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## Teaching Note on Indigenous Peoples and the Land

Marek Brooking

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# TEACHING NOTE ON INDIGENOUS PEOPLES AND THE LAND

By Marek Brooking

## About The Author & Acknowledgement

My name is Marek Brooking, and I am an incoming 2nd year Political Science student who is currently based in London Ontario. My Indigenous background originates from my mother's side as she is part Algonquin (based in Temiskaming Shores First Nation) as well as part French while my father's family is predominantly from the British Isles.

As a researcher, I am predominantly influenced by family figures such as my grandparents, who always encourage me to pursue life under the guise of always learning something new and being able to put yourself in other people's shoes ever since I was a child. This mindset allows me to not only have an active hunger for researching, but also be able to actively consider who or what I am researching and pursue initiatives that could truly help people.

I am interested in Indigenous research as not only do I have Indigenous heritage myself, but I am also interested in actively aiding in the process of reconciliation. I would like to explore Indigenous perspectives and worldviews that have been bound by the strains of colonialism until now and by extension allow this worldview to once again be allowed to grow.

The following paper was written by me, though I received much guidance from both Ivey Associate Professor Diane-Laure Arjaliès as well as Laval University PhD student Julie Bernard, who helped me to build this document into its full potential. I would like to thank them for the guidance they have given me and what a great and informative document that they have helped me create.

## Purpose

The purpose of this paper is to not only educate students on Indigenous peoples and their relation to the land, but also re-visit various injustices done to Indigenous peoples upon the arrival of European settlers and how Canada must act to heal these wounds in relation to the land.

## The Legacy of Colonization in Canada

Colonialism refers to a set of policies where a foreign state exerts control over another more local one for the purpose of exploitation. When Europeans first arrived on the continent in 1492, Colonialism was mostly used for the purpose of resource extraction, which would bring them much wealth back on their home continent. <sup>1</sup>

Canada specifically was created as a Settler Colony, which differs from the typical Colonialism seen elsewhere as rather than simply extracting resources, Europeans settled Indigenous lands and decided to establish themselves there permanently and replace the Indigenous peoples who already resided there. Furthermore, Settler Colonialism often involves the suppression of Indigenous culture to not only establish a form of control over Indigenous peoples, but also to limit any challenges to Euro-Centric worldviews <sup>2</sup>.



*Colonial Map of the Americas, 1750 (Fig 1)*

## The Land: Euro-Centric Versus Indigenous Viewpoints

Throughout the Centuries, Indigenous viewpoint of the land has often been rather neglected or deemed as “uncivilized” by those of European descent throughout the centuries <sup>3</sup>. This cynicism could be attributed to the clear differences between Settler and Indigenous views of the land as both cultures viewed the concept in two very different manners.

To those of the European Settlers, the land was merely something that one could be used for profits and development as well as be owned by only a single individual through the concept of private property <sup>4</sup>. Additionally, the European Feudal system of the time also had an impact on their worldview as the strict

<sup>1</sup> Kory Wilson, “Colonization,” Opentextbc.ca (BCcampus, September 5, 2018)

<sup>2</sup> Andrea Eidinger and Krista McCracken, “Imagining a Better Future: An Introduction to Teaching and Learning about Settler Colonialism in Canada,” *Ecampusontario.pressbooks.pub*, April 3, 2019,

<sup>3</sup> Kate McCoy, Eve Tuck, and Marcia McKenzie, *Land Education : Rethinking Pedagogies of Place from Indigenous, Postcolonial, and Decolonizing Perspectives* (London: Routledge, 2017).

<sup>4</sup> Michael Asch, John Borrows, and James Tully, *Resurgence and Reconciliation : Indigenous-Settler Relations and Earth Teachings* (University Of Toronto Press, 2018), 49–82.

social hierarchies as well as the need to be above others was brought over to the Americas and implemented upon the lands now deemed to be Canada.

To various Indigenous groups on the other hand, the land has a much deeper meaning of both spiritual and cultural significance. For example, Indigenous peoples view the land as sacred and connected to the Creator. They also embrace the concept of land stewardship and land conservation as the health of the land itself was integral to many Indigenous cultures <sup>5</sup>.

Personal Note: When considering Euro-centric views on the land, one must also be aware of Terra Nullius, a Latin expression which roughly translates to “Nobody’s Land”. It is important to mention this concept as it was one of the main justifications used to ignore Indigenous title for centuries. A good example of this is the figure used in the previous section, which only recognizes European holdings on the continent and implies that anything not yet held by Europeans is simply uninhabited <sup>6</sup>.

#### Indigenous Oral Tradition and the Land

Oral tradition is an integral part of most Indigenous cultures in North America. It is the practice where Elders or any other highly respected individuals within an Indigenous nation may pass on certain stories and wisdom to the next generation. Often, storytelling in a cultural sense is generally done to convey a certain lesson or cultural norm within Indigenous culture, which often includes wisdom about the land around them as well as teachings about preserving and respecting the environment. This relates to the land itself as these stories help to spread Indigenous ideas about land to the next generation, with stories such as the Ojibway creation story (see Appendix A) serving to teach about the Indigenous view of the environment and that it must be collectively shared rather than fought over.

#### **Indigenous Land According to the Modern Settler System**

Due to the hegemony of Euro-Centric ideas of the land, Indigenous territories have been divided into several categories within the Settler system of Canada. All land solely inhabited by Indigenous peoples are governed by the Indian Act, Canada’s primary document relating to Indigenous affairs.

