

**Letting the Right One In: The Formulation & Articulation of a
Rights-based Discourse for the International Indigenous Movement**

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Abstract

At the international level, indigenous activism has increasingly taken the form of advocating for ‘indigenous rights.’ These rights-based claims are articulated through a human rights framework, exemplified by the UN Declaration on the Rights of Indigenous Peoples, which was passed by the UN General Assembly in September 2007. Since this time, the Declaration has become the focal point of indigenous activism at the international – and domestic – levels. Proponents of the DRIP have claimed that it moves international law into a “post-Eurocentric” position, and that for the first time, the rights of indigenous peoples have been recognized by the international community.

This thesis interrogates the rights-based discourse employed in international indigenous activism. Using postcolonial and poststructuralist theory, it puts forward a hypothesis of double-movement governance affecting indigenous peoples throughout the world. In this thesis, the double-movement is made up of relations between biopolitical management of indigenous lives, and neoliberal governmentality, which come together to establish the power relations within our present-day colonial system. This double-movement governance is then connected to Glen Sean Coulthard’s critique of a politics of recognition framework, on which human rights are based. Together, this theory forms my hypothesis that instead of providing indigenous peoples with emancipatory pathways out of the colonial present, indigenous rights discourses further entrench colonial norms and hierarchies within indigenous communities, and between States and indigenous peoples.

Having established my hypothesis, I then test it with empirical data from the Declaration, indigenous fora at the UN, and domestic laws, agreements and policies. Taking the evidence into account, I argue that despite meaningful steps being taken to establish collective rights for indigenous peoples, a rights-based discourse does indeed continue to entrench colonial norms and hierarchies within indigenous communities and between States and indigenous peoples. This is in part because of issues of translation that occur when indigenous claims are articulated through a human rights framework, but also because a system based upon a politics of recognition – such as a human rights framework – is unable to move indigenous peoples out of the present-day colonial relations of power in which they live. Ultimately, such a system is only able to offer indigenous peoples ‘white liberty and white justice.’

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Introduction

The past 30-40 years has seen an important shift in international human rights discussions. Not only have these discussions have become increasingly mainstreamed, as can be seen in the proliferation of documents and texts from the United Nations (UN) and other sources such as States¹ and other, more regional institutions. Alongside this we have also seen a rise in the visibility and presence of indigenous² claims to decolonization, primarily in the form of claims to indigenous rights, which have been built within and alongside a human rights framework.³

These claims have come to be increasingly formalized into one, relatively coherent movement, which has been given various titles, including the “Indian rights movement” (Brysk 2000: 55), and the “International Movement of Indigenous Peoples” (Niezen, 2003), among other names. For my purposes here, I will refer to the movement throughout this thesis as the ‘indigenous rights movement.’ This movement works in many forms and forums throughout the world, both internationally and domestically. At the core of the movement is an understanding that indigenous peoples from around the world share a common perspective and positionality. Within this thesis I am using Alcoff’s (1988) understanding of positionality, whereby identity and subjectivity are defined not only by internal experiences, but also in relation to “the external context within which that person is situated,” literally the position of the person (or group) in society (433). Regarding indigenous peoples, I follow Anaya⁴ (1996) in that this common

¹ Throughout this thesis I capitalize ‘State’ when referring to States as territorially-bounded governance units typically understood as the primary unit of analysis for International Relations as a discipline. I also use ‘State’ somewhat interchangeably with ‘Government,’ especially in Chapter 5. This is not necessarily the case in all the texts that I have quoted though. In instances where another author has not capitalized either term, I defer to their own writing and will not change the capitalization of words.

² There is no universal consensus on whether or not to capitalize “indigenous.” Throughout my proposal, and the thesis itself, I will refrain from capitalizing the term for two reasons. The first is that such a usage may work to homogenize indigenous peoples into a catch-all term, which may not entirely be appropriate. The second reason is that it would seem to take something away from the capitalization of indigenous nations, such as the Sioux or Iroquois, which I will capitalize. Others choose to capitalize the term however, and throughout my proposal I will follow their lead when quoting the authors themselves.

³ This claim comes not only directly from authors such as Pulitano (2012a), Anaya (1996; 2012), and others, but also from Indigenous and UN representatives themselves. Indeed, institutions such as the Special Rapporteur on the rights of indigenous peoples (SR Indigenous) argue that their role is to investigate the human rights violations of indigenous peoples (SR Indigenous 2014: 4)

⁴ James Anaya has been an integral part of the indigenous rights movement for many years. He has participated in the movement both as a scholar – the James J. Lenoir Professor of Human Rights Law and Policy at the University of Arizona’s College of Law – and as an institutional member of the UN – the Special Rapporteur on the rights of indigenous peoples. Throughout this thesis I will distinguish between these roles: when quoting Anaya as a scholar I

perspective and position is derived from a common set of historical and ongoing experiences, including colonization and dispossession (Anaya 1996: 39). Further, it also comes from what is called a common “panindigenous worldview” (Brysk 2000: 55), or ‘cosmology’⁵ (Beier, 2005).

These forces have come together to accomplish astonishing results. As Anaya tells us, indigenous peoples are now becoming a key part of the human rights conversations (Anaya 1996: 45), and have created “a certain new common ground about minimum standards that should govern behavior towards indigenous peoples” (*Ibid*, 50). This can be seen most concretely at the UN, where mechanisms such as the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the Permanent Forum on Indigenous Issues (PFII) presently exist, and provide a forum for indigenous peoples to come together not only to discuss issues affecting them, but to petition States to respond to these issues as well.

Indigenous peoples have also pushed the boundaries of international law past a concerted focus only on the individual, towards a conception of law that includes collectivities and communities as bearers of rights as well (Anaya, 1996). To this end, UN organizations such as the International Labour Organization (ILO) have been instrumental. In addition to the mechanisms identified above we can add the UN Declaration on the Rights of Indigenous Peoples⁶ (Declaration). Indeed, since the September 2007 passage of the Declaration, it has been focused on as the most important component of this movement, and as “a milestone in the re-empowerment of the world’s aboriginal groups” (Anaya & Wiessner in Pulitano 2012a: 2). Because of this focus on the Declaration by indigenous rights advocates and scholars, I take it as my object of analysis here.

will refer to him by name; when quoting Anaya in his role as Special Rapporteur I will refer him in his institutional capacity.

⁵ Beier articulates a vision of cosmology as a “theory of the universe” that specifies “what is and what is not, what can be and what cannot” (Beier 2005: 45). Perhaps more lyrically, Beier states that “Western cosmological ascendancy begets particular limits on ontological and epistemological possibilities and these limits pronounce upon the boundary between the ridiculous and the sublime” (*Ibid*). By way of comparison, Western cosmology is centred around “linear expresses of both process and being” (*Ibid*, 44), leading to a reliance on dichotomies, whereas “the ascendancy of the circle over linear expressions of existence in traditional Lakota cosmology does not lend well to the construction of dichotomies” (*Ibid*).

⁶ There is no uniform abbreviation for the Declaration. Throughout this thesis I will refer to it as the “Declaration.” Others refer to it as the “DRIP.” When quoting an author, I will not change the acronym or the abbreviation, and will include the term as written by them.

More specifically, I am interested in how the indigenous rights movement engages the Declaration – and a rights discourse more generally – in order to move forward a decolonial agenda.⁷ Presently, indigenous peoples remain entrapped within colonial structures both normative and concrete. Concretely, we continue to see the imposition of Westernized governance structures upon indigenous communities, including Band Councils in Canada, which works to further entrench non-indigenous modes of governance (Morgensen 2012: 806). A less concrete example is the required use of majority, instead of indigenous, languages within indigenous communities throughout the world, which is evidenced by the rapid death of indigenous languages, and the loss of indigenous culture with them (PFII, 2008). This continued colonization is an ongoing reality for indigenous peoples, despite statements to the contrary by national leaders who even deny a history of imperialism (Dearing 2009: web). Against this reality, indigenous peoples are mobilizing in many different ways in order to disassemble those colonial structures that have organized them into subservient roles within State hierarchies. While a complete analysis of all the ways in which this protest manifests itself is not possible here, I am interested in examining the effectiveness of the Declaration and the discourse on moving the decolonial agenda forward. In doing so, as I've just noted, my project focuses primarily upon the indigenous rights movement in the international realm.

Research Question & Core Argument

In order to speak to the concept of indigenous rights, my thesis will focus on the interplay between indigenous and human rights, and how States have used the tools of neoliberal

⁷ Decoloniality is a term that comes from a Latin American movement that centres on "delinking from [...] the colonial matrix of power" (Mignolo 2011: XXVII), which is often understood as emanating from what Mignolo (2009) calls "eurocentered modernity" (162; see also Mignolo 2011: 2). Despite having been begun in Latin America, decoloniality touches various peoples and regions of the world through the "colonial wound" (Mignolo 2009: 161). Decoloniality differs from decolonization insofar as they refer to different aspects of colonialism, similar to Coulthard's (2014) distinction between the subjective (decoloniality in this case) and objective (decolonization) structures of colonialism (33-5). In this way it would be possible to decolonize without undergoing a process of decoloniality, usually by throwing off the colonizers themselves but taking on the subjective structures of their power. In this instance, decoloniality is centred on a "definitive rejection of 'being told' from the epistemic privileges of the *zero point* what 'we' are, what our ranking is in relation to the ideal of *humanitas* and what we have to do to be recognized as " (Mignolo 2009: 161). This distinction foreshadows my own discussion of subjective vs. objective structures of colonial powers at work in a politics of recognition, and how those seeking decolonization through an indigenous rights framework may not be successful in realizing a decolonial agenda at the same time.

international order⁸ to maintain their own position vis à vis indigenous peoples. In doing this I engage in a critique of the Declaration to then illustrate how States continue to govern indigenous peoples and subjectivities at the international level through the document. More specifically, I frame my analysis around the question of what effects the Declaration and the discourse have on both indigenous peoples, and on the international system as a whole.

My key argument is that the Declaration – and the discourse itself – acts as a *dispositif*⁹ of neoliberal international order, which is used to maintain indigenous peoples as the colonized subject within present settler hierarchies.¹⁰ I argue that instead of displacing or dismantling colonial norms and hierarchies, the Declaration instead can reinforce them. This is done because the discourse itself doesn't disengage from the double-movement of power¹¹ that serves to maintain indigenous peoples within colonial frameworks. Instead, it is built within present power structures, and becomes a part of the Hegemonologue of human rights – Beier's (2005) concept describing a hegemonic monologue – accepted at the international level already.

Pre-existing acceptance of the human rights framework is important for the indigenous rights movement. It allows for a much more broad acceptance of indigenous claims, as those claims are

⁸ Within my thesis I understand neoliberal international order to be organized around States, which work to facilitate the dispossession of indigenous territories. This is consistent with the understanding of settler colonialism discussed within Coulthard (2007 & 2014) and Alfred (2005), as well as that of neoliberalism according to Mirowski (2013) and Peck (2010). Here it is a strong State with the context of 'mature neoliberalism' (Mirowski 2013: 40) that works to build a market-oriented society in part by managing indigenous lives and dispossessing indigenous peoples of their lands. The central place of the State mirrors the organization of relations at the UN, where it is only States that may be Members. While NGOs and other non-State actors may have a voice, they do not have decision-making power, as it is only States that are allowed to vote on resolutions.

⁹ *Dispositif* comes from Foucault, and most directly translates to 'apparatus,' or otherwise a mechanism. A direct translation is not strictly possible however, as a *dispositif* is not a material object, the way apparatus is understood in English. Instead, Foucault describes a *dispositif* as a "phenomenon" (Foucault 2007: 6), among other things. In my present case, the Declaration is used to in order to reproduce colonialism, and its norms and structures.

¹⁰ These hierarchies are fundamentally based in dispossession, according to Coulthard (2014): "A settler-colonial relationship is one characterized by a particular form of domination; that is, it is a relationship where power—in this case, interrelated discursive and nondiscursive facets of economic, gendered, racial, and state power—has been structured into a relatively secure or sedimented set of hierarchical social relations that continue to facilitate the dispossession of Indigenous peoples of their lands and self-determining authority" (6-7). Fundamentally then, indigenous peoples dominated by non-indigenous (settler) society and State-led corporate interests. Because of this, corporate expansion over indigenous lands continues.

¹¹ I describe this double-movement of power in Chapter 2. Briefly, I argue that a settler biopolitics and neoliberal governmentality work together to govern indigenous peoples, maintaining them within the colonial hierarchies referred to above. I understand both forms of power to be moving individually and in tandem, hence the double-movement aspect of double-movement governance. These are not the only forms of power in existence, but are those that I am concerned with here.

rooted in a logic that is fundamental – and therefore legible – to the international system itself. This aspect is important to my argument as a whole, because it makes clear that indigenous peoples also are agents within this system, and that it is not only the system that ‘acts’ upon indigenous peoples, but that indigenous peoples can also act upon the system. Indeed, the choice of a rights-based discourse offers indigenous representatives the opportunity to shame States in a manner they will understand. “[M]oral persuasion” has been at the centre of the movement’s work since the beginning of the movement (Lightfoot 2009: 74), and fits well with a human rights framework. This perhaps highlights one of the reasons as to why indigenous leaders have chosen this rights-based discourse as their emancipatory pathway: it was determined to be the best way to win recognition of their claims. Indeed, if articulated outside of a human rights framework, it is difficult to understand how indigenous peoples easily win acceptance of their claims, especially if they are articulated in a form seemingly foreign to the international system.

Further, my thesis shows how indigenous peoples have made concrete changes to the way in which human rights are interpreted, another example of indigenous agency. Because of this, my argument lies not in making the case that indigenous peoples have simply accepted the role of colonized subjects. My argument is instead about the requirement of gaining recognition that a human rights framework is established upon. In the following chapters I argue that this need to gain recognition means that indigenous claims will always be dependent upon States to accept or reject them, continually reproducing – at least to some extent – the very relations of power that indigenous peoples seek to disengage from.

Looking to theoretical issues, my thesis is based in the nexus between post-colonialism and post-structuralism, also incorporating political economic theory in reference to neoliberalism. Through a post-colonial lens I understand the Declaration as maintaining “Indigenous subjects of empire” (Coulthard 2007: 439). I show this theoretically by engaging with post-structuralist literature on States’ biopolitical management of indigenous peoples and subjectivities, in combination with Coulthard’s (2007 & 2014) critiques of contemporary politics of recognition frameworks. Ultimately, according to Coulthard, such frameworks offer indigenous peoples only “white liberty and white justice” (Coulthard 2014: 39), instead of the emancipatory pathways it claims to offer (*Ibid*, 43). In this thesis I transfer this analysis to the international level, arguing

the Declaration does not – and perhaps cannot – provide a clear and problem-free path for indigenous peoples to fully escape from the present settler colonial hierarchies. In this sense, I understand colonial hierarchies to mean situations in which indigenous peoples are not able to undertake their own, autonomous governance and decision-making processes. As Coulthard makes clear in his Conclusion, it is this ability that is at the core of indigenous self-determination, or what he calls indigenous ‘resurgence’ (*Ibid*, 154-6). This means not only that indigenous peoples have the ability to make their own decisions, but that they also have the ability to decide upon how those decisions are made – including the governance structures through which decision-making processes take place.

Importantly, I also engage with neoliberalism as the partner of biopolitical management in the double-movement governance I describe in Chapter 2. In the thesis I engage with both the economic and social aspects of neoliberalism as (somewhat) separate streams of thought. My social analysis incorporates neoliberal subject formation in relation to the technology of biopolitics; it is in my analysis of land claims resolutions that I engage concretely with the economic aspects, touching on neoliberalism only insofar as neoliberal capitalism is the prominent form of capitalism in the present-day Western world.

Methodology

My analysis of the effects of the Declaration is grounded in an empirical research design, where I explain the empirical data I find in relation to theory. Thus, my conclusions rely upon documentary data, coming primarily from the UN itself, as well as other scholarly work on this issue. Regarding the documents from the UN, the bulk of the reports and statements I found came from the Indigenous Peoples’ Center for Documentation, Research and Information (doCip). doCip was “created in 1978 at the request of the Indigenous delegations participating in the first international conference of non-governmental organizations on Indigenous issues held at the United Nations” (doCip, web). It collects many of the documents brought to the various organs of the UN that deal with indigenous issues. Through doCip I was able to find many of the statements, studies and reports delivered at the Working Group on Indigenous Populations (WGIP), EMRIP, and PFII, as well as further historical documents on the indigenous rights movement itself and past conferences on indigenous issues. Other documents were collected

from the websites of specific mechanisms, and well as non-governmental organizations (NGO) websites such as IWGIA's.

Despite the availability of documents from decades past, I found that many of the statements made at the early sessions of the WGIP were no longer available. Instead, I found that it was primarily the reports of these early sessions that were available. In the reports they often did not identify the specific speakers, but did identify whether they were Government representatives, NGO representatives, or indigenous representatives. As the mechanism matured they provided more detail regarding who was speaking, and what specifically they said. Because of this I have been able to identify trends throughout the sessions, which I have analyzed in the chapters that follow.

From the documents available to me, I have chosen to concentrate primarily upon the statements of indigenous peoples and governments. This has meant that many of the NGOs that have spoken at these forums have not been included in my final analysis.¹² A final concern with regard to the statements I am selecting has to do with language. I speak both French and English but not Spanish, which is an important language within international indigenous activism. At first I was concerned that I would not be able to collect and analyze a representative sample of indigenous statements; however, after collecting the statements made in both French and English, I found that I had multiple statements from every continent – including Latin and South America – and not statements only from North America and Oceania as I had imagined. Because of this I was able to collect enough statements to have a representative sample.

The language issue also was involved in my selection of a case to use to illustrate the potential pitfalls of rights claims resolutions – see below for a description of this case in Chapter 5. My linguistic limitations to English and French precluded me from examining agreements in any great detail unless they are made official in either French or English. This means that I was unable to engage in depth with agreements throughout Latin America or parts of Asia, where

¹² Oftentimes UN mechanisms focused on indigenous issues will differentiate between indigenous NGOs and non-indigenous NGOs. Within my project I have chosen to include the statements of indigenous NGOs, and not include those of non-indigenous NGOs.

many of the agreements/arrangements were entered into in Spanish or Portuguese (Latin and South America), or any of the various languages spoken in Asia. Because of this I elected not to use them as my primary example here. Instead I will include references to these agreements in this chapter, however it will only be with use of secondary material. These examples from Latin America and Asia serve primarily as illustrations of neoliberalism and colonialism in action, accompanied by indigenous resistance and exertion of agency. Ultimately I selected the Nunavut Land Claims Agreement as my focal point for the above-mentioned practical reasons, and also because it represents the largest land claim agreement in the world.

Regarding other, non-primary source documents, I use texts – both academic and non-academic, written by indigenous and non-indigenous peoples – that speak to the epistemologies and ontologies held by indigenous peoples. My engagement with these texts allow me to illustrate the implications of the Declaration as a *dispositif* because, due to the constraints of a Master's thesis, I was unable to undertake field research to speak directly with community members and indigenous representatives to the mechanisms themselves. With these limitations in mind, it is still possible to gain a relatively representative picture of indigenous spiritualities from anthropological work regarding specific peoples, and the writings of indigenous peoples themselves (for examples see Alfred, 2005; Beier, 2005 & 2009; Watson, 2009; Watson & Venne, 2012). In this respect, I chose to engage most directly with more critical voices, instead of those more often heard within discussions surround the Declaration. Specifically, the authors I chose are particularly conscious in their challenge to the settler status quo, and their perspectives are often not represented in primarily optimistic discussions around the emancipatory potential, and effect, of the Declaration. In doing so however, I do not pretend to give voice to 'unspoken' perspectives; rather, I seek to engage with consciously critical literature in order to highlight the less-discussed aspects of the Declaration and its impacts.

Finally, regarding the method of my analysis itself, I have attempted to contextualize my reading of the texts so that my analysis does not become desituated. This means that in reading the texts I am not searching out keywords, but looking to how the concepts – self-determination, sovereignty, collectivity, etc. – are mobilized, and within what kinds of contexts they are

situated.¹³ Doing so includes reading the whole document and including not only the fact of a concept's usage, as might be done in a more quantitative discourse analysis, but attempting to include the meaning surrounding the concept as well. More specifically, in order to discuss the expectations of indigenous peoples prior to and during the drafting of the Declaration, I identified particular passages and statements that established perspectives held by a number of the participants. I was helped in this in some ways insofar as the reports – in particular those of the WGIP – already were written in such a way as to represent the general tone of discussion, or to represent the discussions that were taking place between participants with differing perspectives. Further, in evaluating the effects and effectiveness of the Declaration I searched out discussions of practice of indigenous rights within the texts, especially as it concerned the 'implementation' of indigenous rights flowing from the Declaration. In searching for these particular things within the texts, I looked not for a sort of scientific 'generalizability,' but rather for particular points that were representative of the discussions unfolding. For me, this provides a sort of 'thick' analysis on which I base this thesis.

Chapter Breakdown

My first chapter provides context on the indigenous rights movement, and the Declaration itself. First I provide a brief history of the international indigenous movement, essentially highlighting the movement as multiple perspectives and stream brought together. I also argue that we should understand the Declaration itself not as a monolith, but as an assemblage of perspectives – both complementary and competing. This situation in some ways can be seen to mirror that of the formation of the movement itself, as it includes a multitude of indigenous peoples and groups brought together by non-indigenous 'experts' and other actors. Finally, I highlight the most important parts of the Declaration for my analysis – including the rights to self-determination and territorial rights – before building the case for the Declaration as an object of inquiry.

The second chapter presents my hypothesis and the theoretical framework upon which my thesis is based. I speak to how I understand subjectivity to be formed relationally, and then

¹³ In this way, I understand my analysis to take on a 'thick' character of the sort Geertz (1973) describes.

describe both the biopolitical management of indigenous peoples and the way in which neoliberalism works to form subjects of a particular mold. I then illustrate how these two forms of governance work together to establish the colonial situations of contemporary existence for indigenous peoples. Finally, having established that, I engage with post-colonial and post-structuralist literature to understand how a human rights framework built upon the necessary recognition of rights claims cannot serve as an emancipatory pathway for indigenous peoples.

The third chapter highlights some of the ways in which indigenous representatives have made concrete change to the human rights framework at the international level. Similar to my argument above, I argue that indigenous peoples should not be understood solely as passively accepting a colonial framework imposed upon them by States. Instead, indigenous representatives at the UN have managed to infuse a Westernized human rights framework with indigenous elements, and to do so while maintaining indigenous governance and decision-making traditions. In order to do this I first explore some of the existing literature on the subject in order to understand what positive impacts scholars believe the Declaration has had. Next, I speak to the way issues of personhood and subjectivity were dealt with in rights-based discourse prior to the Declaration's passage. Finally, I explore the situation since the passing of the Declaration, ultimately finding that important strides have been taken in the realms of having indigenous peoples claims recognized at the international level.

After having explored some of the gains of the indigenous rights movement, I turn to a more direct critique of the use of a rights-based discourse itself. This begins in the fourth chapter with an analysis of the concept of self-determination, and a critique of a recognition-based model as a way for indigenous peoples to gain access to self-determination. To do so, the chapter follows the same model as the previous one. First I engage with scholarly work in order to examine some of the conceptual confusion behind the Declaration itself, arguing that ultimately the Declaration does not take account of indigenous philosophies, in part because of the homogenizing nature of a rights-based discourse. I then turn to primary source material from prior to the Declaration's passage in order to understand how the concept of self-determination was being discussed at UN mechanisms prior to, and during the drafting of the Declaration. To close the chapter I continue examining primary source material in order to understand how self-determination is dealt with at

UN mechanisms after the Declaration's passage. Ultimately I find that self-government – not self-determination – has come to be considered a 'best practice.' While possibly a step forward from direct rule of a settler government, self-government cannot offer indigenous peoples true decision-making power over their own governance, and continues to reinforce colonial norms and structures.

My final chapter engages directly with the way in which rights claims are resolved. In this case I examine the case of the Nunavut Land Claims Agreement in order to illustrate the ways in which indigenous peoples, while gaining increased authority to self-govern, are still managed through colonial norms and structures. In this case, I examine the way in which the Agreement gives the Inuit lands within their zone of claim to be held in fee simple title, effectively replacing the messiness of Aboriginal title for the cleanness of underlying title for the Government of Canada. The chapter then discusses how the Agreement imposes Western structures upon indigenous peoples with regard to how their lands are to be governed, specifically through the requirement that lands be held by corporations only, and that land use policies and decisions be made through corporatized Review Boards. Finally, the chapter shows that through the Agreement the Government of Canada retains explicit veto rights over Inuit governance, even over Inuit Owned Lands. Taken together, this points to how even in resolving indigenous claims, States are still able to maintain their positions within colonial hierarchies. This is further reinforced as I connect other examples of land claims resolutions with the same features found in the Nunavut claim.

Conclusion

To close this Introduction there is one point still necessary to discuss: the diversity of indigenous peoples, as well as their forms of protest. Indigenous peoples and their experiences are incredibly varied throughout the world. While the indigenous rights movement focuses on a collective experience of colonialism and a desire to be rid of it (Engle 2010: 51; Pulitano 2012a: 6; Niezen 2003: 2), the ways in which colonialism is implemented and felt on an everyday level can be quite different throughout the world. I try to speak to differences throughout the thesis, while at the same time critiquing the colonial nature of relations between indigenous peoples and States in a more general way. I feel that not doing so could work to homogenize indigenous

peoples into a singular Indigenous Subject instead of acknowledging the multiple indigenous subjects that actually exist. Such a move would serve disempower a multitude of indigenous subjects in a similar fashion to the phenomenon critiqued by Spivak (1988) and her treatment of the subaltern. I attempt to avoid this in my thesis.

As noted, the indigenous rights movement attempts to speak with one voice for all indigenous peoples. This can bring up questions and issues of representation. This thesis does not focus on issues of representation within the movement itself, though that would appear to be a subject ripe for academic analysis. Also, the usage of a collective voice is not antithetical to recognizing diversity, especially when rooted in a collective approach to decision-making and international activism in general, including by “taking strong consensus positions” on issues (Lightfoot 2009: 74). I’m not sure there is one ‘right answer’ with regard to the way in which the indigenous rights movement conceives of itself, and this is certainly not my purpose here. Instead, my analysis attempts to engage with the movement, the Declaration, and rights discourse on their own terms. In doing so I speak of ‘indigenous representatives’ when describing those participating in UN mechanisms, instead of a more general ‘indigenous peoples.’ This usage seems more appropriate to me given my own positionality, from where this thesis of course flows. Also, while I briefly discuss the formation of the indigenous rights movement in Chapter 1, this is not a central concern of the thesis. Instead, I focus more upon the discourse of the movement, and the potential effectiveness of the framework from within which it operates.

Chapter 1

As is clear from my Introduction, the Declaration – and its institutional role – is a major part of my thesis. Because of this, it is important that I offer my own understanding of the Declaration, what it represents, and its specific role(s) within the movement and international civil society. A complete history of the movement itself, and an account of the nearly 40 year history of the Declaration from its inception to its place within today's movement by Indigenous peoples would require much more space than is available here.¹⁴ Instead, this first chapter is intended to offer an abridged history highlighting the points most cogent to my analysis.

Throughout this chapter I will be continuing to engage in the writing of a post-colonial and post-structuralist account the Declaration itself as discussed in the Introduction. In doing so I will be seeking to understand the text not as a monolith, but as *assemblage* in the genealogical tradition of Foucault, “a form of history which can account for the constitution of knowledges, discourses, domains of objects etc.” (Foucault 1977: 117).¹⁵ This means looking at the multiplicity of ways in which the Declaration was constituted, and the multiplicity of perspectives that continue to inform it. It is in this way that I am using the term ‘assemblages:’ I argue that the movement and the Declaration should be understood as collections of logics and powers that continue to work both with and against each other. With this understanding, the Declaration should be read as a document that was written by various people(s) according to multiple logics, instead of a cohesive document emanating from a single source or logic. This informs my ultimate conclusions about the Declaration as a whole by illustrating how, despite clearly involving indigenous logics and offering a change in status for indigenous peoples internationally, the Declaration should be viewed as furthering the entrenchment of a neoliberal, colonial system. Further, I am seeking to understand the indigenous rights movement itself in much the same way, though it does not make up the main unit of analysis for this thesis.

In order to build my case for the movement and Declaration as assemblages, I begin with a description of the indigenous rights movement. In this I include the movement's roots and the

¹⁴ For much more expansive histories of the Declaration, please see Dahl (2009), Lightfoot (2009), and other work by the International Work Group for Indigenous Affairs (IWGIA).

¹⁵ For further information on this tradition, see Foucault (1977).

work of international actors in its creation and sustenance. Here I also highlight some of the cleavages within the movement, specifically regarding the concept of self-determination. Next, I provide a short description of the drafting of the Declaration, and then discuss some of its key content, and the distinct logics represented in, and working through, the document. Finally, I briefly comment on the position of the Declaration with regards to international indigenous activism in general, and the central role that it plays within the movement specifically.

Origins of the Indigenous Rights Movement

While the history of indigenous activism within international organizations can be traced back to Deskaheh's time at the League of Nations in 1923-4,¹⁶ my thesis will focus instead on the more 'modern' equivalent of this movement. This more formalized iteration of the movement can be considered to have begun with the Barbados Declaration in 1971, where a group of "dissident anthropologists...pledged to promote indigenous self-determination and enter politics to save endangered cultures" (Niezen 2003: 18). Of particular note is how accounts of the formation of the movement always emphasize the role of non-indigenous 'experts' in both the formation of the movement, and its articulation of claim.¹⁷ This will be an important aspect of the history discussed here, and offers a view into some of the distinctions in understandings of concepts within the movement. This will be highlighted here by the concept of self-determination, considered to be the key demand of the indigenous rights movement (Brysk 2000: 59; Engle, 2010; Tauli-Corpuz 2008: 77).

External Actors and the Indigenous Rights Movement

While indigenous activism at the international level – in a 'modern' context at least – can be traced back to Deskaheh and Ratana at the League of Nations, the contemporary indigenous rights movement has come about as a result of action begun in the 1960s and 1970s. Spurring on the formation of the movement were "Principled international actors" (Brysk 2000: 62), who

¹⁶ Deskaheh was a Cayuga Chief who took travelled to Geneva in 1923 on behalf of the Six Nations Confederacy. His visit was intended to raise awareness of the plight of indigenous peoples, and specifically the Six Nations. In addition to this, Deskaheh attempted to have the Six Nations be declared independent, and given a spot alongside States at the League of Nations. For a more detailed account of Deskaheh's work, see Niezen (2003: 31-36). This is by no means the only example of indigenous leaders petitioning the international community in the early 20th century. Ratana, a Maori leader from New Zealand also made a trip in 1925 as well (Tauli-Corpuz 2008: 84).

¹⁷ For examples see Brysk (2000), Dahl (2009), and Niezen (2003).

were pushed to action because of what has been called a “lack of awareness among indigenous groups of the widespread, almost global nature of the crises they faced” (Niezen 2003: 30). To these actors, this lack of awareness meant that indigenous peoples were not organized around their common goals of liberation from the abuses perpetrated against them by the very States that claimed sovereignty over their territories (*Ibid*, 5). Once ‘outsiders’ began working with indigenous groups and communities to organize throughout the 1960s and 1970s, this began to change (*Ibid*, 30). The primary role of these international actors was to lend their expertise as “issue advocates and knowledge processors” (Brysk 2000: 10). Accounts of this work further state that with their help and support indigenous groups and communities increasingly began to make connections amongst themselves, which led to a movement unified around their own indigeneity, and around a common desire for liberation from the abuses of States (Niezen 2003: 10).

Chief among these international actors is the Catholic Church whose actions – at least throughout Latin America – “directly produced major Indian movements...and indirectly fostered dozens more” (Brysk 2000: 63). In fact, the Church even took on the role of speaking for indigenous peoples, as “concerned clergy were the most frequent (and periodically successful) interlocutors for Indian interests” (*Ibid*, 9). This role as interlocutor for indigenous peoples did diminish, but did not completely recede with the involvement of indigenous peoples themselves in the movement. Rather, they continued to play their roles as before (*Ibid*, 10). Individual actors are not the sum total of the Catholicism’s involvement however: the Church structure itself also got involved. To this end, the Church’s actions have been described as including “Continentwide [sic] ecumenical conferences during the 1980’s [that] built the ideological and organizational foundations” for future campaigns, and whose “aid programs, and professional networks” offered international links to activists (*Ibid*, 63).

Another group that played a pivotal role in the founding of the movement – and continues to play an ongoing role today – are Western anthropologists. Indeed, those involved in the movement have made the argument that the Barbados Declaration represents *the* foundational moment of the movement (Brysk 2000: 18; Engle 2010: 56). Importantly, the Declaration was written and signed uniquely by anthropologists (Brysk 2000: 18 & 64; Dahl 2009: 31). Aside

from this central involvement, anthropologists also founded the International Work Group on Indigenous Affairs (IWGIA) because they were appalled at the “serious atrocities being carried out against indigenous peoples in” Latin America (Dahl 2009: 24). IWGIA has remained an integral part of the movement throughout its history, and has primarily worked to document those atrocities over the years (*Ibid*, 26). The purpose of this documentation was to raise awareness of abuses against indigenous peoples within “a politically aware public” (*Ibid*), a task which was completed initially only by non-indigenous scholars with the financial assistance of governments and UN agencies (*Ibid*, 27-29).

