relationship" 265 between peoples based upon good faith and consent.

To revisit consent in this way is not to tell the same story as traditional social contract theory. Social contract theories range from quasi-anthropological descriptions of the origins of society in agreements among persons in a state of nature to the use of contract as a conceptual device for thinking about what we should demand of each other and the state. 266 Traditional social contract theory points to agreement among rational individuals for the foundation and content of legitimate government authority. This theory influenced - and continues to influence - Americans' story of their constitutional government. American judges, for example, have used the idea of a social contract to justify exclusion, discrimination, and domination. 267

Social contract theory, then, is susceptible to the same objection as the public trust conception of government, namely, that whatever legal legitimacy it purchases comes at the price of legitimating social injustice. Perhaps any story of constitutional government based on contract lends itself to ideologies of domination, not relational redemption. 268 Critical social theorists have argued that the contract conception can exclude as much as it secures freedom among individuals. Carole Pateman, for example, has argued that the original contract includes not only the social contract constituting the state, but also the "sexual contract" through which men assert the right to govern women. 269 Following Pateman's account of the sexual contract, Charles Mills has argued that the social contract also includes a "racial contract" through which whites have justified the exclusion and domination of people of color. 270 Thus, the social contract has served as an ideology of domination, not simply a story of agreement among free and equal persons.

When it comes to American colonialism, moreover, the association between contract and domination is not simply conceptual or metaphorical. The United States acted coercively in many treaty negotiations with Indian Nations. Negotiation can lead to domination if one party does not have "the people and institutions [necessary to] hold their own as equals across the table." 271 Many Indigenous Peoples are renewing and developing the necessary institutions. But any number of "principal-agent difficulties" arise when we think about contracting as a tool of self-government. 272 Finally, in many cases colonial states refused to contract with Indigenous Peoples. Within the United States, where treaty making ended in 1871, 273 there are many Indian Nations without treaties.

One advantage of looking to contract rather than to trust as a metaphor for multicultural constitutionalism, however, is that it focuses us on these difficult questions, rather than on how colonial states justify the supreme power they claim over Indigenous Peoples. 274 Charles Mills has argued that the core of the contract metaphor is the recognition that human choices construct the law and the state. 275 As a doctrinal matter, a fiduciary relationship can exist by operation of law. The United States, for example, has assumed the authority of a trustee by operation of federal law even where Indian Nations have not consented to it. By contrast, as Michele Goodwin has argued, "a social compact exists only when a real social relationship exists. In this way, the party subject to the State's compact must be valued, their contributions respected, and their communities honored." 276

Understood in this way, the social contract is a relationship. It is not a thing, like a piece of paper in a consumer contract. 277 The social contract is not a ritual, repeated every four years in a voting booth, nor a foundation that the Framers built centuries ago and left to posterity. Instead, the social contract is an ongoing relationship between equals in which agreement and resolution of differences in good faith is a goal.

This relational understanding of the social contract has analogues in the common law of contract. Relational theories emphasize contracts as relationships based upon "good faith, best efforts, and reasonable adjustments between parties." 278 One way of thinking about contracts treats them as exchanges between parties who aim to maximize value through one-off market transactions rather than as building blocks of relationships. Relational contract theorists, on the other hand, think that the way to understand contractual agreements is by focusing upon the social relationship between the contracting parties. They reject the idea that we can best understand contracts by focusing upon one-shot deals between strangers who reach agreements in impersonal markets, an idea they associate with classical contract theory. Understanding most contracts requires a thick description of relationships in which "parties expect some form of loyalty" as well as "trust and social solidarity." 279 The difference between relational contract theory and its classical counterpart is not simply one of standards versus rules, though it encompasses that distinction. Relational contract theory, rather, focuses upon fostering ongoing relationships among contracting parties. Otherwise, relational theorists warn, "legal mechanisms are imperialistic and do not function effectively in concert" with the norms the parties have established throughout their relationship. 280 Thus, for relational theorists, recognizing the relational realities of most contracts opens up critiques of existing law and invites new norms of contracting.

Indigenous Peoples have asserted their rights to relationships based upon consent while resisting colonial domination. Sometimes this resistance involves demanding that colonial governments keep their treaty promises. 281 More broadly, as Robert Williams has put it, "so long as indigenous peoples can continue to point out the embarrassing fact that they never consented to" the authority of colonial states, "they will continue to be able to frame a compelling case for their fundamental human rights of self-determination." 282 This case need not depend on a traditional Western conception of the social contract, even if it draws upon that conception for rhetorical and normative force. Before there was a U.S. Declaration of Independence, Vine Deloria remarked, "American Indians were the original proprietors of the continent, the quintessential practitioners of the original social contract." 283 And before there was a story of "We the People," there were stories of many different peoples.

When it comes to North America, one such story holds that "the Trust Doctrine was not the exclusive byproduct of the Western legal tradition brought to North America from the Old World." 284 In the early years of Indian and European relations in eastern North America, Indian and European sovereigns treated each other in fact "as rough political, economic, and military equals." 285 As late as the 1820s, Chief Justice Marshall, the author of the foundational judicial opinions in federal Indian law, "feared the possibility that the Indians would push America into the sea." 286 As equals, Indian Nations offered understandings of international diplomacy that did not depend upon the law of trusts.

For the Iroquois, for example, diplomatic relationships were extensions of kinship. 287 Indians might refer to their European treaty partners as fathers or brothers, with the Europeans "naturally assuming that the father figure represented authority and wisdom in dealing with Indian children." 288 Understood in European terms, the diplomatic relationships between Indians and colonial governments looked like a guardian-ward, or perhaps a parent-child, fiduciary relationship. But Indian kinship terms did not have the same connotations for Indians. It was not uncommon for different Indian Nations in eastern North America to treat with one another in kinship terms without surrendering sovereignty as a ward to his guardian. 289

There are many such traditions of Indigenous diplomacy. Among Indian Nations of the eastern woodlands, 290 for example, treaties were sacred pacts affirmed by wampum. Wampum belts, made of clamshells or glass beads, served many functions, including as gifts and records of intergovernmental agreements. 291 The Gus-Wen-Tah, also known as the Two Row Wampum, symbolized the Haudenosaunee understanding of the intergovernmental relationship of "peace and friendship." 292 Along the wampum there "are two rows of purple" that "symbolize two paths or two vessels," one for Indians and another for non-Indians, "travelling down the same river together," with neither "trying to steer the other's vessel." 293 The Gus-Wen-Tah signifies a relationship of mutual protection and trust, not the submission and vulnerability of a ward to a guardian under Euro-American fiduciary law.

Understood as a "mutual, ongoing trust relationship" between sovereigns, 294 this vision signifies legal and moral protections for Indian self-determination and separatism. Robert Williams has argued that Chief Justice Marshall's opinion in Worcester incorporated Indian understandings of the trust relationship into federal law. 295 In Worcester, the Chief Justice wrote that the "relation" between the Cherokee Nation and the United States "was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting, as subjects, to the laws of a master." 296 Treaties between the two nations "recognize[] the national character of the Cherokees, and their right of self-government, thus guaranteeing their lands." 297 On that understanding of Worcester, American constitutional law and discourse has a story of mutual consent among peoples.

Recognizing the rights of Indian Nations to steer their own vessels entails respect for political communities whose ideas of good governance may not be rooted in fiduciary norms of Western law. In this way, a story of mutual consent is not a story of U.S. supremacy based upon plenary power and the Indian trust. Nor is it a story that assumes that U.S. norms and institutions are superior to Tribal institutions and norms. Such differences among legal norms and institutions are not unfamiliar from the American constitutional tradition. After all, the American federal system incorporates differences in legal norms through the varied laws of the fifty states. 298 The federal government may assert the supremacy of federal law, but that does not mean that federal law is superior to Tribal law. 299 Viewing relationships between Indigenous Peoples and colonial governments in terms of Indigenous diplomacy and relational contracts focuses us on mutual obligations and good faith, while not assuming Indigenous and colonial governments are partners that must share the same values.

The idea of relational contracts is not simply a metaphor when it comes to Indigenous Peoples. In many cases, there are "actual contracts" 300 that embody ongoing relationships of mutual respect and good faith. American Indian Nations have looked to treaties as tools of self-government. Under Indian traditions of diplomacy, mutual respect, protection, and good faith are inherent to treaties. Many Indian treaties embody an ongoing relationship of mutual respect and a continuing obligation among peoples to resolve disputes through consent, not conquest. An Indian treaty is not merely a document that memorializes an agreement; rather, it invokes a relational understanding of contract and consent among peoples.

Even though the United States has ceased treaty making with Indians, contracts remain an important tool of self-determination. Indian Nations have entered into self-determination contracts with the United States to provide government services, such as education and health care, to their citizens. 301 Long-term contracting with private parties has allowed Indian Nations to develop their economies. 302 And Indian Nations have entered into agreements to resolve disputes with state and local governments over jurisdictional boundaries. 303

Calls for a resumption of treaty making and government-to-government relationships based on consent are common in American Indian social movements. In November 1972, for example, American Indian activists marched the "Trail of Broken Treaties" to present "Twenty Points" to the federal government. Seven of the twenty demands concerned restoring a consensual, treaty-based relationship between Indian Nations and the United States. 304 More recently, international Indigenous rights movements have called for nation-states to comply fully with the duty to obtain free, prior, and informed consent from Indigenous Peoples, which is codified in the U.N. Declaration on the Rights of Indigenous Peoples. 305 Within the United States, the federal government's failure to live up to that obligation has been brought to national attention with the federal executive branch's authorization of construction of the Dakota Access Pipeline across the traditional territory of the Standing Rock Sioux Tribe, 306 a decision that violated the executive's obligations to take a hard look at the impacts of a pipeline spill on Tribal rights. 307

Metaphors of contract and consent thus capture some of the social reality of Indian Nations' autonomy and self-determination. Indian Nations have persisted not as wards of a colonial guardian, but as nations that negotiate agreements to provide government services, to develop their economies, and to resolve disputes with other governments. The operative metaphor here is not the guardian-ward relationship, or even a relationship in which a trustee makes decisions for her beneficiary. Instead, the metaphor is one of contract. There is a significant risk of romanticizing consent and contract as an alternative to the trust conception. But if we are committed to a constitutional democracy that recognizes Indigenous self-determination, then we need a way of sharing stories that begins with mutual respect and autonomy, not with plenary power and domination.

#### That orientation is best – the question of how we get to the alt matters in the context of transformative ideals – conflating all attempts of change as redemptive of the settler state shuts down our ability to redress concrete instances of harm and ignores the necessity of engaging with state structures towards transformative ends

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Amna A. Akbar, “Demands for a Democratic Political Economy,” *Harvard Law Review Forum*, vol. 134, 2020, pp. 98-106, https://harvardlawreview.org/wp-content/uploads/2020/12/134-Harv.-L.-Rev.-F.-90.pdf.

I. NON-REFORMIST REFORMS

As a matter of rhetoric, the left often fashions itself as against reform and outside of formal politics -- characterizations that liberals and scholars echo. 51But today's left social movements are turning to demands, reforms, and policy platforms. 52This is not a rejection of electoral and legislative politics: it is a cautious embrace, marking a shift for the emergent left. The demands are amplified by an increasingly organized strategy to elect left and socialist candidates to office, to challenge the Democratic Party's ties to corporate money and the billionaire class, and to redefine the realm of the possible. 53Congressional Representatives Alexandria Ocasio-Cortez, Ilhan Omar, and the growing Squad are supported by a developing constellation of organizations focused on electoral strategy -- and these elected officials have become important amplifiers for radical demands. 54The turn to reform undoubtedly reflects the defeat of the revolutionary politics of the New Left and Black Power era -- itself an index of frustration with what the civil rights movement achieved 55-- as well as a recognition of the immensity of U.S. military and police power that rose up to crush movements here and around the world. 56But it also reflects a sober assessment of the limited scale of left, working-class, and poor people power amid decades of state repression and the rise of the neoliberal agenda Klarman documents. 57It is a bid for power that recognizes that mass disenfranchisement is central to the elite's hold on the state and the economy. A growing number of organizers now understand the need to organize poor, working-class, Black, brown, and immigrant people to effectuate transformational change. 58

Reform has long been a central question in debates about left and socialist strategy, 59with a range of terms to capture the aspiration for a reform program aimed at a larger project of transformation. 60Organizers are increasingly invoking non-reformist reforms, the term coined in the 1960s by French economist-philosopher and socialist André Gorz. 61In Strategy for Labor, Gorz defined a non-reformist reform as one that does not comport with "capitalist needs, criteria, and rationales." 62Instead it advances a logic of "what should be" and requires "implementation of fundamental political and economic changes." 63Whether the change is "sudden" or "gradual" is immaterial: non-reformist reforms require a "modification of the relations of power," in particular "the creation of new centers of democratic power." 64

The non-reformist reform framework is prevalent in abolitionist organizing against the prison industrial complex 65and deployed by those who embrace racial justice, anticapitalism, and socialism more broadly. 66In Golden Gulag, Professor Ruth Wilson Gilmore calls for non-reformist reforms, which she defines as "changes that, at the end of the day, unravel rather than widen the net of social control through criminalization." 67Through decades of campaigns against carceral infrastructure, abolitionist campaigns have produced rubrics demarcating an approach to reform focused on reducing the scale, power, tools, and legitimacy of the carceral state. 68The focus on the ideological scaffolding of carceral control -- the equation of policing with safety, for example -- signals a keen understanding of the interlocking ideological and material infrastructure of our lives. 69In turn, it suggests, like Gorz did, that a revolutionary program of reform must continually deepen consciousness around the violence and exploitation of the status quo as it advances the possibility of alternatives.

While Gorz is remembered as a champion for non-reformist reforms, his work is decidedly ambivalent: a "very clear dividing line" will not always exist between "reformist" and "non-reformist reforms." 70Assessing a demand for "the construction of 500,000 new housing units a year," for example, would require an assessment of whether the proposal involved "the expropriation of those who own the required land, and whether the construction would be a socialized public service, thus destroying an important center of the accumulation of private capital; or if, on the contrary, this would mean subsidizing private enterprise with taxpayers' money to guarantee its profits." 71The non-reformist reform does not aim to create policy solutions to discrete problems; rather it aims to unleash people power against the prevailing political, economic, and social arrangements and toward new possibilities.