#### Crown land

Crown land refers to the land that is directly owned and administered by the federal and provincial governments. In this territory, the government could essentially do what it wants unless it overlaps with the other types of territory. This territory is only under the jurisdiction of the Indian Act if it overlaps with other territories mentioned <sup>7</sup>.

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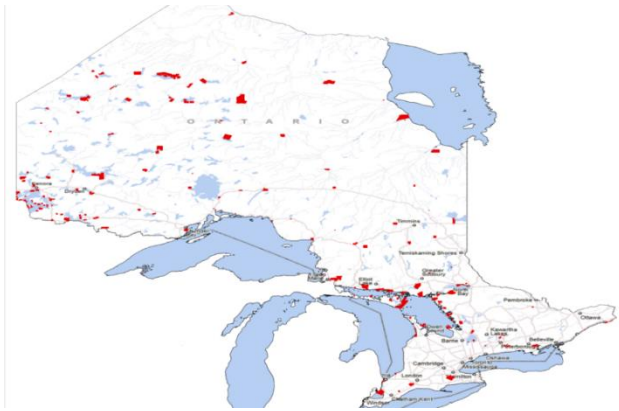
<sup>5</sup> Marion Buller et al., *Reclaiming Power and Place : The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Volume 1b* (Vancouver, Bc: National Inquiry Into Missing And Murdered Indigenous Women And Girls, 2019).

<sup>6</sup> “Dismantling the Doctrine of Discovery,” 2018

<sup>7</sup> “Crown Land | the Canadian Encyclopedia,” [www.thecanadianencyclopedia.ca](http://www.thecanadianencyclopedia.ca), n.d

## Reserves

Territory that has been exclusively set aside for Indigenous peoples through a Treaty and only Indigenous band members themselves may live within them. These territories are administered under a separate piece of legislation known as the Indian Act and are often equal to that of a municipality<sup>8</sup>. However, unlike a municipality, Indigenous peoples within a reserve cannot sell or gain equity from the land they live on, but exceptions can be given to Families as they could informally inherit land from other Family members, though these claims lack legal protection and are often heavily disputed. The lack of formal private property on reserves has become detrimental to economic growth as the Band in question cannot fully commit the land to economic development, leading many to call for the privatization of reserves<sup>9</sup>.



General Location of All Indigenous Reserves of Ontario in Red  
(Fig. 2)

## Traditional Territory

A term used to describe the lands that Indigenous bands have laid a historical claim on. This claim could be due to the land's spiritual, cultural, or economic importance to the band in question and because of that Indigenous people often have extended rights in these territories despite not usually being on reserve territory<sup>10</sup>.

## **An Introduction to Treaties**

From a Colonial context, a treaty can be described as a legally recognized agreement between an indigenous nation and the federal government (often referred to as simply 'The Crown')

The terms of the treaties themselves often included the ceding of territory in exchange for protections, luxury goods, and specific plots of land that the band in question could live on once their land was ceded<sup>11</sup>.

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<sup>8</sup> Dean Neu and Cameron Graham, "The Birth of a Nation: Accounting and Canada's First Nations, 1860–1900," *Accounting, Organizations and Society* 31, no. 1 (January 2006): p. 52

<sup>9</sup> Tom Flanagan and Christopher Alcantara, "SOURCES PUBLIC POLICY Individual Property Rights on Canadian Indian Reserves," 2002

<sup>10</sup> Libby Chisholm and Molly Malone, "Indigenous Territory | the Canadian Encyclopedia," [www.thecanadianencyclopedia.ca](http://www.thecanadianencyclopedia.ca), 2016

<sup>11</sup> Government of Canada; Indigenous and Northern Affairs Canada; Communications Branch, "Treaties and Agreements," [www.rcaanc-cirnac.gc.ca](http://www.rcaanc-cirnac.gc.ca), November 3, 2008

## A Brief History of Treaty-Making in Canada

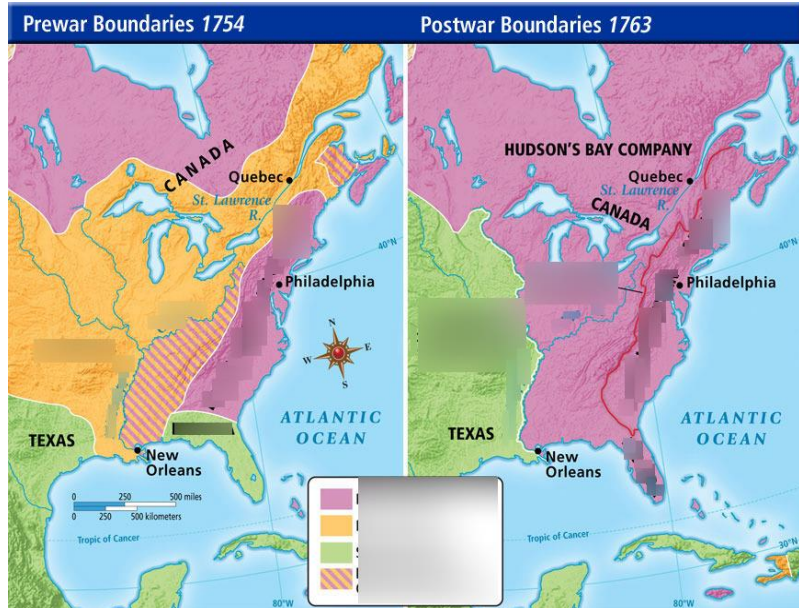
In North America, the practice of treaty-making has a long and controversial history among both Indigenous groups and the descendants of European settlers alike. The story of formal treaty-making begins with the Anglo-French rivalry that existed in the early colonial period as both nations had established large colonies in what is now considered Canada. The French would cooperate and ally with most Indigenous nations of the region to better secure their colonial holdings, which would become an issue for the British after the entirety of New France was ceded to them in the aftermath of the Seven Years' War (1756-1763),

creating much tension in the region as most of these Indigenous nations were very distrustful towards the British for obvious reasons<sup>12</sup>. This tension would lead the now overextended British Empire to create one of the earliest forms of treaties in what is now called Canada.