With the above examples we have seen the role played by specific groups in the founding and perpetuation of the indigenous rights movement, but there are also more general aspects of international involvement that come from other actors including human rights experts and non-indigenous activists. Specifically, non-indigenous actors often play the role of educators. This was seen in part above with regards to the documentary role that anthropologists played, but also touches on the role that human rights activists played as well (Dahl 2009: 31). One of the more important conditions identified by scholars writing about the movement is that indigenous peoples typically “become educated” prior to any successful movement beginning (Brysk 2000: 67).¹⁸ This education comes not only from educational systems, but also from the work of other activists, including human rights activists and anthropologists who frame their struggles in terms of human rights (Dahl 2009: 31). Here we can see that education in human rights activism should be counted among the ‘tools’ that these “Principled international actors” have provided for indigenous peoples (Brysk 2000: 62).

Yet another aspect of the role that non-indigenous international actors play within the movement has been described as being coordinators (Brysk 2000: 87; Dahl, 2009¹⁹). Here we

¹⁸ While Brysk (2000) discusses this in a Latin American context, the same phenomenon is apparent in a North American context as well. Two telling instances include the James Bay Cree, who were only able to win concessions from the Government of Quebec and the Government of Canada once they were able to have members of their community trained as lawyers who then came back and participated in legal actions against the government (Isacson, 1996). The other key example is found within Nunavut where Inuit activists have recounted the need to “learn a new language” – that of human rights – in order to engage with the Government of Canada on issues of land rights in the Canadian Arctic (Clarida Fry, 2008).

¹⁹ For a more in-depth look at how this role is put into practice, see Dahl (2009: 120-145).

come to understand the role that ‘indigenist’ groups²⁰ play within the movement “as the bridge between the movement and the transnational network” (Brysk 2000: 86). Again, these groups typically have emerged from the Barbados Conference, and have been sustained through a number of other conferences throughout the years since (*Ibid*). To connect the indigenous groups and international civil society indigenist groups are described as “reach[ing] downward to local indigenous groups and outward to form activist alliances and persuade mass publics to support their cause” (*Ibid*, 88). Examples of those who take part in these kinds of activities include journalists (*Ibid*, 92), Peace Corp volunteers (*Ibid*, 92-3), and again, anthropologists (*Ibid*, 93). These diverse individuals and groups are bound together “around principles, ideologies, and roles, building new forms of transnational community, collective consciousness, and Other-identification” (*Ibid*, 88), and ultimately act as the “bearers of information” to the international community (*Ibid*, 91).

What should be understood then, is that the ‘indigenous rights movement’ is less a singular movement begun from the ground up by indigenous actors, and more of a coalescing of diverse perspectives. This diverse group was organized and educated by non-indigenous activists, who then connected fledgling domestic and regional organizations and movements to a broader human rights activist community within international civil society. Such work clearly took the form of working with pre-existing indigenous groups when possible, but it also took on the form of “a more pro-active role” in areas where indigenous organizations didn’t exist, including Africa and Asia (Dahl 2009: 65). Within these regions, “very few people...were even organized on the basis of ethnicity, never mind indigeness” (*Ibid*). Through the work of organizations such as IWGIA, indigenous organizations were formed and began advocating for their rights (*Ibid*). Given the role of non-indigenous international actors highlighted here, and especially the role that they played in bringing the concept of indigeneity to communities throughout Africa and elsewhere, it is clear that the movement would not exist in its current form without the intervention of non-indigenous ‘experts.’ This highlights one of the key aspects of this movement that often goes unremarked upon: the discourse of the movement would not have developed in the way it did if it were not for the non-indigenous coordinators of the movement.

²⁰ The term indigenist comes from Brysk (2000: 86), who uses this term to describe groups that are not indigenous, but who advocate for indigenous rights.

Understood this way, the movement and its discourse also represent a sort of assemblage whereby indigenous peoples – with their own traditions and logics – come together with the experience and ‘tools’ of non-indigenous human rights groups and practitioners. These actors have worked together in order to form the phenomenon that we see today, with each playing roles integral to their combined success.

In some ways, the discourse of indigenous rights is unremarkable, and certainly is often unremarked-upon in the literature on the movement. Reading through texts about the founding of the movement illustrates how this discourse might be understood to have been brought to the movement, rather than it arising organically uniquely from indigenous groups themselves. One of the examples of this can be seen in Jens Dahl’s (2009) work on how IWGIA specifically worked with indigenous organizations that advocated for their human rights (*Ibid*, 114-120), rather than those that espoused Marxist-derived doctrines (*Ibid*, 155-56). Another account of this in action come from Brysk (2000), who speaks to how international civil society went in and selected the groups and narratives that would win support at the international level (*Ibid*, 88). In doing so, they would have picked a human rights framework, since that fit more easily within established narrative. Of course this would not happen without the support of the indigenous actors engaged in the movement itself. Here indigenous agency can be understood to be exercised in terms of a strategic usage of particular narratives and stories.

I will delve into a problematization of this issue, in respect to self-determination, in greater depth in Chapter Four of this thesis, but here it is important to note that this is neither inherently good, nor inherently bad. Indeed, by operationalizing this narrative, indigenous representatives gained easier access to networks through which they have been able to advocate for their protection. However, this can also come at a cost, and given the colonial legacies that continue to impact indigenous peoples, it is necessary to be even more attentive to the actions of non-indigenous Westerners when they are engaged in organizing indigenous communities. A concern of mine here is that the formation of the indigenous rights movement has come at the cost of ‘smoothing over’ of differences, and of eliminating counter-narratives to the indigenous rights discourse. While there can be no definitive discussion of whether the rights-based discourse constitutes an organically indigenous articulation of claim(s), it is worth noting that this is not the

only way for claims to be articulated. Indeed, in my conclusion I will seek to offer alternative approaches for further study.

Taken together then, we can see that an accurate reading of the indigenous rights movement reflects its inclusion of a multiplicity of logics, represented by groups that each retain their own histories and perspectives. These groups are ultimately brought together by international actors to form what is taken as a coherent whole. Interestingly, this collection of movements comes together to articulate a common discourse at the international level. This discourse is centred around the concept of rights, and particularly the right to self-determination (Niezen 2003: 17-18; Engle, 2010 & 2011).

One way to see some of the distinctions between the groups is to interrogate that core concept of self-determination. This is the purpose of the next section: to unpack the distinctions in indigenous understandings of the right to self-determination.²¹ In doing so we can further understand how the movement should not be understood as a monolith, but rather as a collection of groups that, while arguing for discursively the same right, are coming at the question with different perspectives and perhaps, goals.

Self-Determination in the 'Fourth World'

The first understanding of self-determination to be discussed comes from the 'Fourth World,' which is an "idea [that] was developed - and continues to be used - mostly by indigenous groups and their advocates in the global North (including Australia and New Zealand)" (Engle 2010: 50). The name itself attempts to create a clear break with the Third World, and indigenous peoples within that world, primarily over the issue of European colonization (*Ibid*, 47-50). For indigenous peoples in the global North, it is clear that they continue to live within the reality of settled colonialism, and that they have not yet been able to begin the breaking up of this system (*Ibid*, 49). Because of this, among those who aligned themselves with the Fourth World

²¹ As will be seen below, this inevitably means oversimplification of the varieties of self-determination that were articulated by indigenous peoples and their organizations. Because of this, my characterization should not be understood to be a genealogical account. Though I have yet to come across such an effective history, Engle's (2010) book *The Elusive Promise of Indigenous Development* does a good job of sketching out some of the distinctions between indigenous activists in a more fulsome way than can be done here.

movement, the concept of self-determination took on a strong, external dimension (*Ibid*, 52). The external aspect of this claim to self-determination derives from indigenous communities maintaining their right to independent Statehood outside of the bounds of colonial States that continue to rule over them today (*Ibid*, 50).

This conception of self-determination focused on “tribal sovereignty” (Engle 2010: 53-4), which is understood in contrast to the “domestic dependent nations” language used specifically in U.S. courts (Carroll 2012: 145), but which also has application within other Anglosphere contexts,²² Nordic countries in relation to their Sámi peoples, and to indigenous peoples within Guyana to a degree,²³ among others. Instead of being dependent on the settler States established by their colonial masters, Fourth World advocates engage with States on indigenous terms founded on indigenous cosmovisions (Engle 2010: 51), and from a position of tribal governance (Carroll 2012: 145). This meant “Land was...central to indigenous claims for self-determination in the 1970s” (Engle 2010: 55), because claims to self-determination were rooted in indigenous peoples’ relationship to land and other spirits (*Ibid*, 51). Importantly, this perspective isn’t predicated on a cultural homogeneity of indigenous peoples, as seen below. Because indigenous cultures can remain quite distinct (*Ibid*), the claim to similarity rests in how indigenous peoples relate to their lands, and the other spirits on their lands.

The strong, external conception of self-determination combined with this focus on land to create a claim that can be clearly distinguished from present-day accounts of self-determination that will be seen later in the thesis. The key difference has to do with the fact that this strong

²² This phrase ‘domestic dependent nations’ is rooted in the US Supreme Court case *Cherokee Nation v. Georgia*, 30 US (5 Pet.) 1 (1831). In the case Chief Justice Marshall argues that while indigenous nations are indeed nations, they are not sovereign nations, and thus are nations that are subject to US law. He goes on to argue that they are also dependent upon the US Government – hence the ‘dependent’ portion of domestic dependent nations. Effectively, this means that tribes (and not tribal governments established and overseen by the US Government) can legislate their own laws on their own reserves, but that they are not sovereign. I would argue that this logic extends to other settler nations such as Australia, Canada and New Zealand where we see the term ‘self-government’ used to describe indigenous governments that are established primarily according to the expectations of liberal, representative democracies, and which cannot legislate laws that contravene those of the sovereign State.

²³ Guyana is an interesting case, given its history of British colonial rule, which is similar to Anglophone States. Independence came much later for Guyana however, and the Independence Agreement with the UK explicitly required the Guyanese Government to return indigenous lands (La Rose & MacKay 1999: web), unlike in Anglosphere countries. This has not necessarily happened however (*Ibid*), and indigenous movements within Guyana have been rooted in calls “for a future equitable relationship with the Guyanese state” (*Ibid*), suggesting an appeal to at least a form of sovereignty.

understanding of self-determination left open the possibility for Fourth World indigenous peoples and advocates to form their own States (Engle 2010: 52), and to “gain some degree of sovereignty over [their] national homeland” (Griggs in Engle 2010: 50). This focus on decolonization (*Ibid*, 49) hearkens back to other movements against colonial rule by imperial European powers. It requires that indigenous claims be taken seriously within the international system, and provides an illustration of what a true nation-to-nation approach might entail with respect to two equal partners negotiating, and alongside previous treaties already signed by indigenous nations with the British Crown.²⁴

Further to this sense of a collection of perspectives included within indigenous movements, the Fourth World perspective should not be taken as representative of a geographical area. Indeed, a strong critique of this sovereignty-based approach has come from Mohawk scholar Taiaiake Alfred (1999). Alfred’s critique is that sovereignty – and seemingly Statehood itself as understood in non-indigenous, Westernized, neoliberal terms – is an inappropriate concept for indigenous governance because of its roots in Western conceptions of being (Alfred 1999: 57). This clearly shows that even within the same geographical area, there is no consensus on the best way to articulate claims to self-determination, even when they incorporate indigenous epistemologies or cosmologies. Through understanding this we can see a real diversity within not only the movement itself, but also within the way that specific concepts are understood between groups.

Focus on Cultural Dispossession

In comparison to the Fourth World movement, Latin and South American indigenous groups tended to advocate for self-determination understood in a more culturally-based way. Land is certainly still important for indigenous peoples throughout the region, but oftentimes indigenous peoples still lived on their traditional lands (Engle 2010: 55), and so that sense of dispossession

²⁴ This of course implicates Canada, which still enforces the treaties signed between indigenous peoples and the Crown – though only in the loosest sense, and always interpreted in a manner most beneficial to the State itself. It also implicates the United States though, as indigenous nations within what is today the United States also negotiated with the British Crown prior to the American Revolution. This would be another illustration of the nation-to-nation approach favoured by indigenous peoples, and an illustration of its applicability – in a historical sense – to indigenous-settler relations within the United States, which historically as sought to exterminate its indigenous population.

was not understood in the same way. Instead, that dispossession came from how their labour was being exploited on that land, and how this “represented lost traditions and culture” (*Ibid*). To remedy this then, decolonization comes from a re-engagement with those traditions and cultures. Ultimately, this conception of self-determination has become the focus of the movement, and we see scholars such as James Anaya now stating that the model flows “from the interplay of Indigenous demands and the authoritative responses to those demands, is one that sees Indigenous peoples as simultaneously distinct from, and yet part of, the states within which they live” (Anaya 2001: 112).

As was seen above, the Fourth World movement focused on a similarity of dispossession, with this dispossession focused on indigenous lands. With the claims of cultural loss, we see that “The Indian rights movement refers to campaigns for principled change in the status and conditions of Indians as a distinct cultural group” (Brysk 2000: 69). Such a definition also is organized around a similarity of dispossession, in this case a dispossession of culture. The above quotation has been read to speak to a sense of oneness of culture among indigenous peoples referred to as ‘*panindianismo*’ (Engle 2010: 56). This feeling of oneness of culture contrasts with the Fourth World understanding of differentiation between cultures of indigenous groups, and clearly illustrates a different understanding of the term ‘self-determination.’ This is not the only interpretation however. A common experience of cultural dispossession is another reading, one that is similar to the common dispossession within the Fourth World movement. It is different insofar as the focal point here remains on culture, instead of lands. Such a reading has been advanced by the same authors, with Brysk (2000) and Engle (2010 & 2011) both making clear that cultural dispossession was emphasized throughout Latin America, whereas the forced dispossession from traditional territories was felt more viscerally in North America. This is not to say that the phenomena existed independently of each other;²⁵ rather, there was simply a different focus from the various movements within the regions. This has resulted in different goals sought through the common discourse of a right to self-determination.

²⁵ Indeed, indigenous peoples clearly lost much land throughout Latin America, and issues such as the banning of cultural ceremonies, as well as residential school systems throughout North America had an important impact that has been called “cultural genocide” by many, including the Chairman of Canada’s Truth and Reconciliation Commission, Justice Murray Sinclair (Puxley, 2012), and former Canadian Prime Minister Paul Martin (CBC News, 2013).

One other distinction is the role that Marxism played in the initial forms of *panindianismo*. Importantly, recall how this form of self-determination is founded in a sense of exploitation of indigenous peoples' labour, and this was founded in part on Marxist leaders' portrayal of indigenous struggles and claims (Engle 2010: 60). This connection was concretized in Marxist-inspired *campesino* movements throughout Latin America, thought most notably within Mexico (Brysk 2000: 103; Engle 2010: 65). This understanding of claim led to a sense of self-determination as emancipation arising from "within the current nation-state structure," and so unconcerned with the strong, external self-determination found among the Fourth World Movement (Engle 2010: 66).

Ultimately then, when studying the movement and its articulations of claim, it becomes clear that we are studying not a single, unified and coherent movement, but rather a collection of different groups that each bring their own perspectives to bear. While the movement itself comes together to work towards a common goal of self-determination, this goal means different things to different peoples, and should be critically examined. This feature of indigenous activism only becomes more clear as we turn to the Declaration itself. Indeed, throughout the rest of this first chapter I will provide a brief illustration of the history of the Declaration itself, as well as showing some of the competing logics that are contained within, and work through, the text.

History of Indigenous Activism and the Declaration

As mentioned, the process of drafting the Declaration took nearly 25 years and involved extensive effort and cooperation by both Indigenous peoples and UN Member States. The process culminated in 2007 when document itself was adopted by the UN's General Assembly (GA).

The history of indigenous activism within the international system can in part be traced back to the Martinez Cobo Study, which is also seen as one part of the impetus behind the drafting of the Declaration. The Study was undertaken by Martinez Cobo in his capacity as the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities for the Commission on Human Rights. and represents the first sustained report on the abuses of

Indigenous peoples within the UN system. Submitted in three parts between 1981 and 1983, the Study kicked off a push at the international level to protect Indigenous peoples, which led to the creation of the WGIP.

In 1983 work began on a first draft of what would become the Declaration. At first the drafting of the Draft Declaration was done outside of the UN system, but within two years “it was taken up by the UN and vested with the...WGIP in Geneva” (Watson & Venne 2012: 90). Importantly, indigenous peoples were not consulted on this change, and the move was done without their consent (*Ibid*). Within a short time at the WGIP indigenous peoples became involved, and work was undertaken by representatives from indigenous communities and organizations, non-indigenous NGOs, and State governments, as well as international experts who were already a part of the UN system (*Ibid*; Lightfoot 2009: 104-28). The structure of the group who began drafting the Declaration is important, because – despite a prior lack of consultation – it still retained a place for indigenous peoples to participate meaningfully in the writing of the Draft Declaration. Indeed, the inclusion of indigenous peoples had a profound impact on the Declaration itself as it led to the inclusion of Article 3, which stated: “Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This Article was seen as the linchpin of the Draft Declaration for Indigenous peoples, without which any Declaration itself would be meaningless (Watson 2000: 26).

Problems arose when the Draft Declaration was sent to the Commission on Human Rights (now the Human Rights Council) in 1994 to be finalized before being brought to the UN General Assembly. At the Commission, indigenous peoples were denied the opportunity to fully participate in the writing of the Declaration. Within the WGIP Indigenous representatives were able to participate in, and indeed even drove, the writing of the Draft Declaration; at the Commission indigenous representatives were allowed to comment on various parts of the Draft Declaration, but were not allowed to be a part of the drafting process itself, a role reserved only for Member States (Watson 2000: 26).

This exclusion was felt almost immediately by indigenous peoples, as States began to speak strongly against the inclusion of a right to self-determination for Indigenous peoples (Watson 2000: 27). One of the effects of this was the inclusion of a new Article, which began to erode the strong language of self-determination found in previous versions of the Draft Declaration:

“Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.”
(Draft Declaration, Article 31)

At first Article 31 may not appear to distort the meaning of the previous Article 3. When read initially the article just appears to clarify the meaning around the term self-determination. Additionally, this specific article does not even make it into the final text of the Declaration.

The problem with this view is that the inclusion of Article 31 begins the erosion of that right to self-determination for indigenous peoples. The final text of the Declaration includes a final Article that states in part that the Declaration cannot be used to undermine “the territorial integrity or political unity of sovereign and independent States” (Declaration, Article 46 (1)). This clause was included in the Declaration at a later stage by States in order to guarantee limitations on the right to self-determination of indigenous peoples. Once indigenous peoples were excluded from positions of authority in the drafting of the Declaration, States were able to include provisions that would limit the impact of the rights that they were agreeing upon.²⁶

The Draft Declaration continued to be discussed and negotiated within the confines of the Commission on Human Rights until it was officially brought to a vote at the UNGA in 2007. The structure of the Commission, and the fact that the Declaration was voted upon exclusively by UNGA Member States created the need for it to be capable of winning the support of States that initially opposed the strong language around self-determination for indigenous peoples within

²⁶ This attempt at limiting the rights claims of indigenous peoples can also be seen in how the document was passed as a Declaration, and not a Treaty. Much attention has been focused on the legal authority of a Declaration versus that of a Treaty, with Canada calling the Declaration an “aspirational” document, that does not impose legal obligations in the manner of a Treaty (Statement of Support for the UN Declaration, Canada 2010: web). On the other side, the former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, has argued that the Declaration functions as customary international law due to its wide acceptance (Anaya, 1996). The drafting of a Declaration instead of a Treaty could be seen as a further move by States to ensure that legal ramifications are not brought into play. This is beyond the scope of this thesis however. Suffice to say that the debate has not been settled.

the Draft Declaration, including Canada, other former British colonies, and many African States (Engle 2010: 145-6). This meant that though drafted primarily because of its importance to indigenous peoples (Pulitano 2012a: 1-2; Dahl 2009: 93-4), the Declaration ultimately required the insertion of the kind of language seen with the inclusion of Article 31 of the Draft Declaration, and Article 46 (1) of the final Declaration itself, in order to win enough votes to pass at the UN GA.

Over the years enough discussion was had, and finessing of the language done, to accommodate all but four of the Member States of the UN GA, and the Declaration passed with a vote of 143-4 with 11 abstentions. Over the ensuing years each of the four States that voted against the Declaration have since released Statements of Support for it – all have come with no change to the document itself – so that now the Declaration is now seen to have “universal consensus” (Grand Chief Edward John, 2012).

Content of the Declaration

This section will analyze the Declaration itself according to the logic outlined above regarding the document as an *assemblage*. In understanding the content of the Declaration, it is possible to see that important steps have been taken towards representing indigenous epistemologies and cosmovisions; however, it is also clear that Western legalistic epistemologies remain prevalent – and arguably primary. Indeed, in some ways it is difficult to argue that the Declaration reflects a substantial change in primary governing logic. Looking ahead, this critique will be further explored in my fourth chapter, where I develop a post-colonial critique of the text wherein as long as any document requires Member States to sign off on it, the document remains fundamentally colonial.

To turn back to the content of the Declaration itself though, my discussion of the content of the Declaration will be informed by indigenous cosmologies themselves in order to highlight the multiple ways to understand the Declaration. I will first explore the concept of collective rights included in the DRIP, as well as discuss how the DRIP itself indeed offers a sense of international personhood to indigenous peoples, which is a real break from the situation prior to the Declaration’s passage (Anaya, 2012). Then I will discuss a couple of key concepts contained

within the Declaration: first the territorial rights of indigenous peoples, then the ever-important right to self-determination. These last two sets of rights will be discussed in order to problematize some of the indigenous readings of the Declaration, which as discussed earlier, see it as “represent[ing] the international consensus on the minimum standard of indigenous rights that states are obligated to recognize and protect” (Lightfoot 2010: 84).

Collective Rights

Historically, the concept of human rights has been tied explicitly to a liberal, individual, subject. This is clear in Woodiwiss’ (2005) work. In his book titled “Human Rights,” Woodiwiss argues that human rights are to be understood “as the inalienable property of all *individuals* throughout the world, as theirs simply because they are human” (Woodiwiss 2005: XII; emphasis mine). To make the matter even more clear, Woodiwiss later uses Galtung to make it clear that “Before one can talk of anything in any culture as a precursor of our human rights construct, that culture has to have also produced a conception of persons as individuals” (*Ibid*, 16). This Western preoccupation with individuals can be traced back to Roman law, as it recognized them insofar as it enabled individuals specifically to protect their individual interests (*Ibid*, 17). Indeed, this individualized notion of human rights can be pushed further, as Engle (2011) has pointed to the neoliberal, capitalist subjectivities at play in discussions of human rights.

Opposed to this Western, individualized understanding of the subject, indigenous peoples typically understand the self as existing only in a more collective fashion, particularly as it relates to the way an individual only exists in relation to their community. Indeed, Isabel Altamirano argues that “To be indigenous is to have a sense of community as a whole... To be indigenous is consensus” (Altamirano in Alfred 2005, 142-43). Tied to this is Alfred’s explicit discussion of a “circle of interdependency” within indigenous communities that includes all those living within that community (Alfred 1999: 42). Even the conception of justice among many indigenous peoples includes a communal nature, whereby to bring about a just conclusion to a situation is to restore peace and harmony among the relations within the community (Alfred 1999: 42-43). This sense of collective being has been at the heart of indigenous claims for decades (Engle, 2011; Alfred 2005: 135), and is just now being substantively addressed at the international level.

The shift in the Declaration and previous instruments towards an acceptance of group, or collective, rights can be seen in the shift from focusing on “Everyone” in the UDHR to “Indigenous peoples” in the Declaration. Indeed, a plural pronoun is used in the Universal Declaration of Human Rights (UDHR) only to discuss the rights belonging to families (see Articles 12, 16, 23 and 25). This focus on the plural in the text of the Declaration arguably reflects the indigenous focus on the collective community. We can see that this transformation does push the boundaries of a human rights framework, leading to the “development of new norms and new standards” (Anaya, 2012) that, in this case, includes a “concern for collective human rights” (Anaya 2001: 109).

Territorial Rights

Within the Declaration, Articles 25 and 26 deal perhaps most specifically with indigenous lands and territories. Indigenous peoples traditionally have a fundamentally different relationship with land than Western peoples, a relationship that has been ignored in international declarations and agreements up until this point. The Declaration changes this by stating that:

Indigenous peoples have the right to *maintain and strengthen their distinctive spiritual relationship* with their traditionally owned or otherwise *occupied and used lands, territories, waters and coastal seas* and other resources and to uphold their *responsibilities to future generations* in this regard. (Declaration, Art. 25; emphasis mine)

Article 26 repeats essentially the same points, with more emphasis on the rights indigenous peoples have to their traditional lands for the purposes of development, and traditional occupation and use (Declaration, Art. 26).

Taken together, these articles clearly develop more traditional conceptions of the relationship between peoples and their lands found within indigenous communities. The reference to “distinctive spiritual relationship[s]” is reflective of Alfred’s argument about how indigenous peoples see their lands and territories as having a spirit, and the relational nature of the interactions between humans and their territories (Alfred 1999: 42 & 2005: 9). By including language such as “occupied and used,” rather than ‘owned,’ the Declaration also clearly points to how indigenous peoples do not conceive of their relationship with their territories as one of ownership, but rather one of maintenance and use (MacKenzie in Pulitano 2012b: 306). Finally, Article 25 speaks to the “responsibilities to future generations” whereby indigenous peoples must

maintain their traditional territories for their children, and their children's children (Declaration, Art. 25). Such an understanding represents the indigenous position as a steward of the land (Alfred 1999: 60), as the stewardship role is one in which the peoples must maintain the lands for other, future generations (*Ibid*).

In some ways Article 26 can also be seen to push in this same direction, though it can also be interpreted differently as it includes language around indigenous peoples "hav[ing] the right to own..." their lands (Declaration, Art. 26 (2)), which dilutes somewhat the force of its inclusion.²⁷ This subtle shift towards ownership over land can also be seen in some of the other Articles that focus on economic issues for indigenous peoples. Specifically, Article 20 speaks to indigenous peoples having "the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities" (Declaration, Art. 20). From this we can see a focus on economic development, brought about in part through work by indigenous organizations and their focus on land and resource issues (Lightfoot 2009: 107-8). Importantly though, other reports from the drafting of the Declaration show that indigenous peoples – in this case of the Americas – were discussing land within a spiritual context (*Ibid*, 76), which is also referred to within Article 25. Understood together, this treatment of land is exemplary of the Declaration as an *assemblage*, and representing multiple perspectives including those of both States and indigenous peoples.

Right to Self-Determination

As we have seen above, self-determination has been, and remains, arguably the key right for indigenous peoples, and is the focus of much of the indigenous scholarship around the Declaration. Articles 3 and 4 of the text are seen to establish indigenous peoples' right to self-determination by stating they have the right to "freely determine their political status, and freely pursue their economic, social and cultural development" (Declaration, Art. 3), and speaking to

²⁷ This same sentiment is also apparent in the Preamble of the Declaration, where the document uses the term "control" to speak to indigenous people's rights over "developments affecting them and their lands, territories and resources" (Declaration, Preamble). In this case the language functions more in the sense of Article 26 than 25, as indigenous philosophies and epistemologies themselves would not necessarily claim to control their lands in the way Western legal norms understand it.

the right to autonomy that indigenous peoples have over “their internal and local affairs” (Art. 4). This sense of autonomy for indigenous peoples is new within international legal instruments, and is reinforced throughout the document. As we have also seen, Article 20 further contains provisions that speak to indigenous peoples having “the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities” (Declaration, Art. 20). Again, we can see that indigenous peoples’ autonomy is stressed throughout the text.

The above articles illustrate an important dimension of the discussion around the right to self-determination in the Declaration: there is some flexibility in the understanding of self-determination. As show before, different indigenous groups and peoples understand self-determination quite differently, and the flexibility within the Declaration means that indigenous peoples have won a right to self-determination that does not come across as a ‘one size fits all’ type model. As above, the new aspect of this concept of self-determination comes from the flexible nature of the concept’s definition. Past documents have not included such an understanding. Indeed, past practices by States have directly ignored indigenous customary institutions.²⁸

Issues arise when examining other sections of the Declaration that touch on the right to self-determination though, as other portions of the text seek to limit indigenous expressions of self-determination. Specifically, the document maintains provisions that actively assert a State’s rights as primary over indigenous peoples themselves. The Preamble of the Declaration reads:

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law (Declaration, Preamble).

This is telling, as international law has been consistently set by the member States of the UN, who have not been known to be generous towards indigenous peoples. As well, traditional

²⁸ This can be seen around the world, from Latin America – Brysk (2000) shows what land tenure systems across the region look like – to Africa and Asia (See Dahl (2009) for information on land titling processes throughout Africa and South Asia). Two specific examples include the band council institutions of Canada (as described by Alfred, 1999), and the Sami Parliament’s non-use of traditional *Siida* institutions throughout the Nordic countries (Kuokkanen 2009: 98).

international law is comprised of the same agreements referred to by Pulitano as being “Eurocentric” (Pulitano 2012a: 17). The final article of the Declaration, Article 46, also includes the same language that “The exercise of the rights set forth in this Declaration shall be *subject only to such limitations as are determined by law* and in accordance with international human rights obligations” (Declaration, Art. 46 (2); emphasis mine).

Article 46 also includes another complicating factor that renders self-determination potentially less possible for indigenous peoples, and again imposes a non-indigenous framework upon them. The Article states that:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act...construed as *authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States*” (Declaration, Art. 46 (1); emphasis mine).

Through this we see the imposition of the current sovereign framework on States and indigenous peoples, similar – in logic at least – to the maintenance of State borders throughout the decolonization movement in the mid-20th century. This works to limit self-determination by retaining borders defined by colonial powers that may not correspond to those envisioned by the peoples seeking self-determination. It also would appear to be in direct contradiction with the language in Article 20 of the Declaration regarding the importance of indigenous institutions and models, at least insofar as they reflect indigenous national aspirations,²⁹ as opposed to territorial aspirations. Such language may reflect the concessions necessary to gain States’ support for the document in the UN GA; however, its inclusion also makes it difficult to argue that the Declaration explicitly advances a solely non-Eurocentric vision of international law, and complicates the emergence of indigenous self-determination. As before, this does not necessarily nullify the true strides won by indigenous peoples, but instead points to multiple logics flowing through the Declaration, even in its final form.

Importance of the Declaration

²⁹ By national aspirations I am speaking to the division of indigenous nations by State boundaries. One example of this is the Mohawk Nation that resides on both sides of the Canada-US border, and which attempts to govern itself as a united nation. This was seen in the issuing of Haudenosaunee passports on multiple occasions, with mixed success (Onondaga Nation 2010: web; Horn 2010: web). Another example of this would be the Sámi Parliaments, which while officially existing independently of each other, come together frequently to make decisions.

As mentioned above, the Declaration has served as the focal point of Indigenous activism at the UN, and throughout much of the rest of the world, since it was passed in 2007. The effort to have the Declaration passed by the UN GA has now been followed up with States being called upon to “implement” the Declaration and the rights contained within it (Atleo, 2013). This effort and focus on the Declaration reflects its centrality to indigenous activism. As well, the Declaration is cited more often than other documents in Indigenous speeches at the various fora, and it is specifically focused on by many Indigenous mechanisms.³⁰

The focus on the Declaration is due not only to its status and the effort expended on its drafting and passage, but also because of what the document is intended to represent for indigenous peoples, namely, the Declaration is “a unique international instrument that set standards and the foundation for the continued survival of indigenous peoples, the protection of their rights, dignity and well-being” (Grand Chief Edward John, 2012). This quote speaks to the central importance of the Declaration for indigenous peoples as *the* international instrument that will help them to sustain their cultures in the new century, after so many years of destruction and dismissal by States.

The Declaration is also seen by indigenous peoples as inhabiting a post-Eurocentric legal space (Pulitano 2012a: 17), as it was drafted in large part through the efforts of Indigenous peoples themselves (Pulitano 2012a: 1-2; Dahl 2009: 93). This feeling plays in to the quote above from Grand Chief Edward John, and speaks to the need to free themselves from dependency on non-indigenous governments that is articulated by many Indigenous leaders.³¹ The fact that the Declaration is seen as taking indigenous perspectives into account also helps to explain the sustained focus on the text since its passage. If it were not seen as beneficial for indigenous peoples, it is unlikely that so much attention would be focused on it, and its use in the international activism would no doubt fade.