But whether something is non-reformist or reformist is about more than the nature of the demand and its particulars: it is also a question of how the campaign is waged. Consider another example: abolition of the death penalty. The conventional liberal approach emphasizes that death is too great a power for the state, and reassures the public that life sentences will continue to ensure safety of local communities. In this guise, the campaign aims to shrink the state's carceral power in one particular way but does not question mass human caging. As the campaign attempts to undermine the death penalty, its logic shores up the legitimacy, righteousness, and necessity of life sentences. 72A non-reformist approach would frame the problem of the death penalty as stemming from the larger violence of prisons and policing and its historical continuities with lynching and enslavement. Life without parole then is not the solution, it is illegitimate carceral violence: what abolitionist organizers in Pennsylvania have dubbed "death by incarceration." 73

If the same demand can be framed or implemented in reformist or non-reformist ways, the line is undoubtedly murky in practice. But this does not make the attempt to distinguish futile. Instead it clarifies that reform projects are contradictory gambits if the aim is transformation: they always have the possibility of reifying the status quo. Nonetheless, there are essential distinctions for developing transformative programs of reform that aim to undermine the prevailing order in service of building a new one.

The hallmarks of non-reformist reforms are three. First, non-reformist reforms advance a radical critique and radical imagination. 74Reform is not the end goal; transformation is. 75Non-reformist reforms are "conceived not in terms of what is possible within the framework of a given system and administration, but in view of what should be made possible in terms of human needs and demands." 76In advancing an agenda to meet human need, non-reformist reforms advance a critique about how capitalism and the carceral state structure society for the benefit of the few, rather than the many. They also posit a radical imagination for a state or society oriented toward meeting those needs.

By contrast, reformist reforms draw on and advance critiques of our system -- whether that be capitalism or the carceral state -- that do not question underlying premises or advance alternative futures. In fact, reformist reforms "reject[] those objectives and demands -- however deep the need for them -- which are incompatible with the preservation of the system." 77Here, one can think of the quick rejections by so many of defund the police or the Green New Deal -- despite the mounting evidence that liberal reforms have done little to limit police violence or to slow the speed at which we are hurtling toward increasingly frequent environmental disasters. 78Liberal reformism effectively shields the status quo from deep critique. 79The end goal of liberal reformism is just that: reform.

The non-reformist reform then provides a framework for demands that will undermine the prevailing political, economic, social system from reproducing itself and make more possible a radically different political, economic, social system. For abolitionists, the underlying system to undermine is the prison industrial complex and the horizon to build toward is abolition democracy. For socialists, the underlying system is capitalism and the horizon socialism. In theory and practice, these are intertwined, variegated, and debated political projects. 80

I am suggesting neither a false neatness within nor artificial distinctions between rich left traditions. But I mention it to make a point so obscured in legal discourse: that approaches to reform reflect ideological commitments, critiques of or acquiescence to underlying systems, aspirations for the future, and theories of change. Reforms communicate analyses of our conditions, tell stories about possibilities, and contribute to dynamic relations of power. So the target and object of the non-reformist framework will depend on one's political project and analysis, as will whether one accepts a reformist or non-reformist orientation.

Whereas reformist reforms aim to improve, ameliorate, legitimate, and even advance the underlying system, 81non-reformist reforms aim for political, economic, social transformation: for example, socialism or abolition democracy. They seek to delegitimate the underlying system in service of building new forms of social organization. Rather than relegitimate, they seek to sustain ideological crisis as a way to provoke action and develop public consciousness about the possibilities of alternatives and our collective capacity to build them together.

Second, non-reformist reforms must draw from and create pathways for building ever-growing organized popular power. 82They aim to shift power away from elites and toward the masses of people. This is a matter of substance and process, from where the demand comes, the vision it advances, and the space it creates. Whether through demands on the state or the workplace, non-reformist reform " always requires the creation of new centers of democratic power[,] . . . a restriction on the powers of State or Capital, an extension of popular power, that is to say, a victory of democracy over the dictatorship of profit." 83In their focus on power, non-reformist reforms challenge liberal legal frameworks that tend to obscure power relations. 84Non-reformist reforms are about building the power of people to wage a long-term struggle of transformation.

In contrast to reforms formulated by expert elites, non-reformist reforms come from social movements, labor, and organized collectives of poor, working-class, and directly impacted people making demands for power over the conditions of their lives and the shape of their institutions. 85People living under perilous conditions must generate analysis of those conditions, and advance solutions, in collective formations. 86 Collective processes -- whether in organizations, unions, or assemblies -- become schools of democratic governance in action: processes of enfranchisement and exercises in self-determination that build power and motivate further action. 87

Third, non-reformist reforms are about the dialectic between radical ideation and power building. Non-reformist reforms come from contestatory exercises of popular power. 88They attempt to expand organized collective power to build pathways for transformation. As such, they are not in themselves about finding an answer to a policy problem: They are centrally about an exercise of power by people over the conditions of their own lives. They aim to create "a vast extension of democratic participation in all areas of civic life -- amounting to a very considerable transformation of the character of the state and of existing bourgeois democratic forms." 89

Because the end goal is building power rather than identifying a policy fix, non-reformist reforms can only be effective when pursued in relation to a broader array of strategies and tactics for political, economic, social transformation. That includes protests and strikes as well as political education, mutual aid, organizing, and the building of alternative institutions.

Along with other strategies and tactics, reforms are in dialectical relationship with transformation: deepening consciousness, building independent power and membership, and expanding demands. 90As Gorz put it, reforms have to be imagined as part of a longer-term "strategy of progressive conquest of power by the workers." 91

#### Alt makes the mistake of assuming structures are inevitable – that reifies the structures they try to fight and undermines radical changes to the social order

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Manu Vimalassery, Juliana Hu Pegues, and Alyosha Goldstein, “Introduction: On Colonial Unknowing,” *Theory & Event*, vol. 19, no. 4, 2016, https://muse.jhu.edu/article/633283#bio\_wrap.

Structures and Events

The theorization of “settler colonialism” is indicative of these tensions. Activists and academics have increasingly taken up settler colonialism as an analytic to address the particular ways in which colonialism operates and persists in places such as Canada, Australia, New Zealand, and the United States, as well as Israel/Palestine. To a considerable extent, much of the work that has recently become associated with settler colonial studies has already been underway in Native American and Indigenous studies, as well as other fields including ethnic studies and colonial discourse studies. Our contention is that the particular ways in which settler colonialism has assumed predominance as an analytic risks obscuring or eliding as much as it does to distinguish significant features of the present conjuncture.22 Indeed, we suggest that when settler colonialism is deployed as a stand-alone analytic it potentially reproduces precisely the effects and enactments of colonial unknowing that we are theorizing in this introduction. Approaches to the analysis of settler colonialism, as isolated from imperialism and differential modes of racialization, are consequences of the institutionalization of this work as a distinct subfield, which is claimed and consolidated through analytic tendencies that foreclose or bracket out interconnections and relational possibilities. Settler colonial histories, conditions, practices, and logics of dispossession and power must necessarily be understood as relationally constituted to other modes of imperialism, racial capitalism, and historical formations of social difference.

The key insights of settler colonial studies into the particularity of settlement as a manner of colonial power have also led to a tendency to focus on this distinction as constituting a discrete and modular form or ensemble of practices— such as Patrick Wolfe’s often cited contention that “settler colonialism destroys to replace”23—that can be applied across differences of geography or time. As such, settler colonialism appears as a self-contained type rather than a situatedly specific formation that is co-constituted with other forms and histories of colonialism, counter-claims, and relations of power. For instance, in the U.S. context, settler colonialism as a singular manner of colonialism entirely misses the ways in which the abduction and enslavement of Africans and their descendants was a colonial practice that, while changing in its intensities and modes of organization over time, was co-constitutive of colonialism as a project of settlement rather than a supplement that demonstrates the taking of land and labor as distinct endeavors.

Wolfe’s description of settler colonialism as a structure, and not an event, has by now achieved the status of a truism in analyses of settler colonialism.24 Wolfe’s work has been crucial in bringing further attention to the fact that colonialism is an ongoing fact of life for indigenous peoples more than fifty years after the advent of the so-called era of decolonization. His scholarship insightfully underscored historical continuities in the shifting regimes and policies of settler states in relation to indigenous peoples, and challenged a certain produced ignorance about the “post” colonial character of societies like the U.S., Canada, Australia, and New Zealand.25 Yet drawing an absolute distinction between structure and event, and as a result, discarding a focus on the historicity of settler colonialism, neglects some of the ways Wolfe distinguishes between the binary terms structure/event in the service of further analysis. For example, Wolfe emphasizes how settler colonialism is a “complex social formation” with “structural complexity” that emerges through process.26

When taken up as a modular analytic that travels without regard to the specificities of location or social and material relations, a categorical event/structure binary banishes deeply engaged historical knowledge from the landscape, turning away from historical materialism, devolving into a scholastic debate over identities and standpoints that are reduced to structural essences and divorced from politics or contingency. Emphasizing structure over event also limits the analysis of settler colonialism itself into a descriptive typology, orienting our vision narrowly within the technical perspective of colonial power (in the white Commonwealth countries), away from geographies from below, such as a hemispheric perspective of the Americas, with their multiple and distinct modes of colonialism, thus replicating the conditions of unknowing.27 Foregrounding structure against event might also divert attention away from imperialism. This binary perpetuates taking what Lisa Lowe calls the “colonial divisions of humanity” as given. Situating this compartmentalization as a consequence of imperial formations calls attention to how, as Lowe writes, “The operations that pronounce colonial divisions of humanity—settler seizure and native removal, slavery and racial dispossession, and racialized expropriations of many kinds—are imbricated processes, not sequential events; they are ongoing and continuous in our contemporary moment, not temporally distinct now as yet concluded.”28 If the analytic project is reduced to naming and delimiting settler colonialism as a distinct structure of power that exists in specific places, primarily the settler peripheries of Anglo imperium, we lose focus on the Caribbean and the Americas as the grounds of modern imperialism, abdicating the hard-won horizon of anti-imperialism.

An emphasis on structure over event is symptomatic of the stabilization of colonial unknowing through binaries and schematic modes of thought. As Wolfe writes, “Territoriality is settler colonialism’s specific, irreducible element.”29 However, Wolfe’s cartographic model is that of the frontier, in which “the primary social division was encompassed in the relation between natives and invaders.”30 The frontier is a linear model, a binary opposition between civilization and savagery, reflecting both a colonizing subjectivity and its state form. What socio-spatial imaginaries, and concomitant critical models, might become visible if we thought from other spatial forms, such as circles or spirals, spatial forms that are often more relevant to indigenous epistemologies than straight lines? If we remapped the colonial condition through circular or spiraling forms, what new insights might we gain on the decolonial imperative?

For one, we might be able to better grasp colonial, racial, and imperial simultaneities, as well as positions that do not easily fit into a settler/native binary. As Wolfe writes, “Settler-colonists came to stay. In the main, they did not send their children back to British schools or retire ‘home’ before old age could spoil the illusion of their superhumanity. National independence did not entail their departure.”31 Moreover, to inflect these insights through the lens of negritude produces a considerably more complex set of possibilities, where the verbs come and stay do not carry any simple or easily recoverable trace of agency or consent.32 As Iyko Day writes, “the logic of antiblackness complicates a settler colonial binary framed around a central Indigenous/settler opposition.”33

It may be useful to dissolve the implied divide between structure and event. How would our critical perspective open up if we began to understand (settler) colonialism as a structuring event, an ongoing elaboration of a structure, a suspension of time, tense, and timeliness? In order to interrogate settler colonialism as a unique structuring event or events in a structure of power, close attention to process and relationship, to structures of power as they transform in specific places and times, seems to be a useful approach for clarifying the stakes of decolonial possibility. Marx’s insights on the need for capital (and for individual capitalists) to perpetually reproduce the social relations of capitalism (on an expanding scale) and the vulnerable never given-in-advance character of that reproduction, could be relevant for contemplating settler colonialism as it constantly thwarts and undoes its own internal governing logics. To consider settler colonialism as a structure of failure seems a useful starting point for an intellectual project that proceeds from the impulse of decolonization.34 To bring the critique of imperialism back to the foreground in indigenous-centered critiques of colonialism is to bring back basic questions about the definitions of these terms, and their relation to each other. This is not about discarding analysis of settler colonialism for analysis of imperialism, but instead about entangling them in order to specify historically particular processes and structures.35 To the extent that a settler colonial analytic disavows relationships between settler and congruent modes of colonization, imperialism, and race, the field formation of settler colonial studies runs a risk of capture, breathing further life into shifting and mutable colonial sovereignty claims.

#### The aff is the only way out – changing the social order in spite of its overarching structures is the only ethical option

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Lewis Gordon, “5: Thoughts on Afropessimism,” *Freedom, Justice, and Decolonization*, Routledge 2021, pp. 77-78.

An ironic dimension of pessimism is that it is the other side of optimism. Oddly enough, both are connected to nihilism, which is, as Nietzsche showed, a decline of values during periods of social decay.17 It emerges when people no longer want to be responsioble for their actions. The same problem surfaces in movements. When one such as the Black Liberation movement is suffering from decay, nihilism is symptomatic. Familiar tropes follow. Optimists expect intervention from beyond. Pessimists declare that relief is not forthcoming. Neither takes responsibility for what is valued. The valuing is what leads to the second, epistemic point. The presumption that what is at stake is what can be known to determine what can be done is the problem. If such knowledge were possible, the debate would be about who is reading the evidence correctly. Such judgment would be a priori—that is, prior to events actually occurring. The future, unlike transcendental conditions such as language, signs, and reality, is ex post facto; it is yet to come. Facing the future, the question is not what will be or how do we know what will be but instead the realization that whatever is done will be that on which the future will depend. Rejecting optimism and pessimism, there is a supervening alternative, as we have seen throughout the reflections offered throughout this book—namely, political commitment.

The appeal to political commitment is not only in stream with what French existentialists call l’intellectuel engagé (the committed intellectual) but also in what reaches back through the history and existential situation of enslaved, racialized ancestors. Many were, in truth, an existential paradox of commitment to action without guarantees. The slave revolts, micro and macro acts of resistance, escapes, and returns to help others do the same, the cultivated instability of plantations and other forms of enslavement, and countless other actions, were waged against a gauntlet of forces designed to eliminate any hope of success. The claim of colonialists and enslavers was that the future belonged to them, not to the enslaved and the indigenous. Such people were, in colonial eyes, incapable of ontological resistance. A result of more than 500 years of “conquest” and 300 years of enslavement was also a (white) rewriting of history in which African and First Nations’ agency was, at least at the level of scholarship, practically erased. Yet there was resistance even in that realm, as Africana and First Nation intellectual history and scholarship attest; what, after all, are Africana, Black, and Indigenous Studies? What, after all, are those many sites of intellectual production and activism outside of hegemonic academies? Such actions set the course for different kinds of struggle today.