The most prominent of these would be the Peace and Friendship treaties of Atlantic Canada, where various indigenous nations (mostly former French allies) were given exclusive rights to fish and hunt, conduct trade, acceptance of their catholic beliefs, and so on.

Unlike most treaties seen later, there would be no official land cessions in the form of reserves, though this is primarily because the goals of these treaties differ from the later ones<sup>13</sup>

Personal Note: To clarify, the Peace and Friendship Treaties were a series of treaties signed both before and after the Seven Years' War, though they all had the same common goal to ensure peace between White Settlers and Indigenous groups<sup>14</sup>. However, this need for peace was mostly due to the British not being capable of taking on all Indigenous nations at once militarily rather than simply wanting to have a peaceful relationship with Indigenous peoples<sup>15</sup>.



North America Before and After the Seven Years' War, with France in Yellow and The United Kingdom in Pink (Fig. 3)

<sup>12</sup> Anderson, Fred. *Crucible of War : The Seven Years' War and the Fate of Empire in British North America, 1754-1766*. London, Faber And Faber, 2001, p. 545.

<sup>13</sup> Prof. Wicken, "Peace and Friendship Treaties | the Canadian Encyclopedia," [www.thecanadianencyclopedia.ca](http://www.thecanadianencyclopedia.ca), n.d

<sup>14</sup> Government of Canada; Indigenous and Northern Affairs Canada; Communications Branch, "Fact Sheet on Peace and Friendship Treaties in the Maritimes and Gaspé," [www.rcaanc-cirnac.gc.ca](http://www.rcaanc-cirnac.gc.ca), November 3, 2008

<sup>15</sup> Jean-Pierre Morin, "Concepts of Extinguishment in the Upper Canada Land Surrender Treaties," *Western Libraries*, 2010, Ps. 21-22

To further appease Indigenous groups in their new colonies, Britain also enacted the Royal Proclamation of 1763. The issuing of this declaration would not only serve to give extended protections to the Indigenous peoples east of the Thirteen Colonies, but also formalize Anglo-Indigenous<sup>16</sup>. However, many of these guarantees would be blatantly violated as colonists moved into Indigenous territories anyways.

This treaty-making process would often increase in times of notable levels of immigration to Canada. For example, after the American Revolution and the signing of the Treaty of Paris (1783), many still loyal to Britain fled to Canada (both Indigenous allies and Loyalist Settlers) for protection. In response to this influx and to protect the underpopulated Great Lakes region, Great Britain signed a series of land cessions with local Indigenous nations to accommodate for these refugees. Many of these guarantees would be respected as well, however many of the treaties themselves would prove to be extremely vague and confusing in terms of conditions as they were applied upon the land, causing much dispute that still exists today<sup>17</sup>

Moving forward, the various precedents set by the Royal Proclamation of 1763 – such as land cessions for “rights” -- would remain as the newly-formed nation of Canada would implement such terms to secure the rest of its modern territories<sup>18</sup>.

### Historic and Modern Treaties

A key aspect of Treaties that should be noted would be the landmark Supreme court case known as *Calder v British Columbia (AG)*<sup>19</sup>, or more commonly referred to as the Calder Case. This case is significant as Indigenous title – the inherent right to use traditional territory -- as a concept was acknowledged for the first time within Canadian law and was officially recognized that such title existed before the arrival of Europeans. The recognition of indigenous title within the Calder case would drastically change the way Indigenous land was viewed within Canadian Statutory law, and though the case itself was defeated in the supreme court, it would begin the process of Modern Treaties<sup>20</sup>.

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<sup>16</sup> “Treaties vs. Terra Nullius: Reconciliation, Treaty-Making and Indigenous Sovereignty in Australia and Canada,” heinonline.org (Indigenous Law Journal at the University of Toronto)

<sup>17</sup> Ibid, Morin, Jean-Pierre. “Concepts of Extinguishment in the Upper Canada Land Surrender Treaties.” 2010. pp. 24-27

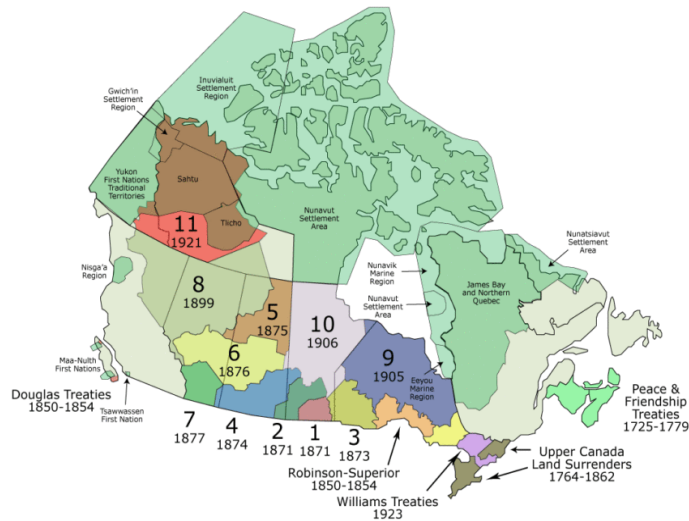
<sup>18</sup> Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada, “Royal Proclamation of 1763: The Establishment of Treaty-Making Process,” [www.rcaanc-cirnac.gc.ca](http://www.rcaanc-cirnac.gc.ca), September 19, 2013

<sup>19</sup> *Calder v British Columbia (AG)* [1973] SCR 313, [1973] 4 WWR 1

<sup>20</sup> Hamar Foster, *Let Right Be Done Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*. (Univ Of British Columbia Pr, 2008), 3–7.