³⁰ One of the ways that this can be seen is how the EMRIP and PFII each have an item on the schedules for their annual sessions that deal specifically with implementing the Declaration. This is not seen for other texts or agreements. Another way this can be seen is through the speeches of indigenous peoples at the UN and its mechanisms, and in the papers written for the various mechanisms, and the reports by the SR, which (nearly) invariably reference the UNDRIP, with many including it within the very title of the paper itself.

³¹ For an example of this see Alfred (2009) and his discussion on how a dependency on the Canadian government has meant the ruin of indigenous communities.

Importantly as well, the Organization of American States (OAS) has a Proposed American Declaration on the Rights of Indigenous Peoples that has been awaiting debate and a vote for 17 years after being passed by the Inter-American Commission on Human Rights in 1997. While there are distinctions between the UN Declaration and the OAS' Proposed American Declaration, many similarities remain as well, and one of the key factors holding up the adoption of the Proposed American Declaration is the existence of the UN Declaration, and questions over what other concessions will need to be made to gain approval for the Proposed American Declaration. Even if the Proposed American Declaration is enacted however, the UN Declaration will continue to play a central role in the international indigenous activism, as it will remain the only truly international instrument to which indigenous peoples can point in order to argue for their indigenous rights.

As can be seen above, the Declaration remains the basis for much of the indigenous activism at the international level today, and without movement on the Proposed American Declaration, it will remain so into the future. I am selecting the Declaration as my case study because of these reasons. Indeed, it is nearly impossible to study the rights of indigenous peoples at the international level without involving the Declaration as a central object of analysis. The history discussed above will be directly referred to and analyzed in my fourth chapter, though suffice to say that the Declaration itself remains the focal point of indigenous activism, as it has for the past 20 years.

Conclusion

To conclude then, from the brief illustrations sketched out above it is clear that the Declaration cannot be taken as a singular, monolithic entity. Rather, it is important to understand the multiple logics running through it, both indigenous and non-indigenous. It is also clear that the indigenous rights movement – and its claims – does not come from nowhere. Indeed, non-indigenous actors clearly worked to help organize the movement. This should not be taken *a priori* as a problem: given the relations of power inherent to issues of indigeneity and indigenous peoples, the support and work of non-indigenous actors will arguably be necessary to create lasting, substantial change. However, when those actors are literally selecting which stories they

want to tell (Brysk 2000: 88), and selecting the groups that accord to their own discourse (Dahl 2009: 150 & 155-56), then questions should be raised regarding the specific influence that those actors had on indigenous activism, and what else might have been.

This chapter has raised these questions, and sought to show the movement and Declaration not as monoliths, but as assemblages. In understanding the Declaration in this way it becomes clear that the document should be – and is – seen as a victory for indigenous peoples, because it clearly contains significant gains for indigenous peoples. Despite this, as has been argued elsewhere, this has not necessarily led to concrete changes in State policy (Lightfoot, 2010). Here we have seen that these two seemingly contradictory phenomena both hold because of the multiple logics informing, and flowing through the Declaration.

This understanding of these phenomena as building a textual assemblage works to orient the rest of this thesis, and helps to build the case that despite the gains won by indigenous peoples, the Declaration should be understood to further entrench a neoliberal colonial framework. In the next chapter I turn to academic theory in order to discuss the formation of indigenous subjects within international relations, and engage in a theoretical critique of a human rights framework as the primary emancipatory tool for indigenous peoples. I also describe a sort of double-movement governance of indigenous peoples, which combines both biopolitical management of indigenous peoples by States, as well as neoliberal governance that is common to all subjects.

Chapter 2

The first chapter introduced the indigenous rights movement, as well as the Declaration itself. In doing so it portrayed both as assemblages of logics incorporating – and representing – not only distinctions between indigenous peoples and governments, but those within the indigenous activism as well. This provided the history and context to be able to engage with the both the human rights-based discourse of the movement, and with the Declaration itself. I now turn to the formation of indigenous subjecthood. Specifically, I bring together indigenous studies literature with subaltern studies, and issues of governance through biopolitical management with neoliberal governmentality. In doing so I put forward a hypothesis that will be examined in the following chapters. That hypothesis is that a human rights framework is unable to establish the conditions necessary for indigenous emancipation from the colonial present, and that it instead further entrenches those colonial norms. This is due to the combination of biopolitical management of indigenous peoples with neoliberal governmentality, which forms a set of power relations that allows a politics of recognition framework – such as human rights – to continue (re)producing colonized indigenous subjects. To lay out this argument, I first seek to establish how this subject is formed, and what powers are acting upon it. Then, using this I sketch out a theoretical argument for why a human rights framework reinforces colonial norms and relations between indigenous peoples and States – such as having States define indigenous peoples, or having States ignore indigenous languages to the point of extinction – instead of offering indigenous peoples the sort of self-determination that is foundational to emancipation from colonialism (see Green, 2014 & Smith, 2014).

In order to do so, this chapter will be broken down into three broad sections. First I use Coulthard (2007 & 2014) to illustrate how indigenous subjectivity is formed, and relate this to the concept of human rights. Next, I briefly discuss two of the governance systems acting on indigenous peoples: biopolitical management through settler colonialism, and neoliberal transformation. Finally, I turn back to Coulthard to show how the relations of power between indigenous peoples and States make the disassembling of colonial norms and hierarchies through a politics of recognition problematic, and how this relates to a human rights discourse. Together,

these sections lay out the hypothesis that will be empirically tested throughout the rest of the thesis.

Forming Indigenous Subjectivity

Turning to the question of indigenous subjectivity, I first return to a point I discussed briefly in the Introduction, that is, whether there exists an Indigenous Subject or a diversity of indigenous subjects, each with their own perspective, history and cosmology. Here I want to again reiterate that there cannot simply be one Indigenous Subject of (indigenous) human rights. The holistic, consensus-based approach of indigenous activism at the international level (Lightfoot 2009: 74) notwithstanding, even the Declaration recognizes as much. Instead of a singular subject, articles within the text recognize a multiplicity of traditional systems and customs (Article 9), languages and philosophies (Article 13 (1)), governance institutions (Article 18), and relationships to lands, territories and resources (Articles 25 & 26). In speaking to the ways these issues are understood among indigenous peoples, the Declaration points to an acceptance of multiple – though not necessarily solely individual – indigenous subjects, which is distinct from the one-size-fits-all approach commonly accepted within human rights law (Woodiwiss 2005: XII).

Understood through this lens, the term ‘indigenous peoples’ incorporates a multiplicity of nations – and when challenging dominant norms, a multiplicity of actors engaged in resistance – despite often being homogenized under a singular movement at the international level. Indeed, it is important to understand the diversity brought to the table by the term ‘indigenous peoples,’ because ignoring it serves only to reinforce colonial narratives themselves. Though the experiences of indigenous communities and nations have often been similar with regards to the abuses and discrimination perpetrated against them by European colonialism – which has served as the basis for the international indigenous movement itself (Brysk, 2000; Dahl, 2009; Lightfoot, 2009) – each community retains their own practices, philosophies, and modes of governance that can contrast, and sometimes conflict with one another. In uncritically homogenizing these communities we work to maintain existing relations of power by silencing the multiple voices of subaltern subjects, and engaging only with the singular voice we expect (see Spivak, 1988). Through this, we continue to cut off potential pathways to emancipation that

can arise out of engagement with the actual claims of subaltern (in this case indigenous) subjects. I also note that I am not trying to say that indigenous peoples should not work together to create change. This strategy of collective action has in fact been incredibly successful in gaining recognition and a modicum of change at the international level. Rather, normatively, I am following Alfred (1999; 2005 & 2009), Beier (2005), and Coulthard (2007 & 2014), among others, in trying to say that indigenous peoples, nations, and communities should be taken on their own terms instead of those enforced by Western voices. It is for this reason that I make reference to indigenous subjects and peoples, instead of an Indigenous Subject; when I speak of subalternity, I speak to the common experience uniting indigenous peoples, and not a common Subaltern Subject.

Indeed, my use of ‘peoples’ here is a conscious rejection of the homogenizing tendencies of States with regards to indigenous peoples. During early relations between indigenous representatives and States, there was ‘concern’ on the part of States in using the plural term ‘peoples’ to describe indigenous peoples (WGIP 1992: 19 (74)). Instead, States pushed for the use of ‘population’ (WGIP 1984: 18 (103)), which could refer to the indigenous population of a specific State, or to the world’s indigenous population, and has the connotation of singularity instead of the multiplicity that ‘peoples’ connotes. The term ‘population’ also has a similarity to the terms used within biopolitical theory, which I discuss further below. In this context, a population has biological, demographic and statistical connotations that may encourage understanding and dealing with “it” primarily through a biopolitical lens, or even along the lines of Agamben’s ‘bare life.’ Opposed to this is the use of ‘peoples,’ which has a history of use in international law as evoking a group that constitutes – or is able to constitute – its own political community. Finally, using the term ‘population’ can reinforce the place of indigenous peoples *within* a sovereign-State framework, since according to Agnew (1994) the State is understood as a “container” for populations (or in his words ‘societies,’ see 68-71). We further work to attach a given population to a specific State, delimiting them by the territorial bounds of those States,³²

³² A good example of this would be the Sámi peoples who are spread across Norway, Sweden, Finland and small parts of Russia. Despite historically being nomadic, and often traveling across the territory to herd reindeer, the Sámi have now been separated into citizens of each of the States in which they are said to reside. In each State (except Russia), the Sámi have their own parliaments, which regularly meet to decide on common policy across the

with populations then becoming a national phenomenon defined in terms of States (*Ibid*). In this case, populations become defined by the territories on which they live – or are said to live, or are relocated to, in the case of indigenous peoples – which are then given meaning as a part of the sovereign political community of the State, a sort of ‘bare space’ analogous to Agamben’s ‘bare life.’ On the other hand, and drawing upon the history of peoples within international law, the term ‘peoples’ has strong connotations and associations with nationhood, and the right to self-determination. In this case then, wording matters, and I believe that in consciously choosing to use the term ‘indigenous peoples’ I am better positioned to avoid the homogenizing and domesticating tendencies that States apply to indigenous peoples within their recognized territories.

Based on this understanding of multiple indigenous subjects, I turn now to Coulthard to discuss how I understand indigenous subjects to be formed. In doing so I will not be speaking directly to the politics of recognition issue in this section, as I will save that for the final section of this chapter. Instead, I turn to the process of subject formation: in my case the creation of an international personhood for indigenous peoples. Importantly, my thesis bases itself in the understanding that identities are created through being recognized as such by other subjects, and recognizing other subjects as such as well. Here I follow Coulthard’s argument that these identities are “dependent on and shaped through our complex relations with others” (Coulthard 2014: 28). Crucial to the enterprise of indigenous decolonization is the creation of a subject who is self-determining, especially when considering the focus on the right to self-determination articulated by indigenous peoples seen in Chapter 1.

In order for this self-determining subject to be formed, two moves become essential, both of them based upon the necessity for mutual recognition between indigenous peoples and States.³³ Coulthard takes the first move from Fraser and Honneth, stating that relations of recognition are deemed “constitutive of subjectivity: one becomes an individual subject only in virtue of

entire area they live on, suggesting a continued sense of Sámi identity outside of their citizenship. A similar phenomenon can be seen along the Canada-US border with the Mohawk.

³³ This mutual recognition is necessary for the formation of *self-determining* subjects in various contexts, and I am not arguing that it is ongoing here. Below I hypothesize that in the case of indigenous peoples at the international level, it is in fact not ongoing, because it is replaced by a misrecognition owing to existing relations of power.

recognizing, and being recognized by another subject” (Fraser & Honneth in Coulthard 2007: 440). This speaks to the importance of mutual recognition by acknowledging that it is only in recognition of another, and that other recognizing them, that one’s subjectivity is realized.

The second move in the formation of a self-determining subject touches more specifically on the issue of self-determination. Here we are told that “the realization of oneself as an essential, self-determining agent requires that one not only be recognized as self-determining, but that one be recognized by another self-consciousness that is also recognized as self-determining” (Coulthard 2007: 440). According to this reading, in order for there to be meaningful self-determination it is essential for *both* parties entering into the mutual recognition to recognize each other, and themselves, as self-determining. Here we see the necessity of mutual recognition again, as it is not only being recognized as self-determining, but being recognized as such by an agent *that you also understand to be self-determining*, that offers the emancipatory possibilities associated with self-determination, including: access to lands, the rebuilding of indigenous forms of governance and belonging within communities, the use of indigenous languages, and even the basic ability for indigenous peoples to make final decisions for their own communities without the possibility of having a colonial State overrule them. My proposed argument here is that in needing to gain recognition as self-determining from settler States, indigenous peoples are trapped in needing to gain this subjecthood from the very entity that is denying them the practice of self-determination itself.³⁴ This risks foreclosing on the possibility of indigenous emancipation, so long as it is premised on gaining recognition of self-determination from within a colonial structure.

Turning to the issue of human rights and international law helps to contextualize the issue of

³⁴ Interestingly, if we are to take this one step further, the relationality between indigenous subjects and non-indigenous subjects exists and works both ways: Morgensen (2011) argues that “Settlers ... are inexplicable apart from their relationality to Indigenous peoples, as well as to forms of indigeneity of their own imagining that undergird settler subjectivity” (59). The important aspect of this argument is that settler subjectivity, and the fact of its existence, is underwritten by the colonial appropriation of indigenous lands, and a (previous) forced subjection of indigenous communities. This may go unremarked upon by settlers who do not conceive of themselves as such, but the existence of non-indigenous societies and States upon indigenous lands throughout the world attests to the continued applicability of the relations. Within my hypothesis, the distinction arises that settlers maintain the practice of self-determination, and are seen to be legitimately exercising that power, whereas indigenous peoples are denied similar opportunities.

subjectivity within indigenous rights discourse, and to understand subject formation in the context of my thesis. Here I am looking specifically at the relational aspect of human rights, similar to Coulthard's description of indigenous subject formation. Importantly, within human rights each party inhabits different roles, instead of each being fully autonomous and self-sufficient agents³⁵: indigenous peoples are in this case the bearers of human rights, which States are the guarantors of (Green 2014: 25; Woodiwiss 2005: XI). One of the issues here is that there have been differing interpretations of who is guaranteed what with respect to human rights over time (Woodiwiss 2005: XIII-XIV), stemming from differences over republican vs. cosmopolitan conceptions of the basis for human rights (*Ibid*, 88-9). Effectively, the debate comes down to a question of natural legal principles against the sociological construction of human rights. Here, those subscribing to the natural legal interpretation (cosmopolitan) understand that rights simply exist, and that everyone holds human rights because of their core humanity. Opposed to this, sociological (republican) analyses understand human rights to be socially constructed, with rights themselves not even simply existing, but rather being formed out of mutual agreement amongst States (in this case). What this latter understanding of human rights means is that each bearer of rights gains access to them only insofar as the rights are guaranteed by an entity with the ability to do so (for a more in-depth discussion of this tension see Woodiwiss (2005).

Within the rights debate between cosmopolitans and republicans, I align myself with the republican perspective in arguing that we should understand rights to be a socially constructed phenomenon. In doing so I understand indigenous peoples as holding rights not because of the 'fact' of their indigeneity and humanity, but rather because States have agreed to uphold them and are now guarantors of those rights. This process mirrors the extension of recognition within politics of recognition frameworks. This is similar to the argument that indigenous rights activists and scholars are putting forward, as Green argues that States now have "an obligation to revise existing and develop future legislation and policy in light of [their] obligations under the UNDRIP" (Green 2014: 25). These obligations occur because of their acceptance of the Declaration itself, and illustrate that indigenous subjects of human rights are born out of the

³⁵ This is similar to Coulthard's argument regarding subject formation for indigenous peoples, and his argument regarding the inappropriateness of a politics of recognition given the colonial present that indigenous peoples exist within.

recognition of their subjecthood by the States that now uphold those very rights.

Double Movement Governance

As laid out above by Coulthard, the double-step process of the formation of self-determining subjects is quite general, and applies to all those understood to be self-determining. Below I put forward the theoretical argument that power relations have an important role to play in the ‘deforming’ of indigenous subjects, and that it is through these relations that we see the creation of Coulthard’s ‘Indigenous subjects of empire.’ Indeed, in this process colonialism and colonial power relations must be accounted for. This section builds on how indigenous subjects are formed by speaking directly to the questions of power relations hinted at above. In this section, I hypothesize the way two types of power act upon indigenous peoples: settler biopolitics and neoliberal governmentality. Within this argument, biopolitics continues to structure colonial relations, and works to manage indigenous life in a way fundamentally different from the management of non-indigenous life. In addition to this, indigenous peoples and communities are subject to the neoliberal governmentality that acts upon all subjects, indigenous and non-indigenous alike. Together, they institute a type of double-movement of power structures. Here I put forward the argument that the interplay between these two types of power means that a human rights framework, based upon a politics of recognition whereby States accept and guarantee indigenous rights claims, maintains indigenous peoples within colonial hierarchies.³⁶

Settling Indigenous Life

Biopolitics is perhaps one of the more clear manifestations of colonial structures still working to organize indigenous life both domestically, and in general. The concept itself is quite diverse, with various authors, such as Foucault and Agamben, each theorizing biopolitics as functioning

³⁶ It is important to note here that these two forms of power coexist differently – and in different measures – in different circumstances. This is to say that the double movement between settler biopolitics and neoliberal governmentality acts unevenly throughout the world: one may act more strongly in one instance, while the other might under different circumstances. For example, the application of settler biopolitics may be much more explicit in the United States and other settler States such as Australia or Canada, whereas it is less explicit – but still exist – in a State such as Bolivia or Guatemala, where neoliberal governmentality might be more explicit. Despite the unevenness, the double movement is conceptually useful in understanding the operations of power characteristic of relations between indigenous peoples and States, wherein indigenous peoples are often both managed and disciplined by States into subaltern roles. These roles often result in indigenous peoples being governed, rather than governing, or being acted upon in hierarchal relations of power. This does not mean that indigenous peoples are only ever acted upon however. Indeed, Chapter 3 displays the agency of indigenous peoples at the international level.

in different ways, and as affecting different governance mechanisms. Reflecting this diversity, authors such as Byrd (2011), Genel (2006), Morgensen (2011), and Rifkin (2009) have connected the concept of (settler) biopolitics to ongoing colonization of indigenous peoples by governance mechanisms in various ways. Settler biopolitics is much like other aspects of power however, in that it is not applicable to all indigenous peoples in all States in the same ways. Rather, settler biopolitics manifests itself differently depending on the circumstances. The following section discusses biopolitics from both Foucauldian and Agambian perspectives, and connects the technology of power to the daily fact of colonization still existing within the world.

The concept of biopolitics was first introduced by Michel Foucault, who saw it emerging in the 18th century as a technology of power distinct from that of a disciplinary power (Foucault 2003: 249), and which is exercised both by State as well as non-State actors (*Ibid*, 250). Disciplinary power focuses on the individual, and “centers on the body, produces individualizing effects, and manipulates the body as a source of forces that have to be rendered both useful and docile” (*Ibid*, 249). One of the ways in which this can manifest itself is the sovereign right to kill (*Ibid*, 247). In contrast, the ‘technology of biopower’ is used by various types of actor and organizations, and focuses on “the collective body of individuals,” trying “to control the series of random events that can occur in a living mass” in order to establish a sort of ‘homeostasis,’ or equilibrium, within that population (*Ibid*, 246 & 249).

This equilibrium is achieved through a focus on “the biological processes of man-as-species” (Foucault 2003: 246-7), and life as the site of the exercise of power (*Ibid*, 249; see also Genel 2006: 46-7). As Genel (2006) writes, biopolitics focuses “on collective phenomena that have long-term political effects and strives to regulate them” (46). This regulation is achieved through a specific functioning of biopolitical power, where biopolitics is understood as a technology that puts into action probability and statistics in order to ‘compensate’ for “the series of random events that can occur in a living mass” (Foucault 2003: 249). This speaks to a fundamental aspect of biopolitics, in that it is not concerned with punishing individuals according to a legal code in the way we understand the functioning of a criminal justice system. Rather, through biopolitics the governing agent seeks to organize and manage a particular population through their interests (Foucault 2008: 45). This is because through biopolitics, the agent is now focused

less on questions of *letting* live, and more focused on *making* live through the management of those biological processes referenced above (Foucault 2003: 240-1; Genel 2006: 47). Biopolitics shifts focus from “repression or prohibition” towards using power in a ‘positive’ manner (Genel 2006: 48), effectively managing life in order to produce the desired outcomes. An example of this offered by Foucault comes through his (1978) analysis of sexuality throughout history, where he argues that there was not a concerted effort to repress sex; rather, sex was ‘put into discourse’ (11) as “a mechanism to increase incitement” (Genel 2006: 48). In putting sex into a discourse it was separated from questions of juridical power, and exercised rather as a biopolitical technology. For Foucault, this is done in order to protect “the security of the whole from internal dangers” (Foucault 2003: 249). One of the questions that remains however, pertains specifically to that whole that is to be secured. That question, as it relates to my project, is who is a part of that whole? How are biopolitical technologies used to manage indigenous life?

In order to act upon a population, a sovereign must delimit that population. Sometimes this is done through nationalities, but according to Foucault, this is also done through a logic of racialization (Foucault 2003: 255). Looking to indigenous peoples, I am hypothesizing that they are considered to be a population targeted by the technology of biopolitics because they are organized through a racialized fragmentation of the body politic. This is particularly applicable to ‘Indians,’³⁷ Inuit, and Alaskan Natives in Canada and the United States, as they remain among the only peoples in the world who are legally demarcated according to their genealogical lineage by States who categorize them according to a blood quantum or parentage. No other ethnic groups have such a system of organization, and this establishes indigenous peoples as legally distinct from non-indigenous in a variety of countries. For Foucault, this fragmenting out of specific populations is a key component of the ‘*Raison d’état*’:

“The specificity of modern racism, or what gives it its specificity, is not bound up with mentalities, ideologies, or the lies of power. It is bound up with the technique of power, with the technology of power...We are dealing with a mechanism that allows biopower to work. So racism is bound up with the workings of a State that is obliged to use race, the elimination of races and the purification of the race, to exercise its sovereign power” (*Ibid*, 258).

³⁷ I am using the term ‘Indian’ here as the legal term referring to status First Nations and American Indians. Sadly, this is still the term used to legally distinguish between those with status, and without status in both Canada and the United States. Because of this, I use it to point to a specific group of peoples subject to specific laws only because of their possession of a certain ‘blood quantum’ of indigenous blood.

Based on this, the State fragments the population into different racialized segments in order to properly manage it towards its proper survival. Looking to the above quote, this racial classification can also be understood as establishing “the precondition for exercising the right to kill” (Foucault 2003: 256) where doing so would benefit the overall population – a phenomenon distinct from the disciplinary right to kill touched on above. Focusing on ‘Indian’ life, within Canada and the United States particularly, I am putting forward the argument that indigenous populations are classified in two particular ways. The first categorization separates indigenous peoples from the rest of the population, and is based upon genealogy and race – and self-identification in some cases, just to complicate issues. The second round of classification separates the ‘Indians’ from the indigenous, effectively those eligible to receive the ‘benefits’ of status, and those not. This is done by virtue of the amount of ‘Indian’ blood they have flowing through their veins either through a literal blood quantum, or based on parentage. What I understand to be taken from this is not only that indigenous peoples are racialized within settler societies, and organized according to different relations of power, but that this same phenomenon occurs even within indigenous communities. Through this we can see the literal, colonial re-organization of populations according to biological logics, and this acting as the basis for governmental policies.

Turning to Agamben, we find biopolitics being tied much more explicitly to sovereignty than in Foucault. For Agamben, this is done through “the logic of the exception, the privileged object of which is life, and [sovereignty] constructs itself by producing a biopolitical body, which is to say by including bare life through its exclusion” (Genel 2006: 50). Bare life – also known as *homo sacer* – is that biological body that the sovereign determines is not a citizen, and so exists outside the law: effectively a biopolitical body that does not count. Here then, Agamben distinguishes himself from Foucault insofar as Foucault focused on techniques of *governance*, rather than Agamben’s focus on the techniques of *government* (the sovereign). Foucault’s conception of biopolitical governance neither requires a space outside the law, nor that any particular body be governed outside of it. Opposed to this, Agamben directly states that the sovereign in part derives their power from the biopolitical formation of bare life and the placing of that bare life outside of legal bounds in a sort of “relation of ban” (Rifkin 2009: 92; see also Agamben 1998: 28). *Homo sacer*, banned from subjecthood within the polis, is then relegated to

a ‘camp,’ according to Agamben’s analysis. Rifkin, writing about Agamben’s camps, describes them in this way: “The camp opens up a location within the state in which persons who are linked to the space of the nation by birth can be managed as ‘bare life,’ as mere biological beings bereft of any/all of the legal protections of citizenship” (Rifkin 2009: 93; see also Morgensen 2001: 54-5).

Within settler biopolitics, the camp is especially pertinent, as it is equated to the First Nations and Native American reserves³⁸ (Rifkin 2009: 94; Morgensen 2011: 70). Essentially, the camp is ruled directly by the sovereign as a state of exception where normal law does not apply (Morgensen 2011: 54-55). The theoretical aspect of my hypothesis argues that this mirrors how the reserve system operates within North America. Indeed, part of what is to be examined in later chapters is that this is the case even in those territories that are considered to be ‘self-governing.’ One example of the void of standard legal systems is the very existence of self-government agreements themselves. Each self-government agreement is passed through the legislatures of the respective State, and literally sets the space apart from the structures of ‘normal’ governance within that State. As is further discussed concretely in chapters 4 and 5, self-government agreements also contain provisions that limit the scope of governing powers available to indigenous communities, with these limited powers always being subject to oversight and control by the central Government.

Within my argument, the territorialization of the state of exception through the reserve means indigenous populations are managed outside of the standard juridical framework in a ‘peculiar’ way (Rifkin 2009: 96). By organizing territory and the State in this way, settler biopolitics seems to work to not only separate indigenous peoples by managing their lives differently, but also to dispossess indigenous peoples of their lands by extending the sovereignty of the State over that very territory. One way this is seen is in how indigenous reserve lands are held for indigenous peoples by the State, which has a fiduciary duty to them.³⁹ Rifkin (2009) discusses this issue, as he links biopolitics within Agamben and geopolitics through a focus on sovereignty:

³⁸ As Morgensen (2011) notes, this is not done directly by Agamben himself, but is done in settler biopolitics literature built off Agamben’s own work (69).

³⁹ For a clear illustration of how this is done explicitly through self-government agreements as well, see Chapter 5.

“More than merely recognizing Native peoples as 'distinct political societ[ies]' with whom the United States must negotiate for territory, however, the treaty system also seeks to interpellate Native polities into U.S. political discourses, presupposing (and imposing) forms of governance and occupancy that facilitate the cession of land.” (96)

According to Rifkin, this interpellation is made possible through the localization of indigenous peoples to reserves, and organizing their life according to the logic of a state of exception (*Ibid*, 97). In Rifkin’s words, this creates a “boundedness by banning” for indigenous peoples within the US (*Ibid*, 98).⁴⁰

Despite some differences, I read the biopolitics of Foucault and Agamben as also overlapping in important ways. Perhaps the most pertinent for my analysis in the coming chapters are the connections between racism and biopolitics. As I pointed to above, racism can play an important part within biopolitical management of a population. Within Agamben, this is primarily done through the segmentation of the population into citizen and *homo sacer*, and the relegation of the latter to the camp. This understanding has been related explicitly to the imposition of the reserve system on indigenous peoples, and how the State is understood as maintaining those spaces as a form of ‘killing state’ (see Byrd 2011: 190-2). This aspect of racialized killing is also present in Foucault, with residential school systems serving as a potent example. The purpose of these ‘educational’ systems was literally to kill the Indian in the child in order to let them live ‘properly’ within the biological mass of the citizenry. This was both the preserve of governmentality (through the destruction of indigenous culture and language), but also explicitly biological through the imposition of specific nutrition programs, and indigenous children being taught how to live a proper, settled, agricultural life instead of what was seen as a pre-modern way of living. In this way, I believe we can see that biopolitical management of indigenous peoples has been oriented around an attempt to kill indigenous peoples, whether directly or

⁴⁰ This issue of the camp can be understood as one of those discontinuities that I referenced above in Footnote 4. In this case, the reserve system has not necessarily been enacted by all States, and even where it has been, it does not apply to all indigenous peoples equally. For example, the reserve as institutionalized in Canada and the United States, does not exist in a country such as New Zealand, or any of the Scandinavian countries, despite Sami Parliaments having some jurisdiction over Sami issues. Further, even within Canada the issue of the camp is different among indigenous populations, with it being most explicitly applicable to First Nations living on reserve. Today, most First Nations do not live on reserve (56% of First Nations live off-reserve according to the Government of Canada) however, and while they still constitute bare life within a biopolitical framework – and are still subject to State management of their lives – they exist outside of the territorial camp. This is not to say that they are not confronted by settler biopolitics, rather, that it is manifested in differing ways in different situations, and to different depths.

indirectly. While methods may have changed to become less explicitly brutal, it is possible to see this continued logic driving State treatment of indigenous peoples today.

Taken together, I hypothesize that biopolitics acts upon indigenous peoples in specific ways that make up a settler biopolitics that is distinct to indigenous peoples. This section has already discussed this in relation to indigenous peoples as a racialized population, and the reserve-as-camp. In addition to these, settler biopolitics functions on the very subjecthood of indigenous people themselves through a sort of “identity regulation” in which it is the State – or in my thesis, the international community – that collapses the multiplicity of indigenous peoples into a homogenous bloc (Morgensen 2011: 62). In addition to this homogeneity of indigenous *appartenance*, Rifkin (2009) notes that biopolitics works at “defining and redefining the threshold of political identity and legitimacy and determining how Native peoples will enter that field, including what (kinds of) concepts and categories they will inhabit” (98). Outside of the reserve context, Rifkin notes how this interpellation takes place by conceiving of ‘the nation’ as “a whole political body” (*Ibid*, 94). Understanding the nation this way “requires narrating it as ‘a unitary subject’ rather than a collection of separate, unsubordinated, self-governing polities” (*Ibid*). Through homogenizing indigenous peoples and communities into the larger body politic, the State organizes the population so as to allow for specific forms of governance to be enacted against indigenous populations, entrenching them as inferior within colonial hierarchies. This colonial aspect of my hypothesis lies in the nexus between the forms of power described above and the way that subjects are formed. Taken together, I believe we can understand settler biopolitics as continually eliminating the possibility of self-determination for indigenous peoples, and actively working to manage the very existence of indigenous peoples as a racialized, subaltern subject.

Neoliberalizing Indigenous Subjects

In addition to the management of indigenous life by States, indigenous peoples are also subject to a neoliberalizing power similar to that exercised against non-indigenous subjects. This power seeks to transform the – in this case indigenous – subject into a neoliberal self. Again, as discussed in the Introduction, when discussing neoliberalism in this context I am making a distinction between governance of the economy, and governance of selfhood. While the

separation often cannot be made neatly – and as will be seen in Chapter 5, the two aspects work together to reinforce each other – for my purpose here I am speaking specifically about to the “multitiered *sociological* entity” that is neoliberal governmentality (Mirowski 2013: 50; emphasis in original). As the title of the subsection suggests then, my hypothesis focuses primarily upon the neoliberal governance of indigenous selfhood. In doing so, I am drawing upon Mirowski’s (2013) extensive definition of neoliberalism through reference to his ‘Thirteen Commandments’ of neoliberalism (53-67). I am also supporting Mirowski’s definition with reference to Peck’s (2010) book as well, drawing eclectically from these sources to highlight aspects that are particularly relevant to my thesis.

One of the most important aspects of the neoliberalization of the self is that it is not simply based on understanding the organization of political life through the intervention of Foucault’s “frugal State” (Foucault 2008: 30-1). Instead, the Mont Pelerin Society⁴¹ seeks to effectively marketize society – and individuals – through “a thoroughgoing reeducation effort for all parties to alter the tenor and meaning of political life” itself (Mirowski 2013: 48). This is not to say that neoliberalism literally seeks to organize everyday life into the form of a market though (*Ibid*, 50-1); rather, neoliberalism seeks to organize everyday life around the *logic* of markets, and more specifically, its own “flexible credo” (Peck 2010: 18) that envisions the neoliberal self as infinitely malleable (Mirowski 2013: 108). Flexibility in this case comes through the imposition of a new sort of freedom according to neoliberal values of negative freedom, or freedom from things (*Ibid*, 60-1). Within this context, two phenomena occur. First, the self is required to be both eminently flexible, wherein the self and human body are reduced simply “to an arbitrary bundle of ‘investments,’ skill sets, temporary alliances...and fungible body parts” (*Ibid*, 59). Second, “Government of the self” is considered to be paramount, whereby each self must simultaneously be “both employer and worker” at the same time (*Ibid*). Essentially then, each self is required to become a pure version of an entrepreneurial self, reliant only upon himself or herself.

⁴¹ The Mont Pelerin Society was founded in 1947 in part by economists such as Friedrich Hayek, Karl Popper, and Milton Friedman, and which served to inculcate and promote contemporary neoliberalism (Mirowski 2013: 39).