#### Aff turns their K of liberal civil rights – the failure of the civil rights movement was its refusal to connect racial equality to a critique of liberalism, capitalism, and domination – we both can and must go further in our political commitment to universalizing freedom

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Aziz Rana, “Conclusion: Democracy and Inclusion in the Age of American Hegemony,” *The Two Faces of American Freedom*, Harvard University Press 2010, pp. 328-337.

Even with such developments, however, the present moment is not without its resources for confronting both the internal decline of free citizenship and the globalized commitment to pacification. And these resources are closely tied to the politics of inclusion and its implications in the post– New Deal order. This is because the previous vision of more robust equality has never entirely died. In fact, recent reform efforts have had a second and competing trajectory, although this trajectory is often obscured at present. For radical reformers, inclusion required overcoming the general reduction in the meaning of citizenship and thus recovering the historic project of independence— only now expanded to incorporate everyone. In the process, this meant fundamentally dismantling the structures of authority at home and abroad that undermined self-rule and made free citizenship impossible. At its most expansive, the American civil rights movement of the 1950s and 1960s in particular combined arguments about internal freedom and external power, while at the same time claiming a popular capacity to speak for the common good. This often-submerged legacy of the movement hints at the continued potential for thinking systemically about today’s problems. It also provides the connective historical link between nineteenth- century mass mobilization and reform projects in the present day, which similarly would seek to defend a universal and nonimperial ideal.

Despite the demise of settler empire, the American practice of international police power and global primacy persists in treating outsiders as instruments for the achievement of national ends. In the nineteenth century, these ends took the form of rich internal accounts of liberty and political possibility. Now, however, they increasingly appear to be domestic security as such and the indefinite protection of American status. In effect, the United States’ orientation to the world combines some of the most problematic ideological features of the settler past without its emancipatory aspirations. It continues to view outsiders— including immigrants within our borders— as part of a dependent periphery, to be used for the extension of national wealth and dominance. Yet these practices have become detached from the meaningful provision of economic and political self-rule for Americans. In a sense, the key challenge for the present is to invert such developments, to revive accounts of self-rule, and to dissolve their connections to external subordination at home and abroad— to make freedom truly universal. These final pages employ arguments from the civil rights period to draw out the contemporary implications of this project and to suggest current possibilities for connecting efforts at inclusion with a broader revision of the substance and goals of collective membership.

The Two Civil Rights Movements

Since the entrenchment of the New Deal order, the civil rights movement has embodied the most sustained effort to revive both the vision of liberty as self-rule and to connect this vision with a critique of empire. Today this legacy is almost entirely forgotten, in large measure because the mid-twentieth-century struggle for black equality always had two conflicting dimensions. On the one hand, efforts to end racial segregation and formal legal discrimination sought to incorporate blacks fully into American projects of hegemony abroad and security at home. They emphasized social mobility for middle- class blacks and inclusion for some into arenas of corporate, professional, and political power. These features are perhaps most tellingly illustrated by the legal prong of black attempts to end racial inequality. The best-known civil rights litigation of the 1950s involved segregated primary schools, but the earliest test cases of the National Association for the Advancement of Colored People (NAACP) focused on postgraduate professional study— especially law school. One of the first serious victories in the NAACP legal strategy was 1938’s Missouri ex rel Gaines v. Canada, which held that Missouri violated equal protection guarantees by failing to provide in-state law school education for black students. A decade later, Sweatt v. Paint er (1950) went further, holding that individuals could in no way be denied access to law school on the basis of race.1 For these NAACP lawyers, equality was crucially about winning for blacks the opportunity to achieve professional status and to participate at the highest echelons of corporate and political leadership.

In the mid-1960s, in the wake of tremendous popular unrest and mobilization across the American South, President Lyndon Johnson pressed Congress to end legalized segregation and to provide all blacks with voting rights. In many ways, these reforms embodied a choice by white politicians at the national level to protect New Deal liberalism by removing the eyesore of southern segregation and by making regional practices consistent with those prevailing elsewhere in the country. In other words, such reforms sought to preserve American domestic economic and political stability while strengthening U.S. moral standing internationally. This essentially preservative role was shared by many in the black middle class, who had long viewed the civil rights struggle in terms of liberal inclusion and elite social mobility. In fact, much of the traditional leadership within the black community was opposed to combining a critique of legal discrimination with either more extensive domestic reform initiatives or with challenges to U.S. global power, particularly in the context of Vietnam. For instance, Whitney Young, the head of the Urban League, warned activists at the NAACP’s 1966 convention that the League would denounce any groups that tied issues of “domestic civil rights with the Vietnam Conflict.”2

The long-term victory of these voices within the civil rights movement not only has set the terms for today’s discussions of race but also has shaped the very meaning of those previous struggles and therefore our political inheritance as Americans. In particular, it has meant that goals of black equality in the United States are largely disconnected in the political imagination from broader independence struggles in Asia, Latin America, and Africa. Racial equality is understood as a specifically American project of integration, one that primarily consists of providing worthy elements within the black community with an equal opportunity to achieve professional and middle-class respectability. There is no doubt that this project has brought with it clear benefits, especially the steady reduction of those everyday forms of humiliation— from name calling to formal discrimination and random violence— that historically marked the black experience. Yet the focus on incorporating black elites into the structures of American authority has also come at a clear cost. It has involved nothing less than ignoring our most recent collective attempt to create a truly inclusive community premised on democratic self-rule—to imagine inclusion as a call to elevate everyone to the status of free citizens.

For many civil rights activists, the goal of popular mobilization and the hope embedded in the project of black emancipation lay precisely in the fulfillment of this vision. At the end of his life, W. E. B. Du Bois warned civil rights leaders that simply eliminating legal segregation would not alter the position of economic and political subordination confronting most blacks. Shortly before leaving for exile in newly independent Ghana, Du Bois told a college audience in North Carolina that although the United States was “definitely approaching . . . a time when the American Negro will become in law equal in citizenship to other Americans,” this represented only “a beginning of even more difficult problems of race and culture.” Ending formalized in equality was only a prerequisite for creating a community grounded in the substantive freedom of its members. Such freedom required challenging corporate and governmental hierarchies, which denied most individuals, regardless of race, economic independence and daily control over their work life. Only if these hierarchies were dislodged would Americans finally “restore the democracy of which we have boasted so long and done so little.”3

Moreover, Du Bois directly tied this project of freedom at home to confronting empire in all its manifestations, including the persistent and informal modes of external control wielded by powerful states. Du Bois understood the black experience in the United States as a particular variant of Europe’s larger colonial legacy and thus believed that any meaningful commitment to eliminating the vestiges of colonialism meant supporting its elimination everywhere. It was no accident that Du Bois chose to live the remainder of his life in Nkrumah’s Ghana, as a symbol of anti-imperial unity. Du Bois hoped that blacks in the United States would take the lead in reshaping America’s position in the world and in making common cause with colonized peoples throughout the globe to alter their conditions of political and economic dependence. In the words that echoed the United States’ own postcolonial founders, he imagined a truly free Africa, which “refuse[d] to be exploited by people of other continents for their benefits and not for the benefit of the peoples of Africa” and that would “stress peace and join no military alliance and refuse to fight for settling European quarrels.”4

One leader who not only heard Du Bois’s call but struggled to situate it as the basis of an organized social movement— capable of standing as a government behind the government— was Martin Luther King Jr. Today King is widely viewed as the patron saint of civil rights activism, conceived largely as an effort to end legal discrimination and to provide upwardly mobile blacks with an equal opportunity to achieve social power. However, his actual views and those of many of his supporters were far more expansive. In King’s final book before his death, Where Do We Go from Here? (1967), he explicitly joined his vision of liberty to the universal republican ideals of radical Populists and Progressives. King argued that the black condition in the United States was that of “educational castration and economic exploitation” and that overcoming racism required more than merely ending formal segregation; it entailed “a radical restructuring of the architecture of American society.” According to him, black subordination drew sustenance from the same forces that concentrated wealth and political control in fewer and fewer hands while justifying the permanent global extension of America’s military footprint. In his view, the “evils of racism, poverty and militarism” were deeply intertwined and had to be overcome by actions that addressed both American international police power and the domestic elimination of popular authority.5

The first challenge for King was not to assert a particular programmatic agenda but rather to reclaim collective agency, eroded by the rise of centralized corporate and state institutions. He hoped that the civil rights movement would develop new organizational means by which a constituency within society could be permanently mobilized to wield democratic control. He argued that without such a social base, government would “elude our demands” and that whatever measures it passed would be for “use as supplicants” rather than products of a self- actualizing public will. According to him, for democracy to exist in practice, there had to be more than regular elections; individuals had to participate directly in shaping collective life. As King wrote, “We must develop, from strength, a situation in which the government finds it wise and prudent to collaborate with us.” In a sense, he hoped that civil rights groups and their supporters would replace the nineteenth-century laboring community as the stand-in for the public writ large. Rather than relying on the presumed virtue of those in power, or “wait[ing] passively until the administration had somehow been infused with . . . blessings of goodwill,” such mobilized agency would direct politics to conform to ideals of self-rule. Like the old collectivity of farmers and wage earners, this new constituency had the potential to connect its particular interests— in economic and political freedom— to the interests of all. It thus could serve as a voice of popular power, compelling state and economic elites to impose needed structural changes.6

Like Weyl, King outlined these changes by beginning from the recognition that American society was marked by tremendous abundance; in fact, the black position in the United States was that of “poverty amid plenty.” As such, it was time to abandon prevailing efforts “to compress our abundance into the overfed mouths of the middle and upper classes until they gag with superfluity.” Instead, social wealth should be employed not simply to free individuals from the most extreme forms of immiseration but also to establish the conditions for everyone to enjoy creative and meaningful work. In calling for the abolition of poverty, especially through measures such as a guaranteed income for all, King did not see the provision of economic security as an end in itself. Rather, he imagined it as an essential requirement for a society committed to making labor an activity of personal fulfillment— or, as Kallen would have phrased it, to transforming labor into leisure. To this end, he quoted at length from Henry George’s Progress and Poverty (1879), a classic text of the nineteenth- century’s robust populist tradition:

The fact is that the work which improves the condition of mankind, the work which extends knowledge and increases power and enriches literature, and elevates thought, is not done to secure a living. It is not the work of slaves, driven to their task either by the lash of a master or by animal necessities. It is the work of men who perform it for their own sake, and not that they may get more to eat or drink, or wear, or display. In a state of society where want is abolished, work of this sort could be enormously increased.

For King, as for Henry George before him, freedom entailed both economic self-rule and practical political control through mobilized and assertive social constituencies.7

Moreover, precisely because of the historic black position of exclusion, King saw any project of emancipation as admitting no color line or national barrier. At home this required imagining the civil rights movement as properly a poor people’s movement that incorporated blacks, impoverished whites, and immigrant communities (particularly from South and Central America). Since each group found itself denied both the benefits of economic independence and basic political authority, according to King, “only through their combined strength” would it be possible “to overcome the fierce opposition we must realistically anticipate.”8

Internationally, King’s commitment to self-rule meant following in Skidmore’s and Bourne’s footsteps and seeing the interconnections between in equality at home and continuing practices of global expropriation. In King’s view, “Equality with whites will not solve the problems of either whites or Negroes if it means equality in a world stricken by poverty and in a universe doomed to extinction by war.” In the context of the Cold War, he considered the ideological power of communism as in large measure a product of Western efforts to sustain systems of formal and informal rule across much of the globe. King wrote, “Communism is a judgment on our failure to make democracy real and to follow through the revolutions that we initiated. Our only hope today lies in our ability to recapture the revolutionary spirit and go out into a sometimes hostile world declaring eternal opposition to poverty, racism, and militarism.”9

In practice this meant two basic transformations in American foreign policy. First, it entailed repudiating the emerging modes of global authority, which, just as Nkrumah had worried, undermined the formal sovereignty of newly in de pen dent states and reduced large swaths of the global south to the de facto control of external forces. King saw the legacy of the Monroe Doctrine in Latin America as “tremendous resentment of the United States,” resentment motivated by permanent U.S. interference with local economic and political practices:

The life and destiny of Latin America are in the hands of the United States corporations. The decisions affecting the lives of South Americans are ostensibly made by their governments, but there are almost no legitimate democracies alive in the whole continent. The other governments are dominated by huge and exploitative cartels that rob Latin America of her resources while turning over a small rebate to a few members of a corrupt aristocracy.10

According to King, American complicity in local authoritarianism and economic expropriation was ultimately due to its commitment to maintaining an international police power. As a consequence, the second key transformation needed in American foreign policy involved the ideological rejection of such interventionism and the dismantling of the global military footprint that supported it. This police power asserted the right to intervene whenever and wherever the United States believed that democratic order was imperiled. King contended that, rather than promoting actual self- determination, American actions had the tendency to freeze disputes in ways that undermined lasting resolution or served external interests rather than local publics. They also propped up regimes with little internal legitimacy, which meant that these regimes could stay in power only with the continual investment of yet greater economic and military resources. King saw American support for apartheid governments across southern Africa— through corporate capital investments, trade, and defense alliances— as stark proof of how international police power, and its stated aims of promoting peace, had been transformed into an instrument of pop u lar suppression.

For King, the most explicit consequence of this American orientation to the world was that, rather than creating an actual condition of peace, it ultimately justified greater military adventurism. It treated local communities as means to the end of U.S. ideological ambitions and as instruments for the perpetual extension of global power. Precisely because of the need to overcome international disorder no matter where it existed, the United States was trapped in a project of endlessly extending its geographic footprint and defense commitments. According to King, such realities underscored how “the leaders of nations again talk[ed] peace while preparing for war.”11 It also meant that America found itself, as in Vietnam, forever subject to local insurrections and new potential dangers, which in turn warranted even greater military spending and territorial presence.

In his view, as in the view of republicans dating back to Harrington, the logic of the United States’ military infrastructure brought with it the steady reduction of economic and political freedom at home. It necessitated the centralization of power and entailed that America’s unprecedented social wealth be diverted from its appropriate task— creating an inclusive community committed to economic independence and the democratic elevation of all its members. Looking at an America marked by internal inequalities and external interventionism, King remarked, “A nation that continues year after year to spend more money on military defense than on programs of social uplift is approaching spiritual death.”12

In the years since King’s death, his account of universal republican freedom— let alone his stark warning to fellow Americans— has more or less been ignored in the public discourse. While King is deified as a twentieth- century hero, one to stand alongside the founders, his actual views are quietly discarded. To the extent that the civil rights agenda is pursued at all, it mostly involves further incorporating black elites into the institutions of American economic and political power. The notion of tying economic subordination within the United States to global patterns of inequality, let alone the democratic ideal of a permanently mobilized social agent, is hardly ever broached. Nonetheless, it is precisely this vision that holds out the possibility of restructuring collective institutions and of combining a mass politics of inclusion with a broad-based commitment to self-rule at home and abroad.