Modern Treaties are legal agreements signed after 1973 that dealt with the issue of unceded Indigenous territory or more specifically territory that had never been legally given to the crown by Indigenous tribes. This type of treaty is alternatively referred to as a comprehensive land claim <sup>21</sup>.

On the other hand, the treaties signed before 1973 are referred to as Historic Treaties. Since this is before the recognition of any Indigenous title or rights, Historic treaties are often filled with disputed terms and agreements that may be less favorable for an Indigenous band. To resolve this issue, a First Nations band may create what is known as a specific claim, which acts to contest historic treaties and resolve disputes that may exist within the potentially centuries-old agreements <sup>22</sup>.



Personal Note: Modern Treaties are an especially important aspect of reconciliation as not only do they deal with the issue of Unceded Territory (Indigenous land that was taken despite no treaty being signed) but also due to the changing process of how treaties are negotiated.

## Overview of Constitutional Law from an Indigenous standpoint

To truly understand Indigenous law, one must look to the Constitution and various other documents that were imperative to the administration of Indigenous peoples under the colonial system. This section will explore the various legal documents that impacted the lives of Indigenous peoples and how their place within Canadian constitutional law more broadly.

### British North America Act & The 1982 Constitution

A Constitution is a key aspect of any nation, essentially acting as an instruction manual on how a given country should be governed <sup>23</sup>. By looking at the Constitutions of Canada and all that surrounds it, one

<sup>21</sup> Keith Crowe, "Comprehensive Land Claims: Modern Treaties | the Canadian Encyclopedia," [www.thecanadianencyclopedia.ca](http://www.thecanadianencyclopedia.ca), 2015

<sup>22</sup> Treasury Board of Canada Secretariat and Treasury Board of Canada Secretariat, "Historic Treaties - Open Government Portal," [open.canada.ca](http://open.canada.ca), n.d

<sup>23</sup> Government of Canada, Department of Justice, Electronic Communications, "The Canadian Constitution - about Canada's System of Justice," [Justice.gc.ca](http://Justice.gc.ca), 2017



could not only see the rights gradually given to Indigenous peoples, but also what work still needs to be done.

The British North America Act was Canada's constitution from 1867 to 1982 and is often deemed to be the country's founding document as Britain allowed more autonomy to the newly created colony. The document itself takes heavy inspiration from the previous dealings of the crown such as the Royal Proclamation of 1763, which means that much of Canada's early stances on Indigenous peoples was based off this document<sup>24</sup>. For Indigenous peoples, this meant that while they received the most basic rights<sup>25</sup> on top of some resources provided by the government, it was left extremely vague and confusing for certain groups such as the Métis and Inuit peoples<sup>26</sup>, who were not included until later dates and even then, were not fully recognized as Indigenous peoples in Canada<sup>27</sup>. This detail is specifically important as not only were these groups excluded from certain land rights that other Indigenous peoples were given but were only neglected by the government and forced to fend for themselves.

For example, the Inuit, despite being Indigenous, had little to no mention within the Indian Act (R.S.C., 1985, c. I-5) (hereafter "the Indian Act") and because of this any land that they lived on had no protection from exploitation. This exploitation could be primarily seen through the depletion of the Inuit food supply of whales and other aquatic animals, which left Inuit peoples extremely dependent on food supplies from the south and has left much of the region impoverished<sup>28</sup>.

Personal Note: This is not to state that the Indian Act was purely a good piece of legislation for Indigenous peoples. It is merely to show that some groups did not even receive the most basic of protections that were provided to other Nations as European settlers did not consider them Indigenous enough. It underlines the problematic nature of the Eurocentric view of what Indigenous peoples were allowed land rights and who were not.

The 1982 Constitution refers to the legal document that was meant to replace the previous constitution. This new constitution was not only created to become fully independent of the United Kingdom, but also enshrine various fundamental protections for groups across the nation through the Charter of Rights and Freedoms. This piece of the constitution would not only guarantee the human rights of Indigenous peoples, but only treaty and land rights. This guarantee is evident within Section 35 (specifically section 1 and 3) of the 1982 constitution, which states<sup>29</sup>

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<sup>24</sup> "Indian: An Analysis of the Term as Use in Section 91 (24) of the British North America Act, 1867," heinonline.org, Saskatchewan Law Review, 1978

<sup>25</sup> The most basic rights included Protections from exploitation within Reserves, Guaranteed claim to territory, some Self-Governance

<sup>26</sup> The Métis and Inuit are diverse groups and are composed of various subgroups, though for the sake of time we shall be using the group as defined by the Indian Act's interpretation of the two groups.