In this situation, the neoliberal self does not truly hold a static identity, instead becoming entrepreneurial and flexible enough to seemingly be anything to anyone (Foucault in Mirowski 2013: 95-6). This flexibility exists not only at the level of the individual however, as Peck argues that neoliberalism manifests itself in different ways depending on the local context, existing only in ‘impure’ forms in each instance (Peck 2010: 7-10). This point is important to keep in mind, as I posit that it would apply to the case of indigenous peoples. This is because, as seen above, there are not only differences with regards to the powers exerted over them, but also land and economic issues that are distinct from the situations faced by non-indigenous peoples, and which will be more closely examined in Chapter 5. Here we would have a situation whereby it isn’t simply enough to destabilize an economy into a sort of ‘forward failure’ often undertaken by neoliberalism (*Ibid*, 23; see also Klein, 2007). Instead, we see objectionable conditions – of the type discussed below – created on reserve by neoliberal States in order to seemingly force indigenous peoples into neoliberal frameworks in order to simply survive. Ultimately then, this localization of neoliberalism shows that there is no single way in which neoliberalism acts (Peck 2010: 21-2), though ultimately the separate situations all seek a similar endpoint of a normalization of neoliberalism and neoliberal governance.

Returning to the issue of the indigenous neoliberal self, I argue that the transformation of this self comes about because of how deeply neoliberalism has sunk into everyday life. It has effectively become the “ideology of no ideology” (Mirowski 2013: 28), as illustrated by the many people who claim that it simply does not exist (*Ibid*, 37; Peck 2010: 2). Indeed, Mirowski (2013) argues that one of the most important aspects of contemporary neoliberalism is that it seeks to be understood as a ‘natural’ phenomenon (55). This natural character of neoliberalism comes from how everything is subsumed by the market (*Ibid*, 54-5), and how this has essentially created a “comprehensive worldview” (*Ibid*, 56), and a fundamental redefinition of what it means to be human (*Ibid*, 58). Instead of understanding ourselves as connected to others, and as parts of communities, neoliberalism seeks to individualize us (*Ibid*, 66), and have neoliberal “political/economic theories do dual service as a moral code” (*Ibid*). This means that all individual and governmental decisions are to be made according to (neoliberal) economic logics masquerading as moral positions in order to be considered proper or legitimate. As will be seen in Chapter 5 in discussing indigenous development and land rights discourse, they increasingly

are. For Mirowski, the endpoint of neoliberalism's 'virtuous whole' is the formation of an agent that does not understand their own place within the neoliberal system. Indeed, this agent is acting to perpetuate that system by simply engaging in their everyday life, even when consciously attempting to act in a way that is anti-capitalist or anti-consumerist:

“The ideal neoliberal agent was a person who didn't even need to know she was neoliberal, because the various aspects of her selfhood were conceived as being in natural harmony with the totality of the [neoliberal] kosmos, whether she consciously aspired to be wicked vanguard rebel or placed conformist” (2013: 105).

Key to the formation of the unknowingly-neoliberal agent is that they are not formed through discipline, or some grand conspiracy organized by a single source of power. Instead, Mirowski argues that it is through the absorption of neoliberal logics, discourses and images that we become neoliberal selves. This absorption occurs through a “thousand and one little encounters spread over a lifetime,” and takes place at a “granular level” in everyday life (Mirowski 2013: 154). Effectively, these encounters occur each time we turn on the television to watch the ‘disaster-porn’ news coverage of indigenous issues, or read an article online about how the internet has transformed the way in which indigenous peoples lifting themselves up by selling indigenous art through online marketplaces. Within the context of my project, I am looking at States and other organizations, and trying to understand if they can be seen as laying foundations for us to then build ourselves into neoliberal selves. If so, does this come about because of the images and discussions that we engage with on a daily basis?

Double-Movement Governance in Action: News

Thus far in discussing these two types of power exercised upon indigenous subjects, I have spoken about each individually. Before laying out my hypothesis regarding how these forms of power act within a colonial politics of recognition, I briefly turn to how settler biopolitics and everyday neoliberalism can be understood to interact to reinforce each other. In order to do this I will look at some of the portrayals of indigenous life and communities in ‘mainstream’ news programming by collecting news stories regarding indigenous peoples that illustrate a narrative oftentimes found within everyday discourse. In doing so I seek not to provide a wholesale analysis of the news; rather, I am merely seeking to provide a vignette to concretize how the double-movement of governance works on indigenous peoples. Specifically, I illustrate how settler biopolitics works to racialize indigenous peoples, and how this is further echoed by the ‘everyday sadism’ of everyday neoliberalism.

The right to kill does not only come in the form of direct application of death, as in the death penalty or other state-sanctioned killing. Instead, I am looking to the establishment of the very conditions within which racialized subjects are forced to live: life on First Nations and Native American reserves. As Alfred (2009) notes, conditions on reserve have reached ‘crisis’ levels, wherein “opportunities for a self-sufficient, healthy and autonomous life for First Nations people on individual and collective bases are extremely limited” (42).⁴² Conditions on reserve are so bad that the UN consistently ranks them as far removed from the rest of G7, and even G20 countries on quality of life indexes (Cooke, Beavon & McHardy, 2004; SR Indigenous 2013 & 2014). In fact, these very conditions drive exponentially higher rates of youth suicide on reserve (SR Indigenous, 2014), and higher rates of death and incarceration across many different categories. This fits into a logic of settler biopolitics that quite literally seeks the extinguishment of indigenous life where it cannot be – or simply is not – organized towards the safety and security of the whole, and does so through the imposition of standards of living that ensure this outcome. The imposition of these kinds of standards of living does not only come from States alone either. Indeed, in some self-governing communities, indigenous leaders themselves make impactful decisions that cannot be discounted. However, these decisions are made by indigenous governments that have been “designed to mimic colonial forms of authority,” and thus can be understood to operate according to colonial norms (Alfred 2005: 135), which tends to produce specific kinds of effects (see Alfred, 2009 for these effects). This points to structural issues in how we conceive of self-government, which is discussed more fully in Chapter 4 and illustrated in Chapter 5.

Concurrent with this biopolitical racialization of the management of life and death, we have the phenomenon of ‘everyday sadism’ presented by Mirowski (2013) as being integral to neoliberal organization of life. ‘Everyday sadism’ is described by Mirowski as allowing those still with jobs and in (relatively) privileged positions within society to be “galvanized to find within themselves a kind of guilty pleasure in the thousand unkind cuts administered by the

⁴² Many others have noted similar problems. In news media alone the issues identified include housing problems (Rae 2014: web), missing and murdered indigenous women (Renzetti 2014: web; Caplan 2014: web), access to indigenous communities (Canadian Press & Globe and Mail 2015: web), among many others.

enforcers of trickle-down austerity” (130). Cultural outlets have used the phenomenon particularly effectively in order to redirect anger over neoliberal failures in the political sphere towards the most victimized themselves (*Ibid*, 131). One example of this discussed by Mirowski is what he calls “crisis-porn news stor[ies]” about the victims of eviction notices and job losses who are then asked to tell their story, only to be called such things as “scavenging raccoons” by political figures when they are forced onto social welfare programs (*Ibid*). Other examples include the payday loan industry, who Mirowski says are treated “as exemplary of the types of legitimate businesses that provide opportunity and salvation in the current contraction” (*Ibid*); or criminal trespassing laws that literally criminalize homelessness, even reaching into the past and making a ‘spectacle’ out of arrests to create a “contemporary theater of cruelty” (*Ibid*, 136-7). These images in turn “fortify the neoliberal self” (*Ibid*, 134) through “an active externalization of the experience of insecurity and vulnerability to revaluation” (*Ibid*, 133) in order to make the audience believe “that it is legitimate for themselves to take advantage of those who fail” (*Ibid*, 135).

Briefly then, I think it is useful to link the biopolitical creation and management of suffering on indigenous reserves with the fortification of the neoliberal self through the pleasure taken in the suffering of the most victimized.⁴³ Indeed, media stories in print, and perhaps more impactfully on TV, often focus on the suffering of indigenous peoples on reserve. Clear examples of this include the coverage of the deplorable conditions in Attawapiskat (Pierro 2013: 7-10; Galloway 2013: web; Schwartz 2013: web; CBC News 2013 a & c: web; see also Stastna (2011) for a more generalized example), as well as the coverage of drug and alcohol abuse on reserves across North America (Clibbon 2012: web; Yeung 2011: web).

Importantly, settler reactions to these horrific images and conditions too often are simply to blame indigenous peoples themselves. This is evidenced through politicians and everyday people

⁴³ One of the potential issues here comes with the *individualized* conception of the neoliberal self within Mirowski, and the fact of our taking pleasure in seeing the suffering of indigenous *communities*. This slippage does not disqualify my reading of these two phenomena as reinforcing each other for two reasons. The first is that Mirowski does not consider issues of indigeneity within his work, and the legal framework of settler States such as Canada or the United States means that the racialization of indigenous peoples occurs both on a communal level, as well as an individual one. Second, in speaking to ‘everyday sadism’ I am not speaking only about an indigenous audience, but also about a settler audience outside of a reserve setting. This difference means that the neoliberal self can still be fortified on both individual and collective levels among settlers as well as indigenous peoples.

grumbling about how much money States spend on indigenous populations, including seemingly ‘common sense’ complaints about no taxes, free gas and post-secondary education for indigenous peoples (Harvard Native 2012: web; Sagan 2015: web), and about Chiefs and other elites enriching themselves instead of providing for their communities (Ellis 2013: web; CBC News 2013d: web). The argument goes that ‘if we had all those advantages we wouldn’t be in those situations, we would be industrious and entrepreneurial, and make something of ourselves and our communities.’ The communities and peoples themselves are also directly blamed for ‘wasted’ money, as done by the Canadian Government in the case of Attawapiskat when they imposed a third-party consultant to manage the Band Council’s funds (CBC News 2011: web).

Taken together then, this sort of ‘disaster porn’ has multiple impacts. One is that settlers’ sense of our own superiority is further entrenched, as we watch the images of indigenous suffering in the news media. Images such as these have a powerful effect on our understanding of different groups or people, and works to form our stereotypes of them (see Bleiker & Kay 2007: 142-4). This is especially the case with news media, which “is perceived as a reflection of the actual, as a neutral mediator between a subject, and, in the case of most international news, an object usually located in another part of the world” (*Ibid*, 143).⁴⁴ Because of this those images and stereotypes of indigenous peoples that we see and hear in the news become further entrenched within non-indigenous settler society. This leads to further restrictions and conditions placed upon indigenous governments and peoples in order to effect the outcomes we desire, such as the imposition of third party financial managers for self-governing indigenous communities (CBC News 2011: web), or the imposition of economic development projects against indigenous communities’ wishes (Free Speech Radio News 2014: web; Schertow 2008: web; Arghiris & Kennedy 2015: web). When this occurs, colonial norms and standards of domination are further entrenched and enacted on indigenous life. Not only do we continue with our biopolitical management of life and death on First Nations reserves, but there is also the external imposition of neoliberal norms and standards on indigenous peoples: we seek their ‘responsibilization’ by way of consultants and imposition of neoliberal, entrepreneurial, selves in order to save their communities. In this way we can see the ‘double-movement’ of governance between settler

⁴⁴ The comment about ‘international’ news continues to be relevant here, given the remoteness and isolation of many indigenous communities.

biopolitics and neoliberalism in action.

The Colonizing Power of a Politics of Recognition

I used Coulthard in the first section of this chapter to show how (indigenous) subjects are formed through mutual recognition with others, typically through a politics of recognition framework advocated for by scholars including Charles Taylor and Will Kymlicka. Coulthard's argument is that though this framework currently operates to establish indigenous subjectivities (Coulthard 2007: 427-8), it neither offers substantive redress and reconciliation for indigenous peoples, nor can it offer the emancipatory pathway towards freedom that it claims to provide. Rather, Coulthard argues that as a result of the colonial nature of the recognition process itself, the subject that is formed through this framework in fact becomes "significantly *deformed*" (Coulthard 2014: 29; emphasis in original). Ultimately then, the end result of the policies that stay true to a politics of recognition framework is to create "Indigenous subjects of empire" (Coulthard 2007: 439). In this section I trace the theoretical formation of Coulthard's argument, setting myself up to hypothesize concretely about its relevance to a human rights framework for indigenous emancipation in the next section.

Importantly, for Coulthard, an emancipatory politics of recognition requires that participants be *equal*, self-determining subjects if there is to be any sort of reconciliation. I argued above that, with regards to the biopolitical management of indigenous life and indigeneity, this equality is lacking from the mutual recognition between indigenous peoples and colonial States. The problem with a politics of recognition debate as put forward by Taylor or Kymlicka "has to do with its failure to adequately confront the dual structure of colonialism itself," instead only addressing the subjective aspect⁴⁵ (Coulthard 2014: 33). With this focus, the objective structural aspect that is the settler State – and its colonial apparatus – is ignored (*Ibid*). We are then left with a situation whereby a politics of recognition framework attempts only to combat the colonial effects at the subjective level, which will not allow for true recognition (*Ibid*, 34). Rather, the relations of domination between settler and settled are left intact. Especially in

⁴⁵ Here Coulthard is following Fanon with respect to colonialism incorporating dual levels: objective and subjective. For Fanon, not only were there "*objective* historical conditions but also [subjective] human *attitudes*" at play in colonial contexts (Fanon 1991: 84; emphasis added). These two aspects of colonialism work together to continually reinforce not only the structures of colonialism, but also the mindset of those colonized.

circumstances with more explicit colonial norms – such as those in Canada and the United States where the State literally decides upon who gets to be indentified as indigenous, thereby maintaining power over the very definition of indigeneity itself – in order for a politics of recognition framework to be successful, it is important that it not allow indigenous peoples to continue to be dominated by ‘former’ colonial powers.⁴⁶

This is precisely the problem that Coulthard comes to in reading Fanon: “where ‘recognition’ is conceived as something that is ultimately ‘granted’ or ‘accorded’ a subaltern group or entity by a dominant group or entity—prefigures its failure to significantly modify, let alone transcend, the breadth of power at play in colonial relationships” (Coulthard 2014: 30-31). This is due to there being the need for recognition by the State for indigenous peoples, but no reciprocal recognition necessary due to the relation of domination. Given this, “in actual contexts of domination (such as colonialism) ... the terms of recognition usually determined by and in the interests of the master (the colonizer)” (Coulthard 2007: 439). When discussing the impacts on indigenous peoples – in Canada for Coulthard, internationally for this paper – we must take into account that they are considered the ‘subaltern’ (Beier, 2005), or as having lived, and continuing to live, through a history and present that is rooted in a colonially-dominated framework, which makes up the objective aspect of the colonial power structure (see Coulthard 2014: 33).

Through a politics of recognition then, a colonial power – such as the State within my account – grants recognition to indigenous peoples, which allows the colonial system to maintain itself without the need to resort to readily observable violence. Instead, the “long-term stability of a colonial system of governance relies as much on the ‘internalization’ of the forms of racist recognition imposed or bestowed on the Indigenous population by the colonial state and society as it does on brute force” (Fanon in Coulthard 2014: 31). This internalization takes the form of the structures of colonial rule becoming the structures that indigenous subjects define themselves according to – again, much as is seen through the adoption of human rights standards for

⁴⁶ Or perhaps not even ‘former,’ as Prime Minister Harper addressed the G20 in 2009 and proclaimed that “Canada has no history of colonialism” (Dearing, 2009), apparently forgetting not only the ongoing colonization of indigenous peoples in Canada, but also the founding history of the country as a British colonial possession.

indigenous peoples.⁴⁷ Put plainly, from this perspective “the best the colonized can hope for is ‘white liberty and white justice; that is, values secreted by [their] masters’” (*Ibid*, 39), eliminating the possibility for meaningful self-determination.

Understood through this lens, it would seem impossible for a politics of recognition framework to allow for the type of meaningful self-determination that would allow indigenous peoples to organize and govern themselves according to their own institutions and in accordance with their own philosophies and cosmovisions. Because of this, such a framework appears to lack a pathway to freedom or emancipation from the present colonial governance for indigenous peoples. Indeed, Coulthard goes on to argue that:

“rather than leading to a condition of reciprocity the dialectic either breaks down with the explicit nonrecognition of the equal status of the colonized population, or with the strategic “domestication” of the terms of recognition leaving the foundation of the colonial relationship relatively undisturbed” (Coulthard 2014: 40).

This illustrates that a politics of recognition framework can be seen to maintain the types of domination and hierarchies present in colonial situations. In these cases, instead of emancipation, the framework serves to reinforce the positionalities of both settlers and indigenous peoples. This is often done through an explicit domestication of recognition, as pointed to here by Coulthard. In my hypothesis regarding the Declaration, Article 4 speaks directly to this in giving powers of self-determination to indigenous peoples only over “local” affairs (Declaration, Art. 4). Further, in its announcement of support for the Declaration, the United States explicitly spoke to a new understanding of self-determination as occurring only *within* existing States (Government of the U.S. 2010: 3). In forcing recognition to occur within existing States, colonial relations are maintained through the colonizing States retaining the right to recognize or not indigenous claims. In these cases indigenous peoples have a much more limited ability to recognize the authority of the State. A similar process of domestication also comes in the form of what Taiaiake Alfred calls “cooptation,” whereby Indigenous leaders are brought into the fold of

⁴⁷ Of course, this is not to say that the internalization of a colonized subjectivity is total, nor even *necessarily* occurring at all. As Mbembe (1992) speaks to, there is not one single colonized subjectivity, but multiple, each being performed at various times and in various venues. This is done in part based on who is present, and what kind of a ‘face’ the colonized wishes to present. With respect to my project here, this could mean that the adoption of a human rights framework could simply be a means to an end for indigenous peoples, and not considered fundamental to their emancipatory struggles. Instead, it might only be the public face given to the movement, not the fundamental driving concept. I speak to this in Chapter 3 where I discuss examples of indigenous agency, and especially in the Conclusion to the chapter, where I discuss a possible strategic engagement with a rights-based discourse.

government power (Alfred 1999: 73-80). When this occurs, indigenous leaders are effectively told that the way in which they have decision-making power is by working with and within State governments, reinforcing a domesticated view of indigenous peoples. While this has been discussed theoretically here, it will be further discussed in a more empirical fashion in Chapter 4 and 5.

Recognition, Subalternity, and the Hegemonologue

In theory then, a politics of recognition framework is unable to offer indigenous peoples real self-determination, and instead works to further entrench colonial norms and hierarchies. Here I build on this, and use Beier's (2005) concept of the Hegemonologue to hypothesize that this same process is at play in the links between power relations and the human rights framework used by the indigenous rights movement. The Hegemonologue concept is based upon Spivak's (1988) discussion of subalternity and how subaltern subjects lack the ability to speak and be heard by non-subaltern subjects. Beier takes this, and makes a disciplinary critique of International Relations, arguing that "both displacement and destruction of Indigenous peoples are ongoing and, in this sense, what we might like (or perhaps need) to think of as the unsavory business of yesteryear is, in fact, still being perfected" (Beier 2005: 14). Here I argue that human rights activism plays a similar role with respect to indigenous rights, effectively disallowing for sincere engagement with indigenous philosophies. This will be tested in the following chapters.

To begin, Beier defines his Hegemonologue as "that decidedly Western voice that speaks to the exclusion of all others, heard by all and yet, paradoxically, seldom noticed, the knowledges it bears having been widely disseminated as 'common senses' rather than as politicized claims about the world and our ways of being in it" (Beier 2005: 15). In depoliticizing their claims, and indeed "By way of their omissions as much as their claims, scholars of International Relations, like those working in other disciplines, unwittingly participate in the (re)production of the enabling narratives of advanced colonialism"⁴⁸ (*Ibid*). Through this Beier is arguing for

⁴⁸ Here Beier is using the term 'advanced colonialism' to be understood as the everyday colonialism that we in settler and non-settler societies alike continue to perpetuate upon indigenous peoples, despite our seemingly modern, or post-colonial, contemporary world. This can take the form of unacknowledged usage of indigenous lands, and the way in which they have been unproblematically – for settlers at least – brought into the fold of the contemporary State, with the rights, powers and control that come along with it. Beier also notes that this advanced colonialism

International Relations – and academia in general – to take account of its very ontological foundations to understand that we have built it upon a Western way of understanding, or cosmology, especially its understanding of a linear approach to history as “progress” (*Ibid*, 31).

One of the problems with this is that International Relations then only accepts Western knowledge – or knowledge based on Western ontological principles – as being valid. Specifically, “we violently speak the modern Western Self over and against Indigenous peoples” (Beier 2005: 22). Consequently:

“Contestation in International Relations takes place only on the terrain occupied by questions of ontology and epistemology and the range of such questions is determined in advance by cosmological commitments that insinuate themselves from beyond the reach of debate. This has the effect of shielding Western cosmology from serious scrutiny without impeding the powerful influence it exerts over knowledge.” (*Ibid*, 45)

In silencing those voices that seem ‘exotic’ or ‘foreign’ we lose out on indigenous cosmology and knowledges as alternative perspectives and ways of resolving our problems. Within my thesis and questions of indigenous rights, I hypothesize that the same effect occurs. Our options remain limited to Western norms and standards. International Relations also falls into this trap, “as international theory does not extend to raising challenges to the operant Western cosmology that both constrains and conditions it, it cannot rightly be regarded as counter-hegemonic” (*Ibid*, 46).

As I touched on in Chapter 1, I believe a similar phenomenon is ongoing in international politics. Here I read claims as being considered legitimate only insofar as they are formulated in the ways that States expect them – in this case in the form of human rights discourse. If claims are not accepted as legitimate outside of a human rights discourse, they cannot be accepted. Effectively I believe this forces indigenous peoples to engage in the Hegemonologue of human rights, contributing to the “maintenance of oppression(s)” (Beier 2005: 17) against indigenous peoples, and working to “violently erase” those indigenous voices that speak up (*Ibid*, 33). Further to this, while there are times in which non-Western voices are heard, for the purposes of International Relations, Beier (2005) argues that they are necessarily mediated “through the

further manifests itself in “the idea that Indigenous peoples do not constitute authentic political communities” (Beier 2005: 15), and instead only do so by way of government recognition. This leads to “the denial/erasure of Indigenous values and knowledges” (*Ibid*). This is apparent in the academic realm in Beier’s case, but also in the realm of politics and everyday life outside of the confines of the Ivory Tower.

already authoritative voice of the scholar” (30), and that those voices are still judged against the standards set by Western texts (*Ibid*, 35). This means that “The result is that voices speaking from the margin become audible only when they mimic those of the centre - when they retain too much that is "foreign" or arcane to the Western ear they are typically reduced to artifacts of the exotic, charming perhaps but hardly authoritative" (*Ibid*).

The issue for my hypothesis becomes, even if it is an efficient and effective discourse within which to engage, human rights can be understood to privilege that ‘Western Self’ above others, and in many ways is a Western discourse (Woodiwiss, 2005). Through the inclusion of indigenous conceptualizations of community there has been real change to the individual nature of human rights; however, I argue there is still the issue of translation of indigenous claims to fit the established discourse. The translation of claims can mean that some concepts and understandings are lost, mirroring Spivak’s argument that the subaltern is silenced in part as a result of their translation (1988: 306). Within my hypothesis, the translation occurs through the need to gain recognition for indigenous claims, and how that can deform both the indigenous claims, as well as the indigenous subjects making those claims as well.⁴⁹ As a result of the failings of a politics of recognition, human rights remain the only option for indigenous claims to be accepted at the international level, thus remaining the hegemonic monologue that forms Beier’s Hegemonologue.

This issue has been recognized in relation to indigenous peoples and human rights as well, particularly by Andrea Smith in her discussion on human rights vs. civil rights. One of the arguments in favour of human rights, according to Smith (2014), is that they are not “derogable by states” and therefore “cannot be abrogated by states” (83). Aside from meta-critiques of human rights frameworks as being birthed out of colonial norms,⁵⁰ one of the issues is that human rights claims – especially those made by indigenous peoples as examined here – are taken

⁴⁹ This point is similarly touched upon by Byrd (2011: XXVI) as she discusses how freedom cannot come through ‘enfranchisement’ into participatory democracy.

⁵⁰ For more on this, see Randall Williams (2010), who argues against the use of human rights by indigenous peoples, because of their use by States and non-indigenous activists in keeping questions of decolonization unaddressed, and instead focusing attention elsewhere.

to the UN, which is a “bod[y] of nation-states,” and thus focused on States’ interests (*Ibid*).⁵¹ Smith makes this point explicitly: “A human rights framework is still ultimately enforced by nation-states and hence this framework relies on the continuation rather than the end of those states” (*Ibid*). This illustrates how indigenous peoples claim their rights from the very States that maintain systems of colonization and oppression, and that not only is it those States that will need to give up their own benefits to indigenous peoples, but they are adjudicating the claims of indigenous peoples over what they will need to give up. I am arguing that this system serves to maintain indigenous peoples in Coulthard’s ‘colonial hierarchies,’ without recourse to adjudication by non-State powers, especially not self-determining, indigenous powers. It is this argument that will be tested over the following three chapters.

Conclusion

This chapter has put together a theoretical argument against a human rights framework holding emancipatory potential for indigenous peoples, and hypothesized instead that it only serves to reinforce existing colonial relationships and norms. To do this I combined Coulthard’s argument regarding the formation of indigenous subjects with a double movement of power between a colonial biopolitics and everyday neoliberal governmentality. From this, I returned to Coulthard to argue that no framework based on a politics of recognition can offer indigenous peoples a pathway out of the ongoing colonialism due to the colonial nature of relations between subjects. A human rights framework is no different, especially as indigenous peoples are disciplined into a Hegemonologue by which they must articulate their claims in specific ways – in this case through a human rights discourse – in order to be accepted by States. Instead of changing the positionality of the subjects, such a framework only further Western, or Westernized, voices as being those deemed legitimate.

The following chapters seek to bring this somewhat into question, and to examine whether these arguments hold. Chapter 3 does so by focusing on the ways in which indigenous peoples have

⁵¹ Indeed, in the case of the Declaration this is even more clear, as it was not an independent UN that was negotiating the Declaration, but rather indigenous and State representatives themselves. In this case Barnett and Finnemore’s (1999) analysis regarding the ‘pathologies’ of international organizations and their behaviour are less applicable because the UN and its bureaucracy were not imbued with the type of agency seen in their study. Because of this, State interests are more directly engaged, and not mediated through the workings of an agentic international organization.

made changes to the concept of human rights so that it better incorporates indigenous ways of relating to each other, and even includes indigenous peoples at all, a counterpoint to the human rights as inherently colonial thesis sketched out theoretically here.

Chapter 3

The previous chapter engaged in a theoretical critique of human rights frameworks built upon recognition, hypothesizing that they are not able to open emancipatory pathways for indigenous peoples out of the colonial present. According to my hypothesis, these frameworks fail because they do not work to displace relations of power between subjects, but rather reinforce them. In this chapter, I turn to the specific effects of the discourse and the Declaration. Specifically, I discuss some of the ways in which we can see indigenous agency exerted at the international level. This runs counter to the hypothesis presented in the previous chapter, and shows some of the ways in which the hypothesis might not capture the full extent of indigenous activism at the international level. It follows from Chapter 1 in treating the Declaration as an assemblage, with multiple constituent parts and logics within the text, not all of which will necessarily work together in a perfectly coordinated manner. This plays out in the effects of the Declaration and a rights-based discourse, insofar as there are some ways that we can understand them to incorporate indigenous epistemologies and meet their demands. At the same time, not all indigenous demands are engaged with, and some important aspects of indigenous philosophies – even those with which they have engaged – are pointedly left out. This complexity of engagement will be analyzed in the next three chapters.

This chapter focuses on some of the successes of the indigenous rights movement as they relate to a rights-based discourse and indigenous subjectivity and agency. I focus here specifically on the aspects of collective rights, standard-setting, and the formation of international indigenous subjecthood. In doing so I also discuss how indigenous representatives have exercised their agency to push back against some aspects of an encroaching neoliberalism. To do so, the chapter first outlines what some of the literature has to say about the use of a human rights discourse by indigenous peoples. Then I will turn to each of the aspects of the discourse mentioned above, and through an examination of discussions during and after the drafting and passage of the Declaration I will highlight some of the successes of the movement. These sections of the chapter will be broken down into two overarching sections. One of these will speak to the expectations of indigenous peoples during the drafting of the Declaration; the other will focus on what appears in the Declaration, and the effects that has had. Finally, I close

by discussing the strategic use of the human rights discourse, and how engagement with this framework helped indigenous claims to gain recognition at the international level.

Literature Review

To open the substantive portion of this chapter, I will begin with a brief review of the existing literature on the question of the role that the Declaration plays in international relations and law. This review will primarily concern itself with the perspectives of those who support the Declaration, and who have written extensively about the positive effects of the Declaration on the rights of indigenous peoples.⁵² Here the argument is threefold. First, they argue that the Declaration is an explicit recognition of indigenous peoples as subjects of international law because of their indigeneity, rather than because of their citizenship of a UN Member State. Second, the concept of human rights has been broadened by the Declaration, specifically insofar as it clearly establishes the collective rights of indigenous peoples, instead of a focus only on the rights of individuals as previously seen in human rights law. Finally, the Declaration acts as a sort of minimum standard for acceptable policy and behaviour for States regarding their relations with indigenous peoples. This necessarily involves the creation of new forms of international law, and allows indigenous peoples – through representatives at international fora, or through activism both internationally and domestically – to hold States to account when they do not meet these standards.

Indigenous Subjectivity and International Law

Within international human rights law prior to the Declaration, only two instruments specifically spoke to the inclusion of indigenous peoples: Conventions 107 (1957) and 169 (1989) from the International Labour Organization (ILO). Convention 107 in particular was seen by indigenous peoples as problematic – and eventually also by the ILO – for its ‘integrationist’ perspective⁵³ (ILO, ND, web). While the Declaration was being drafted, Convention 107 was revised – ostensibly to remove the ‘integrationist’ perspective – and put forward anew as

⁵² This is not intended to be a comprehensive literature review. Instead, I have only tried to highlight specific aspects of the academic work supportive of the Declaration. Critiques of the Declaration will be further addressed in the fourth and fifth chapters.

⁵³ “Integrationist” is the term used by the ILO to describe the Convention. By contrast, indigenous peoples have consistently used the term “assimilationist” since the Convention’s passing. For an example of this language see Anaya (1996: 48).

Convention 169. The problem with these two Conventions however is that they were never considered to be truly universal, as they only applied to States that ratified them (Anaya 1996: 49). Indeed, at its peak only 27 States ratified Convention 107,⁵⁴ and Convention 169 only counts 20 State Parties to it. Because of this, it isn't possible to consider Conventions 107 and 169 as defining subjecthood for indigenous peoples worldwide, as very few states signed onto the agreements.

By contrast, Anaya argues that the Declaration represents customary international law, using indigenous peoples' active role in the drafting process as evidence of this (1996: 41; see also Stavehagen in Pulitano 2012a: 3). Pulitano further explicitly writes that through the Declaration indigenous peoples are now "rights bearers themselves" because of their status as indigenous peoples (Pulitano 2012a: 1), instead of through their belonging to a specific State. This subjectivity for indigenous peoples is seen as different than that within Conventions 107 and 169 precisely because "there is no longer any government, at least in a formal sense, that opposes the declaration" (Anaya, 2012). This is different from the ILO Conventions, and offers indigenous peoples widespread recognition in a way previously unseen at the international level. Further, this recognition brings about indigenous subjecthood within international law that was previously unarticulated (Green 2014b: 22), precisely because "Indigenous peoples' rights are a concern of international law and attention for the entire international state community" through the Declaration itself (*Ibid*, 35). It is this attention and recognition of indigenous peoples and their rights because of their indigeneity that makes this indigenous subjectivity fundamentally different from previous iterations, where indigenous peoples were subjects of international law because of their citizenship in colonial states.

As mentioned above, indigenous representatives are participating in the writing of international law as well, and this participation is already having effects. Anaya states "international law increasingly addresses and is shaped by nonstate actors and perspectives" (Anaya 1996: 40). This has meant a change from previous human rights treaties that indigenous

⁵⁴ Currently Convention 107 remains ratified by 18 States. Nine signatories have since become party to Convention 169, thus ending their commitment to Convention 107.

peoples and their representatives continue to refer to.⁵⁵ The effects of this participation has been the formation of a “modern discourse of peace and human rights...[which] tempers positivism in international law” by helping to root contemporary customary international law in “non-European cultures and perspectives” (*Ibid*). As a result, these scholars argue that we see a weakening of the State sovereignty system as the backbone of international law (Anaya 2001: 110-111). Instead, “The model that is emerging, from the interplay of Indigenous demands and the authoritative responses to those demands, is one that sees Indigenous peoples as simultaneously distinct from, and yet part of, the states within which they live” (*Ibid*, 112). This is illustrative of the important, and fundamental, changes that come with the inclusion of new indigenous subjectivities into international – and domestic, at times – law.