Humanitarian Imperialism, Immigration, and the American Periphery

King’s vision, as well as the more expansive legacy of the civil rights movement, raises a basic question for the current moment. What spaces exist not only for locating arguments about dependence but also for developing the popular potential to confront prevailing frameworks? Answering this question involves imagining the social constituencies and reform initiatives capable of pursuing an ideal of self-rule. It therefore means linking the concrete material interests of specific groups to the larger common good and thus showing how experiences of inequality or subordination illuminate a more pervasive social predicament. In particular, it involves addressing today’s twin realities: the retreat of robust ideals of collective possibility and the seemingly permanent expansion of American power. This power, although now disconnected from internal freedom as self-rule, continues to generate relations of external control as well as to justify the near limitless growth of presidential authority. These external relations both instrumentalize outsiders and transform U.S. dominance into an end in itself. Such realities are most strikingly highlighted by the dramatic alteration in the place of immigrants in collective life, from co-ethnic participants in settler empire to nonwhite members of a dependent periphery— one that exists even within our borders. In a sense, sustaining the expansive civil rights legacy means confronting this fact. It also suggests a new politics of inclusion, one with the potential to rehabilitate self-rule as a general and guiding social commitment.

#### Perm do both – even if change is impossible, we should still act to create a new order – reject the alt’s attempts to determine the endpoint of political struggle in advance

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Aziz Rana, “Freedom Struggles and the Limits of Constitutional Continuity,” *Maryland Law Review*, vol. 71, no. 4, 2012, pp. 1046-1051, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2493&context=facpub.

V. Conclusion: Democratic Discretion and Narratives of Tragedy

The preceding sections have sought to highlight two claims about the ties between freedom struggles and constitutional discourses in America. First, they attempted to remind readers that a long black political tradition, consciously linked to global independence movements, questioned the very compatibility between redemptive anti-colonial aspirations and either constitutional faith or continuity. And second, such discussions emphasized that at two decisive moments of potential anti-colonial rupture in the U.S. the resort to frameworks of constitutional construction hindered as much as they assisted meaningful change. These two claims suggest a lesson and a caution for contemporary progressives committed to actualizing goals of equal and effective freedom. The lesson is that progressives should be less afraid of political discretion and more instrumental in their endorsement of constitutional principles and languages. The caution is that the repeated historic inadequacies of redemptive enterprises – whether here at home or as part of global anti-colonial projects abroad – raise doubts about the continuing utility as such of narratives of redemption (be they political or constitutional).

Let me begin by developing what I take to be the lesson of the historical examples. In many ways, Stevens and the most egalitarian among the Radical Republicans were generating in the first months of Reconstruction a vision of Congress as an instrument for exercising what Emmanuel Sieyès famously described as “constituent power.” 73 By this, Sieyès had in mind the sovereign authority that creates and thus precedes any instituted government. Such power was both democratic and legitimate because it expressed the national will, the people as a whole. In his view, government and its constituted powers were justified only to extent that they remained “faithful to the laws imposed upon [them]. The national will, on the other hand, simply needs the reality of its existence to be legal. It is the origin of all legality.”74 At a moment of collective refounding, Stevens sought to employ congressional discretion and military authority as constituent tools for transforming the basic character of American life – to act outside the bounds of ordinary legality in order to regenerate legal norms.

Today, among many progressives (inside and outside of the legal community) the exercise of such discretion is almost always associated with concerns about a usurpatory and “imperial”75 presidency. Not unlike those Egyptian activists who called for fidelity to the existing 1971 Constitution – regardless of its limitations – the thought is that constitutionalism protects the rights of the weak and that discretion enhances the power of despots. Given the legal specter of Schmittian dictatorship and the historical experience of totalitarianism, these fears are not to be taken lightly. In the words of one such progressive scholar, the “arbitrary character . . . of constituent power” must be avoided because it “is where the law ends, and pure politics (or war) begins.”76 At the same time, however, the Egyptian example also indicates that the progressive embrace of constitutional fidelity, as well as related discourses of shared tradition, may have their own pathologies. As the Mubarak regime exposed, instituted processes can themselves be deeply oppressive and, by contrast, the popular and extra-legal discretion of mass constituents can serve anti-authoritarian ends. In other words, depending on the political conditions, constituent power may well be generative and democratic rather than despotic; at the same time constitutionalism and frameworks of constitutional construction can simply promote a coercive rule-by-law.

More relevantly for the American case, the story of Thaddeus Stevens and David Davis indicates that progressive orientations to constitutional faith should be assessed pragmatically. Not only has the constitution-in-practice been riddled with injustice, as Balkin eloquently illuminates, the Constitution’s discursive structures have not been an unalloyed blessing for the freedom struggles of the past. Indeed, there is no reason to believe that although the radical potential of previous movements may have been hindered – at the most crucial moments – by the focus on constitutional narrative, similar fates will not befall future efforts. If the goal of progressives is a transformative and ultimately political one, faith should reside in the ideal of effective and equal freedom alone; this preeminent commitment may require both a politics of constitutional construction as well as one of constitutional rupture (the latter through democratic discretion). In a sense, progressive political faith should view its relationship to traditions, including constitutional ones, strategically – to be asserted when it serves emancipatory purposes and questioned or even rejected when it does not.

Such a call for progressives to be less tradition-bound and more willing to embrace constituent power (not to mention its very real political dangers) comes with a final note of caution. Twentieth century projects of redemption, both revolutionary anti-colonial ones and those grounded in constitutional faith, have all participated in a particular type of emancipatory history. As theorist David Scott writes, these redemptive accounts embrace a narrative structure of “romance.”77 They have presented “narratives of overcoming, often narratives of vindication; they have tended to enact a distinctive rhythm and pacing, a distinctive direction, and to tell stories of salvation.”78 Above all they have posited a future in which individuals can transcend oppression and unshackle freedom from existing modes of subordination – once and for all. Yet, the contemporary moment, both in the U.S. and in the postcolonial world writ large, has been marked by far greater historical complication. Post-apartheid South Africa offers just one telling illustration. The South African struggle embodied a classic story of anti-colonial redemption, complete with a revolutionary re-founding and a fundamental constitutional rupture. Yet, the postcolonial present in South Africa is much more equivocal than straightforwardly redemptive. Although constitutionally premised on racial equality, the country remains riddled with extreme economic hierarchies that are the persistent legacy of apartheid. In a sense, even total revolution and explicit constitutional rejection has not assured a future of salvation. Similarly, here in the U.S., the twentieth century’s great redemptive social movements – on behalf of organized labor, civil rights, and women’s equality – have transformed the political terrain but have also either receded in social power or left us with complex presents, marked by the overlap between formal equalities and substantive injustices. As Scott suggests, the twentieth century romance of redemption and untainted emancipation is now in many ways “a superseded future, one of our futures past.”79

The response among progressive should not be to give up generally on a utopian imagination. But it does suggest the value of binding this imagination to historical narratives of tragedy rather than to those of redemption or romance. By tragedy, I do not mean the notion that “due to some flaw or defect” our political and constitutional frameworks will necessarily commit us to “a disastrous course of action,” one that produces “great suffering and severe punishment.”80 Instead, I mean the idea, certainly embedded in the concept of a tragic flaw, that historical moments are marked by linked and mutually constitutive relationships of freedom and subordination. In describing the tragic in the postcolonial predicament, Scott writes:

[T]ragedy sets before us the image of a man or woman obliged to act in a world in which values are unstable and ambiguous. . . . [F]or tragedy the relation between past, present, and future is . . . a broken series of paradoxes and reversals in which human action is ever open to unaccountable contingencies – and luck.81

Thus, every political period, be it the Civil War, Reconstruction, or the current-day, presents its own hierarchies and dependencies. The goal of progressive action is to uncover those forms of dependence and to strive for liberation from them. But even successful projects of emancipation will produce their own “unaccountable contingencies” and generate new legal and political orders that knit together secured freedoms with emerging hierarchies, as post-apartheid South Africa and contemporary America suggest. This is the paradox of tragedy. It offers a narrative in which the struggle for emancipation is a ceaseless one, requiring an aspiration to utopia but never capable of being completely redeemed in history – as total emancipation is always and permanently beyond reach.

Besides speaking to the complexity of our postcolonial and post-civil rights times, such a narrative of tragedy better addresses the current moment in two ways. First, unlike stories of redemption, it provides a greater bulwark against the inclination to rationalize the injustices of the present, especially by acceding to a Whiggish faith in progress. Redemption stories, as Balkin himself recognizes and critiques,82 have the tendency to read history as a long-term trend toward justice, albeit halting and uneven. At a time when old forms of subordination persist in the U.S. and yet we see sustained backsliding from the very achievements of previous eras, a tragic narrative frontally challenges the complacent willingness to believe that conditions are ‘good enough.’ It does so by reminding us to be on continuous guard against the hidden and unwitting forms of domination embedded in our social practices, even in those practices – like constitutional construction and veneration – that we collectively esteem.

Second, and finally, an adequately tragic sensibility helps progressives to reclaim a space in their political imagination for democratic discretion. The grave problem of past revolutionary agendas (anti-colonial or otherwise) was a failure to appreciate fully the destructive violence generated by radical change. But if constitutional rupture must still be part of the progressive toolkit, an awareness of the tragic has the potential to cabin the worst consequences of discretion. Tragic discourse, by emphasizing the ambiguous nature of any transformative project, suggests its own ethic of political responsibility. Such a narrative makes ever-present the potential costs wrought by legal rupture and compels progressive actors to appreciate the political stakes when breaking from constitutional fidelity. A tragic sensibility demands of progressives both that they aggressively assert emancipatory commitments and that they embrace a judicious political ethics. Ultimately, it imagines an orientation to collective life animated by justice but tempered by the recognition of indissoluble paradox.

#### It’s historically inaccurate – indigenous people relate to settlerism in different ways – their theory is homogenizing

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ONE OF THE PROBLEMS OF WRITING AUSTRALIAN COLONIAL HISTORY is the tension between presenting colonisation as displacement, dispossession and destruction, on the one hand, and presenting it as the production of opportunities for the survival of a self-conscious series of enclaves that would eventually form an ideologically potent, land-rich (if unevenly), national Indigenous constituency, on the other. In my current work, I find it fruitful to explore the geographical variety of Australia’s colonial history and to consider the diversity of Indigenous identities that this history has generated. In doing so, I have sensed the increasing influence of an approach led by Patrick Wolfe and Lorenzo Veracini that, in my view, has reduced sensitivity to Indigenous heterogeneity. My purpose, in this essay, is first to critique that approach and then to sketch my alternatives—highlighting the regional sequence of Australia’s colonial occupation and the different ways in which senses of Indigenous distinction have remained robust.

A recent, themed issue of Arena Journal had the title ‘Stolen Land, Broken Culture’. 1 Whenever I glance at that cover I want to add some adjectives: ‘restored’ and ‘increasing’ to ‘stolen’, and ‘adapted’ and ‘heterogeneous’ to ‘broken’. There is now such a vigorous debate about what has survived and what should survive, that historical scholarship should have more to say about survival than about ‘erasure’. The least impeachable protagonists of the debate about what should and should not survive identify as Indigenous (though some dislike that term). From this discord among Indigenous intellectuals, I have found the strongest stimulus to rethink the history of Australia’s internal colonialism. How is it possible to make sense, historically, of the proliferation of Indigenous views about their heritage and future that began to emerge publicly in 1995 (the Hindmarsh Island controversy) and that has continued in the speeches and writings of the Indigenous intelligentsia? The quest to explain such Indigenous proliferation animates my current work and prompts the following challenge to the growing influence of the historiography of ‘erasure’ and ‘elimination’.

Structures that eliminate

In his paper distilling and (as it seemed to me) commending the work of Wolfe and Veracini, Ed Cavanagh has reminded us that settler colonies—by definition— cannot decolonise.2 The invasion of colonising settlers into Indigenous territories and life worlds is never reversed: colonial authority endures as a structure, and it does not abate or withdraw. ‘Invasion is a structure not an event’, in Patrick Wolfe’s much quoted phrase.3 That structure has a logic and, in the events and contingencies of the enduring colonial relationships, it is persistent and discernible to the trained eye. The task of social and historical analysis is therefore twofold: to infer the underlying logic of settler colonisation, and to demonstrate that the most significant feature of any instance of settler colonial authority is its conformity to this underlying logic. The historiography presented by Wolfe, Veracini and those who sympathetically cite them is a historiography of continuity, of repetition, of demonstrating persistent patterns beneath the surface of apparent discontinuities. To quote Wolfe, to narrate the history of a settler colony is to chart ‘The continuities, discontinuities, adjustments, and departures whereby a logic that initially informed frontier killing transmutes into different modalities, discourses and institutional formations as it undergirds the historical development and complexification of settler society’. 4 In his account of Wolfe’s view, Cavanagh attributes to ‘indigenous subjects of settler societies’ (whom he does not identify) the perception that ‘there is little different about the structures of invasion or the dominance of a majority over time’. 5 Settler colonialism is ‘relentlessly active in the present’. 6

‘Elimination’ is the single most important word in Wolfe’s account of the underlying logic that he has discerned in the colonial history of Australia and other settler colonies. (Veracini tends to favour the word ‘transfer’; he lists the many ways that settler colonies have effected ‘transfer’. 7 ) In his contribution to Arena Journal (an essay about Israel), Wolfe writes that since 1994 he has been refining his formulation of the ‘central concept/project of settler colonialism … as primarily governed by a logic of elimination’. 8 In the same essay he argues: ‘The key characteristic of settler colonialism is not Europeanness but the dual outcome of destruction and replacement’. 9 Wolfe makes it clear that by ‘eliminate’, ‘destroy’ ‘replace’, he does not necessarily mean physically exterminate. Many different formations of settler colonial authority that do not physically exterminate colonised people can be understood as effecting some kind of ‘elimination’. Similarly, Veracini writes of the ‘progressive disappear[ance] [of Indigenous people] in a variety of ways: extermination, expulsion, incarceration, containment, and assimilation … (or a combination of all these elements)’. 10

Those who cite these formulations of the logic of settler colonial society may offer compelling illustrations of ‘erasure’ or ‘elimination’: frontier violence, the removal of Indigenous children and (as some see it) the Northern Territory Emergency Intervention. However, if the ‘erasure’ thesis is to be paradigmatic, then many other illustrations must be possible. The intention of those offering the settler colonial paradigm is to outline the persistent determinant logic of a pervasive settler colonial structure, making it reasonable to ask of any instance of settler colonial authority: how does it manifest the structure of ‘elimination’ (or ‘erasure’ or ‘transfer’)?