<sup>27</sup> Cora Voyageur and Brian Calliou, "VARIOUS SHADES of RED: DIVERSITY within CANADA'S INDIGENOUS COMMUNITY," *THE LONDON JOURNAL of CANADIAN STUDIES* 16 (2000): 110–13

<sup>28</sup> Facing History, "The Inuit," Facing History and Ourselves, 2013

<sup>29</sup> Refugees and Citizenship Canada Immigration, "INAN - Section 35 of the Constitution Act 1982 - Background - Jan 28, 2021," www.canada.ca, May 13, 2021

(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed

(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

### Indian Act of 1876

The Indian Act of 1876 is the primary legislation concerning those who are First Nations peoples in the eyes of the Canadian Government. More specifically, this legislation oversees the governing and administration of the reserve system, the use of Indigenous land, and essentially anything concerning the lives of Indigenous peoples both off and on reserve. This act has also previously been responsible for most of the more controversial aspects of Canada’s history with Indigenous peoples as this legislation was also in charge of the Residential School system and various other methods of Assimilation that attempted to erase all Indigenous culture and identity.

It should also be mentioned that Assimilation was a key goal of this legislation until recently. This goal is proven by the origin of the act itself, which was a collection of acts such as the Gradual Civilization Act of 1857 and the Gradual Enfranchisement Act of 1869, which all intended to rather weaken Indigenous self-governance of the land or embrace the Assimilation of them into Settler culture <sup>30</sup>.

### The White Paper

The White Paper was a 1969 policy proposal created by the Canadian Government which called for the end of Indian status as a concept as well as the abolishment of the department of Indian affairs.

It was ultimately rejected as it was clearly another attempt to further assimilate Indigenous Canadians into settler society. The white paper would be the last open attempt at proposing further assimilation, and from there the federal government would attempt to gradually encourage indigenous self-governance <sup>31</sup>.

### Key Consequences of this Legislation

The key consequences of this legislation can be divided into two very different categories; those that promoted the Assimilation of Indigenous peoples within Settler society, and those that uplifted Indigenous rights and autonomy in both a political and cultural sense.

- BNA & The Indian Act: This piece of legislation most likely had the most detrimental impact on Indigenous peoples in Canada. Historically, this act was responsible for most – if not all – Assimilation policies such as Residential Schools and the banning of spiritual/cultural Indigenous activities. This has left many of today’s Indigenous peoples with a generational trauma that still haunts entire communities to this day. Furthermore, the Indian Act was also responsible for the creation of a reserve system where land is entirely controlled by the Federal Government. This means that even today Indigenous reserves often have much more difficulty becoming self-sufficient and must depend on Government subsidies to survive as they have little to no control

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<sup>30</sup> “The Indian Act,” indigenousfoundations.arts.ubc.ca, n.d

<sup>31</sup> John F Leslie, “The Indian Act: An Historical Perspective,” *Canadian Parliamentary Review* 25, no. 2 (2021): 23

over the land they live on. Additionally, despite the Indian Act being about the Indigenous affairs, it excluded many groups such as the Métis and Inuit groups, and while this was due to this legislation being created prior to Canada's expansion to their home regions, it would cause issues later on as peoples within these two categories would receive little recognition or support even after their land and resources were taken by the federal government, which would lead to increased poverty among these communities today.

- **White Paper of 1969:** The White Paper was a policy proposal rather than a concrete initiative, though it still had significant consequences for Indigenous peoples as this proposal was adamantly opposed by both Indigenous groups as well as a good amount of the general Canadian population. This clear opposition would demonstrate to the Canadian Government that Assimilation was not the way forward and would lead to an increase in Indigenous autonomy and guarantees, would notably the inclusion of Indigenous rights within the 1982 Constitution.
- **1982 Constitution:** This piece of legislation was a step in the right direction for Indigenous rights & land title as the Canadian Charter of Rights and Freedoms provided Indigenous peoples with unalienable rights that could not be overruled under only the most exceptional of circumstances, further protecting Indigenous peoples from some of the persecution that they have faced for centuries. Furthermore, the addition of Section 35 not only further implements the rights and guarantees mentioned previously, but also protects Indigenous land rights through the recognition of treaties and land title.

### **Accountability to Indigenous Land & Title**

To account for both historical injustices such as the Indian Act and the unequal power structures created by the colonial system, the Crown has developed several methods and principles to avoid the exploitation of land in which indigenous title applies.

#### The Honour of the Crown

The Honour of the Crown is a constitutional principle that encourages the Crown to act in a fair and respectful manner when negotiating with Indigenous peoples. This often applied to Treaties signed with Indigenous governments and has its origins in the previously mentioned Proclamation of 1763. However, despite its age the principle itself has evolved greatly ever since its creation as previously its goals have become much less vague than its first iteration.

#### Duty to Consult

The Duty to Consult is the obligation that the Crown must consult with relevant Indigenous groups if a decision may affect Indigenous or Treaty Rights to accommodate for Indigenous interests. However, despite the process behind Duty to Consult being guaranteed, the results may not always favour Indigenous interests as various claims across the country are still disputed and have not been tested in court <sup>32</sup>.

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<sup>32</sup> Ccslaw Admin, "Honour of the Crown," Centre for Constitutional Studies, August 4, 2021,

## Indigenous Fiduciary Duty

Indigenous Fiduciary Duty refers to the unique relationship between Indigenous peoples and the Canadian Government. More specifically, one where the Canadian Government must safeguard the interests of Indigenous peoples rather than the other party in negotiations (Even if that other party is the Government itself) <sup>33</sup>.

It was formally established through the Supreme Court Verdict known as *Guérin v The Queen*, which stated that the Crown had a fiduciary duty towards Indigenous peoples <sup>34</sup>. However, despite this verdict, the policy has been especially difficult to do as the Government is obligated to fight itself on disputes, which would evidently leave the Government to sometimes break this fiduciary duty. A good example of this would be cases such as *Coldwater et al. v. Canada (Attorney General) et al.*, 2020, where the Crown failed to fully inform the Indigenous nation of the environmental effects of a pipeline expansion <sup>35</sup>.