Collective Rights

Historically, the concept of human rights has been tied explicitly to a liberal, individual, subject. This is made clear in Woodiwiss’ (2005) book titled “Human Rights.” In the book Woodiwiss argues that human rights are to be understood “as the inalienable property of all *individuals* throughout the world, as theirs simply because they are human” (Woodiwiss 2005: XII; emphasis mine). To make the matter even more clear, Woodiwiss later uses Galtung to make it clear that “Before one can talk of anything in any culture as a precursor of our human rights construct, that culture has to have also produced a conception of persons as individuals” (*Ibid*, 16). This Western preoccupation with individuals can be traced back to Roman law, as it recognized them insofar as it enabled individuals specifically to protect their individual interests (*Ibid*, 17). This individualized notion has also been brought forward to the present-day human rights framework, which further entrenches a neoliberal, capitalist subject. This can be seen in part through the cultural rights focus forwarded by some indigenous organizations. Such a focus has been described as one that “fits quite comfortably with – and was perhaps even facilitated by – neoliberal development models (Engle 2011: 142; see also pgs 159-60 of the same text), including by pursuing the types of land titling projects discussed in greater depth in Chapter 5 and pushing an individualized notion of self (*Ibid*, 160) similar to that seen in Mirowski’s neoliberal subject (2013: 116).

⁵⁵ For further elaboration on this, see Anaya (1996 & 2001), Brysk (2000), Green (2014), and Pulitano (2012).

Opposed to this Western, individualized understanding of the subject, indigenous peoples typically understand the self as existing only in a more collective fashion (Anaya 2001: 109; Niezen 2003: 3; Tauli-Corpuz, 2008; Savard, 1970), particularly as individuals only exist in relation to their community. Indeed, Isabel Altamirano argues that “To be indigenous is to have a sense of community as a whole...To be indigenous is consensus” (Altamirano in Alfred 2005: 142-43). Tied to this is Alfred’s explicit discussion of a “circle of interdependency” within indigenous communities that includes all those living within that community (Alfred 1999: 42; see also Beier 2005: 44 & Savard, 1980). Even the conception of justice among many indigenous peoples includes a communal nature, whereby to bring about a just conclusion to a situation is to restore peace and harmony among the relations within the community (Alfred 1999: 42-43). This sense of collective being has been at the heart of indigenous claims for decades (Alfred 2005: 135; Engle, 2011), and is just now being substantively addressed at the international level.

This sense of collective identity has indeed become one of the organizing principles for the international indigenous movement (Brysk 2000: 88 & 103; Niezen 2003: 17-18). One of the ways that this collective aspect of indigenous rights is put into action is through the concept of self-determination. Indeed, self-determination is widely understood to be the ‘linchpin’ of the Declaration itself (Engle 2011: 147; Kuokkanen 2014: 126), and without it indigenous subjectivities of human rights cannot truly exist separately from those of citizens of colonial States, a phenomenon which will be further discussed in chapter four. Despite its disputed status, proponents of the Declaration assert that the right to self-determination for indigenous peoples is held collectively (Anaya 2001: 109; Green 2014b: 26), through placing concern on indigenous peoples as peoples, and not simply as a segment of a State’s civil society (Anaya 2001: 113). As will become clearer throughout this chapter, indigenous activism has worked to reformulate international law “into a force in aid of indigenous peoples' own designs and aspirations” (Anaya 1996: 42).

According to these arguments, within the Declaration the focus has been displaced from the individualistic notions of human rights that dominated the human rights system previously (Anaya 1996: 48). Instead of the European precepts contained within previous international law,

now we see that "concepts of group or collective rights have begun to take hold in the articulation of human rights norms" (*Ibid*, 42). This has come about specifically because of the Declaration – and its place as the “gold standard in international and domestic law for state protection of Indigenous human rights and constitutes international human rights law” (Charters & Stavenhagen in Green 2014b: 23) – and its widespread and “unprecedented” acceptance and the recognition of collective indigenous claims by States (quote from Pulitano 2012a: 15; see also Green 2014b: 35 & Kuokkanen, 2014).

Setting of Standards

Finally, perhaps the most important role of the Declaration is the role that it plays in setting standards for the observance of indigenous peoples’ rights. This role “emerged as a response to profound state violation of inherent human rights of Indigenous peoples” (Fontaine 2010: 8-10 & Hartley, Joffe and Preston 2010: 12; all quoted in Green 2014b: 23), and has been taken up forcefully by activists, scholars, and indigenous representatives since. It has been the central focus of the WGIP, the Permanent Forum on Indigenous Issues (PFII), and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) throughout their existences, and fundamentally represents the original rationale for the original drafting of the Declaration itself.

Key to this standard-setting effect of the Declaration is the assertion that “the language of the Declaration pushes the boundaries of international law beyond the Eurocentric legal framework to embrace fundamental indigenous epistemologies” (Wiessner in Pulitano 2012: 16). This perspective is often rooted in a legalistic theoretical lens, a key argument of which is that we are now seeing a "reformed system of international law" with respect to indigenous peoples, due to "significant advancements in the structure of world organization and shifts in attendant normative assumptions” (Anaya 1996: 39). Indeed, proponents argue that these shifts have brought about a change in the "legal tradition of states" (Pulitano 2012a: 6). It is through the pushing of the boundaries of international law that we can see the Declaration setting new standards, rather than simply reiterating old ones. Ultimately then, the Declaration constitutes “a major and historic step towards addressing the persistent human rights violations against Indigenous peoples worldwide” (Joffe 2014: 218).

To turn our attention briefly to the legal force of the Declaration, scholars are somewhat split. On the one hand it is possible to find those such as Pulitano, who argues that the Declaration is not inherently binding on states (2012a: 2; see also Carroll, 2012 & Lightfoot, 2009). On the other hand, Pulitano also argues that “The Declaration is the most comprehensive statement of the rights of indigenous peoples ever developed, giving prominence to collective rights to a degree unprecedented in international human rights law” (*Ibid*, 15). This is to say that the Declaration fundamentally represents ‘soft law,’ (Wiessner 2012: 43), and “provides a principled and normative legal framework for achieving reconciliation between Indigenous and non-Indigenous peoples around the world” (Joffe 2014: 218).

From this perspective, the force of the Declaration comes in part from its status of having universal acceptance (Joffe 2014: 218). Indeed, the argument put forward by Anaya is that it be used “as a normative guide” for international legal experts, as it establishes agreed-upon standards that states should be expected to meet (Anaya, 2012). While on the surface it may appear that because of its status as a Declaration – and not a Treaty – the text is not legally binding, Anaya argues that:

“it would be inaccurate to say that it has no legal significance, in my view, for a number of reasons. We are all familiar with the way that declarations can build on existing international legal operation, so I will incorporate by reference all those arguments to say that the Declaration of the Rights of Indigenous Peoples does have some legal significance. As a political document it has significant weight, if only by virtue of the overwhelming majority of the world's states that voted in favor of it--143 versus four against and 11 abstentions, and all of the four that voted against it have since reversed their positions in public statements (including the U.S.) and now endorse the declaration. So there is no longer any government, at least in a formal sense, that opposes the declaration” (*Ibid*).

Due to this, Anaya makes that case that while it may not be inscribed in international law as a Treaty, the Declaration must be upheld as establishing customary international law due to the agreement upon its principles – and Articles (*Ibid*). Further, through viewing the Declaration as customary international law, the expectation is that it will be “mainstreamed” into everyday UN activities (Wiessner 2012: 43), and also into the policy-making process of States.

Taken together, this section has discussed three key arguments by scholarly proponents of the Declaration. The first is that the voting pattern behind the Declaration’s passage gives indigenous peoples a subjecthood within international law that was denied to them before. The second argument centres around collective rights, and how human rights are not only held by individuals

anymore, that indigenous representatives have secured collectively-held indigenous rights through the Declaration. And finally, the Declaration sets meaningful standards of protection for indigenous peoples within international law. If true, these arguments represent strong cases for the effectiveness of indigenous actors at the international level, and the important changes they have brought about. The following sections test these claims. In them I use reports, statements and studies from UN mechanisms in order to understand the extent to which indigenous peoples have concretely impacted international human rights frameworks.

Indigenous Expectations Prior to the Passage of the Declaration

In order to be able to look at the effects of the Declaration and the discourse in concrete terms, it is important to understand where things began. To do this I am using the reports from the annual sessions of the WGIP, as well as some of the indigenous statements made during these sessions, to show precisely what indigenous representatives expected their activism to achieve. In doing so I am cognizant of the ‘political’ nature of these documents – insofar as they represent negotiating positions for both States and indigenous representatives and should be understood to be strategic and instrumental. Despite this caveat, the reports do not contain specific details of the negotiations themselves, but rather are more broad in scope: the WGIP annual sessions were used as a forum to discuss ongoing issues within indigenous communities. Negotiations during the drafting of the Declaration took place at negotiation and drafting tables outside of the annual sessions themselves. Because of this, I believe that the reports can also be understood as genuine reflections of the issues of concern to indigenous communities, representatives and organizations. Also, the reports represent some of the only material on this period of the indigenous rights movement available in an ‘official’ format in English, and as such, are the best source of information available.

From these reports three key expectations of indigenous peoples become clearer. I will speak to issues of collective rights and the implementation of international standards here. The third issue – self-determination – will be discussed further in the next chapter. The rest of this section will illustrate these expectations through the words of indigenous peoples and Members of the WGIP themselves, and then in the final section of this chapter I will compare these expectations

against what is still being discussed at the UN throughout the eight years after the Declaration's passage through the GA.

Collective Rights

Though the right to self-determination is often described as the most integral to the pursuit of indigenous rights overall, the collective nature of indigenous rights is often taken as one of the defining features of indigenous human rights. As was seen above, indigenous authors state that communities are founded on reciprocal bonds that bring all members into harmony, and specifically eschew the individualist nature of non-indigenous communities. This emphasis on the collective nature of indigenous sense of being is reflected throughout the discussions at the WGIP during the drafting of the Declaration. Also, similar to the right to self-determination, the collective nature of indigenous rights was subjected to critique by States, a phenomenon not uncommon to indigenous activism throughout the international realm.

One of the early focuses of the WGIP was on the question of land, and land rights for indigenous communities. Within this discussion indigenous representatives made clear that the right to land was critical not only to their physical survival, but their cultural survival as well (see: WGIP 1982: 16 (79), 18 (84 & 86); WGIP 1983: 19 (96); WGIP 1984: 7 (27), 8 (37)). Within this context, observers at the WGIP spoke to how indigenous peoples' "unique and spiritual relationship to their land...was different from the Western European concept of land ownership" (WGIP 1984: 8 (37)). This difference came through the collective holding of indigenous land, which was contrasted with Western individual ownership of land (*Ibid*),⁵⁶ and how indigenous peoples "did not conceive of institutionalized land as a commodity" (*Ibid*, 10 (49)). Indeed, this displacement of indigenous peoples from their lands – and the ensuing commoditization of those lands – was discussed as being one of the fundamental aspects to ongoing colonialism (*Ibid*, 7 (27); WGIP 1985: 10(36); WGIP 1988: 12 (46)). From this, a

⁵⁶ There is of course a danger in simply assuming that all indigenous communities and nations hold the same views on their relationship to their traditional lands. While I am conscious of differences between communities and nations, indigenous peoples' relationship to their lands are often spoken about in a similar fashion, and in direct contradiction to Western conceptions of land as something intended only to be possessed and used as a way to accumulate wealth. Opposed to this, traditionally indigenous communities often didn't necessarily possess, or own, their lands only for productive purposes. Rather, they act more as caretakers and holders of the land for future generations. For more complete discussions of this issue, see: Alfred (1999 & 2005), Beier (2009), Brysk (2000), Coulthard (2007 & 2014), Engle (2010), Niezen (2003), Watson (2001), and Watson & Venne (2012).

“reaffirmation of [collective indigenous] land and resource rights” was seen as being one of the “most significant features” of the draft declaration (WGIP 1988: 18 (68)), and stood quite apart from the individualized ownership relations prevalent in most States.

Importantly, for indigenous representatives the focus on the collective nature of indigenous rights did not come at the expense of individual rights. This is highlighted by indigenous representatives because during the drafting of the Declaration State representatives spoke to the importance of making individual rights and freedoms a prominent feature of the Declaration (WGIP 1989: 18 (58)) out of concern that collective rights would “override” individual freedoms (WGIP 1992: 19-20 (77)). Responding to this, indigenous representatives stated that they saw a “combination of individual and collective rights with special emphasis on the latter as an inherent and essential element of indigenous rights” (WGIP 1988: 18 (68)). Also, in direct response to fears by State representatives indigenous representatives stated that “indigenous rights are both collective and individual and the terminology used in the Declaration must clearly accommodate both aspects” (WGIP 1989: 18 (59)). This also reflects academic discussions around the collective nature of indigenous rights, insofar as the relationship between individual and collective rights has been called “mutually interactive” (Kuokkanen 2014: 124). The argument goes then, that within indigenous communities one set of rights cannot exist, let alone thrive, without the other.

After sending the Draft Declaration on to the HRC, State representatives again worked to limit the collective nature of indigenous rights through an attempted denial of the term ‘indigenous peoples’ and instead include the term ‘indigenous populations’ or ‘indigenous people’⁵⁷ (WGIP 1993: 19 (62); WGIP 1994: 14 (41)). To this, indigenous representatives responded that should they not be able to use ‘peoples’ in the declaration, this would “destroy their collective basis and to continue colonial domination” because it would maintain them as subject to a non-indigenous, individualized framework (WGIP 1993: 19 (65)). From this robust

⁵⁷ The issue between the terms could be seen by some as a semantic difference, but it has real implications. By insisting on ‘peoples,’ indigenous representatives sought to link indigenous nations to other nations, which had already been accepted as having a right to self-determination, such as in the Universal Declaration on Human Rights. In doing so, they resisted conceiving of indigenous communities as only collections of indigenous individuals, and further entrenched the collective nature of indigenous belonging.

response it becomes clear that the indigenous representatives saw the collective nature of their rights as fundamental to their emancipation from colonial frameworks, which had worked – and I argue later continue to work – to destroy the communal nature of their relations. This shift to a collective understanding of indigenous rights will be important to attempt to find in the final Declaration itself, and to see being used in the work of these indigenous mechanisms.

Declaration as Outlining ‘Minimum Standards’

From the very founding of the WGIP it was made clear that part of its purpose was to “give special attention to the evolution of standards concerning the rights of indigenous populations” (ECOSOC Resolution 1982/34, 1982). This mandate was clearly undertaken by the WGIP from its very first session when the Chairperson/Rapporteur spoke to the WGIP differentiating itself from other Working Groups because of its “standard-setting mandate” (WGIP 1982: 10 (46)). Exactly what form these standards would take was not settled at this point however. At the first session of the WGIP, some indigenous representatives spoke to a desire for an international Convention, which would set legally binding standards for states (*Ibid*, 12 (54)), with an eye very much on other international human rights treaties already in force (*Ibid*, 10).⁵⁸ At the same session, it was governments that first spoke in favour of writing a Declaration instead (*Ibid*, 7 (31)), a position later supported by indigenous representatives at the WGIP as well (WGIP 1984: 17 (98)).

Importantly though, indigenous support for the drafting of a declaration was contextual to an ongoing discussion on the need for an international Convention that would hold “binding force” on States (WGIP 1984: 17 (95)). While it is true that indigenous representatives supported the drafting of a Declaration, this support came only subsequent to their statements explicitly endorsing a Convention as being preferable (*Ibid*, 17 (96); WGIP 1983: 20 (102)). Even then, indigenous representatives supported the drafting of a Declaration only in the context of a

⁵⁸ The reference to other, pre-existing standards was a common occurrence among indigenous observers at the WGIP. The standards cited include: the Convention on the Prevention and Punishment of the Crime of Genocide (WGIP 1982: 15 (71)), Protocol II of the Geneva Conventions (WGIP 1983: 10 (43)), the International Covenant of Civil and Political Rights (Union of New Brunswick Indians 1984: 1) and its Optional Protocol (WGIP 1984: 17 (95)), among others.

mechanism – either to be included within the text or external to it – that would be empowered to enforce the proposed Declaration.

The focus on enforcement began with the discussions surrounding other international standards. At the first session of the WGIP Members stated “that particular attention should be given to the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide” (WGIP 1982: 15 (71)). This offered the first concrete sign of the expectation that the standards set by the WGIP would be put into practice and enforced. Also, according to a Member of the WGIP, the GA itself set this expectation through the resolution that called for the Declaration. In that resolution, the GA called on the parties drafting the Declaration “to include implementation machinery” specifically to work towards “establishing reporting obligations for States” (WGIP 1988: 20 (74)).

During the drafting process indigenous representatives continued to point to a lack of implementation of international standards at the national level: “Madame Chairperson, progress being made in the international arena with regard to international laws and standards does not yet correspond to a national level where implementation is apparent” (International Indian Treaty Council 1992: 4). Once the WGIP had completed their work on the Draft Declaration this focus on implementation of indigenous rights standards was transferred to the implementation of the Draft Declaration itself, and “to the fact that the draft declaration in its present form did not contain any implementation mechanism” (WGIP 1993: 16 (46)). Because the purpose of the Declaration was to “serve as a manual of conduct for Governments” which is to “be used in obtaining [indigenous] rights at the national and international level” (WGIP 1994: 14 (44)), it is clear that indigenous peoples expected there to be some sort of enforcement mechanism for the Declaration itself.

The work of drafting the Declaration did not fulfill indigenous observers’ expectations for standard-setting activities. Rather, the statements made at the WGIP clearly show that indigenous representatives were still interested in continuing the standard-setting work of the Declaration:

“The Chairperson-Rapporteur...reminded all participants that the members of the Working Group were independent experts and were *interested in considering a comprehensive*

framework for the protection and promotion of the human rights and fundamental freedoms of indigenous peoples.” (WGIP 1994: 12 (31), emphasis mine)

There are two ways to interpret this quotation, and they can work together. The first is that the Chairperson-Rapporteur was expressing the will and mandate of the WGIP; the second is that the Chairperson-Rapporteur was speaking directly to indigenous representatives, and intended to calm any concerns that a comprehensive framework was being abandoned. Both interpretations signal a continuing concern with implementation of international standards with respect to indigenous peoples’ rights.

Indeed, the comments from the UN envision the Declaration as “a significant step towards ensuring the fundamental rights of indigenous peoples” (*Ibid*, 12 (26)). This kind of language is important, as there is no discussion of this being the end of the work of the WGIP, or more importantly, the end of the process of setting standards. Instead of having finished their work, indigenous representatives saw the need for “a continuing elaboration of standards,” suggesting again “that a convention on the rights of indigenous peoples could be drafted” (WGIP 1995: 14 (52)). Other indigenous representatives also called for more work, but in the form of a “functional commission” (WGIP 1996: 36 (116)) tasked with implementing the Declaration, or perhaps a “special procedure for complaints and formal communications” instead (*Ibid*, 37 (123)).

Based on the evidence presented above, it is clear that indigenous peoples saw the Declaration as recognition by States of their rights claims.⁵⁹ From the broadening of the concept of human rights as including indigenous collective rights, to recognition by States of new, explicit standards for indigenous rights, the documents from the WGIP make it clear that indigenous representatives expected States to finally recognize them as bearers of rights as indigenous peoples, not simply as citizens of States (see, for example: WGIP 1994: 14 (51)). This recognition comes not only through the Declaration, but we can understand the Declaration to be

⁵⁹ This exact sentiment was expressed by the Grand Council of the Crees at the 1992 session of the WGIP, where they stated: “indigenous peoples were now also being recognized, in practice, as subjects of international law. The drafting process of the declaration had had a positive impact on some forward-looking Governments, in that they had already proceeded to adopt, or were in the course of doing so, appropriate measures aimed at putting into effect essential human rights standards discussed within the Working Group” (WGIP 1992: 14 (51)).

an amalgamation of the various rights that indigenous representatives claimed access to through the rest of international law (WGIP 1982: 10; Union of New Brunswick Indians 1983: 1 & 3; Nordic Sami Council 1983: 1; WGIP 1987: 12 (43)). Ultimately then, indigenous representatives see the Declaration as a reaffirmation and recognition of their fundamental rights under international law, and see the Declaration as broadening and changing international law to better align with indigenous epistemologies. It is through this recognition that indigenous representatives are looking forward to creating lasting change for their peoples. This change is to come through sustained State engagement with indigenous peoples, and a change in the way that all non-indigenous organizations and entities interact with indigenous peoples.

After the Declaration

While this chapter has been very focused on academic work and indigenous expectations around the Declaration, it isn't easy to draw a clear line between the drafting and passage of the Declaration, and specific State policies. However, by understanding the Declaration in the context of the indigenous rights movement's use of a human rights-based discourse, it is possible to see specifically how they have both had material benefits for indigenous peoples, and have changed international law. This section focuses on those benefits and impacts the Declaration and the discourse have had.

The first – and perhaps most obvious – outcome of the Declaration's passage is that indigenous claims would appear to now be universally recognized. This comes because, as noted by Anaya earlier, the Declaration is no longer officially opposed by any country. Further to this, there have been some clear gains in terms of recognition of specific rights of indigenous peoples. This section will turn to the two aspects of indigenous rights discussed above, and seek to understand how the Declaration has had an impact on each. First I will analyze the collective aspect of indigenous rights. Here I focus on how the concept of human rights has been broadened through State recognition of collective indigenous rights, and how this can be seen as pushing back against the neoliberal self. Second, I discuss the Declaration as an international standard, and what that has offered to indigenous peoples. This section then establishes successes for the indigenous rights movement. I then build on these in my conclusion, where I contextualize the

articulation of indigenous claims within a human rights framework, suggesting a possible strategic usage of the discourse.

Collective Rights

The collective aspect of indigenous rights was seen as absolutely fundamental to their accordance with indigenous epistemologies and conceptions of being, as I discussed above. With regards to the effects of the Declaration, there can be little doubt that the collective nature of indigenous rights should be understood as recognized by UN Member States. This has been done through these Governments accepting not only the plural noun ‘indigenous peoples,’ instead of their preferred indigenous people or indigenous populations, but also explicitly through the Preamble to the Declaration:

“Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.” (Declaration, Preamble)

Further to this, the shift towards an acceptance of group, or collective, rights can be seen in the shift from focusing on “Everyone” in the UDHR to “Indigenous peoples” in the Declaration. Indeed, a plural pronoun is used in the UDHR only to discuss the rights belonging to families (see Articles 12, 16, 23 and 25). This focus on the plural in the text of the Declaration arguably reflects the indigenous focus on the collective community. We can see that this transformation does push the boundaries of a human rights framework, leading to the “development of new norms and new standards” (Anaya, 2012) that, in this case, includes a “concern for collective human rights” (Anaya 2001: 109).

Previously, States saw the collective nature of indigenous rights as potentially harmful to individual rights (WGIP 1992: 19-20 (77); WGIP 1989: 18 (58)). This was concretized through the votes against the Declaration being contextualized as partially motivated by unease with collective aspects of indigenous rights. This applied specifically to the issue of land rights and the possibility of an indigenous ‘veto’ over proposed economic projects (Government of Australia, 2007; Government of Canada, 2007; Government of New Zealand, 2007). Now though, no State opposes the collective aspect of indigenous rights, and those who spoke against the Declaration in 2007 seem to have reversed their positions and explicitly recognized the

collective nature of indigenous peoples' rights (Government of Canada, 2010; Government of the United States, 2010).

This does indeed represent a broadening of the concept of human rights away from their previous, individualistic standard. The question though is what this recognition has meant for indigenous peoples in terms of State policies and procedures. Here it is especially difficult to point to specific measures taken to further recognize and affirm indigenous peoples' collective rights, as these measures are integrated within all policies, including land rights and self-government agreements. Instead, the explicit recognition of indigenous peoples rights through the endorsements by Canada, New Zealand and the US offer a clear example of indigenous peoples making fundamental change to human right norms and standards.

Importantly, the invoking of indigenous collective rights on the basis of indigenous identity is illustrative of indigenous agency in resisting against further deepening of neoliberalism throughout daily life. According to Mirowski (2013): "A striking characteristic of the neoliberal approach to selfhood is the intransigent renunciation of most forms of classification of people, and abjuration of the resolution of the self into rigid components" (*Ibid*, 116). While liberals can be understood to argue for a fundamental sameness among all peoples in their understanding and definition of the self,⁶⁰ under neoliberalism this characteristic works to form a plastic self, upon which "imposition of any categorization is deemed imperious and elitist" (*Ibid*). Further to this, the neoliberal self needs to maintain ultimate flexibility, to the point where no aspect of the self can be considered indispensable (*Ibid*, 110). For Mirowski, this represents "The *summum bonum* of modern agency is to present oneself as eminently *flexible* in any and all respects" (*Ibid*, 108).

⁶⁰ One clear example of this would be the Canadian Governments 1969 *White Paper*, which put forward an explicit policy of literal assimilation of indigenous peoples. In this instance, indigenous peoples – who had only recently been recognized as citizens themselves – were to effectively lose all identification as indigenous peoples. In practice this would mean that indigenous lands would be divided among band members and accorded on a fee-simple basis, and that the Canadian Government would no longer have 'responsibility' for indigenous Canadians. This would have effectively extinguished – officially at least – indigeneity from Canada, and created individual citizens out of what were before indigenous nations.

Indigenous identification with a collective in international activism, and especially the concrete writing of these collective rights into human rights law, appears to be an explicit repudiation of these trends to isolate individuals from collectives in order to ensure a complete malleability, and a clear sign of indigenous resistance to neoliberalism. The focus on collective rights can work towards ensuring a sense of belonging to indigenous peoples that is reflected in indigenous representatives' statements (WGIP 1984: 17 (98); WGIP 1992: 15 (58); WGIP 1993: 15 (39)). Further to this, the collective aspect of indigenous rights is used in studies and reports by indigenous mechanisms at the UN (EMRIP 2008: 11 (33); SR Indigenous 2010: 8-9 (33)). Together, this reflects a primary plank of indigenous activism at the international level: that decisions be made by consensus whenever possible (Lightfoot 2009: 74), a position entrenched from the very beginning of the movement (*Ibid*, 82-86). Understood this way, the focus on collective identification and consensus-style decision-making represents a rejection of the individualistic, interest-based view of international relations common among both scholars and commentators alike. Ultimately, this success also speaks to a concerted exercising of indigenous agency at the UN, a rejection of one of the fundamental logics of neoliberal governmentality, and a way that we can see change being brought by indigenous peoples to international relations. Indeed, States no longer object to the collective nature of indigenous rights and claims, and would appear to have accepted this collective identity as legitimate. Such a fact speaks to my hypothesis from Chapter 2 perhaps being incomplete, at least in not taking indigenous agency into account.

Declaration as an International Legal Standard

As seen above, indigenous representatives from the very beginning of the drafting process saw the Declaration as an international legal standard. This understanding of the Declaration is clearly carried through into the way the Declaration has been spoken about, and used by indigenous representatives after its passage. This understanding of the Declaration is illustrated in two ways. The first is that the Declaration is used as a standard in and of itself that States are expected to not only aspire to, but to achieve. The second is that the Declaration is spoken about as one instrument of international law among many, and again, is a standard to which States will be held. Fundamental to both of these perspectives is the understanding that the Declaration

represents international law as agreed upon by States, and thus is a clear example of their recognition of indigenous human rights claims.

Regarding the Declaration as used as a stand-alone standard, this is seen through many of the studies undertaken by the EMRIP and the PFII. One example of this comes in a study on pastoralist communities in Africa (2013), where the PFII states:

“In 2003, the African Commission on Human and Peoples’ Rights adopted the report of its working group on the rights of indigenous populations and communities on the notion of indigeneity in Africa. This notion is closely associated with the norms and standards and processes of the United Nations Declaration on the Rights of Indigenous Peoples.” (PFII 2013: 2 (1))

Further to this, in the section titled ‘Overview of rights issues’ the PFII states: “Indigenous pastoralists are asking that national legislation be aligned with the United Nations Declaration on the Rights of Indigenous Peoples” (PFII 2013: 6 (26)). Indeed, throughout this section the Declaration is the only international standard discussed, showing that the PFII believes the Declaration to be able to stand on its own as an international standard. This same approach can be seen in a PFII study on development (2010) where they state the Declaration “provides a strong basis” (PFII 2010: 8 (24)) and “a comprehensive normative framework for advancing development with [indigenous] culture and identity” (*Ibid*, 8 (25)).

At the same time as it is used as a stand-alone standard, elsewhere the Declaration is also used alongside other international standards in studies and reports. Indeed, many studies undertaken by indigenous mechanisms at the UN reference the Declaration not only as establishing standards specific to indigenous peoples, but instead stating that it reaffirms international legal standards applying to all peoples. Here the Declaration applies these legal standards specifically to indigenous peoples. This use of the Declaration is evident in a 2009 study on education undertaken by the EMRIP, where the Declaration is noted as containing “specific standards concerning the right to education of indigenous peoples” (EMRIP 2009: 5 (10)). Alongside the Declaration, this study also points to other instruments as establishing these rights more broadly, including: the Universal Declaration on Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women (*Ibid*, 5 (9)), ILO Convention 169 (*Ibid*, 5 (10)), the Convention on the Rights of the Child (*Ibid*, 6 (15)), and the International Covenant on Economic, Social and Cultural Rights (*Ibid*, 7 (16)), among others. Other examples of this use of

the Declaration as reinforcing other standards comes from other EMRIP studies (2011; 2012 (a); 2012 (b)), SR studies and reports (2012 (a); 2012 (b); 2013), and the PFII as well (2010).

Ultimately, in using the Declaration as an international standard – either singularly or as one among many – indigenous representatives create for themselves the opportunity to hold States to the rights that they themselves agreed to. We do not see States explicitly speaking about the Declaration as a legal standard, but we see them speaking to it as an aspirational standard (WGIP 1990: 25 (124); WGIP 1992: 13 (48); Government of Canada, 2010). If States are going to speak about the Declaration in such terms then it is important for the international indigenous movement to hold States to that. As Lightfoot (2012) describes, States – and especially liberal democratic States – do not want to be seen to be poor human rights stewards, and so they are open to pressure by indigenous peoples and their allies (102). Through using the Declaration as a standard agreed-to by these same States, indigenous peoples appear to have given themselves yet another pressure point against these States.

Conclusion

Throughout this chapter I have shown how the statements, studies and reports from indigenous mechanisms at the UN support academic conclusions regarding the positive impacts that the Declaration has had for indigenous peoples. Specifically, I have highlighted the way that the Declaration has established collective rights for indigenous peoples, a new phenomenon from a previously-exclusive focus on individuals rights. I also highlighted how the Declaration plays a role in establishing international legal standards for the treatment of indigenous peoples. Together I believe this points to indigenous agency at the international level, something my hypothesis from Chapter 2 does not explore in depth.

These are but two of the successes of the Declaration I could have highlighted. I chose them because they stood out to me as acting as sorts of umbrellas insofar as they established the conditions for the other successes won by indigenous representatives. No matter what the other aspects of the Declaration state, they must include the possibility of being held collectively, and are a standard to which States and other actors will be held. Having other rights – including rights to participation in development (Declaration, Art. 17), protection for cultures and

languages (Declaration, Arts. 11 & 13), and lands and territories (Declaration, Art. 25) – be subject to these conditions is what I consider to be the most tangible and impressive success of the indigenous rights movement. It concretely illustrates the power and agency of indigenous peoples in dealing with States, a power that cannot be forgotten. States do not seek to limit their own activities without reason, and the moral campaign waged by indigenous peoples⁶¹ was able to gain important agreements from States.

Following this point regarding the moral campaign of indigenous peoples, I would argue that one of the most important things the rights-based discourse – and the Declaration as its key achievement – has done for indigenous activism at the international level is to make indigenous claims acceptable to international civil society and national governments. This has been done through organizing the activism around a rights-based discourse that has already been accepted at the international level, and which has a proven history of real improvements for marginalized populations around the world. The discourse's acceptance is seen through the repeated references made by States and other actors regarding the need to support and protect the human rights of various groups around the world. These statements have been made at the United Nations for decades, and are enshrined in the UDHR along with many other conventions and treaties.

Notably, one of the aspects absent from available literature, and which I could not find concrete evidence of through my research, is discussion surrounding a strategic use of the rights-based framework for the articulation of indigenous claims. Despite important successes in gaining recognition for rights-based claims, there have also been significant drawbacks to the use of this discourse, which will be explored more fully in the following chapters. From my research, it is clear that indigenous representatives realize the need for accommodation and a scaling-back of their demands in order to gain recognition (Tauli-Corpuz 2008: 92-4), so they accept that the use of a rights-based discourse through the UN is not able to offer a complete solution. Further, in reading through existing literature, I came across authors who spoke to the decisions made by indigenous representatives: “Among the various international bodies, the most important space

⁶¹ From the beginning, the indigenous rights movement used “moral persuasion” to get States to pass the Declaration with the aspects they wanted (Lightfoot 2009: 74). Further, once Anglophone States voted against the Declaration in 2007, they were subject to a further campaign of moral persuasion to reverse their position (Lightfoot 2012: 103).

which indigenous peoples decided to engage with was the United Nations system” (*Ibid*, 88). Because of this, the movement may engage with the human rights discourse strategically, precisely because it had already been accepted as legitimate, and thus can be used to pressure States, given their discomfort with being seen to be poor human rights stewards (Lightfoot 2012: 102).