The possible answers to that question are more numerous and diverse to the extent that we accept a feature of Wolfe’s account of the logic of elimination in the settler state and society: the concept of ‘repressive authenticity’. 11 The phrase refers to one of the ways that ‘elimination’ is effective. In performing ‘repressive authenticity’ the settler society recognises Indigenous people as bearers of a precontact culture that remains always different from the culture of the settler society. Benefits—both material and symbolic—may accrue to the Indigenous people who claim such recognition, but to gain these benefits Indigenous Australians have to perform according to certain settler colonial notions of their authenticity as Indigenous people. In a 1994 paper, Wolfe called these prescriptive notions ‘state-conceded Aboriginalities’. 12

The jurisprudence of native title could be cited as an example of ‘repressive authenticity’ or of a ‘state-conceded Aboriginality’. As critics of native title determinations—not least Noel Pearson—have pointed out, judges have spelled out what the customs of the claimants were and then translated those customs into incidents of title that are specific to each adjudicated case. The resulting ‘bundles of rights’ have been criticised for not entitling Indigenous owners to do some of the things that—as modern Indigenous people—they would now like to do with their land.13 ‘Repressive authenticity’ prescribes Aborigines’ pre modernity. Thus fortified with the concepts of ‘repressive authenticity’ and ‘state-conceded Aboriginalities’, the historian can find the settler colonial structure of elimination to be pervasive, right up to our apparently more progressive present times. For example, Wolfe invites us to see Australian land rights legislation as a ‘culturalist’ continuation of the ‘logic of elimination that the initial invasions had expressed’. 14

This settler colonial paradigm thus has the appealing quality of being empirically exhaustive: whether through the removal of children or the erection of a monument to the Stolen Generations, through the denial of native title or the recognition of native title, through the remembrance of violence or the forgetting of violence, the structure of erasure/elimination/repressive authentication does its work. The discursive power of the settler colonial state and society is inexorably effective. All representations of Indigenous Australians and all self-representations by them are subject to the suspicion that they are best understood as the tactical moves of a deeply cunning settler colonial governmentality.

I have three concerns about this influential paradigm. First, can it account for itself? If the settler colonial narrative is so pervasive, how can we be sure that our self-consciously critical historiography is not just another one of its tactics? If that question seems merely a clever debating point, consider my second point: those writing within this paradigm have trouble dealing with Indigenous agency. The ‘elimination thesis’ logically requires its adherents to postulate Indigenous difference and Indigenous agency. Rarely do they forget to note and honour Indigenous agency, crediting it with indomitable persistence against the shapeshifting settler colonial hegemony. However, the paradigm encourages hesitation about characterising Indigenous difference, for to formulate Indigeneity— that is, to describe the contingent content of its difference—risks falling into the trap set by the paradigm’s own critical hermeneutics: any construction of agency as ‘Indigenous’ might be just another version of that ‘authenticity’ that is said to be repressive. Every instance of Indigenous agency is under suspicion of being ‘state-conceded’. For practitioners of the eliminationist paradigm, the inscription of ‘Indigenous agency’ is something to be left to others; for the practitioners of the eliminationist paradigm any such characterisation is always already known to be yet another manifestation of elimination’s inexorable logic. Honouring Indigeneity as ineradicable ‘difference’ tends to be a gesture made at the end of a description of the settler colonial edifice. The tendency of this paradigm is to render Indigenous agency either as ‘state-conceded’ or as an empty, counterfactual narrative space, mentioned out of political piety. The resistant Indigenous subject is beyond empirical specification, an unrepresented and unrepresentable thing that is always already external to the exhaustive discursive work of the settler colonial imagination.

Sovereignty’s moral complexity

My third point has to do with the evocation of settler colonial collective agency as tactical, shape-shifting, never absent, but variously manifest. There seem to be two quite different versions of this settler colonial agency. On the one hand, one evokes its adaptive fluidity, as the structure of settler colonial society somehow finds and invents the agents that perform the myriad tasks of elimination, erasure and repressive recognition; the settler colonial structure is always tactically resourceful in the agencies of its deployment. On the other hand, settler colonial agency is evoked as a collective agent, an enduring national psyche that is anxious, divided, ambivalent, troubled by unresolvable tensions within its project. The attribution of affect to the settler colonial mentality or archive preserves the idea of a singular collective settler agency, as if settler colonies were persons.

It would be easy to exaggerate the idea that settler colonial ambivalence can be narrated as ‘anxiety’. While I have no doubt that there have been anxious agents, the characterisation of particular settler colonial agents as ‘anxious’ is not easy to support empirically, and as a reader I have often had the feeling that the writer depicting ‘anxiety’ is ‘presentist’: ‘From the standpoint of my values, what you did and said back then should have made you anxious’.

A more impersonal analysis enables us to move from anxious agents to contending structures. It is more productive, I suggest, to account more impersonally for ‘settler colonial society’, to evoke it in terms of structures and tendencies to which agents get recruited; I am sympathetic to Wolfe’s structuralism. However, I am not persuaded by his presentation of a singular structure’s relentless consistency, its inexorable logic (of ‘elimination’ or of anything else). Wolfe’s emplotment of settler colonialism interpellates the historian/reader in a compact of epistemological and political certainty: we know what’s going to happen because it always does. My contrary preference is to see history as less predictable, messier, more surprising and occasionally more hopeful. The recent contention of ‘Indigeneities’ has invigorated my uncertainties.

Settler colonial projects give rise to many different kinds of institutions and ethical cultures, and in the duration and physical size of settler colonies (particularly Australia, a vast space whose colonial occupation remains a work in progress) there are many opportunities for diverse settler colonial formations to co-exist. I emphasise ‘contending structures’ in order to distance my approach from the search for the single ‘structure’ that seems to drive Patrick Wolfe towards seeing so many different phenomena as manifestations of the structure of elimination. The tensions structured within the settler colonial project interest me because they seem to me to offer a better chance of understanding historically the diverse ‘Indigeneities’ that we now can see.

Let me give an example of some recent work that I admire, before I proceed to talk about my own work. That the settler colonial project is internally conflicted is the theme of Heather Douglas and Mark Finnane’s recent book Indigenous Crime and Settler Law. 15 By narrating the fraught implementation of criminal law against Aborigines, they show how persistently Australian authorities—from legislators to judges and officials ‘on the ground’—have asserted and recognised Aboriginal difference. They point out that the recurring necessity of this recognition of difference is at odds with the legal doctrine that Australian sovereignty is unified and territorially exhaustive. They do not characterise the settler colony as an anxious subject but as an incoherent project of authority: settler colonial sovereignty is ‘imperfect’ in Australia.

Two features of the argument presented by Douglas and Finnane hold particular interest. First, in their account, the imperfection of Australian sovereignty is revealed not in the application of the law of real property to land and sea but in the administration of the criminal law. Reading the Douglas and Finnane book made me realise that Australia has had relatively little difficulty re-constituting the property regime, in the final third of the twentieth century, so that Aboriginal and Torres Strait Islander people can be owners of land; their customs of ownership are different from the colonists’, but not in a way that troubles Australian law in principle. Aboriginal and Torres Strait Islander property can be encoded, in a political settlement that does not objectively threaten settler property. What has ‘unsettled’ Australian law, Douglas and Finnane argue, is Indigenous agency in their putatively criminal conduct towards one another.

Second, Douglas and Finnane ironise Australian sovereignty, but do not judge it. Unlike so much ‘post-colonial’ analysis that assumes a transcendent morality from whose perspective colonisation can never have done good and Indigenous resistance is always to be celebrated, *Indigenous Crime and Settler Law* has no historically transcendent moral confidence. Its ‘critical’ work is far more modest: merely a juxtaposing of colonial doctrine (unified jurisdiction) with colonial law and order practices (soft legal pluralism). While some would assume that ‘the civilising mission’ has been only a righteous engine of colonial self-interest, Douglas and Finnane allow it a range of possibilities, including the securing of person and property—albeit as the colonists have understood person and property. Nor do they necessarily admire ‘soft legal pluralism’ as a concession won by Indigenous resistance to colonial authority. The legal pluralism that has emerged in Australia is open to the suspicion that it rests on norms and usages that ought, on human rights grounds, to be questioned.16

If there is a plot in the historiography of elimination, it is that the structure of settler colonialism has always already triumphed—either by erasing the Indigenous presence or by determining the forms of its survival. What I appreciate about *Indigenous Crime and Settler Law* is its uncertainty about whose interests are served by the imperfect realisation of settler colonial sovereignty— that is, by the persistence of an Aboriginal normative order.17

So far, I have written much about other people’s work, and in the remainder of this piece, I highlight two ideas of my own that I am trying to work with in order to understand historically the heterogeneity of settler colonial and Indigenous agencies. First, I sketch one way that we can take seriously the continental geography of the settler colonial project in Australia. Second, I survey some ways that the ‘Dying Native’ story resonates in Australian history.

Geographical diversity: a settler colonial nation for a continent

When Australia federated in 1901, there were two Australias: North and South. One of the questions for federal public policy since 1901 has been how to bring these two regions together within a single governmental paradigm.18 The South had evolved a successful social model: racially homogeneous, export-oriented agriculture, protected manufacturing, with a developmental state managing public investment that drew heavily on overseas savings. In the first decade of federation, this ‘Southern Australia’ forged a durable class compromise around the protection of relatively high wages from the competition of cheaper labour and from the import of goods produced from cheaper labour. Frank Castles, Stuart Macintyre and Paul Kelly have described this social model (Kelly calls it the ‘Australian Settlement’).19 All that I wish to add to their accounts is to underline their geographical limitations: this Australian social model was south of the Tropic of Capricorn and confined pretty much to the coast and to zones where agriculture and urban manufacturing were possible.

The North (in which I include the arid Centre, as it became available to British-Australian occupation) was different: in its more demanding geographies, in its more limited opportunities for private and public investment, in its sparser population and in the ethnic composition of that population. To extend the ‘Australian Settlement’ across the continent would require incorporating non-white peoples—Asians, Pacific Islanders, Aborigines and Torres Strait Islanders—into the political culture and political economy of the Australian Settlement. One way we could write the history of Australia’s Indigenous relations since federation would be to ask: to what extent was it possible for the South to colonise the North—that is, to generalise to Northern Australia the model of economic development and social integration that had evolved as the basis of an imagined British-Australian community in the southern agricultural zones and colonial capitals?

It is necessary first to put racism in its place. My generation of historians has been obsessed with the racism and the sexism of the Australian Settlement. We have examined the social policies, the industrial relations policies, the immigration policies and the Aboriginal protection policies of the first half of the twentieth century and we have highlighted the offence that these enactments of the Australian Settlement give to our contemporary multicultural, anti-discrimination liberal sensibilities and principles. While sympathising with that critique, I want to recall that the Southern social model was a set of political devices— state-managed markets for goods, labour and finance—that socially integrated an immigrant population through high levels of employment. Australians who lived through the Depression of the 1930s felt the attrition of that model, when the demand for labour weakened.

The four Northern populations that were problematic—from the Southern point of view—were Asians, Pacific Islanders, Aborigines and Torres Strait Islanders. The Asians and the Pacific Islanders were dealt with either through expulsion or through assimilation. The Torres Strait Islanders, proliferating well beyond the carrying capacity of the Straits colonial economy, either found a place within the Northern mainland as a waged labour force or stayed in the Straits as the more or less contented clients of the Queensland government. The Aborigines of remote Australia have proved to be the most difficult to recruit into the Australian Settlement. Before the Second World War, they developed relationships of symbiosis with governmental and mission authorities and with an undercapitalised and marginal beef industry. A number of factors combined to keep them socially and spatially distant from the institutions of the Australian Settlement: the imperatives of their own social order (including a syncretic response to Christianity); the policy of declaring their vast, road-deprived homelands to be reserves where alien contact could be minimised; the indifference, contempt and cultural respect of Euro-Australians; and, most important, the lack of transformative public and private investment in remote regions.

The Second World War forced a policy experiment to occur. The perceived possibility of Japanese invasion necessitated unprecedented public investment in the North: the resulting acute labour shortage brought curious and venturesome Aborigines into contact—of unprecedented scale and quality—with a relatively open-minded and pragmatic military. Native labour camps were a short-lived experiment in the formation of Aborigines into wage-labouring subjects. Sympathetic observation concluded that their rapid acculturation showed that remote Aborigines could and should be assimilated. For the thirty years following the war, governments in Northern Australia sought ways to convert Aboriginal hunter-gatherer labour power into the kind of human material that was suited to twentieth-century capitalist labour processes. However, there was never enough private and public investment to absorb the quantity of Aboriginal labour that was available in Northern and Central Australia. The pastoral industry obscured this problem until the 1960s insofar as the labour processes of that industry allowed a symbiosis of pastoralists who were defective capitalists with Aborigines who still had one foot in the hunter-gatherer economy.20 With the modernisation of the remote marginal pastoral industry by the late 1960s, the extent of the excess of Aboriginal labour power in remote and very remote regions became apparent.21

Assimilation was an attempt to absorb Aboriginal society into a standard Australian pattern of wage labouring, family formation and household structure. By the early 1970s, assimilation, in one sense, had failed in the remote regions because of the weakness of the required transformative force: public and private investment that would change the use of land and labour. However, assimilation was not only a political economy of wage-labouring and family formation; it was also a political economy of formal citizenship entitlements. That formal dimension of ‘assimilation’ was consummated in the early 1970s, admitting all Aborigines—even the most nomadic—to welfare entitlement. As Noel Pearson has argued, the late 1960s and early 1970s was a bizarre historical conjuncture— and here I am using my own terms, not Pearson’s—in which a legal-formal assimilation substituted for a socio-economic assimilation that had failed to materialise.22 The extension of the Australian Settlement to remote Aboriginal Australia was thus an unintended parody of the Australian Settlement: remote and very remote Aboriginal people secured entitlements designed for an economy and society that did not exist where they lived.

At this point in my narrative—still focused on the early 1970s—I need to highlight one other incongruity between Southern models of social integration and Northern social conditions. In the Southern model, Aboriginal people had become detached economically (and often physically) from their land base. No longer land-based in their economy, ‘southern’ Aborigines faced three options: institutionalisation (under church or state supervision), urbanisation, or impoverished autonomy in rural backwaters. In the North, it had been possible to evolve a quite different way to manage the relationship between Aboriginal people and land. From the point of view of settlers and colonial investors, much of northern and central Australia was unattractive, and it was easy enough to declare huge tracts of northern and central Australia as reserves. Aboriginal ‘protection’ in the South had demanded the remnant population’s rapid acculturation—a project to which many Aborigines were attracted. In the North, authorities of church and state operationalised ‘protection’ as the slowing down of acculturation. Defined by their very lack of transformative investment, reserves were weak instruments of social transformation. However, for reserves to function as zones of deferred social engineering, they had to remain worthless. That worthlessness was challenged, in the 1950s and 1960s, by the Commonwealth’s extensive programme of mineral mapping. Some reserves were found to be minerally prospective, precipitating a political contest between, on one side, government agencies allied with mining corporations and, on the other side, Aborigines, churches and others espousing, with much political success, a new global human right called ‘land rights’.