## **Indigenous Reconciliation in Canada**

After failing to Assimilate Indigenous peoples in Canada, the Government began a shift to expanding Indigenous rights and title as well as healing relations between Settler-Indigenous relations, though this would be an extremely gradual process as Canada would remain somewhat reluctant to giving full Indigenous title up until recently.

## Truth & Reconciliation Commission (TRC)

Organized after the Indian Residential Schools Settlement Agreement, the Trust & Reconciliation Commission was established to, as the name implies, reconcile with former Residential School survivors along with educating the Canadian public on residential schools and the many injustices carried out by the Government.

After years of speaking to residential school survivors and gathering over 5 million documents relating to the Residential School system, the TRC produced a multi-volume report on its findings along with 94 “calls to action” that would help the Canadian Government further reconcile with Indigenous peoples <sup>36</sup>.

## UNDRIP and Settler Opposition

The United Nations Declaration on the rights of Indigenous Peoples or UNDRIP is a piece of legislation passed by the United Nations general assembly in 2007 that aims to guarantee various rights such as the right to practice their culture, customs, religion, language, and much more. It also guarantees the right to traditional territory, and while it does not override any Treaties mentioned previously, it does encourage Governments to respect these treaties and recognize any traditional territory of Indigenous peoples.

Notably, there are 4 nations that voted against this resolution: The United States, Australia, New Zealand, and Canada. This rejection of UNDRIP was mostly due to concerns that granting Indigenous peoples more autonomy would ultimately undermine their own or that the legislation would override previous

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<sup>33</sup> M Litman, “Law of Fiduciary Obligation | the Canadian Encyclopedia,” [www.thecanadianencyclopedia.ca](http://www.thecanadianencyclopedia.ca), February 2006

<sup>34</sup> *Guérin v The Queen* [1984] 2 SCR 335

<sup>35</sup> *Coldwater et al. v. Canada (Attorney General) et al.*, 2020 FCA 34

<sup>36</sup> Government of Canada, “Truth and Reconciliation Commission of Canada,” [Rcaanc-cirnac.gc.ca](http://Rcaanc-cirnac.gc.ca), June 11, 2021

human rights legislation within the respective countries. However, all four nations would eventually ratify UNDRIP after further review <sup>37</sup>.

### Land Acknowledgements

To many, land acknowledgements are merely a small speech at the start of events that acknowledges the traditional territory that a certain Indigenous group once inhabited. However, it is much more unique as not only is it a clear rejection of the colonial worldview that has historically existed in Canada, but also to honour the Indigenous peoples who have previously lived there. Land acknowledgements ultimately help both those who currently live in Canada and those who are new to the country understand the legacy of treaties and how living on the land is a privilege given by Indigenous peoples <sup>38</sup>.

### **IPCA's and Land Trusts**

With Reconciliation also comes an opportunity for Indigenous peoples to govern themselves. A key way in which this is being done is through the Conservation of ecosystems across Canada, where many Indigenous bands and even individuals have made it their duty to preserve the land themselves. In terms of conservation itself, one could see two relevant types of such organizations in relation to Indigenous land.

- Land Trust: A Land Trust is a charitable organization that is responsible for preserving land for the purpose of conservation and protection of ecosystems. Indigenous Bands can cooperate with these organizations to protect vulnerable lands for them <sup>39</sup>.
- Indigenous Protected and Conserved Areas (IPCA): IPCAs are lands and waters that are directly governed, conserved, and protected by Indigenous governments. Furthermore, this type of conservation not only serves the self-evident purpose of protecting ecosystems, but also promoting Indigenous culture and self-governance as they are given full autonomy on how to properly conserve the lands in question <sup>40</sup>

### How do they compare to each other?

When comparing the two, there are both many similarities and differences. Starting with the former, both types evidently have the common goal of conserving land and protecting vulnerable ecosystems for future generations. They are also both recognized as legitimate organizations by the Canadian Government (hence both may receive ecological gifts). Moving to the differences, one could see that IPCAs also serve

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<sup>37</sup> United Nations, "United Nations Declaration on the Rights of Indigenous Peoples | United Nations for Indigenous Peoples," United Nations, 2015

<sup>38</sup> "Land Acknowledgement," Indigenous University of Toronto, 2020

<sup>39</sup> Ontario L, Trust Alliance P. O. Box 54 Acton Acton, and Ontario L7J 2M2 P: 416-588-OLTA, "What Is a Land Trust," OLTA, n.d

<sup>40</sup> "About IPCAs," CRP Website, n.d

a socio-cultural purpose that a simple Land Trust does not as Indigenous peoples are able to govern their own territory rather than having others do it for them – A key goal of the policy of Reconciliation.

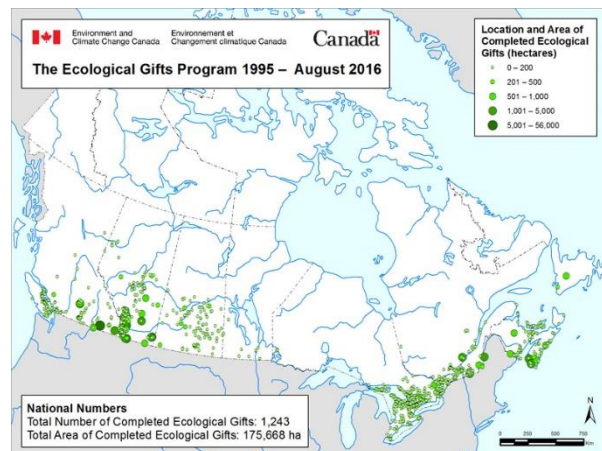
### **Ecogifts and Indigenous land**

An integral part of Indigenous conservation are Eco gifts as they are not only prioritize vulnerable land but is also a Government program, hence making it reliable and less likely to be a source of exploitation in comparison to more private sector leaning initiatives.