As I discussed briefly above – and in the first chapter – from the beginning indigenous activism around the international indigenous movement has sought to tie protection for indigenous peoples with internationally accepted human rights standards, and eventually began to engage exclusively with a human rights discourse. This was no doubt in part shaped by those ‘principled international actors’ (Brysk 2000: 62) who helped to found the movement, but it also required indigenous peoples themselves to stand up and engage with those actors in articulating their claims. It strikes me as naïve and illogical to deny indigenous leaders, representatives and peoples the agency to have made the decision that this was the best – or most effective – path forward, especially considering the remarkable changes they have made to how human rights can be conceived.

Further, the fact that they sought to make those changes is perhaps further evidence that indigenous peoples and representatives did not feel that a human rights framework itself encompassed them unproblematically. Had they believed – or been duped into believing – in the framework wholesale, they would not have sought to include the collective aspect of indigenous rights. Instead, indigenous representatives engaged with a human rights framework and then succeeded in organizing it according to their own conceptions of belonging. To me, this is further evidence that indigenous representatives may well have decided to engage with a human rights discourse for strategic reasons.⁶²

⁶² There is also possible other evidence outside of the UN system as well for indigenous representatives to engage selectively in specific discourses. One clear example of this comes from the National Chief of the Assembly of First Nations, Perry Bellegard. During his victory speech aimed at the Chiefs that elected him and all First Nations peoples in Canada after he was elected National Chief, Bellegard spoke about extractive and oil and gas projects not moving forward, and about how indigenous peoples were going to stand up for themselves again. In speaking to Steve Paikin on TVO’s *The Agenda* – a show aimed at a non-indigenous Ontario-wide audience – Bellegard instead spoke about First Nations communities being “open for business” and about how indigenous peoples in Canada wanted nothing more than to become a part of the provincial, national and global economies. These are clearly two quite distinct messages that have been tailored for the specific audiences at which the comments were aimed, and

Indeed, it took time for the indigenous rights movement to gain traction, and based on the literature presented above, it was only with the passage of the Declaration that both international law and human rights concerned themselves with indigenous subjecthood as distinct, and therefore to see that indigenous claims had been recognized by international civil society and States. From this, the Declaration has been used as an international standard similar to human rights conventions and treaties, both on its own, and alongside these other instruments. Ultimately then, we can see that through articulating their claims from within a human rights framework, indigenous representatives – and the movement more generally – have succeeded in gaining recognition of their claims, and therefore seemingly validating at least some aspects of their apparent strategic engagement with the discourse. While it is impossible to know for certain that this recognition would not have come had these claims been articulated outside of the human rights framework, the use of the framework no doubt aided in their acceptance.

Through its work, the movement successfully incorporated itself within a framework that was based on non-indigenous, individualistic notions of international subjectivity. In addition to this, the understanding of subjectivity within this rights framework has also been broadened to include collectively-held rights, which better reflect indigenous notions of community and belonging. This is no doubt another important success for the international indigenous movement, and further speaks to the positive aspects of indigenous representatives engaging with a human rights framework.

In addition to these successes however, my thesis argues we should also consider how indigenous claims can still have the entrepreneurial, neoliberal self seep into their discourse, effectively mis-articulating indigenous claims and epistemologies. It is this aspect of the argument that I turn to in my following chapters, where I speak to the incommensurability between a human rights framework based on recognition, and the granting of self-determination to colonized subjects. Following that I illustrate some of the concrete issues of land rights claims, with specific reference to the Nunavut Lands Claim Agreement (NLCA). Together, these next

point to an engagement with discourses selectively, as any political leader is expected to do. (All information about National Chief Bellegard's statements comes from TVO's *The Agenda* from May 27, 2015.)

two chapters work to reaffirm my hypothesis from Chapter 2, and illustrate how articulating indigenous claims through a human rights framework can lead to issues of translation, further entrenching colonial hierarchies and norms between indigenous peoples and States.

Chapter 4

The previous chapter looked at how the Declaration establishes ‘minimum standards’ for State behaviour and policy towards indigenous peoples. It also discussed how indigenous peoples have successfully exercised their agency in broadening human rights frameworks to include the concept of collective rights, following indigenous conceptions of being and the core demands by indigenous activists and representatives at the international level. It did so by looking not only at existing literature, but also at the studies, reports and statements by indigenous and other representatives at UN mechanisms. This allowed me to build my case using primarily source documents and statements that came directly from the participants and mechanisms themselves.

This chapter follows a similar methodology, focusing instead on indigenous selfhood and self-determination. I argue that the way this issue has been – and continues to be – dealt with at the international level supports my hypothesis from Chapter 2, that an indigenous rights discourse is not effective as a pathway for indigenous emancipation. Instead, by interrogating the issues of selfhood and self-determination, it becomes clear that the indigenous rights discourse has only further entrenched existing relations of power. Regarding selfhood, indigenous peoples remain defined according to individualistic, neoliberal logics. Turning to indigenous claims of self-determination, there is an acceptance of self-government as a ‘best practice,’ maintaining the involvement of the biopolitical technologies of power in indigenous life seen in Chapter 2. What self-government lacks however, is a way for indigenous peoples to govern themselves outside of non-indigenous frameworks, the way the right to self-determination is intended, and which will be explored more fully in Chapter 5.

To make this argument, the chapter will be divided into three sections. The first focuses specifically on the Declaration itself. It critiques the Declaration directly by focusing on some of the conceptual confusion – and possible distortion – of indigenous philosophies within the Declaration, and points to some of the pitfalls of homogenizing indigenous peoples into one group. This section also focuses on the conceptualization of personhood and who defines it. Finally, the first section closes by speaking to how it is States who act as the ultimate

‘gatekeepers,’ since they were the ones given the authority to decide upon the claims to be accepted – through voting for or against the Declaration at the UN GA. The second section focuses on primary source material, and turns to the reports of the WGIP to establish what was being discussed there during the drafting of the Declaration. The third section looks at the situation after the passage of the Declaration. Using studies, reports and statements presented at UN mechanisms after the Declaration’s passage, I argue that instead of meaningful self-determination, self-government has become the accepted standard for indigenous communities to achieve. In the context of the colonial present, self-government only serves to further deepen the power relations between indigenous communities and State governments by giving States control over the legal frameworks within which indigenous peoples must govern themselves.

The Declaration as a Colonial Construction

As I hypothesized from a theoretical perspective in Chapter 2, a human rights framework rooted in a politics of recognition framework cannot offer indigenous peoples emancipatory pathways out of colonial reality. Instead, the move towards a liberal politics of recognition serves to reinforce the construction of indigenous subjects within the colonial framework they are born into, so that they have only “white liberty and white justice” to look forward to (Fanon in Coulthard 2014: 39). Specifically here I understand these forms of justice to be those associated with the realization of human rights. These may serve as meaningful protections in terms of the safety and security of the basic humanity of indigenous peoples, when actually implemented. However, as I’ve argued throughout this thesis, and continue to do so here, Western conceptions of international legal protections do not adequately capture indigenous claims. Instead they perform a type of translation of indigenous claim into Western, legalistic discourse that maintains indigenous peoples as colonized. In this case indigenous peoples cannot decide upon the forms of redress and reconciliation they wish to pursue, and are offered only the imposed framework of human rights.

This section will illustrate how the same process can be seen at work within the Declaration itself. Instead of the emancipatory document suggested by its proponents, and despite the victories within the document won by indigenous representatives and negotiators, this section argues the Declaration may represent another limiting route for indigenous activism. Included

with the progress claimed in the passage of the Declaration, the document serves to offer indigenous peoples a personhood and voice that is mediated by the very States responsible for colonization. In order to build this argument I will first illustrate some of the ways in which the Declaration displaces indigenous cosmologies. Secondly, I answer the question: whose vision of personhood does the Declaration establish? My response is that the subjectivity articulated through the text cannot substantively be seen as distinct from that already existing subject of human rights. Finally, I turn to perhaps the most troubling aspect of the Declaration itself: the State-centric nature of the document, as well as the writing and passing of the document.

‘Conceptual Confusion’

First then, I will seek to interpret the Declaration with respect to some of the key aspects of indigenous cosmologies. Here I will primarily rely upon a critical indigeneity articulated by Taiaiake Alfred, among other authors. In doing so I am not trying here to make Alfred speak for all indigenous peoples.⁶³ While I realize that it can be particularly problematic to rely solely on one author as an authority on indigenous cosmologies writ large, Alfred instead stands for himself as representing one cosmology among other cosmologies, in part as a matter of necessity. Indeed, due to the constraints of an MA thesis, I have chosen to focus primarily on one author who develops an explicit and coherent account of indigenous cosmologies, and who identifies explicitly with his own community and the Mohawk Nation more generally. In identifying so explicitly with his community, Alfred also puts forward a particularly ‘traditionalist’ cosmology through his work. By engaging with cosmologies rooted in indigenous philosophies, I believe I am able to more concretely analyze the types of philosophies the Declaration engages with. With this proviso in place, the first aspect of the Declaration I turn to is the concept of self-determination. I choose the concept, because it is considered fundamental to the realization of indigenous emancipation, and features prominently within discussions regarding the Declaration, as seen above. Also, self-determination is a concept that can be understood quite differently

⁶³ Indeed, there has been a concerted effort at unity at the international level (Lightfoot 2009: 66), with proponents of the Declaration expounding on how there is a sense of oneness between indigenous peoples worldwide. Within this they have emphasized a shared cosmology between indigenous peoples – specifically that ‘panindigenous worldview’ seen earlier from Brysk (2000: 55). I am not seeking either to establish or critique the veracity of these claims either; rather I am suggesting that because of the variety encompassed under the term ‘indigenous peoples,’ we should look directly to some of those ‘traditional’ principles expressed by indigenous peoples themselves in evaluating the effectiveness of the Declaration.

among indigenous and non-indigenous peoples (Beier 2009: 5; D’Errico, 2009) and even differently among indigenous peoples and groups, as I discussed in Chapter 1.

At its core, I am understanding self-determination to be the right of indigenous communities to make their own decisions not only on day-to-day governance decisions, but also about the form(s) that governance itself takes. The way that self-determination is typically understood in the language of rights is through an assertion of sovereignty on the part of the peoples that are self-determining (Alfred 1999: 55⁶⁴). To some indigenous philosophies this articulation of their claims is entirely misguided, as “Traditional indigenous nationhood stands in sharp contrast to the dominant [(neo)liberal] understandings of ‘the state’” (*Ibid*, 56). Thus, “the simple act of framing the goal in terms of sovereignty is harmful in itself (*Ibid*, 57). This is because “sovereignty is an exclusionary concept rooted in an adversarial and coercive Western notion of power” (*Ibid*, 59), in opposition to non-possessive logics that are to be found within indigenous philosophies (*Ibid*, 61). The very usage of the term sovereignty implies that indigenous peoples are seeking to control the land and exercise exclusive dominion over it, an understanding that privileges the position of people to the exclusion of others – including the land itself. This is not the same understanding of self-determination that would be found among the relational conceptions of indigenous philosophies⁶⁵ (*Ibid*, 60-63; see also Savard, 1980). Relational concepts do not elevate the position of humans to above that of the land, instead they emphasize the stewardship role that indigenous peoples need to play with regard to their land (Alfred 1999: 60), a role that does not allow for the ownership of one spiritual being by another.

In embracing a stewardship role over that of a sovereign, a truly self-determining indigenous nation may ultimately reject the trappings of Statehood and sovereignty that Alfred argues against above. This would seemingly revolutionize the way that governance would relate to lands and territories, and could mean a re-organization of the way in which indigenous peoples decide

⁶⁴ The idea of difference between the conceptions of indigenous peoples and liberal nation states can also be found within Beier (2009: 5) and Oliveira (2009: 9), though they do not speak specifically to the intersection of indigenous non-sovereign claims and colonial notions of territorial integrity in the way Alfred (1999) does, or even the way that a settler biopolitics is exercised across lands over which indigenous peoples have traditionally acted as stewards for future generations (Morgensen, 2011; Rifkin, 2009).

⁶⁵ For a particularly striking example, see Watson (2009) who argues that “In my place of small voice my position is clear: our old people never named our relationship to country as a native title right. The old people lived with, and they *were* the country also” (28).

to ‘develop.’ I don’t believe this would mean a reversion to the sort of lifestyle that indigenous communities lived prior to settlement; however, it might mean different decisions made regarding extractive projects on indigenous lands, or the development of new technologies that are less invasive in order to facilitate these projects. This is not to say that a self-determining indigenous community would necessarily make different decisions though, as each community would retain the ability to decide that particular projects are in the public good, so to speak. However, by all accounts that calculation of public good might well be made differently, especially as governmental decisions come to be made conceiving of land as an integral part of communal social lives, rather than as something communities have dominion over. Further, an understanding of governance as stewardship could also conceivably change the way decisions are made because the understanding of intergenerational accountability might be different. Recreational spaces, economic land development, and ‘ongoing revenue streams’ might have different importance placed on them by indigenous decision-makers when they close off spaces that have been important to social bonds for generations.

Nor would self-determination concern environmental decisions alone, as the way in which communities are organized might change dramatically as well. As I’ve discussed, indigenous conceptions of self are much more rooted within communities than the individualistic notion of the self that presently dominates at least the Western world. Because of this, systems of government might be radically different than the Western liberal democratic model imposed upon indigenous communities today. This might include being rooted in forms of justice sought by self-determining indigenous communities that look radically different than those we are used to. As Alfred (1999) notes, there are important differences between indigenous and non-indigenous conceptions of justice, with some indigenous philosophies seeing justice as coming through the re-establishment of harmony within communities (42-4; see also Pulitano 2012a: 17), as opposed to the imposition of sanction against perpetrators in many non-Western systems (Pulitano 2012a: 17). This is one of the few areas where important strides have been made in some States to take indigenous philosophies of justice into account in the legal system. One notable example comes from Canada, where Sentencing Circles, along with other restorative justice measures, have recently become an option for indigenous communities dealing with the criminal justice system (for more on this, see Dickson-Gilmore & La Prairie, 2005). More

remains to be done though, and self-determining indigenous communities may well orient their justice systems around notions of community and harmony quite different than those found within many States.

Turning to the Declaration itself, it is true that, as was seen in Chapter 3, there are positive aspects included, such as those that address the collective nature of indigenous cosmologies. However, issues arise when examining other sections of the text that touch on the right to self-determination. Indeed, within the text there remains a strong current of a more Western view of self-determination similar to that found in past agreements. Specifically, the Declaration maintains provisions that actively assert a State's rights as primary over indigenous peoples themselves:

“*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law” (Preamble; emphasis in original).

The inclusion of such provisions is telling, as international law has been consistently set by the Member States of the UN (Smith 2014: 83-5), who have not been known for their generosity towards indigenous peoples. As well, international law is comprised of the same agreements referred to by Pulitano as being “Eurocentric” (Pulitano 2012a: 17), that is, based on liberal European epistemologies, legal traditions, and ideas of conduct. Building off this, the final article of the Declaration – Article 46 – also includes the same language: “The exercise of the rights set forth in this Declaration shall be *subject only to such limitations as are determined by law* and in accordance with international human rights obligations” (Declaration, Art. 46(2); emphasis mine). While this will be analyzed in greater depth below, it is clear here that international law is intended to remain supreme, which complicates the emergence of indigenous, non-Eurocentric perspectives that would drive towards the de-Eurocentrication of international law, as the Declaration is argued to be a step towards (Pulitano 2012a: 17).

Further issues arise in thinking through the cosmological foundations contained within the Declaration, and its exclusive concern with indigenous peoples. It may seem obvious for such an instrument to focus solely on the rights held by indigenous *peoples*, as this follows from the same preoccupations of other human rights documents. However, it can be read to further marginalize the relational nature of indigenous cosmology. Indeed, Alfred argues that in order to fight against “the homogenizing force of Western liberalism and free-market capitalism” it is

necessary to look inwards towards more “traditionally-rooted” subjectivity (Alfred 2005: 37). This subjectivity must be rooted in indigenous cosmologies “that honor the autonomy of individual conscience, non-coercive authority, and *the deep interconnection between human beings and other elements of creation*” (*Ibid*; emphasis mine). Remember also the importance placed on land by indigenous peoples throughout Latin America from Chapter 1. In these cases indigenous peoples were also fight back against conceiving of land in economic terms, and looked to land as a “vital element” in the social development of indigenous communities as well (Brysk 2000: 155). Through this we can see that in addition to economic roles, land plays an important, non-economic role in indigenous communities around the world.

Reading through the Declaration it is not possible to see references to these interconnections with spirits outside of those of humans. Instead we read about the right indigenous peoples “have the right to practise and revitalize their cultural traditions and customs (Declaration, Art. 11(1)), or how indigenous peoples “have the right to the dignity and diversity of their cultures, traditions, histories and aspirations” (Declaration, Art. 15). These protections are important, especially as they relate to cultures that many of the signatories to the Declaration have actively worked to eliminate in the past, and still continue to neglect to where they are near the point of extinction.⁶⁶ However, there is never an invocation of the importance of non-human spirits for the fulfillment of human life. There is no expression of respect for them and their place within creation.

This is of course written with an understanding of a specific sample of indigenous writings, and cannot be said to speak for all indigenous peoples. A ‘complete picture’ of indigenous cosmologies and philosophies is impossible here given the constraints, but also speaks to some of the issues of homogenizing indigenous peoples into a singular movement. One movement cannot faithfully represent the diversity of 370 million people in vastly different situations

⁶⁶ One of the examples of this is the ongoing extinction of many indigenous languages around the world. For example, in Australia there are 145 indigenous languages spoken, 110 of which are considered “critically endangered” (Creative Spirits 2015: web). A similar situation is occurring around the rest of the world: UNESCO has stated that up to 90% of the languages spoken today “are expected to disappear before the end of this century if current trends are allowed to continue” (PFII 2008: 1). This phenomenon is hitting indigenous communities especially hard, as oftentimes indigenous cultures are transmitted between generations through language (Alfred 2009: 133-4).

around the world. In trying to do this, elites within communities are often those chosen to speak, potentially masking the contributions of other members of the community. This diversity of voices complicates the way that we speak about indigenous claims because different people are going to want different things, and may not always be in agreement. What I am trying to do here is not to delegitimize these claims – indeed, if properly implemented they can do a great deal of good. Rather, I am trying to show that conceptually, the Declaration cannot speak to all ‘traditional’ perspectives, and that some such as Alfred have argued that it is most important to look back to those traditional philosophies in order to reinterpret them for the modern age. If it is necessary to look back to them, but the Declaration does not allow for this engagement, it is difficult to see how the Declaration opens this path.

Whose Personhood?

In addition to seeming conceptual confusion, the issue of self-determination also raises questions regarding the aspect of personhood for indigenous peoples described in Chapter 3. The Declaration can and should be read as one of the first documents to establish indigenous peoples as holding personhood at the international level, and is certainly one of the first documents to include indigenous peoples as distinct subjects within international law. However, I argue here that it is also true that it provides this sense of personhood to indigenous peoples only in accordance with already-accepted understandings of a human rights-bearing subjectivity. As I show over the rest of this section, this subjectivity is in many ways defined by neoliberal States and politicians, and incorporates a more individualized ethic of self, despite the gains won by indigenous peoples detailed in Chapter 3. Effectively, this works to delegitimize any sense of meaningful self-determination that would exist as a result of the Declaration’s acceptance. It also seems to support Coulthard’s argument regarding how recognition cannot be meaningfully granted by a colonizing power seen in Chapter 2.

Key to the issue of international personhood for indigenous peoples is the question of how to understand the subject of indigenous rights, as read through the Declaration. Here I turn to Franke’s (2007) and Engle’s (2011) critiques of the ethic of self contained within the text. Both articles come from the standpoint that “Contrary to its inherent aims, the Declaration does not offer so much a radical turn in the relational ethics between indigenous peoples and states as it

entrenches, as international policy, the application of imperial norms between them” (Franke 2007: 360). Specifically, imperial norms would include, among other things, the norm of a hierarchical relationship between indigenous peoples and States, with States continuing to dominate standard-setting within indigenous communities. The issue here for Franke is that “the rights to self-determination on which the Declaration is hinged are confined to a very specific and non-universal yet often universalized ethic of self conceived as early as the sixteenth century by Europeans in their conquest of non-Europeans” (*Ibid*, 361). Indeed, in many ways the ethic of self included in the Declaration can be understood as that found within human rights itself (Engle 2011: 150). Nor is this merely an academic concern; it is noteworthy that indigenous activists throughout the 1970s saw a human rights framework as “assimilationist” (*Ibid*, 151). This stance was later changed throughout the 1980s and 1990s, as human rights discourse seemingly became the most effective way to have indigenous voices heard (*Ibid*, 152-7). Therefore, despite the ultimate decision of many indigenous representatives to pursue indigenous rights through a human rights framework, the assertion of a distinctly indigenous subjectivity through invocation of the Declaration, as I detail below, would appear to be difficult. Instead, “the continued power and persistence of an international human rights paradigm” means that indigenous peoples are trapped within a human rights framework that seeks to discipline its subjects into the capitalist, neoliberal order (*Ibid*, 142).

One of the ways this disciplining of indigenous subjects comes about is through how the Declaration defines the rights held by indigenous peoples, while also “refusing to offer any specific definition of who are the indigenous peoples of the world” (Franke 2007: 363). The only real discussion of this distinctiveness comes in the Preamble of the Declaration, where the General Assembly affirms “that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such” (Declaration, Preamble). Such an affirmation of difference is no doubt important, and there is a case to be made for how the non-definition of indigenous peoples within the Declaration leaves open the possibility of self-definition. This is important not only because identity and self-definition shouldn’t be seen as static, but also because indigenous peoples are defined (both by themselves and by others) differently throughout the world (*Ibid*, 365-6). However, Engle (2011) has persuasively argued that the rights contained within the Declaration

– and indigenous rights in general – “are ultimately defined by a human rights framework” and so indigenous rights are in fact “based on some of the very premises they are meant to challenge” (quote from 149; see 148-50 for a more complete argument). This is in part because of changes made to Declaration during its drafting stage – described below – but also comes about through the inclusion of Article 46(2) in the Declaration. This Article explicitly makes the document “subject only to such limitations as are determined by law and in accordance with international human rights obligations” (Declaration, Art. 46(2)), suggesting that indigenous rights would challenge human rights only in areas that human rights do not address. Problematic here is that the subject of human rights is individualistic, as I discussed in Chapter 2. Given this, there would appear to be tension between the collective understanding of international indigenous personhood established in the Declaration, and the individualistic understanding of personhood within human rights.

Further, the Declaration would appear to continue to formally allow States to set the terms of recognition. As it presently stands, States have the power to determine who is and is not indigenous, as I touched upon briefly in Chapter 2. This has not been challenged in the Declaration, since the text leaves open the question of defining indigenous identity. Concretely, the Draft Declaration included specific articles establishing indigenous peoples’ rights to define themselves including: the right to “maintain and develop their distinct identities’ collectively and individually” (Draft Declaration, Art. 8); “to determine their own citizenship in accordance with their customs and traditions” (Draft Declaration, Art. 32); and, “to determine the responsibilities of individuals to their communities” (Draft Declaration, Art. 34).” Together, these articles would have established much more clear rights for indigenous peoples to identify themselves in a more communal nature, and in accordance to their own philosophies (Engle 2011: 149). As was discussed previously, States have been steadfastly opposed to the recognition of collective or communal identities among indigenous peoples. In line with this opposition, the articles were dropped from the final Declaration “largely because some states that opposed the declaration at that time (before the African Union had registered its concerns) saw collective rights as problematic,” with the States opposed including New Zealand and the US (*Ibid*). Given this, Franke’s concerns that by leaving open the definition of indigenous peoples and subjectivity, States have retained the ability and authority to define indigenous peoples for themselves

(Franke 2007: 364), would seem to ring true. Indeed, without an explicit guarantee that States would recognize and respect indigenous self-identification and definition – whether done collectively, or even individually – there does not appear to be any way to enforce indigenous peoples’ nominal right to define themselves.

This process of States defining indigenous peoples is indeed taking place at the domestic level. One clear example of this comes from Latin America, and also supports Engle’s argument for an indigenous rights discourse establishing a neoliberalized indigenous subjectivity. In her work, Engle refers to Hale’s (2002) paper on the situation in Chimaltenango in Guatemala. Here Hale argues that neoliberal multiculturalism includes a ‘pro-active’ endorsement of “a substantive, if limited, version of indigenous cultural rights, as a means to resolve their own problems and advance their own political agendas” (487). In endorsing indigenous cultural rights, neoliberalism gets to establish “clearly articulated limits” on them though, as well as getting to define the parameters of acceptability by “defining the language of contention” (*Ibid*, 490). Specific examples of this at work include the rise of the PAN political party within Guatemala in the 1990s. The party was centre-right, but was considered “inclusive” of Mayan perspectives and rights claims (*Ibid*, 517-8). This inclusiveness came about because of the cooptation of indigenous leaders who were open to neoliberal multiculturalism (*Ibid*). Because of this seeming inclusiveness, PAN was able to define those advocating for collective rights over lands and territories – as opposed to their preferred, more business-friendly neoliberal agenda – as “radicals” (*Ibid*, 517-20). Further, though it is not said explicitly within Hale’s work, I would argue that neoliberalism – as acted out through right-wing politicians – was able to engage in the strategic definition of indigenous identity itself. In this case, Hale speaks to how PAN was able to label those against neoliberal development and policies as ‘radicals’ who did not reflect true Maya interests, in part because these neoliberal policies come with recognition of Mayan languages and cultures (*Ibid*, 519). The definition of those seeking “collective Maya self-assertion and empowerment” as “radicals” (*Ibid*) seeks to establish what true Mayan identity is, and leads to a situation where States – the PAN movement did form government in 1995 – continue to get to establish indigenous identity within the confines of neoliberalism. Indeed, as Hale writes:

powerful political and economic actors use neoliberal multiculturalism to affirm cultural difference, while retaining the prerogative to discern between cultural rights consistent with

the ideal of liberal, democratic pluralism, and cultural rights inimical to that ideal. In so doing, they advance a universalist ethic which constitutes a defence of the neoliberal capitalist order itself. Those who might challenge the underlying inequities of neoliberal capitalism as part of their ‘cultural rights’ activism are designated as ‘radicals’, defined not as ‘anti-capitalist’ but as ‘culturally intolerant, extremist’. In the name of fending off this ‘ethnic extremism’, powerful actors relegate the most potent challenges to the existing order to the margins, and deepen divisions among different strands of cultural rights activism, all the while affirming (indeed actively promoting) the principle of rights grounded in cultural difference. (*Ibid*, 491)

There are indeed important reasons why the working definition of indigenous peoples remains rooted in self-identification as indigenous.⁶⁷ However, the Declaration does not include any sort of guarantee on the part of States that this process will not be interfered with, either by defining indigenous peoples explicitly themselves – as in the case of Canada, the United States, and others – or in selecting which indigenous peoples get to be recognized and which don’t – as in the case of Guatemala above. Because of this, it would appear that the Declaration provides for indigenous subjectivities that are unable to self-affirm – and self-define – in a meaningful way. This can be seen not only in how States blocked that very self-definition during the drafting process of the Declaration, but also in the case of Guatemala, where indigenous peoples have been defined within neoliberal human rights frameworks that understand subjectivity on a more individualistic basis. By not opposing the privileged position of States vis-à-vis indigenous peoples, the Declaration avoids challenging this “homogenizing force,” which Alfred argues should be “the goal of any traditionally rooted self-determination struggle” (Alfred in Coulthard 2014: 35). Without challenging the relations of power that constitute this ‘homogenizing force,’ indigenous peoples remain rooted in colonial systems of domination, and seemingly unable to return to indigenous philosophies, conceptions of self, and ‘ethical systems’ (Alfred in Coulthard 2014: 35-6).

States as Gatekeepers

Building off this understanding of the inadequacy of the protections for self-definition for indigenous peoples included within the Declaration, it becomes even more clear that one of the continuing issues with the document as a whole is its continued acceptance of the primacy of

⁶⁷ This comes from the Martinez Cobo report, which did not specifically define indigenous peoples, but rather, maintained the right to identification as coming from indigenous peoples themselves, and whose continued use maintains this, providing indigenous peoples and communities the agency to determine their own members.

States within the international system. This ultimately means that we see the same issues arising at the international level as we do at the domestic level: a colonial system in which States grant recognition to indigenous peoples. As I touched on briefly in Chapter 2, there is no mutual need for reciprocity in these encounters, and as I discussed above, this process can lead to indigenous peoples being subject to definition by States, instead of themselves. This ends in a situation in which the indigenous subject is “*deformed*” through the politics of recognition presided over by States (Coulthard 2014: 29).

The first clear illustration of this forced recognition from States comes from an understanding of the process from which the Declaration came to be. This process was described above, however one key aspect of this process will be highlighted again here: the Declaration’s passage through Resolution 61/295 of the UN GA. The importance of this cannot be overstated, as only States are able to be Members of the UN GA, and this is a document that needed to be acceptable to them in order to be passed. As I described in Chapter 1, this meant that States were intimately involved in the negotiations over what would ultimately be included in the final version of the text. The circumstances surrounding the passage of the Declaration are such that it is literally Member States of the UN General Assembly who are legitimizing the claims of indigenous peoples through their recognition of them in a resolution of that body.

This scenario precisely follows in the footsteps of what I take Coulthard (2014) to mean when he argues that even “dumping all our efforts into alleviating the institutional or structural impediments to participatory parity (whether redistributive or recognitive) may not do anything to undercut the debilitating forms of unfreedom related to misrecognition in the traditional sense” (37). In this case, indigenous peoples are now recognized as holding specific rights, and they were involved in the drafting of the Declaration that recognizes this. However, indigenous subjectivities are still defined by States and neoliberal logics, and indigenous cosmologies are still left out of governance. Moreover, when indigenous peoples are offered the opportunity to govern themselves through self-government, they are still subject to oversight and control by the States within which they must reside, and to which I speak to more fully below and in Chapter 5. The drafting and acceptance of the Declaration by the UN GA no doubt represents an alleviation of some ‘institutional or structural impediments to participatory parity.’

Though the issue is not simply whether or not this has occurred; the problem comes in the act of States accepting – and as before, literally recognizing – some indigenous perspectives and views as valid, even at times without indigenous participation, as in the final portion of the drafting process (Watson & Venne 2012: 90).

Regarding this process, the Declaration was initially negotiated in a forum in which indigenous representatives were directly involved – the WGIP. After this, it was taken to a forum in which indigenous representatives were not involved in a formal way, but rather a less direct way – the Human Rights Council. There, as I laid out above, specific articles of the Draft Declaration dealing with indigenous collective subjectivity were stripped from the text at the behest of States because they clashed with the individualistic nature of human rights, and might suggest collective identity was to take precedence over individual identity (Engle 2011: 149). But this was precisely the point of the inclusion of those Articles: for indigenous collective identity to be asserted as primary (*Ibid*, 148-9). While it has been to some degree, as I discussed in Chapter 3, the strongest Articles on this matter were removed in order to gain the recognition of States (*Ibid*, 149 & 161). What we have then is the altering of the indigenous claims – partially in substance, but certainly more fully in effect – in order to gain recognition from the States who must give it. Only after the text had become acceptable to States through the dilution of indigenous collective identity within it, did the Declaration move to the UN GA, where it was ultimately passed by States.

At every stage in the process States maintained the option of refusing to move the Declaration forward. While it is true that indigenous peoples could also have withdrawn their support for the Declaration, aside from a possible moral outcry – the perceived pressure point of States (Lightfoot 2009: 74) – the consequences for States would have been relatively minimal. Indigenous peoples in this case would be left with a colonial status quo, a situation wherein indigenous peoples were described as being “threatened with genocide” (Nordic Sámi Council 1984: 1). This discrepancy illustrates clearly that within the human rights framework of the Declaration, indigenous peoples needed the recognition of States, whereas States did not need the recognition of indigenous peoples. This is mirrored and made concrete by the passage of the Declaration by UN GA, where not a single indigenous representative was able to vote on the

resolution to pass the document. This privilege was reserved only for States, and illustrates concretely how the Declaration represents States literally accepting indigenous claims as valid. Because of the continuation of this power imbalance, colonial hierarchies between States and indigenous peoples remain, even after the recognition of indigenous rights by States.

One of the more striking outcomes of this process is Article 46, which includes a passage that puts this politics of recognition issue in stark relief. The article states that:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act...construed as *authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States*” (Declaration, Art. 46(1); emphasis mine).