Through reformed land legislation, Aboriginal peoples can now negotiate with mining companies, and Aboriginal people have land title (of various strengths) over all the lands that the Crown had not alienated to private or public investors by the 1970s: about 23 per cent of the continent. I want to make three points about that Indigenous land base.

First, the arguments in favour of land rights were politically successful because they brought together a number of different projects of settler colonial self-redemption. The supporters of land rights amount to a coalition voicing an ensemble of themes: that land was essential to the well-being of people spiritually connected to it; that land is the basis of a culture whose difference Australians had a duty to honour and preserve; that land was an Indigenous property right that liberal governance was obliged to honour; that, as property, land was the basis of its owners’ recovery from poverty; that Aboriginal people understand better than the colonists what humans owe to Nature.23 Among these themes there are tensions, and we now debate conflicting projections of the use of Indigenous land.

My second observation is that most Indigenous land is situated in those parts of Australia where the Southern social model or the Australian Settlement has had least effect. That is, investment has not yet changed the Aboriginal population of these regions into a people that lives largely by employment; the practices and beliefs of the ‘Aboriginal domain’, in these regions, remain strongly rooted in pre-colonial traditions. The Community Development Employment Projects programme (CDEP, initiated in 1977) was, in this context, a symptomatic public investment programme. Its purpose remains disputed: is it best, in some regions, to allow Aboriginal people to develop their own hybrid economies and modes of individual and collective consumption? Or was CDEP (and now its successors) a short-term, transitional programme for people whose destiny was to move into what some like to call ‘real jobs’?24 How to intervene in the ‘Indigenous Estate’ and into the lives of its small but morally significant Indigenous population is the big unanswered question of Australia’s formation as a continental nation. How could we generalise, across all the regions and peoples of this continent, the institutions that we have evolved in the southern urban and agricultural regions?

My third observation about the Indigenous Estate is that it is currently undergoing revaluation. As Jon Altman and his colleagues have pointed out, there is very extensive overlap between the Indigenous Estate and the regions whose biological diversity Australia is pledged to protect. Just as mineral mapping triggered a revaluation of Australia’s remote lands in the 1960s and necessitated the political compromise we call ‘land rights’, so the ecological review of Australia’s land management policies has the potential to force a new framework for governing the Indigenous Estate. The same Howard government that gave us the notorious Northern Territory Intervention created the ‘Indigenous Protected Areas’ and ‘Working on Country’ programmes.25

The emergence of an Indigenous land and sea estate is trivialised if we see land rights as just another ‘state-conceded Aboriginality’ expressive of the deeper logic of erasure/elimination. The geographic, cultural and political contingencies of Australia’s colonial history have thrown up a set of economic and ecological possibilities and Indigenous identities that is just too complex and important to be approached in such a reductive way. As well, recognition of Indigenous Australians from some regions as owners and the denial of such status to others has created a distinction within Indigenous Australia whose significance (including competitive dynamics) demands closer attention than we are likely to give if we see them simply as variations on ‘state-conceded Aboriginality’.

Indigenous heterogeneity: what happened to the ‘Dying Native’?

The history of the settler colonial story that the Aborigines were doomed to die out is an interest I share with those who advance the ‘elimination’ thesis. In his essay ‘The Imagined Geographies of Settler Colonialism’, Lorenzo Veracini points out that settler colonial Australia now seeks reconciliation with peoples whose disappearance they once fantasised.26 How has that come about? To answer this question requires that we look more closely at the Dying Native fantasy and distinguish versions of it that seem to have existed at the same time. To pursue these distinctions is another path to understanding Indigenous diversity. There have long been three different versions of the Dying Native fantasy.27 As I describe each version, I will briefly comment on two things: what policy response that meaning aroused in governments and the concerned public; and how Indigenous Australians have responded.

One ‘Dying Native’ story pointed to catastrophic infertility and mortality; Aborigines might cease to exist physically—death in its most literal sense. Until the 1970s (and the recognition of mixed descent people as ‘Aboriginal’) this was widely understood to have been what happened in Tasmania: there were no Aborigines left in that State. Not believing this outcome to be inevitable in continental (particularly northern) Australia, influential humanitarians strove to avert this ‘Tasmanian’ scenario by various measures of ‘protection’: reserves, missions, government settlements. This intervention was successful: Aborigines—even if only so-called ‘full-bloods’ were counted—did not die out and by the 1950s the known continental ‘full-blood’ population was in recovery. Indigenous responses to being ‘protected’ varied regionally, depending on what contact there had been previously and on whether institutional control demanded their severance from ‘country’ and/or kin. Indigenous people were critical of institutional controls, but they also seem to have valued the different kinds of security that they found: biological security, social, even spiritual. The Indigenous memory of the institutional enclaves that arrested their depopulation seems mixed and ambivalent.28

Second, there was ‘death’ by genetic adulteration. This ‘death’ did not involve excessive mortality (and it could even work by proliferation). It had more to do—in the public and official imagination—with who impregnated Aboriginal women: through sex with a man who was not a ‘full-blood’ Aboriginal, the progeny of Aboriginal women would not be fully ‘Aboriginal’ genetically. Over a few generations of such partnering, a genetically distinct Aboriginal population would dwindle; eventually it would be reduced to zero. Policy responses to this possibility varied across jurisdictions and through time. Remote missions were designed to minimise opportunities for miscegenation. Three jurisdictions legislated to regulate Aboriginal marriage choices, but there were contending eugenic visions. Queensland under J. W. Bleakley wanted to prevent or severely limit miscegenation. A. O. Neville in Western Australia and C. E. Cook in the Northern Territory aspired to manage interbreeding. The likelihood of this ‘dying’ scenario was contingent partly on the common opinion between the world wars that ‘half-castes’ were not ‘Aboriginal’. However, official enumerations often followed administrative practice in presenting a more genetically inclusive ‘Aboriginal population’, and this was known to be increasing. We do not yet have an adequate history of Indigenous approaches to miscegenation. Their responses included: continuing intermarriage (across real/imagined racial boundaries) by those Aborigines that could or would marry; passing as non-Aboriginal; the persistence of ‘Aboriginal identity’ among ‘mixed’ people (no doubt assisted by official practices of treating ‘half-castes’ as ‘Aboriginal natives’); the formation of the folk category ‘yella fella’; the assertion of ‘half-caste’ as distinct from ‘full-blood’ entitlement. Ethnogenesis produced a pan-Aboriginal ideology that criticised the idea that hybridity extinguished the race, but a worthy question for historians is to document how and when the reckoning of descent and the interpretation of its meaning have been controversial among Aborigines themselves. The Census has accommodated self-identification since 1971, changing the humanitarian narrative: the Tasmanian Aboriginal population was never extinguished, and the ‘Aboriginal population’ (on the imperfect figures available since 1921) has been recovering since the 1920s.

The third ‘Dying Native’ scenario was about the rapid attrition of the economy, customs and beliefs of Aboriginal people. Even were Aborigines to remain numerous, and whatever their genetic constitution, they would ‘die out’ as a distinct way of life as they acculturated. This version of the ‘Dying Native’ scenario aroused more hope than dread: it was widely thought to be in Aborigines’ interests to acculturate, and it was the duty of governments to promote this. To manage such a cultural transition became the dominant and official policy approach after Second World War experience (the practical repudiation of myths of Aboriginal intellectual incapacity) and as an effect of the displacement of ‘racial’ by ‘cultural’ determinism among policy intellectuals. A complementary policy response was ‘salvage’ ethnography and museology, resulting in a scholarly archive of the ‘classical’ forms of Aboriginal life that seemed to be doomed. Intellectuals promoting and effecting this second response also supported remote inviolable reserves, but they were forced increasingly to concede the necessity of certain transforming interventions. Land rights and native title legislation revived the public policy value of ‘salvage’ ethnography from 1973 to 1993, and cultural policy harnessed a global market in ‘Indigeneity’. However public policy has never given up the duty of acculturation, and Aborigines and Torres Strait Islanders now debate their ‘modern’ socioeconomic aspirations. What is their growing land and sea base good for? Does ‘custom’ exacerbate or ameliorate Indigenous pathology? Indigenous responses to the prospect of the rapid attrition of their distinct way of life have varied enormously; the content and worth of Aboriginality are now matters for their vigorous debate. Many aspired to acculturate (some articulating folkloric heritage), and many were critical of their exclusion from mainstream education, employment, housing. A subsequent generation has criticised this attraction to ‘the mainstream’ and reasserted difference (passages in Jackie Huggins’ Auntie Rita, an intergenerational autobiography, make interesting reading).29 As well, the Indigenous evocation of heritage has bifurcated: the recognition of classical tradition has enabled ‘land rights’ and native title, but from the point of view of many Aborigines such valorisation of ‘tradition’ was also discriminatory against those most affected by colonisation. For such people, the ‘Stolen Generations’ story has been especially important, adding to the terms in which ‘Aboriginality’ could be affirmed at the end of the twentieth century. Thus themes of both survival and loss arise from regional differences of Aboriginal experience.

Conclusion

This schematic parsing of the notion of the ‘Dying Native’ is intended to complement my broad geographical ‘take’ on the colonising sequence. Australian colonisation has been a sequence of frontiers differentiated by shifts, over time, in theories about colonial responsibilities and about the colonised themselves; it has been differentiated also by the physical, social and economic demands and opportunities of Australia’s regions. The diverse meanings and implications of the Dying Native story and the sequenced differentiation of frontier experience combine to make it both necessary and possible to disaggregate and historicise settler colonial agency and Indigenous agency. For me as a historian, the greatest contemporary stimulus to historical revision is the diversity evident in contemporary Indigeneity, and the narratives of difference that I offer here are my way of making sense of that diversity. Since the public dispute among Ngarrindjerri about the ‘heritage’ significance of Hindmarsh Island in 1995, it has become increasingly evident that Indigenous Australians recall oppression and opportunity in different ways, and this underpins the variety of their projections of survival and future flourishing. Thus I find unhelpful the homogenising, psychologising and dehistoricising tendencies of the ‘elimination’ paradigm. By attaching its analytical ambition to establishing the teleological sameness of all narratives of colonisation, that approach not only dampens historical curiosity about distinctions of period, place and agent, it also renders uninteresting an arresting feature of the recent empowerment of Indigenous Australians: the diversity of their remembered pasts and projected futures.

#### And, irrespective of the truth value of their theory, their frame is bad – undermines indigenous agency

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Sheryl, “The Pessimism Traps of Indigenous Resurgence,” Chapter 10 in *Pessimism in International Relations*, Eds. Stevens, T., & Michelsen, N., Palgrave)

Despite all of these activities designed to re-write the relationship between states and Indigenous peoples, some high-profle critical Indigenous political theorists reject all state overtures towards reconciliation and take extremely pessimistic approaches towards future Indigenous-state relations. They advocate that Indigenous resurgence through a return to Indigenous land-based forms of governance is the only path to decolonisation. I argue that while resurgence school theorists are strong advocates for Indigenous nations and bring focus and clarity to a set of issues about power structures and dynamics, they are all caught in the same set of three ‘pessimism traps’ that unnecessarily limit their capacity to contribute to improved Indigenous-state relationships. These pessimism traps emanate from a reliance on Fanonian revolutionary thought and a problematic application of Fanonian theory from French-colonised North Africa to an entirely different context in the English-speaking settler states. Finally, I argue, these pessimism traps are diametrically opposed to the work and vision of Indigenous organisations who have been working on the ground for decades to assert Indigenous nationhood both domestically and internationally, in ways that often assertively and creatively challenge and shift the existing system of sovereign states. In sum, because the resurgence school remains trapped in a pessimism box of its own making, it remains signifcantly out of step with Indigenous movements and actually risks harming their efforts to advance Indigenous self-determination in creative and innovative ways.

Pessimism Trap 1: A Clear Demarcation of Indigenous Individuals into Only Two Categories, ‘Authentic’ and ‘Co-Opted’

For Indigenous resurgence theorists, these two categories are the only possibilities, and there is no grey area in-between. In their view, Indigenous peoples are co-opted if they hold elected offce, make land claims or economic development agreements with governments or industry, or even sign treaties. Furthermore, co-opted Indigenous peoples are so co-opted, that they do not even recognise how they are being used and colonised by the state and its private-sector partners. On the other hand, authentic Indigenous peoples live on their traditional lands, speak their Native languages, practice their culture and govern themselves in traditional fashion. They are the only ones that have successfully resisted the overwhelming forces of colonisation and its powers of cooptation, and the only ones with the power to do so into the future.

In his 2005 book, Wasáse: Indigenous Pathways of Action and Freedom, Taiaiake Alfred calls on the original people, what he calls Onkwehonwe in the Mohawk language, to unify in resisting the colonial structures that continue to oppress them.5 Relying on warrior imagery in the Mohawk tradition, Alfred confronts Indigenous people to recognise Western domination in our communities and resist it. He argues forcefully that Indigenous peoples have become overly complacent on, and even dependent upon, Western social, economic and political structures. He calls for a resurgence in Indigenous spirituality and political structures in Indigenous communities. As he sees it, a strong Indigenous warrior is not one that necessarily engages in war and violent resistance but, rather, is one that shows real courage by living a daily life grounded in the spiritual teachings and practices of our ancestors. The decolonising revolution he calls for is rooted within the peaceful resurgence of traditional spirituality and governance. As he writes, ‘There are people in all communities who understand that a true decolonization movement can emerge only when we shift our politics from articulating grievances to pursuing an organized and political battle for the cause of our freedom. These new warriors understand the need to refuse any further disconnection from their heritage and the need to reconnect with the spiritual bases of their existences’.6 While at frst glance, this book represents a powerful and compelling call to action by Indigenous communities and leaders, a closer examination reveals all three pessimism traps in play throughout the text .