#### What is an Ecogift?

An Ecological Gift refers to the donation of ecologically sensitive land for the sole purpose of conservation. The owners of the land themselves are often given various tax-related incentives for donating the land. After the land in question has been donated, it is administered by rather a Charity Organization or the Federal/Provincial/Municipal Government and must meet the following requirements to be considered <sup>41</sup>.

- The land must be certified by the Minister of the Environment as ecologically sensitive.
- The appraised value of the gift must be reviewed and approved by a panel on behalf of the Ministry of the Environment.
- Once the land's value is certified by Environment and Climate Change Canada and approved, it is "defended" by the Ministry of the Environment if questioned by the Canada Revenue Agency.
- Any modification must be approved ahead of time by Environment and Climate Change Canada.



*Ecological gifts as Indicated in Green (Fig. 6)*

#### Indigenous-Led Ecological Gifts

As mentioned previously, preservation of the land is a key principle of most – if not all -- Indigenous cultures in North America. Due to this fact, the Canadian Ecological gift program also has many Indigenous-led initiatives that aim to preserve ecologically sensitive regions. A prominent example of this phenomenon could be seen through Walpole Island, an Indigenous community located near Windsor.

The region around Walpole Island is well-known for its rare wildlife as well as the rich and diverse wetlands that exist along with them. Therefore, the First Nations group had decided to find its own Land Trust to conserve the land around them along with the additional goal of reconnecting with the traditional territory of the various tribes that reside within the Walpole Island Reserve.

<sup>41</sup> Environment and Climate Change Canada, "Ecological Gifts Program: Overview," [www.canada.ca](http://www.canada.ca), February 9, 2017

Additionally, due to this organization being classified as a charity, it is eligible to receive land donations at any moment rather than depending on others to do so for them <sup>42</sup>.

## **Results**

Ever since the Federal Government's gradual move to Reconciliation and granting of Indigenous rights, it has taken on a protective role over Indigenous peoples and their land – proven through the fiduciary relationship the two groups share. The Federal Government has also been able to extend Rights & Protections through Supreme Court Verdicts such as *Calder v British Columbia (AG)* and *Guérin v The Queen* as well as through more direct means such as the 1982 Constitution.

However, there remain to be many problems as well. For example, the reserve system and its lack of private property – despite it being to protect Indigenous peoples from exploitation – has also limited the ability of Indigenous peoples to build capital. It is why many families must resort to more informal methods that were mentioned earlier, which create much dispute among community members. Furthermore, the Canadian Government has historically not always stood up for Indigenous interests in the face of corporate exploitation despite their legal obligation to do so.

## **Conclusion**

In Conclusion, there are both a great many protections for Indigenous land, rights, and title provided by both the Provincial and Federal Governments. However, there is still much work to be done as the Canadian Government is often conflicted on how much autonomy or protection Indigenous peoples should be granted. In the future, we must ensure that both the Federal Government and their more local counterparts hold Indigenous rights above monetary gain and that Indigenous peoples are given more autonomy to not only govern land themselves but also be able to take advantage of their own land for economic means.

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<sup>42</sup> "Ecological Studies of Walpole Island Receive Funding Support | DailyNews," [www.uwindsor.ca](http://www.uwindsor.ca)