Further, as I noted above, Article 46(2) also includes references to the superiority of international law and human rights obligations over indigenous rights. Notably, similar provisions have been included in other Declarations, including the Universal Declaration on Human Rights, the Friendly Relations Declaration of 1970, and others. Importantly however, the Declaration is the only Declaration that subjects the rights contained within it to ‘international human rights obligations’ (Engle 2011: 150). This would seem to further point to the primacy of human rights over indigenous rights.

The inclusion of Article 46(1) comes directly from the discomfort of African States with previously watered-down language (Engle 2011: 145-6). It points directly to an acceptance that States continue to reign supreme with respect to indigenous claims, as well as international law and human rights, by making the point explicitly. The argument put forward by proponents of the Declaration to counter this is that this article was only included in order to win the approval of states, and that it doesn’t make any material difference in the end (Engle 2011: 147). While materially this may be the case – it is only a few lines of ink on a piece of paper after all – with regards to illustrating colonial relations of power it matters a great deal. If States were unwilling to pass the text without such a provision and they were the ones who needed to pass the document, it would seem that indigenous peoples still need the recognition of States, and that “there is no mutual dependency in terms of a need or desire for recognition” (Coulthard 2014: 40).

Ultimately then, instead of setting their own standards through the sort of self-realization described by Coulthard (2007 & 2014), “the talk and theorizing of indigenous rights is part of an illusion constructed while the colonial project continues to absorb indigenous peoples into itself, through the assimilation agendas of various states” (Watson & Venne 2012: 87). In this case settling is represented by a Declaration that is written in the language of human rights, with human rights being literally inscribed as primary within the text itself, and which was passed by the recognition of former and current colonial States. This would seem to confirm my hypothesis in Chapter 2 regarding human rights in general, whereby States are the parties responsible (Green, 2014; Smith 2014: 83-5). As I have shown in the Declaration specifically, an indigenous rights discourse does not escape from this predicament, and States remain the ultimate gatekeepers in both theory and practice. This ends up meaning that self-determination for indigenous peoples cannot escape the colonial framework within which it is conceived. In the following section I illustrate this with direct reference to the studies, reports and statements of and at UN mechanisms, finding ultimately that instead of self-determination, indigenous peoples are trapped in a system of self-government.⁶⁸

Self-Determination and the Drafting of the Declaration

As discussed in Chapter 1, the concept of self-determination has multiple meanings for indigenous peoples. These various positions were reflected in the debates both around the aims of the Declaration, as well as the specific texts proposed to the WGIP. Despite this, from the beginning of the WGIP, indigenous representatives made clear that self-determination was a fundamental plank of any successful instrument (WGIP 1982: 17). The focus on self-determination did not abate either, as even after the Draft Declaration was officially taken up by the Human Rights Council for consideration – and thus the text of which was not eligible to be changed directly by the WGIP – “A significant number of representatives of indigenous organizations expressed the view that the right to self-determination was the pillar on which all the other provisions of the draft declaration rested” (WGIP 1994: 13 (37)). Debate around the concept took on a similar form to the debate discussed earlier as well. While a “kaleidoscope” of

⁶⁸ For a more expansive discussion on some of the more problematic aspects of trading self-determination for self-government, see Chapter 5.

opinions on what self-determination means were brought up (WGIP 1982: 17 (82)), they can be broken down into two overarching lines of thought: internal and external self-determination.

The view for internal self-determination effectively argues that, similar to Anaya's position, indigenous peoples' self-determination is not focused on secession from the States in which they presently live. One of the ways this was discussed within the WGIP was by using the terms 'autonomy,' 'self-government,' and 'self-determination' seemingly interchangeably (WGIP 1983: 19 (97)). What this meant was that self-determination "did not always mean sovereignty or statehood" for those holding this position (*Ibid*); rather, "indigenous people should themselves be allowed to decide on the degree of autonomy or self-determination they should have" (*Ibid*). Further, the longstanding Chairperson/Rapporteur of the WGIP, E.I.Daes, weighed in clearly on this side of the debate when confronted by States' reservations over the inclusion of a right to self-determination:

Mrs. E.I. Daes, pointed out that the principle of self-determination, as discussed within the Working Group and as reflected in the draft declaration, was used in its internal character, that is short of any implications which might encourage the formation of independent States." (WGIP 1992: 17 (67))

In addition to Mrs. Daes, James Anaya also spoke in favour of the internal nature of self-determination, calling independence potentially "detrimental to the interests of indigenous peoples" (WGIP 1993: 19 (61)). Importantly, from this perspective self-determination for many indigenous peoples included increased representation in governing institutions (WGIP 1987: 14 (52)), clearly a sign of an internal focus to self-determination.

Apart from Daes' assertion above that self-determination was to be 'internal' in character, discussions around strong external self-determination took place at the WGIP as well. These discussions revolved around "universally-recognized standards" for self-determination arising from other instruments (WGIP 1985: 13 (56)), and specifically that standard recognized in the two International Covenants on Human Rights (WGIP 1993: 18 (58)). Like internal self-determination, it also followed the contours of the arguments discussed in Chapter 1 by explicitly condoning the right to seek independence from the States in which indigenous peoples now live. Indeed, when faced with States that sought to limit the exercising of self-determination to internal matters alone, some indigenous representatives explicitly stated that they "were worried about attempts to limit the concept of self-determination to the conduct of internal affairs"

(WGIP 1993: 17 (56)). One articulation of this perspective came from the American Indian Movement of Colorado, who stated that “self-determination could not be limited to those who had already established their States” (*Ibid*, 18 (60)). Similar to the academic interventions made on the side of internal self-determination by Anaya, Maivain Lam spoke in favour of external self-determination stating that:

“she shared the view of the majority of indigenous peoples present. She stressed that indigenous peoples had the same right as all other peoples to self-determination and that many international jurists today held the view that the right of self-determination had achieved the status of jus cogens and was therefore not subject to changes by States.” (*Ibid*, 19 (61))

This perspective was also expressed after the draft declaration was sent forward to the HRC, when during the 1994 session of the WGIP “A significant number of representatives of indigenous organizations” took issue with “qualifying language” that had the effect of “excluding the possibility of independence as a way of exercising” the right to self-determination (WGIP 1994: 13 (37)). This is a clear indication that during the drafting of the Declaration, there was an expectation by at least some indigenous peoples – if not the majority quoted above by Lam – that the right to self-determination was intended to take on an explicitly external aspect.

Given the above discussions, what we can see coming out of the discussions around the Draft Declaration are differing conceptions of self-determination among indigenous peoples. Interestingly however, each of these differing conceptions of self-determination seem to be rooted in more Western positions found throughout the history of international law. Indeed, the arguments in favour of external self-determination especially can be read through the prism of decolonization movements post-World War II.⁶⁹ From my reading there are two aspects of this to be addressed here. The first is the issue of strategic adoption, similar to what I posited at the end of Chapter 3, and have continued to touch on in this chapter. If we understand the adoption of a human rights framework as a strategic choice by indigenous peoples, then the adoption of already-existing conceptions of self-determination would also seem to fit this narrative. In this case, in order to get to a position where indigenous peoples can establish their own conceptions

⁶⁹ For an explicit treatment of this see Wiessner (2011), who explicitly locates the Declaration within what he calls ‘value-oriented international law.’ For a more broad treatment of the links between anti-colonial movements in Africa and post-WW II self-determination and human rights regimes, see Ibhawoh (2014). And for a more historical account of the emergence of self-determination within international law prior to the post-WW II decolonization push, see Lorca (2014).

of self-determination, it might first be seen as necessary to adopt forms of self-determination already accepted within international law as a sort of prerequisite. Discrepancies between indigenous communities and representatives over which form of self-determination to advocate for also make sense in this context, as these differences might arise from different analyses of the balance between which are most likely to be accepted, and which are most likely to be effective in establishing the conditions for indigenous conceptions of self-determination to then be articulated. Given this, a focus on more Western conceptions of self-determination makes sense, especially if the purpose is to use that strategically to get to an indigenous conception of self-determination like the one I've attempted to begin sketching out in this chapter. Further, Western understandings of self-determination on the part of indigenous representatives might make sense given the present context of an international system premised on this very conception of self-determination – ie. sovereignty as a precondition for legitimate governance. In this case, if indigenous peoples are able to win international support for the formation of indigenous-led States, they might be seen as 'equal' to other States, and have this be considered a sort of prerequisite for establishing a more indigenous-conceived form of self-determination.

The second aspect to be discussed results from the strategic adoption of a human rights framework, and touches on issues of translation, or what Turton and Freire (2014) call 'denationalisation.' Given my context, it would seem that indigenous peoples – or indigenous representatives at least – have sought a sort of translation of their claims into a human rights framework as a sort of 'way in' to dominant conversations taking place at the international level. Importantly, Turton and Freire write that these translations "are always interpreted in an alternative way or against a different background from that of the original situation," which works to generate 'misunderstandings' in their usage (*Ibid*, 10). This is not to say that a translation is inherently 'incorrect' in any normative sense, or that the translations themselves can't or don't faithfully reproduce the original. Rather, I am saying "that ideas and theories are dependent on the context in which they are generated" and by taking them out of that context the translator must deal with modification, reappropriation and recontextualisation (*Ibid*, 11). By understanding indigenous claims to self-determination as being translated into an already-accepted framework, it is possible to see how aspects of the claim might be lost, or at least reimagined in a new context. This may not have been the intention of indigenous representatives or

their supporters, and this is not to say that the concepts of self-determination being articulated through the Declaration or international fora are necessarily wrong or missing something. However, I would argue that this is what we should understand as having happened, and is continuing to happen in maintaining the human rights framework as the voice through which indigenous claims are to be made. While it may not be realistic to expect a wholesale escape from this phenomenon, it has shaped the way indigenous claims are articulated, and the way they are perceived. This may bring subtle yet significant costs to the framework's continued usage, and it is important that we be aware of this.

Leaving questions about Westernized understandings of self-determination aside, one thing is continuously made clear: indigenous peoples saw the inclusion of the right to self-determination as necessary for their support of the Draft Declaration. Further, the indigenous right to self-determination is to be "unqualified" (WGIP 1991: 10 (49)), and intended to mean that indigenous peoples themselves define it for their own communities (WGIP 1993: 17-18 (56)).

One of the clearest examples of this right to self-determination in action came as the Draft Declaration was being finalized and as it went forward to the HRC. During this time "some government observers stressed that governments should be involved in process of negotiation in order to arrive at mutually acceptable definitions of indigenous populations for certain specific purposes" (WGIP 1984: 18 (103); see also WGIP 1993: 15 (43) & WGIP 1996: 15-16 (34)). Indigenous peoples spoke out firmly against this notion however, and tied it explicitly to the right to self-determination:

"Many indigenous representatives stated that indigenous peoples' self-identification as a distinct people or collectivity was the fundamental element in the determination of who were indigenous. Integral to their right to self-determination was the right to identify themselves as indigenous peoples for the purposes of international standards and domestic law without interference from States." (WGIP 1996: 16 (35))

From the way in which this strong link between self-identification and self-determination was discussed, it becomes clear that indigenous peoples see the right to self-determination as fundamental to all other indigenous rights.

Ultimately – and as mentioned previously – among the indigenous observers who participated in the WGIP sessions, the right to self-determination is seen as fundamental to the Declaration

itself. The documentation from the WGIP bears this out, as prior to the official beginning of the drafting process indigenous observers called upon the WGIP to place it “at the top of the list of priorities,” because it was seen as “underpinning the implementation of all other rights” (WGIP 1983: 7 (27)). As the drafting process was ongoing it is referred to as the “corner-stone” (WGIP 1989: 18 (56)) or the “pillar” (WGIP 1993: 18 (57)) of the text. And as seen above, when States began to push back on this right during the drafting stage, indigenous peoples threatened to withdraw support from the Declaration if the right was not included without qualification in the final text (WGIP 1994: 13 (37)). When read together it is impossible to see the right to self-determination as anything less than a fundamentally important right to be included in the Declaration for indigenous peoples. Because of that, understanding how the final Declaration has been used to establish indigenous self-determination is a crucial aspect of determining what level of success or failure can be attributed to the document.

Self-Determination through the Declaration

Finally, I turn now to the right to self-determination after the Declaration’s passage, still considered to be the “fundamental” right of indigenous peoples (PFII 2010: 192). Similar to the concept as discussed above, there is a clear split between internal and external sovereignty, and both sides readily admit to there being more that needs to be accomplished. In terms of effects of the Declaration, as with all rights, it is difficult to ascertain specific policies that are now in place that would not have been put in place without the text. However, in going through the work of the EMRIP and the PFII, it is possible to identify specific policies that are being highlighted as positive steps forward by the mechanisms, as well as critiques of these same policies.

The most comprehensive single look at the question of self-determination and governance comes from a 2011 study undertaken by the EMRIP on the right to participate in decision-making and governance. Specifically, the study included information from both States and indigenous peoples, and was intended to highlight best practices. The study itself highlighted different practices that can be seen to coalesce into two focuses: 1) increasing indigenous participation in national governance, and 2) self-government. Regarding indigenous participation in national governance, the EMRIP highlighted programs in the Mexican state of Oaxaca (EMRIP 2011: 8 (35)), Australia (*Ibid*, 9 (40-41)), and New Zealand (*Ibid*, 9-10 (43)). These

programs were primarily oriented around more inclusive governance at national and local levels, and in the cases of Oaxaca and New Zealand there were specific seats set aside for indigenous candidates in elections.

Different from these inclusionary policies are self-governance measures, also identified by the EMRIP's study. Within these policies there was further breakdown, as some self-government arrangements are more informal in nature, including those in the Chittagong Hill Tracts area of Bangladesh (EMRIP 2011: 8 (32)), Malaysia (*Ibid*, 8 (33)), and Cambodia (*Ibid*, 8 (34)). These arrangements typically involve the use of more traditional indigenous systems of governance, or greater attention given to indigenous legal systems. More formalized self-government agreements typically will be the result of legislation, or court decisions. They can include governance powers over demarcated territories or populations, as is the case with Māori institutions (*Ibid*, 5 (19)), Kuna Yala *Comarca* in Panama (*Ibid*, 5 (20)), US Indian Law (*Ibid*, 5 (21)), or Canadian self-government agreements (*Ibid*, 6 (22)). Also included in this category is governance over particular aspects of indigenous life, though not necessarily over defined territories, such as is the case for the Sámi Parliaments in the Nordic countries (*Ibid*, 6-7 (24-27)). Importantly, these self-government arrangements are intended to involve the use of more traditional indigenous governance systems, seemingly giving them greater legitimacy.⁷⁰ These indigenous governments are then able to engage with State governments on specific issues, such as resource management (*Ibid*, 13 (64)), and other issues on which States consult indigenous peoples (*Ibid*, 13-14 (66-71)). Given the potential for indigenous decision-making, such arrangements can offer real levels of internal self-determination.

Problematic here though is the way in which 'internal' aspects of the self-determination are offered to indigenous peoples. As the EMRIP also notes – specifically regarding self-determination in New Zealand – the self-governing institutions are “ultimately controlled by the Government” (EMRIP 2011: 5 (19)). This situation runs parallel to that in the US, where despite “many American Indian nations retain[ing] residual sovereignty over territories,” “Congress can legislate to override American Indian law” (*Ibid*, 5-6 (21)). Even in Panama, where indigenous

⁷⁰ This is not the case for all the arrangements though, with those in Canada, the Nordic countries and the United States effectively imposing non-indigenous systems of government onto indigenous peoples.

territories have “administrative autonomy,” this autonomy can only be exercised “within the framework stipulated within the Constitution and legislation” (*Ibid*, 5 (20)).

Clearly, even through the best practice of self-government, indigenous peoples are not offered self-determination of a manner that takes the form of indigenous governance not controlled by States. This is because the Declaration fails to incorporate a meaningful right to self-determination, as those rights contained within it cannot allow for this self-determination to take the form of dislocation – or independence – from the colonial state (Engle 2011: 145-47; Anaya 2001: 112). As much was made explicit when the US announced its support of the Declaration:

“The United States is therefore pleased to support the Declaration’s call to promote the development of a new and distinct international concept of self-determination specific to indigenous peoples. The Declaration’s call is to promote the development of a concept of self-determination for indigenous peoples that is different from the existing right of self-determination in international law. The purpose of the Declaration was not to change or define the existing right of self-determination under international law. Further, as explained in Article 46, the Declaration does not imply any right to take any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.” (Government of the US 2010: 3)

Indigenous peoples within these States are not accepting this redefinition of the right to self-determination either, with the Lakota Nation calling this “a unilateral and self-serving interpretation of the Declaration” (Lakota Nation, 2014). This statement was made at the 2014 session of the PFII, which had as its theme the issue of governance, and where others also pointed to serious issues with the levels of self-determination offered. One scholar pointed to the case of New Zealand, saying that through the present self-governance policies of the Government, “assimilation is inevitable” (Joseph 2014: 6). Other critics included Chief Oren Lyons of the Onondaga Nation (Lyons 2014: 3 (7)), and the North American Indigenous Peoples Caucus (Harry 2014: 1-2 (11-13)).

After reading through the work of the EMRIP and the PFII alongside indigenous statements at these fora, it becomes clear that what is being offered to indigenous peoples by Governments is not the type of self-determination expected. Rather, some indigenous peoples are being offered the opportunity to self-govern, as long as they do so within the territorial and legal bounds of existing States. This is in some ways reflective of the distinction between internal and external self-determination discussed above, with States clearly implementing policies that amount to internal self-determination controlled by the national Government. The implications of this will

be discussed in my fifth chapter, but suffice to say that such policies are not a full realization of indigenous peoples' right to self-determination. Further to this and when understood in this light, we can understand the hypothesis from Chapter 2 to be in part confirmed: a politics of recognition framework like that found within the Declaration does not seem to offer reliable emancipatory pathways out of colonialism for indigenous peoples.

Conclusion

Through examinations of both the use of the Declaration, as well as the text itself, it becomes clear that an indigenous rights discourse effectively serves to further deepen colonial norms and standards for indigenous peoples. This chapter specifically has undertaken these examinations, and argued that with respect to self-determination and self-definition, the Declaration should be understood as a *dispositif* of (neo)liberal international order. Within this, the Declaration works to maintain and further entrench an order in which States remain the primary gatekeepers of indigenous subjectivity, requiring that it fall within the bounds of acceptability in order to be considered valid. As I have discussed using Hale (2002), these boundaries are sometimes established by States according to neoliberal logics. Further to this, indigenous rights are explicitly subordinated to human rights, further cementing non-indigenous, individualistic understandings of self. Instead of the self-determination argued for prior to the passage of the Declaration, indigenous peoples are required to align themselves with the 'best practice' of self-government within a legal framework established by the very States that have, and continue to, colonize them.

Indeed, this understanding of self-government policies as 'best practices' mirrors the way in which neoliberal practices are discussed in global economic circles and at the UN and other international fora. While these best practices are often seen as being "neutral and technical" 'fixes' for problems faced by States, Best (2007) writes that "it actually involves defining the norm in a given area," effectively setting a standard for policies (94). In these cases, "This standards-setting exercise thus involves the imposition of a set of norms developed by some states onto others," and a re-casting of political choices as non-political 'technical fixes' (*Ibid*). Of course, these norms are not coercively imposed (*Ibid*, 94-5), but then neither are the types of self-government agreements advocated by indigenous rights activism. Instead, similarly to the

global economic sphere, these international mechanisms do not critique the colonial power relations within self-government politics. Instead they are held up as a technical policy fix, not the politically-driven decision that it is. Here we can see not only overt instances of neoliberalism's implication in indigenous lives – as with definitions of self – but also an indirect 'creep' of neoliberal discourse into the very mechanisms established to work against it.

Despite some minor positive steps identified in Chapter 3, the Declaration ultimately rests on having UN Member States legitimize the claims of indigenous peoples through their recognition of them. Coulthard's critique of this framework provides a view to the colonizing effect this in fact has over indigenous peoples. Not only does the text fail to recognize a distinct, indigenous subjectivity as separate from that of prior bearers of human rights, it effectively denies some more traditional indigenous philosophies a voice. This works to assert the domination of States over indigenous peoples through the process by which their claims must be adjudicated. Ultimately then, it would seem as though indigenous peoples are once again receiving the "scraps of history" (Alfred 2005: 37).

This is not to say that all indigenous peoples or communities are unhappy accepting self-government. As I discussed above, it is clear that some groups and communities have understood self-determination as existing within this internal construct. Understanding self-determination through this lens does not necessarily mean that present conditions of self-government are ideal however. Indigenous peoples not requiring the formation of new States is one thing, but indigenous peoples accepting self-government as managed by a colonial State is another. Even where indigenous peoples find self-government to be consistent with their claims to self-determination, others don't. This again gets to the issue of homogenizing indigenous claims and voices into one movement. Regarding the right to self-determination, it does not appear as though a consensus position has been attained – or if that is even possible. Additionally, by seemingly not working through the issues of translation raised here, the indigenous rights movement continues to erase some forms of indigenous claim to self-determination.

In order to speak directly to questions of self-determination and a veto power held by States, the next chapter turns to the case of the Nunavut Land Claims Agreement. In it I build upon my

critique of self-determination within the indigenous rights movement and incorporate issues of economic neoliberalization as well.

Chapter 5

This chapter differs from the preceding chapters. Previous chapters have been more focused on history (Chapter 1), theory (Chapter 2), and the relations at the international level between indigenous peoples and States more explicitly (Chapters 3 and 4). Here I focus more on domestic relations: I will provide an illustration of resolutions of rights claims in the form of land claims agreements. Tying this to the international realm of human rights discourse, my treatment of this topic engages most explicitly with the nexus between land rights and rights to development, touching also on questions of self-determination explored in the previous chapter. Together, these rights often are understood to work to incorporate indigenous lands into colonial capitalist structures in order to provide ‘certainty’ for their exploitation.

In a Canadian context, Coulthard (2014) speaks directly to this, arguing that colonial States have continually sought to “coercively integrate [indigenous] land and communities into the fold of capitalist modernity, [but] it was not until the negotiation of land-claims settlements in the 1970s and 1980s that this process began to significantly take hold” (53). Capitalist exploitation is not only a North American phenomenon, however: this same process takes place in numerous countries, including indigenous-led countries such as Bolivia and throughout other countries in Central and South America,⁷¹ and throughout Asia and Africa.⁷² Important to note is that a similar structure of power to that of claims to self-determination is engaged in relation to indigenous claims over lands. In effect, indigenous peoples are claiming lands that are presently held by States, and their claims over those lands must be seen as legible and legitimate by the governments they are claiming these lands against. Due to the inequality of power – and colonial

⁷¹ In Bolivia, opposition has been growing not only against economic exploitation of indigenous lands (see Indian Law Resource Centre 2010: web; Achtenburg 2011: web), but against Evo Morales’ – the first indigenous President in the country’s history – government and its policies as well (Free Speech Radio News 2014: web; Associated Press 2015: web). For further information about some of the opposition throughout South America, see Indian Law Resource Centre (2010: web) and the Indigenous World (2014 & 2015).

⁷² While not extractive in a traditional sense, in Botswana the Government has been forcibly removing the San people from their territory in order to make the areas available to big game hunters who pay thousands of dollars to hunt (IWGIA 2015: 448; see also: Saugestad, 2011; Amnesty International, ND: web). In Cambodia, indigenous peoples have been fighting against the State granting their lands to corporations in order for them to exploit (IWGIA 2015: 288). In the Philippines there has also been widespread exploitation of indigenous territory by both public and private extractive corporations against indigenous peoples’ wishes (IWGIA 2015: 257-8). For further information about the situation of indigenous peoples throughout Asia, see IWGIA (2014 & 2015).

histories more generally – these lands are often given back in return for a specific type of land tenure according to the whims of States and neoliberal conceptions of organization. Oftentimes this means that lands are given over not necessarily to communal control by indigenous power structures – though there is a communal aspect to the governing structure – but instead indigenous communities must organize the holding of land through corporations set up to make decisions over how the land is to be used.

Concretely then, this chapter will be looking at specific arrangements negotiated and agreed upon between indigenous peoples and States regarding land claims. To do so I will focus primarily upon the Nunavut Land Claims Agreement (NLCA), supplementing this by pointing out similar features in land claims agreements between indigenous peoples and States throughout the world. My purpose in this chapter is not to provide a complete accounting of all of the issues with land rights settlements. Instead, I am using the agreements to point towards some of the more overtly colonial aspects of these settlements, including showing how even while indigenous peoples exercise agency through self-government, their governance systems remain organized through structures and norms established by colonial States. This means that I will not be undertaking a comprehensive history of the claim, its negotiation, or its aftermath.⁷³ My attention will turn to three specific aspects of land claims agreements that are evidenced in claims throughout the world: the concept of titling land itself, governance structures – including corporations and governance/oversight boards – and State control. In exploring these three aspects of land rights claims it becomes clear that indigenous peoples continue to live and govern themselves under conditions imposed upon them by colonial States.

I have chosen these cases primarily because of my own linguistic limitations, which preclude me from examining agreements in any great detail unless they are made official in either French or English. This means that I was unable to engage in depth with agreements throughout Latin America or parts of Asia, where many of the agreements/arrangements were entered into in Spanish (Latin America), or any of the various languages spoken in Asia. I will include

⁷³ Indeed, since the NLCA came into effect there have been lawsuits filed against the Government of Canada for failing to live up to the terms of the Agreement. There remain many fundamental problems within Nunavut – including the striking issue of youth suicide, the rate of which in Nunavut is 10 times the national average (Contenta 2015: web). For a more complete account of the history of Nunavut post-Agreement, see Henderson (2007).

references to these agreements in this chapter; however, it will only be with use of secondary material, and therefore I elected not to use them as primary examples. Like the primary agreements/arrangements discussed above, examples from Latin America and Asia serve primarily as illustrations of neoliberalism and colonialism in action, accompanied by indigenous resistance and exertion of agency. Ultimately I selected the NLCA as my focal point for the above-mentioned practical reasons, and because it represents the largest land claim agreement in the world.

In undertaking my analysis this the chapter will be broken down into four sections. The first puts the NLCA into focus, giving a brief description of what it is, and its most salient features. The second turns to the issue of indigenous title, and in the case of the NLCA, how the Inuit took on ownership of the land in fee simple tenure. The third section discusses the corporatization of indigenous lands and decisions over how those lands are used. And the fourth section speaks to the ‘veto’ power that the Government of Canada maintained over those development decisions, even on Inuit Owned Lands. Together these sections show how even agreements hailed as successful can be understood to continually reproduce colonial norms, logics and structures.

Land Rights Claims: Nunavut in Focus

The NCLA was initially agreed upon in 1990, ratified by the Inuit in 1992, officially signed in May 1993, and received royal assent from the Canadian Government in June 1993. The Final Agreement was decades in the making, involving “negotiation, litigation, political action, community consultation, appeals to the Canadian public, two NWT [Northwest Territories]-wide plebiscites on the concept of dividing the NWT and on the actual dividing line,” and the official formation of the Territory of Nunavut on April 1, 1999 (Fenge & Quassa 2008: 80). With the passage of the Agreement and the formation of Nunavut there was much praise, including the NLCA being called an “achievement shared” (Fenge & Quassa 2008: 83), and describing the Agreement “as an accomplishment in nation building and [it] heralded the combined initiatives as the beginning of ‘a new partnership’ between Canada and the Inuit of Nunavut” (Dewar 2008: 79).

The praise came not only for the land rights settlement, but also the parallel agreement to

establish the Territory of Nunavut.⁷⁴ This support was in part because the new Government of Nunavut was organized so as “to establish a government imbued with Inuit values, some of which are sharply at variance with ‘Euro-Canadian’ values” (White 2006: 9). This includes: the renunciation of political parties within the legislature in favour of a more ‘consensus-style’ approach to governance that follows Inuit tradition (*Ibid*, 13); more respectful discourse within the Assembly described as “low-key and civil, with MLAs actually listening to their colleagues in respectful silence” (*Ibid*) – a feature quite unknown throughout the rest of Canada; and the primary use of Inuktitut and wearing of traditional Inuit clothing within the legislature (*Ibid*, 12), among other changes.

These changes are substantial, and as scholars and others have noted, amount to real, sustained changes to the way in which Inuit have been able to self-govern within the new Territory (White, 2006; Loukacheva, 2007; Henderson, 2007). This is not to say that the new Government and its features have necessarily advanced a decolonial agenda however: White (2006) notes issues with how consensus-style governance has been implemented (23-24), with one MLA saying “We do speak Inuktitut and that’s important but everything else is done as if we were in England” (*Ibid*, 26), and having another say the governance system is ‘alien’ (*Ibid*). Indeed, while I have been unable to find explicit mention of it, it would seem that this ‘alien’ governance system was “imposed” by the Canadian Government in Ottawa, since a similar system in the neighbouring Northwest Territories – from which Nunavut effectively seceded – was imposed in this way (White 1991: 501). Clearly then, there are issues within Nunavut that run deep. This chapter is not focused on issues of everyday governance however; it focuses on three issues within the structures of land claims and agreements themselves. These three phenomena occur throughout the world with regards to indigenous claims, and while using Nunavut as the primary example, I will reinforce the analysis with reference to similar situations in Australia, New Zealand, Norway, and Bolivia.

Title to the Land

⁷⁴ As Dewar (2008) and Fenge & Quassam (2008) both point out, the NLCA differs from the agreement to establish the Territory of Nunavut. While each reinforces the other, the two agreements were officially kept separate during negotiation due to the differing issues at play in each.

Fundamental to the question of lands rights claims and agreements is the transfer of land to indigenous peoples. Without such a transfer, there would seem to be little point to the agreements themselves. Wrapped up in this though is the way in which land is transferred: land is first titled, then transferred to indigenous peoples after that. In the case of the NLCA, Inuit Owned Lands are held in fee simple (NLCA, Art. 19.2.1).⁷⁵ This gives indigenous peoples direct ownership of the lands, and allows them a sort of freedom to govern themselves that is not given to indigenous peoples living on reserve.

Looking back to Chapter 4, ownership of – and sovereignty over – lands is not necessarily consistent with the indigenous understandings of relationships to land and place writ large (Alfred 1999: 56-7). Instead, many indigenous communities and nations understand their roles more as stewards than owners (*Ibid*, 60-2). Putting a fine point on the issue, Watson (2009) writes: “The lawful place of voice from an Aboriginal perspective, is one which is looking to the country from a place of spirit as opposed to dollars” (21-22). Understood this way, “Nunga views on relationships to land, law and peoples are based on spirituality and ancient traditional ways of life, and are in conflict with the intentions of the colonising state and, in particular, the colonial construct of a ‘native title right’” (*Ibid*, 23). Even among the Inuit, conceptions of territory exist independently from those in Western tradition and law (Kapesch, 1982; Fry et al., 2008).

This contestation is derived from “the gap between politico-economic endeavors and traditional values of historically embedded, genealogical, and spiritual relationship to land and place” (Stewart-Harawira 2009: 218). Indigenous peoples see themselves as literally and spiritually a part of the land (Watson 2009: 28), and existing based in “interrelationality” with it (Steward-Harawira 2009: 216); States see land differently, effectively as something that is owned in order to be made economically productive (Alfred 1999: 61). Given the colonial nature

⁷⁵ Fee simple tenure is one type of land tenure under British Common Law, and is considered “the highest and purest form of property” (Blomley 2015: 170). It is a form of freehold estate over which “there is no restriction as to whom the estate may be passed on to” (*Ibid*, 171). Underlying title still remains with the Crown however (*Ibid*). This ‘fact’ is oftentimes contested by indigenous land rights claims within settler jurisdictions, since “fee simple and its sleep-inducing certainties are only possible in a settler society to the extent that a set of prior entitlements and geographies were, and continue to be, erased and ignored” (*Ibid*). This colonization is undertaken through what Comaroff (2001) calls ‘lawfare,’ which is the coercive use of legal systems to control and conquer indigenous peoples (306).

of the relationship between indigenous peoples and States, claims to land rights are typically settled through the imposition of relations to land that are foreign to indigenous communities. This is the case with the NLCA and its imposition of fee simple title, as well as the Ngai Tahu and Tainui settlements in New Zealand. These were land claims whose settlements produced “solid asset bases for the successful claimants” (Stewart-Harawira 2009: 218). Further, this process has been put into effect throughout much of the non-Anglosphere world as well, with NGOs and States working on land titling projects in Peru (Dahl 2009: 79; Mitchell, 2007), Bangladesh (*Ibid*, 57-8), and elsewhere.⁷⁶ In some of these places the projects have been particularly contested. One of these spaces of contention opened up in Bolivia, where “territorializing processes” were involved heavily in the marketization of land through hydrocarbon development (Anthias 2014: 195). This has led to situations where State-designated indigenous territories are simultaneously under claim by extractive corporations through State policies that were put in place to promote development (*Ibid*, 197).