Alfred draws a sharp line between authentic Indigenous approaches and co-opted ones. As he puts it, ‘Not all of us have been conquered. There are still strong Onkwehonwe who persevere in their struggle for an authentic existence and who are capable of redefning, regenerating, and reimagining our collective existences’.7 Yet, he warns, ‘The colonizers stand on guard for their ill-gotten privileges using highly advanced techniques, mainly co-optation, division and when required, physical repression’ and ‘with its massive resources, the state can co-opt leadership and movement successes’.8

Furthermore, Alfred notes, the authentic Indigenous peoples and leaders are no longer the majority, as the co-opted ones seem to occupy most of the leadership roles in organisations and communities. Lamenting the constant temptations for co-optation on offer, from land claims agreements, to casino capitalism, to chief and council salaries, Alfred writes, ‘Working for a cause that has indigenous integrity means sacrifce. …This is the reality of an authentic indigenous existence in political terms. And, evidently, in our communities today, there are only a few people who are convinced that taking on the psychological and fnancial burden of being really indigenous is worth the fght’.9

Similar patterns appear in Alfred’s follow-up 2009 book, Peace, Power, Righteousness: An Indigenous Manifesto. 10 In this work, Alfred walks the reader through Indigenous values, weaving a thesis that a new kind of Indigenous leadership, characterised by the resurgence of Indigenous forms of self-determination, is the only way to resist colonialism and preserve what still exists of Indigenous culture and lifeways today. In a Fanonian spirit, he challenges Indigenous peoples, and particularly leaders, professionals and academics, to be aware of how colonialism has impacted them and their communities on every level, including and especially, psychologically. He challenges Indigenous leadership and communities to recognise these multiple layers of colonialism in current contemporary practice, and to resist them.

As in his earlier work, Alfred divides Indigenous peoples, communities and leadership into two stark categories: authentic and co-opted. Indigenous leaders, he says, either actively resist, or they co-operate with the state. When they co-operate with the state, they ‘rationalize and participate actively in their own subordination and the maintenance of the Other’s superiority’ and therefore become co-opted.11

Further, he sees that as states have moved away from overt violent control of Indigenous communities, co-option has become the preferred method of control and subordination:

The fact is that neither the state-sponsored modifcations to the colonial-municipal model …nor the corporate or public-government systems recently negotiated in the North constitute indigenous governments at all. Potentially representing the final solution to the white society’s ‘Indian Problem,’ they use the co-operation of Native leaders in the design and implementation of such systems to legitimize the state’s longstanding assimilationist goals for indigenous nations and lands.12

One of the deepest problems, according to Alfred, is that co-opted communities, leaders and professionals do not often even realise that they are, in fact, co-opted. Co-option, he says, ‘is a subtle, insidious, undeniable fact, and it has resulted in a collective loss of ability to confront the daily injustices, both petty and profound, of Native life’.13 As a case in point, Alfred engages in a substantial discussion of how the concept of sovereignty itself is Western in focus and therefore, when Indigenous leaders advocate for it, on behalf of their nations and communities, they are unwittingly engaging in a politics of co-optation. ‘Shallow-minded politicians’, Alfred writes, ‘are unable to grasp that asserting a right to sovereignty has signifcant implications’. When they assert a claim to sovereignty but not to resist the state itself, ‘they are making a choice to accept the state as their model and to allow indigenous political goals to be framed and evaluated according to a “statist” pattern’.14 Another prominent member of the Indigenous resurgence school, Glen Coulthard (Yellowknives Dene), was mentored by Taiaiake Alfred and their common philosophy is immediately apparent. As Alfred writes in his foreword to Coulthard’s 2014 book, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition, ‘Coulthard is talking about rising up, …about resurgence and the politics of self-affrmation. This is a call to combat contemporary colonialism’s objectifcation and alienation and manipulation of our true selves’.15

Coulthard critiques the current Canadian policy atmosphere of reconciliation as contemporary colonialism, ultimately the same as the old colonialism, but with a new mask. He argues the structure of the settler colonial invasion continues to dispossess and oppress Indigenous peoples, as it always has, but it now has a new face: the disingenuous liberal politics of recognition—which includes such current policy initiatives as the delegation of self-determination, economic development and the settlement of land claims. He begins by noting that over the past forty years or so, there has been an ‘unprecedented degree of recognition for Aboriginal “cultural” rights within the legal and political framework of the Canadian state’.16 Coulthard acknowledges that the increase in recognition demands coming from Indigenous intellectual and community leaders are largely responsible for these changes to the structure of the Indigenous-state relationship in Canada. Yet, Coulthard’s goal in this work is to challenge the notion that ‘the colonial relationship between Indigenous peoples and the Canadian state can be adequately transformed via such a politics of recognition’.17 Rather than ushering in a new relationship, he argues, the ‘politics of recognition in its contemporary liberal form promises to reproduce the very confgurations of colonialist, racist, patriarchal state power that Indigenous peoples’ demands for recognition have historically sought to transcend’.18

In other words, all of the work and struggle by Indigenous leaders and advocates in the past four decades to advance self-government, recognition of Aboriginal rights and title and economic development for their communities has not only been futile, but damaging to what would or should have been an ‘authentic’ struggle for Indigenous self-determination. Further, all of these advocates and leaders do not even realise how co-opted they have become in the ongoing structures of colonialism. Citing Alfred, and echoing Fanon, Coulthard notes that the dominance of the recognition approach over an extended period of time has produced a class of ‘Aboriginal “citizens”’ who have come to defne themselves in terms of the colonial state and its institutions rather than the culture and political traditions of their own Indigenous nations. He identifes a similar process with capitalist economic development initiatives that have created an ‘emergent Aboriginal bourgeoisie whose thirst for proft has come to outweigh their ancestral obligations to the land and to others’.19 Unfortunately, Coulthard pessimistically views Indigenous rights advancement as ‘bleak’, since ‘so much of what Indigenous peoples have sought over the last forty years to secure their freedom has in practice cunningly assured its opposite’.20

In a 2007 article, Cherokee political scientist Jeff Corntassel takes the co-option argument to the international level.21 Corntassel acknowledges that UN fora do provide opportunities for strategising and diplomacy among Indigenous actors from diverse parts of the world, especially important in storytelling, information sharing and building solidarity. Corntassel also acknowledges that there were a handful of instances in the First UN Indigenous Decade (1995–2004) where Indigenous peoples were able to successfully challenge UN protocols and procedures and insert themselves into the UN ‘on their own terms’. However, despite these acknowledgements, Corntassel concludes that the UN system, being made up of states, aims to co-opt Indigenous peoples into the norms and mores of the state, thereby distracting them from their proper focus on advancing their own nationhood. Like Alfred and Coulthard, Corntassel falls into the first pessimism trap which demarcates Indigenous political leadership into ‘authentic’ and ‘co-opted’ categories.

Pessimism Trap 2: The State is Unified, Deliberate and Unchanging in Its Desire to Dispossess Indigenous Peoples and Gain Unfettered Access to Indigenous Lands and Resources

In other words, colonialism by settler states is a constant, not a variable, in both outcome and intent. Further, the state is not only intentionally colonial, but it is also unifed in its desire to co-opt Indigenous peoples as a method and means of control.

In 2005’s Wasase, Alfred presents the state as unitary, intentional and unchanging in its desire to colonise and oppress Indigenous peoples noting, ‘I think that the only thing that has changed since our ancestors frst declared war on the invaders is that some of us have lost heart’.22 Referring to current state policies as a ‘self-termination movement’, Alfred states, ‘It is senseless to advocate for an accord with imperialism while there is a steady and intense ongoing attack by the Settler society on everything meaningful to us: our cultures, our communities, and our deep attachments to land’.23

Alfred’s Peace, Power, Righteousness (2009) also argues that the state is deliberate and unchanging, stating quite plainly that ‘it is still the objective of the Canadian and US governments to remove Indians, or, failing that, to prevent them from beneftting, from their ancestral territories’.24 Contemporary states do this, he argues, not through outright violent control but ‘by insidiously promoting a form of neo-colonial self-government in our communities and forcing our integration into the legal mainstream’.25 According to Alfred, the state ‘relegates indigenous peoples’ rights to the past, and constrains the development of their societies by allowing only those activities that support its own necessary illusion: that indigenous peoples today do not present a serious challenge to its legitimacy’.26

Linking back to the aim of co-option, Alfred argues that while the state’s desire to control Indigenous peoples and lands has never changed, the techniques for doing so have become subtler over time. ‘Recognizing the power of the indigenous challenge and unable to deny it a voice’, due to successful Indigenous resistance over the years, ‘the state has (now) attempted to pull indigenous people closer to it’.27 According to Alfred, the state has outwitted Indigenous leaders and ‘encouraged them to reframe and moderate their nationhood demands to accept the fait accompli of colonization, (and) to collaborate in the development of a “solution” that does not challenge the fundamental imperial lie’.28

In a similar vein, Coulthard’s central argument is centred on his understanding of the dual structure of colonialism. Drawing directly from Fanon, Coulthard fnds that colonialism relies on both objective and subjective elements. The objective components involve domination through the political, economic and legal structures of the colonial state. The subjective elements of colonialism involve the creation of ‘colonized subjects’, including a process of internalisation by which colonised subjects come to not only accept the limited forms of ‘misrecognition’ granted through the state but can even come to identify with it.29 Through this dual structure, colonial power now works through the inclusion of Indigenous peoples, actively shaping their perspectives in line with state discourses, rather than merely excluding them, as in years past. Therefore, any attempt to seek ‘the reconciliation of Indigenous nationhood with state sovereignty is still colonial insofar as it remains structurally committed to the dispossession of Indigenous peoples of our lands and self-determining authority’.30

Concerning the state in relation to Indigenous peoples on the international level, Corntassel argues that states and global organisations, for years, have been consistently framing Indigenous peoples’ self-determination claims in ways that ‘jeopardize the futures of indigenous communities’.31 He claims that states frst compartmentalise Indigenous self-determination by separating lands and resources from political and legal recognition of a limited autonomy. Second, he notes, states sometimes deny the existence of Indigenous peoples living within their borders. Thirdly, a political and legal entitlement framing by states deemphasises other responsibilities. Finally, he claims that states, through the rights discourse, limit the frameworks through which Indigenous peoples can seek self-determination. Like Alfred and Coulthard, Corntassel has concluded that states are deliberate and never changing in their behaviour. With this move, Corntassel limits and actually demeans Indigenous agency, overlooking the reality that Indigenous organisations themselves chose the human rights framework and rights discourse as a target sphere of action precisely because, as was evident in earlier struggles like slavery, civil rights or women’s rights, these were tools available to them that had a proven track record of opening up new possibilities and shifting previous state positions and behaviour. Indigenous advocates also cleverly realised, by the 1970s, that the anti-discrimination and decolonisation frames could be used together against states. States did, in no way, nefariously impose a rights framework on Indigenous peoples. Rather, Indigenous organisations and savvy Indigenous political actors deliberately chose to frame their self-determination struggles within the human rights framework in order to bring states into a double bind where they could not credibly claim to adhere to human rights and claim that they uphold equality while simultaneously denying Indigenous peoples’ human rights and leaving them with a diminished and unequal right of self-determination. But, because he is caught in the pessimism trap of seeing the state only as unifed, deliberate and unchanging, Corntassel overlooks and diminishes the clear story of Indigenous agency and the potential for positive change in advancing self-determination in a multitude of ways.

Pessimism Trap 3: Engagement with the Settler State is Futile, if Not Counter-Productive

Since the state always intends to maintain, if not expand, colonial control, and is seeking to co-opt as many Indigenous peoples as possible in order to maintain or expand its dispossession and control, it is therefore futile, at best, and actually dangerous to Indigenous existence to engage with the state. Furthermore, all patterns of engagement will lead to co-optation as the state is cunning and unrelenting in its desire to co-opt Indigenous leaders, academics and professionals in order to gain or maintain control of Indigenous peoples.

Alfred argues, in both his 2005 and 2009 books, that any Indigenous engagement with the state, including agreements and negotiations, is not only futile but fundamentally dangerous, as such pathways do not directly challenge the existing colonial structure and ‘to argue on behalf of indigenous nationhood within the dominant Western paradigm is self-defeating’.32 Alfred states that a ‘notion of nationhood or self-government rooted in state institutions and framed within the context of state sovereignty can never satisfy the imperatives of Native American political traditions’33 because the possibility for a true expression of Indigenous self-determination is ‘precluded by the state’s insistence on dominion and its exclusionary notion of sovereignty’.34 Worst of all, according to Alfred, when Indigenous communities frame their struggles in terms of asserting Aboriginal rights and title, but do so within a state framework, rather than resisting the state itself, it ‘represents the culmination of white society’s efforts to assimilate indigenous peoples’.35

Because it is impossible to advance Indigenous self-determination through any sort of engagement with the state, Coulthard also advocates for an Indigenous resurgence paradigm that follows both his mentor Taiaiake Alfred but also Anishinaabe feminist theorist Leanne Simpson.36 As Coulthard writes, ‘both Alfred and Simpson start from a position that calls on Indigenous peoples and communities to “turn away” from the assimilative reformism of the liberal recognition approach and to instead build our national liberation efforts on the revitalization of “traditional” political values and practices’.37 Drawing upon the prescriptive approach of these theorists, Coulthard proposes, in his concluding chapter, fve theses from his analysis that are intended to build and solidify Indigenous resurgence into the future:

1. On the necessity of direct action, meaning that physical forms of Indigenous resistance, like protest and blockades, are very important not only as a reaction to the state but also as a means of protecting the lands that are central to Indigenous peoples’ existence;

2. Capitalism, No More!, meaning the rejection of capitalist forms of economic development in Indigenous communities in favour of land-based Indigenous political-economic alternative approaches;

3. Dispossession and Indigenous Sovereignty in the City, meaning the need for Indigenous resurgence movements ‘to address the interrelated systems of dispossession that shape Indigenous peoples’ experiences in both urban and land-based settings’38;

4. Gender Justice and Decolonisation, meaning that decolonisation must also include a shift away from patriarchy and an embrace of gender relations that are non-violent and refective of the centrality of women in traditional forms of Indigenous governance and society; and

5. Beyond the Nation-State. While Coulthard denies that he advocates complete rejection of engagement with the state’s political and legal system, he does assert that ‘our efforts to engage these discursive and institutional spaces to secure recognition of our rights have not only failed, but have instead served to subtly reproduce the forms of racist, sexist, economic, and political confgurations of power that we initially sought…to challenge’.39 He therefore advocates expressly for ‘critical self-refection, skepticism, and caution’ in a ‘resurgent politics of recognition that seeks to practice decolonial, gender-emancipatory, and economically nonexploitative alternative structures of law and sovereign authority grounded on a critical refashioning of the best of Indigenous legal and political traditions’.40

Corntassel also demonstrates the third pessimism trap, that all engagement with the state is ultimately futile. For the most part, however, Corntassel’s observation is that the UN system operates like a reverse Keck and Sikkink ‘boomerang model’ and ‘channels the energies of transnational Indigenous networks into the institutional fefdoms of member countries’, by which an ‘illusion of inclusion’ is created.41 He argues that, in order to be included or their views listened to, Indigenous delegates at the UN must mimic the strategies, language, norms and modes of behaviour of member states and international institutions. Corntassel fnds that ‘what results is a cadre of professionalized Indigenous delegates who demonstrate more allegiance to the UN system than to their own communities’.42 In his fnal analysis, he charges that the co-optation of international Indigenous political actors is highly ‘effective in challenging the unity of the global Indigenous rights movement and hindering genuine dialogue regarding Indigenous self-determination and justice’.43

Finding that states deliberately co-opt and provide ‘illusions of inclusion’ to Indigenous political actors in UN settings, Corntassel comes to the same conclusion as Alfred concerning the futility of engagement, arguing that because transnational Indigenous networks are ‘channeled’ and ‘blunted’ by colonial state actors, ‘it is a critical time for Indigenous peoples to rethink their approaches to bringing Indigenous rights concerns to global forums’.44

Imagining a Post-Colonial Future: Pessimistic ‘Resurgence’ Versus the Optimism and Tenacity of Indigenous Movements on the Ground

All of these writers advocate Indigenous resurgence, through a combination of rejecting the current reconciliation politics of settler colonial states, coupled with a return to land-based Indigenous expressions of governance as the only viable, ‘authentic’ and legitimate path to a better future for Indigenous peoples, which they refer to as decolonisation. While inherently critical in their orientation, these three approaches do make some positive and productive contributions to Indigenous movements. They help shed light on the various and subtle ways that Indigenous leaders and communities can become co-opted into a colonial system. They help us to hold leadership accountable. They also help us keep a strong focus on our traditional, cultural and spiritual values as well as our traditional forms of governance which then also helps us imagine future possibilities.