## Appendixes

### Appendix A – Ojibway Creation Story

Long ago, after the Great Mystery, or Kitchi-Manitou, first peopled the earth, the Anishinabe, or Original People, strayed from their harmonious ways and began to argue and fight with one another. Brother turned against brother and soon the Anishinabe were killing one another over hunting grounds and others disagreements. Seeing that harmony, brotherhood, sisterhood, and respect for all living things no longer prevailed on Earth, Kitchi-Manitou decided to purify the Earth. He did this with water. The water came in the form of a great flood, or mush-ko'-be-wun', upon the Earth destroying the Anishinabe people and most of the animals as well. Only Nanaboozhoo, the central figure in many of the Anishinabe oral traditions, was able to survive the flood, along with a few animals and birds who managed to swim and fly. Nanaboozhoo floated on a huge log searching for land, but none was to be found as the Earth was now covered by the great flood. Nanaboozhoo allowed the remaining animals and birds to take turns resting on the log as well. Finally, Nanaboozhoo spoke. "I am going to do something," he said. "I am going to swim to the bottom of this water and grab a handful of earth. With this small bit of Earth, I believe we can create a new land for us to live on with the help of the Four Winds and Kitchi-Manitou." So Nanaboozhoo dived into the water and was gone for a long time. Finally he surfaced, and short of breath told the animals that the water is too deep for him to swim to the bottom. All were silent. Finally, Mahng, the Loon spoke up. "I can dive under the water for a long way, that is how I catch my food. I will try to make it to the bottom and return with some Earth in my beak." The Loon disappeared and was gone for a very long time. Surely, thought the others, the Loon must have drowned. Then they saw him float to the surface, weak and nearly unconscious. "I couldn't make it, there must be no bottom to this water," he gasped. Then Zhing-gi-biss, the helldiver came forward and said "I will try next, everyone knows I can dive great distances." So the helldiver went under. Again, a very long time passed and the others thought he was surely drowned. At last he too floated to the surface. He was unconscious, and not till he came to could he relate to the others that he too was unable to fetch the Earth from the bottom. Many more animals tried but failed, including Zhon-gwayzh', the mink, and even Mi- zhee-kay", the turtle. All failed and it seemed as though there was no way to get the much needed Earth from the bottom. Then a soft muffled voice was heard. "I can do it," it spoke softly. At first no one could see who it was that spoke up. Then, the little Wa- zhushk", muskrat stepped forward. "I'll try," he repeated. Some of the other, bigger, more powerful animals laughed at muskrat. Nanaboozhoo spoke up. "Only Kitchi-Manitou can place judgment on others. If muskrat wants to try, he should be allowed to." So, muskrat dove into the water. He was gone much longer than any of the others who tried to reach the bottom. After a while Nanaboozhoo and the other animals were certain that muskrat had give his life trying to reach the bottom. Far below the water's surface, muskrat, had in fact reached the bottom. Very weak from lack of air, he grabbed some Earth in his paw and with all the energy he could muster began to swim for the surface. One of the animals spotted muskrat as he floated to the surface. Nanaboozhoo pulled him up onto the log. "Brothers and sisters," Nanaboozhoo said, "muskrat went too long without air, he is dead." A song of mourning and praise was heard across the water as muskrat's spirit passed on to the spirit world. Suddenly Nanaboozhoo exclaimed, "Look, there is something in his paw!" Nanaboozhoo carefully opened the tiny paw. All the animals gathered close to see what was held so tightly there. Muskrat's paw opened and revealed a small ball of Earth. The animals all shouted with joy. Muskrat sacrificed his life so that life on Earth could begin anew. Nanaboozhoo took the piece of Earth from Muskrat's paw. Just then, the turtle swam forward and said, "Use my back to bear the weight of this piece of Earth. With the help of Kitchi-Manitou, we can make a new Earth." Nanaboozhoo put the piece of Earth on the turtle's back. Suddenly, the wind blew from each of the Four Directions, The tiny piece of Earth on the turtle's back began to grow. It grew and grew and grew until it formed a mi- ni-si', or island in the water. The island grew larger



and larger, but still the turtle bore the weight of the Earth on his back. Nanaboozhoo and the animals all sang and danced in a widening circle on the growing island. After a while, the Four Winds ceased to blow and the waters became still. A huge island sat in the middle of the water, and today that island is known as North America. Traditional Indian people, including the Ojibway, hold special reverence for the turtle who sacrificed his life and made life possible for the Earth's second people. To this day, the muskrat has been given a good life. No matter that marshes have been drained and their homes destroyed in the name of progress, the muskrat continues to survive and multiply. The muskrats do their part today in remembering the great flood; they build their homes in the shape of the little ball of Earth and the island that was formed from it.

## **Research Methodology**

The research for this paper was primarily conducted through online resources. More specifically, most of the information used was provided by scholarly articles provided by Institutions such as Western University, University of Toronto, the University of British Columbia, and some others. Additionally, information from University of Alberta's "Indigenous Canada" course was also used at various points. Furthermore, various independent books were used to better explain the historical context behind the Teaching note.

Various Government sources were also used, most prominently for the key concepts in relation to the Settler system of land. However, for more Indigenous definitions, they were rather taken from an anti-colonial source or a government source that was written by an Indigenous scholar. Furthermore, if a government source is used for an Indigenous definition without an Indigenous scholar authoring it, there is often an anti-colonial source to accompany such a source to ensure that Indigenous injustices are mentioned alongside the Settler interpretation.

Additionally, non-Scholarly articles were also used for more general information on subjects. This use of non-scholarly information was often used to discuss more local issues that lack scholarly sources. It should be noted that this category was used as a last resort as some information is simply too small or local to be mentioned in wider academia.

## **Research Notes**

- In the early phases on my research, I had a hard time finding sources that give an anti-colonial worldview towards the issues discussed in the Teaching Note. Government websites especially have this issue despite being created by various Indigenous scholars as it fails to mention various injustices done to Indigenous peoples. For example, the Canadian Governments section on Indigenous treaties – despite how useful it was -- fails to mention how the promises made were never usually upheld and often neglected by the Crown.
- This is not to say that all Government sources are inherently bias towards the Settler system, though more of these articles must be authored or edited by Indigenous scholars to ensure that no issues relating to Indigenous peoples are swept under the rug. The sources that are written by Indigenous scholars are evidently more likely to include Indigenous injustices

- Furthermore, many historical images seen during my research were extremely Eurocentric as many maps (a few were seen in the Teaching Note itself) only show European colonial territories and not Indigenous territories, which are often rather left blank or shown as a part of a European colonial empire even though such a depiction is an oversimplification of tribe alignments.
- Many sources that depict an anti-colonial view of events in general are often harder to find than those who depict a Euro-centric worldview. This aspect could prove to be detrimental if not changed as the common person is more likely to look at the top sources, which lack much context behind certain Indigenous issues.
- More local Indigenous issues such as the Walpole Land Trust and other Indigenous-led initiatives are often difficult to find information on, though not impossible
- When discussing Reconciliation, Government sources often only discuss what is being done to fix Settler-Indigenous relations rather than directly mentioning what destroyed these relations in the first place.
- Generally, more effort must be dedicated to mentioning Indigenous injustices as one must dig deeper to find online information about it. The average individual is much more likely to find multiple settler interpretations before finding a single Indigenous one.

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