State requirements of titling land that is then given to indigenous communities through land claims agreements seemingly achieve three things. The first is that the land is made legible to the States themselves. In making this argument I am building upon Scott’s (1998) argument regarding how “much of early modern European statecraft seem[s]... devoted to rationalizing and standardizing what was a social hieroglyph into a legible and administratively more convenient format” (3). For Scott, this was done according to a “high modernist ideology” so that the state would be able to build a society that it could effectively manage and govern (*Ibid*, 4-5), similar to the biopolitical governance at play in the relationship between indigenous peoples and States. Within this context, the centralized State is unable to govern populations informed by multiple, potentially competing, logics (*Ibid*, 72). Because of this, the State moves “to define a hierarchy of cultures, relegating local languages and their regional cultures to, at best, a quaint provincialism” (*Ibid*, 73).

⁷⁶ NGOs such as the UN Development Programme and IWGIA have been engaged in projects targeting indigenous populations in Guyana (UNDP, Amerindian Land Titling 2012: web) and the San in Botswana (IWGIA, Projects in Africa: web).

For my purposes, I argue States avoid governing indigenous populations through engaging with various (indigenous) logics of relation being enacted. Because of this, States will seek to standardize the system through the imposition of the fee simple system. This works to smooth out the multiple, messy ‘entanglements’ over Aboriginal title.⁷⁷ Ultimately this allows the State to govern indigenous peoples from within a legible system modeled after its own logics.

The second achievement of the fee simple designation is that – legally speaking – it serves to legitimize Crown occupation of lands. The fee simple designation denotes that the Crown maintains ‘underlying title’ over the land in question (Blomley 2015: 172). In agreeing to hold Inuit Owned Lands in fee simple, Inuit are effectively negotiating an ownership of land that vests the Crown as the ultimate title-holder, legitimating State claims over that territory in the first place. Because of this, indigenous peoples across Canada have resisted the imposition of fee simple title over lands under claim (Blomley 2015: 172-3). Where this imposition of fee simple title occurs throughout the world, I argue that it is another example of States using ‘lawfare’⁷⁸ against indigenous peoples. Ultimately, in looking directly at these types of agreements we see the opposite of the “parallel legal system of Indigenous Nations” (Venne 2012: 4) being implemented. We have further colonization through an imposition of Western, non-indigenous governance mechanisms.

The third achievement of land titling schemes is perhaps the most straightforwardly neoliberal: the imposition of neoliberal development models and logics. The example I draw upon here is from Mitchell’s (2007) work *The Properties of Markets*. In the chapter, Mitchell argues that economics is useful not as a representation of the world, but rather “for organizing socio-technical practices, such as markets” (1⁷⁹). Understood this way, development economics is tasked with the job of bringing non-capitalist forms of wealth into the market (*Ibid*, 6). To help

⁷⁷ As Bromley (2015) explains, Aboriginal is a creation of the Canada – and Australian – courts (171). Accordingly: “Aboriginal title is viewed as coexisting with the radical or underlying title of the Crown. However, because Aboriginal title carries with it a right of use and possession, it constitutes a legal ‘burden’ on the title of the Crown (Slattery 2006). As such, the certainty of Crown title is muddled, as long as the burden of Aboriginal title remains” (*Ibid*). Rifkin’s (2009) argument that the US works to localize indigenous claims over land in order to exert sovereignty over US territory is also pertinent here.

⁷⁸ See footnote 5 for a brief description of ‘lawfare.’

⁷⁹ Page numbers and quotations from Mitchell come from a copy of the chapter that was previously published online, and not the edition published in MacKenzie et al. (2007).

make this argument Mitchell discusses the work of Hernando de Soto and his Institute for Liberty and Democracy's (ILD) work on a land titling project Peru. The project began from the premise that non-titled land was a "defective" form of capital (de Soto in Mitchell 2007: 9), and that the project's purpose was to "bring the poor into the arguments and programs of neoliberalism" (Mitchel 2007: 11). Indeed, the project was incubated "within the network of political agencies and financial resources of the Euro-American neoliberal movement," and de Soto almost literally followed in the footsteps of Friedrich Hayek and his plans for Peru (*Ibid*). The project was pitched as a 'solution to global poverty,' and won the support of the Peruvian government (*Ibid*, 9). Ultimately between 1992 and 2002 approximately 1.2 million urban households were formally titled (*Ibid*). Strikingly however, "the property titling programs failed to have any effect on household poverty" (*Ibid*, 12; see also pgs 13 and 28). Instead, the project formally incorporated lands into the neoliberal market, and brought negative consequences such as the loss of access to housing by women and the bypassing of indigenous land rights by those with the proper government connections (*Ibid*, 28). Despite the lack of positive effects and evidence of negative outcomes for those covered by the schemes, de Soto's 'reform' packages have been exported widely to places like Egypt (*Ibid*, 10), and Tanzania (*Ibid*, 14), among others. While these cases wouldn't be specifically targeted at indigenous peoples, the rationale for land titling is often the same: to lift those targeted out of poverty and into the global economy. This kind of positioning has led de Soto and his ideas being hailed as 'progressive' (*Ibid*, 12), and he has been backed by international organizations such as the UN's World Bank, the US Agency for International Development, and the ILO (*Ibid*, 14). At least in part because of this, de Soto is now taken to be thoroughly mainstream, with proponents talking about turning indigenous peoples specifically into "potentially wealthy landlords" (Flanagan in Ibbitson 2012: web). The privatization of indigenous lands was supported by the Canadian federal Government (Ferrerias 2012: web; Uechi 2012: web), and would seem to be a part of those 'common sense' solutions for indigenous poverty throughout Canada that Prime Minister Harper is supportive of (Blaze Carlson 2011: web).

Corporations, Boards, and Colonial Structures

Perhaps one of the most pernicious aspects of land claims agreements is that oftentimes they require that lands given to indigenous peoples be titled to a corporation set up specifically to

manage the lands and monies transferred from the government. This is the case in the NLCA.

The relevant section reads:

Upon ratification of the Agreement, the Inuit Owned Lands totalling an area at least equal to the amounts specified in Schedules 19-2 to 19-7 and shown on the maps titled Inuit Owned Lands, Ownership Map, in the series Nos. 1 to 237 shall vest in the DIO [Designated Inuit Organization] in the form indicated on those maps and in accordance with the descriptions on those maps. (NLCA, Art. 19.3.1)

In this case, Article 39 of the NLCA expressly makes clear that the DIO referred to in the Agreement is “Tungavik” (NLCA, Art. 39.1.1), which in the *Definitions* section of the agreement is defined as “the corporation without share capital incorporated under the Canada Corporations Act [sic] by letters patent dated April 3, 1990 and supplementary letters patent dated December 16, 1992 and named the Tungavik Incorporated, or any successor” (NLCA, Art. 1.1.1). Since the NLCA’s ratification, there has been a successor organization, now named Nunavut Tunngavik Incorporated (NTI).⁸⁰ This succession proceeded according to the Agreement, as it stated that Inuit Owned Lands may only be transferred to another corporation, or back to the Government of Canada (NLCA, Art. 19.7.1), showing clear intent that the lands given back to Inuit were intended to stay within corporate hands.⁸¹

What we have then, is a literal forced corporatization of indigenous lands, even those given to indigenous peoples to manage on their own. This is one of the issues highlighted by scholars in speaking to the issues with settler colonialism and settler biopolitics: that the logic of the State worked to ensure that indigenous lands were made available for economic exploitation (see: Rifkin 2009: 96; kulchyski 2013: 108; Gray 2009: 19). Through the present system this is a continuing phenomenon, especially when the primary goal of the NLCA is “to provide Inuit with rights in land that promote economic self-sufficiency of Inuit through time” (NLCA, Art. 17.1.1 & Art. 17.1.3).

⁸⁰ Interestingly, NTI has been incorporated under the *Canada Non-Profit Corporations Act* (Industry Canada ND: web), which relieves the corporation from the duty to maximize potential profits. While this partially removes a profit-seeking motive from NTI, it still means that Inuit Owned Lands are held in corporate hands, as required by the NLCA.

⁸¹ A similar situation is occurring in Australia, where claims to ‘Native title,’ when accepted, mean that the successful claimants must incorporate a body in order to hold the lands for them. Indeed, under the *Native Title Act 1993*, indigenous land use agreements are expressly called ‘Body Corporate Agreements,’ and it is only “registered native title bodies corporate” that are able to enter into such agreements (*Native Title Act*, 24BC).

Further, within the text of the Agreement itself, economic issues often are placed at or near the beginning of the lists of issues to be addressed (NLCA, Art. 5.1.3 (a, iii & b, iii); Art. 5.6.1; Art. 11.2.3; Art. 11.3.1; 12.2.2). It may seem as though this is relatively inconsequential: indeed, it doesn't have any legal effect. However, this plays into Mirowski's (2013) argument regarding how images consistently viewed over time "begin to add up to something approaching a worldview" (154). My argument here is that as indigenous peoples are consistently told that their priority is building their economic power – including having the AFN National Chief say that indigenous communities are "open for business" (Atleo in Hopper 2014: web) and that the best program for Aboriginal peoples in Saskatchewan is Cameco, a uranium mining company (Wall 2013: web)⁸² – this begins to be internalized, producing a subjectivity that prioritizes economic gains. Regarding the land rights issues in the NLCA, economic gains are consistently prioritized throughout the text. This combines with the other images seen by indigenous peoples – by both their leaders and those of governments – to produce a sense that they should be focused on how their lands can be made productive economically, instead of culturally or spiritually as has been traditional. In this light, it becomes clear that the forced corporatization of indigenous lands is intended to make those lands productive, and able to be accessed with 'certainty' by the extractive sector.⁸³ This works to further entrench neoliberal precepts of land being there to be brought into an economically productive state, and speaks to the way in which neoliberalism is "defined by the *particular* terrains of struggle that free-market reformers confront 'domestically'" (Peck 2010: 22; emphasis in original).

Further, the claim itself was negotiated by the Inuit through the Tungavuk Federation of Nunavut, a political organization formed specifically in order to negotiate the land claim (Dewar

⁸² Further examples of this include: references to economic policies aimed at Aboriginal peoples in National Aboriginal Day statements (Statement by the Prime Minister of Canada on National Aboriginal Day 2012 & 2015: web); general policy announcements (New Mining Sector-Skills Training Program 2013: web); announcements on Aboriginal education policy (PM Announces an Historic Agreement with the Assembly of First Nations to Reform the First Nations Education System 2014: web); when outlining Government achievements in Aboriginal policy (Prime Minister Harper Outlines the Government's Achievements for Aboriginal Canadians 2007: web); and, with indigenous leaders portraying the problems in indigenous communities as primarily a lack of economic opportunity, as the AFN National Chief Perry Bellegard did on TVO's *The Agenda* (TVO The Agenda, May 27, 2015).

⁸³ Indeed, whole sections of the NLCA speak to the process by which resources are to be extracted from Inuit Owned Lands (NLCA, Arts. 10, 11, 25, 27 and 28), and Impact Benefit Agreements also are explicitly regulated within the Agreement as well (NLCA, Art. 26). The inclusion of language around 'certainty' – and the entirety of Art. 2.7 – speaks to a desire to determine the 'rules of the game' for resource extraction.

2008: 76). When it came time to distribute the lands, the requirement came that the lands be held in corporate hands. It isn't strictly necessary for the land to be held by a corporation either. Indeed, throughout Canada and Australia land is held by municipalities, sub-national, and national governments in the form of Crown Land. Instead, the route decided upon by settler States involves choosing enforced corporatization of indigenous lands, instead of devolving land to indigenous governments to be held for the communal benefit of all Inuit within the territory under claim. By doing this States are able to reinforce non-indigenous methods of governance as an expected norm within 'modern' society, further producing colonial imaginaries within indigenous peoples.

Corporations are not the only governmental organization agreed to in the NLCA. In addition to the formation of corporations in order to receive the land to be transferred under the Agreement, the text also outlines co-management Review Boards (Nunavut Impact Review Board, Nunavut Water Board) and a land-use Planning Commission (Nunavut Planning Commission) (NLCA, Art. 10.1.1 (b)). The text of the Agreement is incredibly specific when discussing the Boards and Commission, not only giving these organizations power over land use planning, development impact review, water allocation and other functions (NLCA, Art. 10.6.1 (a)), but also explicitly laying out the conditions within which projects or proposals may be approved (for one brief example, see Art. 10.6.1 (b-h)), and the specific procedures for those approvals (see Art. 12.2.15-12.2.27 for one example). 'Co-management' is an operative term here, since the Government of Canada still retains the rights to make the appointments to the Boards and Commissions, only half of whom are appointed upon recommendation by the DIO (NLCA, Art. 12.2.6).

This situation is mirrored for the Sámi peoples within Norway. Through the Finnmark Act of 2005 approximately 95% of the region of Finnmark was transferred "to Finnmark's inhabitants through a new agency called the Finnmark Estate" (Solbakk, 2006). The discussed purpose of the Act was to give the Sámi more control over land use planning (*Ibid*). The land is now managed through the Finnmark Estate, which is governed by a Board of Directors. Half of the members of the Board are appointed by the Sámediggi (the Sámi Parliament), and the other half by the Government of Norway (*Ibid*). This way of governance is different from the more traditional

siida system of government (Kuokkanen 2009: 98), again mirroring the imposition of non-traditional (neo)liberal forms of governance on indigenous populations.

Turning back to Nunavut, one of the reasons given for the detail in the Agreement is “self-preservation”⁸⁴ on the Government of Canada’s side (Dewar 2008: 75). Dewar (2008) also notes: “with [an agreement on the formation of] Nunavut there would be no need to negotiate co-management boards, as Inuit could gain control of lands and resources through eventual devolution to a Nunavut territorial government” (*Ibid*). This is still a solution whereby Inuit political organizations would not have powers in and of themselves over development on their lands; that power would rest with a government that is external to Inuit communities, and based upon a Western parliamentary structure. Ultimately, in negotiating the NLCA, the Government of Canada did return land to the Inuit. However, in doing so it enforced a corporatization of their lands, and enforced Western forms of governance on what could occur on those lands through co-management Review Boards and Planning Commissions. Inuit leaders were not supportive of this action either, as Dewar notes that they were pushing back against the inclusion of management boards in the final Agreement throughout the negotiations (*Ibid*, 77). What we have then, is a situation whereby against Inuit opposition, the Government of Canada imposed neoliberal forms of governance on Inuit lands and resources.

A Continued Veto

We can see above that through insisting upon Inuit Owned Lands being held in fee simple title, the Government of Canada is in effect normalizing a settled status for indigenous lands. In that case of land titling, this is done (somewhat) implicitly. In reading through the NLCA however, this normalization of State control over indigenous lands is made explicitly clear. This occurs through the maintenance of the Minister of Aboriginal Affairs as the oversight mechanism for the development and use of the Inuit Owned Land. Such clauses within the Agreement are further signs that indigenous self-determination takes effect only insofar as they

⁸⁴ Here Dewar also notes that the ‘self-preservation’ took on a dual role, since there were dual issues of land claims negotiations addressed through the NLCA, and political claims being made towards the formation of Nunavut (Dewar 2008: 75). These two issues were necessarily dealt with separately, and it is possible that some of the reticence on the Government’s part to giving more powers to a Territorial Government came from there not being a firm agreement on the formation of the Territorial Government, let alone a Government contemporaneously in place (*Ibid*).

govern within the boundaries established within State-established frameworks, and that the State retains the authority to take away governing authority in cases where indigenous peoples stray outside those frameworks.

One of the clearest examples of this comes in Section 12 of the Agreement, in which the Nunavut Impact Review Board (NIRB) is established. Interestingly, the NIRB has a dual mission according to its ‘Primary Objective’:

In carrying out its functions, the primary objectives of NIRB shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of residents of Canada outside the Nunavut Settlement Area. (NLCA, Art. 12.2.5)

This primary object incorporates both the “well-being of the residents and communities of the Nunavut Settlement Area,” and “the well-being of residents of Canada outside the Nunavut Settlement Area” as well (*Ibid*). The slippage between those covered by the Settlement, and those outside of the settlement opens up the possibility that actions could be taken that are against the wishes and best interests of those within the Settlement Area, but that were aimed at the benefit of those outside of that area. Indeed, further in this same subsection of the Agreement the Minister has the explicit right to reject the decisions of the NIRB, because the report “shall be treated as recommendations to the Minister, which may be accepted, rejected or varied by the Minister” (NLCA, Art. 12.6.16).⁸⁵ Even more explicitly, the Agreement states that these provisions “shall apply to Inuit Owned Lands” (NLCA, Art. 12.12.1). This gives the Minister ultimate decision-making powers over even Inuit Owned Lands, another indication of underlying title ultimately remaining with the Crown.

The right of the Minister to the ultimate decision-making power regarding development on Inuit lands also extends to the Inuit Impact Benefit Agreements (IIBA) that specific Inuit communities sign with companies proposing – primarily extractive – projects on their lands. Within the NLCA, Article 26 specifically states that “no Major Development Project may

⁸⁵ In sections – 12.6.11 and 12.6.13 – prior to the section quoted here, the Agreement lays out specific conditions on which the Minister may decline to accept the decision of the NIRB. Section 12.6.16 in fact further states that determinations of the NIRB “shall be treated as recommendations to the Minister, which may be accepted, rejected or varied by the Minister without limitation to the grounds set out in Sections 12.6.11 and 12.6.13.” Given this, the Minister is able to exercise freer reign over decisions of development.

commence until an IIBA is finalized in accordance with this Article” (NLCA, Art. 26.2.1). This is so that Inuit communities can be certain of the benefits that will come to them through the project, and so that companies can receive the ‘certainty’ of community acceptance of the project. From a business and community benefit perspective, this seems like a quite reasonable step. Problematic though is that the Minister retains the right to veto any IIBA within 30 days of it being signed (NLCA, Art. 26.8.1). Even if the argument is that the Government wishes to ensure that Inuit communities will obtain the full scope of benefits possible – ie. that they are just trying to prevent the Inuit communities from being taken advantage of – giving this power to the State effectively removes agency from Inuit leaders and negotiators. It seems to say that Inuit cannot ultimately be trusted to make decisions that are in their best interests.

In addition to holding a veto power over development decisions made by Inuit in some areas, the Government of Canada is also tasked with ‘consulting’ with Inuit over decisions taken in other domains, notably petroleum development (27.1.1-2) and other natural resource development (27.2.1-2). This could be a positive development: Inuit should absolutely have a voice in the development projects that go forward in their communities. However, the Government of Canada has declared that they do not view the notion of Free, Prior and Informed Consent (FPIC) to be a ‘veto power’ held by indigenous peoples (Tremblay, 2011), as have other States such as Bolivia (Schilling-Vacaflor, 2013), and Colombia (Velasco, 2015), among others. By interpreting FPIC in this way, these States are effectively stating that indigenous peoples do not have a final say in the development that occurs on their lands. Indeed, projects have in fact gone ahead despite objections by indigenous communities, including: some of the largest pipeline projects in Canada, which will carry bitumen across indigenous lands (Beaumont 2015: web; Gordon 2014: web; Walker 2014: web); the Northern Gateway Pipeline, which was just approved by a federal review panel against overwhelming opposition by indigenous communities (CBC News 2013b: web); shale gas development in New Brunswick, which was pushed forward despite clear opposition from indigenous communities (Schwartz & Gollom 2013: web); and the building of hydroelectric dams in Panama (Arghiris & Kennedy 2015: web). The Government of Canada has even gone so far as to label indigenous opponents to extractive development “significant risks” to the Canadian development agenda (Lukacs & Pasternak 2014: web). This is considered to be in direct violation of the concept of FPIC, which has become a core expectation

of indigenous representatives at UN mechanisms (Ford, 2010; Dorrough, 2011; Deer, 2011; Harry, 2011). FPIC has also become a focal point for international organizations like the UN, where it has taken on a stronger – meaning, more emphasis on obtaining indigenous consent to projects – since the Declaration’s passage (Barelli, 2012). Given this, the inclusion of a requirement to consult Inuit representatives on resource development projects planned for their communities does not seem sufficient to give indigenous peoples ultimate decision-making power over the development that goes on throughout their own lands. Because of this, it would seem to work against the principles of self-determination inherent within FPIC, and empirically supports the arguments presented in Chapter 4.

Finally, the ‘veto’ power given to the Minister of Aboriginal Affairs under the Agreement also is given to other Ministers in the Government of Canada, albeit in a different form. Specifically here I am speaking to the powers held by the Minister of Defence, who has multiple opportunities to make their own decisions, including the building of military installation upon indigenous lands, even against the wishes of a community (NLCA, Art. 12.12.3), and access to lands for the purposes of military ‘maneuvers’ (NLCA, Art. 21.5.10-11). Both of these rights are the same as are granted to the military over other lands that are privately held. Additionally, access to Inuit Owned Lands is offered to all “Agents, employees and contractors of Government” so long as they are there “to carry out legitimate government purposes relating to the lawful delivery and management of their programs and enforcement of laws” (NLCA, Art. 21.5.1). This further points to the legal effects of fee simple title giving underlying title to the Crown, since the State may engage in the same activities on Inuit Owned Land that it may on other, non-indigenous lands. Effectively, the inclusion of ‘veto’ powers in the NLCA for Government Ministers and other agents works to reinforce the concept of underlying title remaining with the Crown – despite the term Inuit Owned Lands being used throughout the document. Understood this way, self-determination for Nunavut’s Inuit – or even simply self-government – can be equated to legal property ownership rights. There is even the possibility that they are akin to something less than this, because owners of private property are not typically subject to externally-imposed management boards that are empowered to make decisions over land use. Given this, the NLCA and Inuit Owned Lands seem most effective at maintaining Inuit communities within the colonial norms and hierarchies referred to by

Coulthard (2007 & 2014).

Conclusion

Combined, these three aspects of land claims resolutions add up to the continuation and entrenchment of both colonial norms and structures. Norms are perpetuated through the requirement of titling and ownership of land, as well as the norms involved with neoliberal corporatization of indigenous lands in order to make them fit for exploitation, and the continued imposition of Government ‘vetoes’ over indigenous use (or non-use) of lands. Structural concerns here are represented by the imposition of Western legal system of land tenure (ie. through fee simple ownership), the use of corporate bodies to hold Inuit Owned Lands, as well as the exercising of governing authority over development and land use organized through Review Boards and a Planning Commission. Understood together, we can see clearly that resolutions to indigenous land claims, even when they transfer land to indigenous nations, are not necessarily steps away from a colonial past. When agreements such as the NLCA – and others that incorporate the same attributes around the world – are implemented, they serve to provide self-government only within the bounds of colonial legal frameworks. In these instances self-determination is effectively curtailed in favour of continued colonial rule.

To close, the NLCA and the establishment of Nunavut both represent incredible successes for the Inuit. It is no small feat to have concluded the largest indigenous land claims settlement in history, and an even larger accomplishment to have been able to leverage this success into the establishment of a new Territory. This new Territory has successfully infused traditional aspects of Inuit governance into Western, parliamentary-style democracy. With the focus on the use of Inuktitut, Inuit have accomplished something millions of indigenous peoples around the world are striving towards: the revitalization of their language. This helps to maintain Inuit culture in a way nothing else truly can. These are all stunning accomplishments. My concern lies in the way that Western norms and structures are put into practice over Inuit lands and governance. In making Inuit lands legible, something is lost. This is especially so when the ‘messiness’ of indigenous claims are organized through the ‘clean’ lines of underlying Crown sovereignty. Trying to take nothing away from Inuit agency and success, I argue that the resolution to land

rights claims in fact can work to deepen and normalize colonial relations and hierarchies, and ensure that indigenous lands are made ‘open for business.’

Conclusion

Throughout this thesis I have put forward the hypothesis that an indigenous rights discourse is unable to offer indigenous peoples an emancipatory pathway out of the present colonial circumstances in which they live. In testing this, I have relied upon evidence from a variety of sources, including documents from UN mechanisms, States, NGOs, and academics, among others. Through my reading of these documents, I have come to the argument that an indigenous rights discourse – as featured within the Declaration – indeed does not presently begin indigenous peoples down a decolonial path. Further to this, I have argued that because of the way in which this discourse requires the recognition of colonial States, it actually continues to entrench the colonial attitudes, norms and structures it is attempting to do away with. Despite this, I don't believe that the situation is total, and I have attempted to show some instances, notably on collective rights, of where indigenous peoples have made concrete and meaningful gains from within a human rights framework. These gains also include simply being understood to hold subjectivity because of their existence as indigenous peoples, a fact previously unacknowledged by States at the international level.

Existence and acknowledgement in and of itself is not a panacea, however. Even after being acknowledged, indigenous peoples continue to be violently erased by the very States who passed the Declaration in 2007. This violent erasure comes not only physically in the form of State police and military brutality against indigenous protestors, nor only in the form of neglect and desperation within indigenous communities, but also in the form of social and psychological trauma. Being considered lesser than those within 'eurocentred modernity,' having cultures and languages disregarded and literally left for dead, or having self-government whereby the State continues to maintain control over decision-making, all add up to forms of dispossession that are not seen directly as was the taking of life or lands in decades previous. A human rights framework may be able to help with some of these realities; however, I have argued that it is fundamentally unable to offer indigenous peoples self-determination, as rights claims resolutions have shown. Instead, through this framework indigenous peoples are left with only "white liberty and white justice" (Fanon in Coulthard 2014: 39).

This repeated phrase about ‘white’ liberty and justice gets to the broader point my thesis addresses. Namely, those by choosing the language of human rights as that through which to articulate their claims, indigenous peoples have had to perform a type of translation of those very claims, potentially creating hybrid forms. I touched on this in Chapter 4 with respect to self-determination, and I think it is important to bring up again as a more general point to take away from the argument presented over the previous five chapters. Indeed, there are good reasons for why the indigenous rights movement has chosen a human rights framework as the best option through which to have their voice heard. Not the least of these reasons is that the language of “human rights seems less threatening to states and international institutions” than other languages (Engle 2011: 161). If this is the case, it would make sense that it would be easier to win the support of States when claims are framed in this way, especially when other scholars have noted ‘certain potentialities’ – including ‘recognition’ – when Hegemonologies are strategically engaged with (Turton & Freire 2014: 6). Indeed, “travelling ideas and theories can also gain power upon their arrival in a new setting” (*Ibid*, 11), pointing to the possibilities that an indigenous rights discourse can open up for indigenous peoples.

Problematic however, is that translation can also produce ‘misunderstandings’ as concepts are lost and reinterpreted in new contexts (Turton & Freire 2014: 10). This potential problem becomes more clear especially when translation takes place within unequal relations of power. In these cases translation can be included among those “deemed to be ineffective stratagems for challenging what is assumed to be the dominant power or discourse and for drawing attention to difference” because of the dependence on those translating their claims (*Ibid*, 7). In these situations it is often difficult to produce a faithful translation of the original claim, because once translated, the claims become “dependent on the ‘core’ for their key assumptions and theoretical bases” (*Ibid*). It is these aspects of translation that are my concern here in analyzing the indigenous rights movement. My concern is that through having selected a human rights framework, indigenous representatives have engaged with a framework that continues to maintain them as the dependent at the mercy of the dominant. In analyzing issues of personhood, self-government, land rights, and others, I have repeatedly come across instances whereby States agree to support indigenous rights, only to maintain their colonial relationship to indigenous peoples through the implementation of those very rights. This need not necessarily be the case,

as translation and hybridity maintain great potential (*Ibid*, 8), and Mbembe (1992) has shown us the type of agency that colonized subjects maintain, even while continuing to live under colonial rule.

My own positionality of course comes into play here. I am a settler living on indigenous lands within Canada. I hope to always remain aware of my own complicity within the colonial architecture of Canada. Within this context, my thesis ultimately seeks to reach out to other settlers both domestically and internationally, to make it clear that no job has been completed. Even with the passing of the Declaration, we remain living in a world of the most profound inequalities, where as a result of our Hegemonologue, indigenous peoples are too often treated with derision, their voices silenced and values ignored. Such a situation should never be accepted, and indeed, actively opposed whenever possible. It is in this perspective that I engage in my critique of the Declaration. This critique is not absolute however, and as Engle (2011) writes:

“If we are willing to examine it critically, the UNDRIP may have the potential to become an important site for the ongoing struggle over the meaning of human rights, the dominance of human rights as the basis of justice, and the extent to which it might be mined or abandoned for alternative, transformative strategies” (163).

It is within this context that I hope my project will be taken. I am not attempting to say that indigenous representatives are expressly wrong for having engaged with a rights-based discourse. Having indigenous claims accepted by States, and finally being recognized as worthy of recognition represents an achievement many around the world still seek to emulate. In this case, the lack of opposition to the Declaration shows that it may potentially provide that site within or around which indigenous peoples can rally. If, at the end of the day, a human rights-based approach is decided upon as the best, I hope only that some of the pitfalls analyzed here may be taken into account to strengthen those claims. Given the practical realities of organizing, this may end up being the most effective and efficient manner in which to move forward.

Another possible way forward, out the colonial system, might be found in the work of peter kulchyski, who has argued against a “conceptual confusion between aboriginal rights and human rights” (kulchyski 2013: 37). kulchyski’s distinction comes on the basis of both of who gets to claim those rights (*Ibid*, 37-8), as well as how Aboriginal rights exist outside of the strictures of

the “liberal enlightenment” (*Ibid*, 42). Instead, for kulchyski “aboriginal rights [are] directly related to indigenous culture” (*Ibid*, 41-42) and perhaps most importantly, they are related to battles over land as well (*Ibid*, 38).

Through his rejection of liberal enlightenment, kulchyski also considers his system of Aboriginal rights to be “antithetical to capitalism” (kulchyski 2013: 31) and very much rooted in a socialist framework based on Marx’s own writings (*Ibid*, 33). He is able to do this because he argues that “aboriginal peoples belong to a hunting mode of production” that is fundamentally opposed to capitalism (*Ibid*, 30). What this means is that at their core Aboriginal rights are focused on preserving indigenous lands so as to benefit indigenous communities not through extraction, but through the cultural importance of them for indigenous cosmologies. Because of this, kulchyski’s approach helps to organize against both the economic and social impacts of neoliberalism at the same time.

kulchyski’s approach to the issue of indigenous activism also serves to bring the movement back to its roots in some ways. As I briefly discussed in Chapter 1, originally the international indigenous movement was split between those activists that were working from within a human rights-based framework, and Marxist-inspired *campesino* movements. With kulchyski’s invocation of Marx and Marxism as the path forward for indigenous peoples, he is re-engaging this segment of the movement that was displaced by those ‘principled international actors’ who favoured a human rights-based framework. If such a framework is to be advanced, it will provide a clear repudiation of the present neoliberal-inspired state system that continues to further individualized and economically-based rights as existing within State authority.

A further possible approach comes from Coulthard and Alfred, and is rooted in a rejection of the need for recognition by a colonizing Other. Instead, it achieves decolonization through a fundamental self-recognition on the part of indigenous peoples. The important thing here is that this be done on indigenous peoples’ “own terms and in accordance with their own values” (Coulthard 2014: 43) and have “indigenous integrity” (Alfred 2005: 186). For these authors, this integrity comes from decolonization movements being informed by indigenous cultures, philosophies, and traditions (*Ibid*, 56). Indeed, for them “If you play by the colonizer’s rules,

how are you going to win the game?” (Sakej in Alfred 2005: 70). It is only by extracting themselves from colonial rules and expectations that indigenous peoples are able to push forward down a path to decolonization. This is because in this case indigenous subjectivities are no longer deformed by a colonial misrecognition.

According to this perspective, for too long indigenous peoples have accepted governance structures imposed upon them. This has led to what Alfred calls ‘true conquest’: “true conquest becomes inevitable when the Settlers’ imperial claims to legitimacy are accepted and normalized by Onkwehonwe” (Alfred 2005: 56). Regarding the concrete realities of the struggle, Alfred locates the initial steps in a rejection of colonial governance structures, saying that “The political and social institutions that govern us have been shaped and organized to serve white power and...are useless to the cause of our survival” (*Ibid*, 20). Instead, it is indigenous systems of governance that need to be revitalized and used to organize indigenous life (*Ibid*, 155-6). This perspective could be effective, especially insofar as it seeks to expunge the colonized ‘psycho-affective’ attachment Coulthard sees in indigenous peoples’ relations with colonial society (Coulthard 2014: 17-8).

Ultimately though, regardless of what path(s) indigenous peoples pursue through their activism, it is incumbent upon us settlers to all realize our complicity within the system, and to work to change that as well. As long as we continue to demand that indigenous claims be translated into a discourse we are already comfortable with, the potential for mis-articulation through translation will remain. This does not have to mean a denial of liberal democratic norms or governance within our own communities. It does however need to mean a rejection of the colonial way in which this governance has been imposed upon indigenous communities. At this point, settlers cannot conceivably ‘go home’ or wholly leave all the lands we now occupy. Despite this, our existence on the land has to mean an acceptance of a form of governing that takes place alongside indigenous communities, not governing over these communities. It may even mean that the States that presently exist no longer do after decolonization. To the question of what the best solution is, I cannot pretend to have a satisfactory answer, or say for sure what a final form of decoloniality may look like. What I can say though, is that cannot stop us from beginning the journey, a journey which begins with the recognition of the realities of translation.

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