As I have pointed out here, however, all three theorists are also caught in the same three pessimism traps: authenticity versus co-option; a vision of the state as unified, deliberate and never changing in its desire to colonise and control; and a view of engagement with the state as futile, if not dangerous, to Indigenous sovereignty and existence. When combined, these three pessimism traps aim to inhibit Indigenous peoples’ engagement with the state in any process that could potentially re-imagine and re-formulate their current relationship into one that could be transformative and post-colonial, as envisioned by the UN Declaration on the Rights of Indigenous Peoples. The pessimism traps together work to foreclose any possibility that there could be credible openings of opportunity to negotiate a fairer and just relationship of co-existence with even the most progressive state government.

This pessimistic approach is not innocuous. By overemphasising structure and granting the state an enormous degree of agency as a unitary actor, this pessimistic approach does a remarkable disservice to Indigenous resistance movements by proscribing, from academia, an extremely narrow view of what Indigenous self-determination can and should mean in practice. By overlooking and/or discounting Indigenous agency and not even considering the possibility that Indigenous peoples could themselves be calculating, strategic political actors in their own right, and vis-à-vis states, the pessimistic lens of the resurgence school unnecessarily, unproductively and unjustly limits the feld of possibility for Indigenous peoples’ decision-making, thus actually countering and inhibiting expressions of Indigenous self-determination. By condemning—writ large—all Indigenous peoples and organisations that wish to seek peaceful co-existence with the state, negotiate mutually benefcial agreements with the state, and/or who have advocated on the international level for a set of standards that can provide a positive guiding framework for Indigenous-state relations, the pessimistic lens of resurgence forecloses much potential for new and improved relations, in any form, and is very likely to lead to deeper conficts between states and Indigenous peoples, and potentially, even violent action, which Fanon indicated was the necessary outcome. The pessimism traps of the resurgence school are therefore, likely self-defeating for all but the most remote and isolated Indigenous communities. Further, this approach is quite out of step with the actions and vision of many Indigenous resistance movements on the ground who have been working for decades to advance Indigenous self-determination, both domestically and globally, in ways that transform the colonial state into something more just and may eventually present creative alternatives to the Westphalian state form in ways that could respect and accommodate Indigenous nations. Rather, it aims to shame and blame those who wish to explore creative and innovative post-colonial resolutions to the colonial condition.

The UN Declaration on the Rights of Indigenous Peoples (the Declaration or UN Declaration) was adopted by the General Assembly in 2007 after 25 years of development. The Declaration is ground-breaking, given the key leadership roles Indigenous peoples played in negotiating and achieving this agreement.45 Additionally, for the frst time in UN history, the rights holders, Indigenous peoples, worked with states to develop an instrument that would serve to promote, protect and affirm Indigenous rights, both globally and in individual domestic contexts.46

Many Indigenous organisations and movements, from dozens of countries around the world, were involved in drafting and negotiating the UN Declaration and are now advocating for its full implementation, both internationally and in domestic and regional contexts. In Canada, some of the key organisational players—the Grand Council of the Crees (Eeyou Istchee), the Assembly of First Nations, and the Union of British Columbia Indian Chiefs, or their predecessor organisations—were involved in the drafting and lengthy negotiations of the UN Declaration during the 1980s, 1990s and 2000s. In the United States, organisations like the American Indian Law Alliance and the Native American Rights Fund have been involved as well as the Navajo Nation and the Haudenosaunee Confederacy, who represent themselves as Indigenous peoples’ governing institutions. From Scandinavia, the Saami Council and the Sami Parliaments all play a key role in advancing Indigenous rights. In Latin America, organisations like the Confederación de Nationalidades Indígenas del Ecuador (CONAIE) and the Consejo Indio de Sud America (CISA) advocate for implementation of the UN Declaration. The three, major transnational Indigenous organisations— the World Council of Indigenous Peoples, the International Indian Treaty Council and the Inuit Circumpolar Council—were all key members of the drafting and negotiating team for the UN Declaration, and the latter two, which are still in existence, continue their strong advocacy for its full implementation.

Implementation of the UN Declaration on the Rights of Indigenous Peoples requires fundamental and significant change, on both the international and domestic levels. Because implementation of Indigenous rights essentially calls for a complete and fundamental restructuring of Indigenous-state relationships, it expects states to enact and implement a significant body of legal, constitutional, legislative and policy changes that can accommodate such things as Indigenous land rights, free, prior and informed consent, redress and a variety of self-government, autonomy and other such arrangements. States are not going to implement this multifaceted and complex set of changes on their own, however. They will require significant political and moral pressure to hold them accountable to the rhetorical commitments they have made to support this level of change. They will also require ongoing conversation and negotiation with Indigenous peoples along the way, lest the process becomes problematically one-sided. Such processes ultimately require sustained political will, commitment and engagement over the long term, to reach the end result of radical systemic change and Indigenous state relationships grounded in mutual respect, co-existence and reciprocity. This type of fundamental change requires creative thinking, careful diplomacy, tenacity, and above all, optimistic vision, on the part of Indigenous peoples. The pessimistic approaches of the resurgence school are ultimately of little use in these efforts, other than as a cautionary tale against state power, of which the organisational players are already keenly aware. Further, by dismissing and discouraging all efforts at engagement with states, and especially with the blanket accusations that all who engage in such efforts are ‘co-opted’ and not ‘authentically’ Indigenous, the resurgence school actually creates unnecessary negative feelings and divisions amongst Indigenous movements who should be pooling limited resources and working together towards better futures.

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#### Turns alt solvency

Borrows and Tully 18 – John Borrows is the Canada Research Chair in Indigenous Law at the University of Victoria. He is Anishinaabe/Ojibway and a member of the Chippewa of the Nawash First Nation in Ontario, Canada. James Tully is emeritus distinguished professor of Political Science, Law, Indigenous Governance, and Philosophy at the University of Victoria.

John Borrows and James Tully, “Introduction,” *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings*, Eds. Michael Asch, John Borrows, and James Tully, University of Toronto Press 2018, Epub (email [arg5180@gmail.com](mailto:arg5180@gmail.com) for relevant text).

From a resurgence-reconciliation perspective, a major cause of recent divisions arose through the adoption of a dialectic drawn from another colonial context. The binary of Third World decolonization and master-slave dialectics of the 1950s and 1960s was pulled into some Indigenous studies circles in ways that reject reconciliation in broad terms. While great value was derived from much of this decolonization literature, in our view, some of the claims made in its name were over-broad and thus were applied in inappropriate ways. Dichotomies and binaries were advanced in a manner that did not always distinguish between contemporary North America, and those of colonial Africa, Asia, and Latin America in the 1960s. Differences in temporal, spatial, and socioeconomic circumstances were flattened and universalized. Ideas were essentialized, and deficiencies in Third World decolonization were often overlooked. Thus, positions rejecting all forms of reconciliation entered the field. This flowed from a binary framing that insisted the decolonizing resurgence of the colonized had to take place in separation from the colonizer. Some followers of this field argued that no good relationship or dialogue with the colonizer was possible, because such encounters were simply thinly disguised struggles over power between hegemons and subalterns. Those who thought otherwise were dismissed as being misguided, even colonized, by “the system.” This criticism spread to critiquing the majority of Indigenous people as being co-opted. Some held that even the participation in workshops of Indigenous and settler participants, such as ours, was to be colonized.4 Entanglement was rejected, and interdependence was discarded by those who took this position. The colonizer/colonized binary grew in different places and was cloaked in many different guises. It was used to justify the “rejection and separatist resurgence” strategy. This generated divisions among Indigenous people (between those accused of being colonized and those who claim to see through the co-optation), among settlers (between those who accept and reject separationist resurgence), and between Indigenous people and settlers, at almost every site of potentially coordinate action in which it is invoked.

#### Their logic is Exxon’s dream – that’s because only the government can stop warming

Monbiot 8 – Political & environmental activist, recipient of the UN Global 500 Award for outstanding environmental achievement, author of several award-winning books on environmental crises and corporate capture in politics, reporter for The Guardian Neoliberalism.

George Monbiot, August 22 2008, “Climate change is not anarchy's football,” The Guardian, https://www.theguardian.com/commentisfree/2008/aug/22/climatechange.kingsnorthclimatecamp

But in seeking to extrapolate from this experience to a wider social plan, she makes two grave errors. The first is to confuse ends and means. She claims to want to stop global warming, but she makes that task 100 times harder by rejecting all state and corporate solutions. It seems to me that what she really wants to do is to create an anarchist utopia, and to use climate change as an excuse to engineer it.

Stopping runaway climate change must take precedence over every other aim. Everyone in this movement knows that there is very little time: the window of opportunity in which we can prevent two degrees of warming is closing fast. We have to use all the resources we can lay hands on, and these must include both governments and corporations. Or perhaps she intends to build the installations required to turn the energy economy around – wind farms, wave machines, solar thermal plants in the Sahara, new grid connections and public transport systems – herself?

Her article is a terrifying example of the ability some people have to put politics first and facts second when confronting the greatest challenge humanity now faces. The facts are as follows. Runaway climate change is bearing down on us fast. We require a massive political and economic response to prevent it. Governments and corporations, whether we like it or not, currently control both money and power. Unless we manage to mobilise them, we stand a snowball's chance in climate hell of stopping the collapse of the biosphere. Jasiewicz would ignore all these inconvenient truths because they conflict with her politics.

"Changing our sources of energy without changing our sources of economic and political power", she asserts, "will not make a difference. Neither coal nor nuclear are the 'solution', we need a revolution." So before we are allowed to begin cutting greenhouse gas emissions, we must first overthrow all governments and corporations and replace them with autonomous communities of happy campers. All this must take place within a couple of months, as there is so little time in which we could prevent two degrees of warming. This is magical thinking of the most desperate kind. If I were an executive of E.ON or Exxon, I would be delighted by this political posturing, as it provides a marvellous distraction from our real aims.

#### They also can’t just assert all natives are practicing sustainable practices that’s incredibly homogenizing – many extract large revenues from oil which is why only large governmental regs can solve.

Estus 20 – Joaqlin Estus, Tlingit, is a national correspondent for Indian Country Today. Based in Anchorage, Alaska, she is a longtime journalist.

Joaqlin Estus, April 22 2020, “Tribes' billion dollar oil industry ... and now?,” Indian Country Today, https://indiancountrytoday.com/news/tribes-billion-dollar-oil-industry-and-now

The future price for a barrel of crude oil dropped below zero on Monday. A new record. A minus sign for a future contract. And a day later the price was not much better.  A barrel of crude was trading as low as $6.50 a barrel Tuesday, more than 80 percent lower than the start of the year.

For the tribes and Alaska Native corporations that produce oil or support the oil industry the collapse of the industry means less money across the board.

A year ago the Interior Department was hailing tribal production as a billion dollar business.

Assistant Secretary for Indian Affairs Tara Sweeney, Inupiaq, representing the Trump administration, told the U.S. Senate Committee on Indian Affairs that oil and gas production from Indian Country had almost doubled in one year.

The ten or so tribes with significant oil reserves include the Mandan, Hidatsa, and Arikara tribes in North Dakota, Southern Ute tribe in Colorado, Wind River Eastern Shoshone and Northern Arapaho tribes in Wyoming, Jicarilla Apache tribe in New Mexico, Navajo Nation in the Southwest, and the Osage Nation in Oklahoma. It’s hard to see how they can make a billion dollars in 2020 if prices stay so low.

Several for-profit Alaska Native corporations own subsurface mineral rights and provide oil support services. The dividends they issue to shareholders are likely to be affected by the record low oil prices too.

As a state and federal official, and as a journalist, Larry Persily has long tracked oil development world-wide. He’s Atwood Chair of Journalism at the University of Alaska Anchorage and an oil-and-gas columnist for the Alaska Journal of Commerce.

Persily said this week's drop in oil prices is not a surprise.

“The world has been over producing oil for months now. This is not new. What's new now is how much more we’re producing than the world needs.” He said a few months ago the gap between need and supply was small. “It was making people nervous but not nervous enough to kill prices.”

“This pandemic has made it worse, five times worse" said Chairman Mark Fox of the Mandan, Hidatsa, and Arikara Nation, also known as the Three Affiliated Tribes, in North Dakota, "because now all of a sudden, there's nowhere to put the oil.” Trucks, cars, and airplanes are parked, he added.

And if the companies can’t sell it or store it, Fox said, “then what's going to happen is you're going to take losses in your company because of what it costs to break even.”

He said the price will have to rise significantly before producers can come back on line. “I know a few companies that think they can keep their head above water in the upper thirties, but you know, most of them need to be at 40 [dollars per barrel] or more and we're in the same boat as well too.”

Fox said this price drop has "an immediate effect on all tribes involved in energy" production because so many developers will have to curtail their losses and close wells.

Fox said 90 percent of his tribes’ revenue is from oil.