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# Dispossession by municipalization: Property, pipelines, and divisions of power in settler colonial Canada

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## Abstract

In Canada, Indigenous activists and scholars critique municipalization as a threefold process that subverts Indigenous authority to the state, then delegates forms of state authority to Indigenous peoples, and concludes by asserting that delegated authority satisfies the terms of Indigenous self-determination. This article centers municipalization in two steps that connect it to how Canada divides power regarding foreign and domestic affairs. The first examines the history of municipalization and its evolution alongside changes in Canadian federalism. The second examines dispossession by municipalization to show how state divisions of power facilitate extraction of value from land. It uses a case where the federal government considered creating new, privatized reserves of Indigenous land explicitly to facilitate oil pipelines. Together, these support an argument that municipalization is not only a powerful language of critique, but critical to understanding the ongoing production of settler colonial space.

## Keywords

dispossession, settler colonialism, municipalization, racial capital, Canada

In September 2018, the Government of Canada (2018a) led by Prime Minister Justin Trudeau clarified that its new Recognition and Implementation of Indigenous Rights Framework would not "create municipal-style governments." From the outside it seems a minor clarification, but it was an important admission. Earlier that year, the government had launched the new framework by describing it as righting colonial wrongs, especially the failure to treat Indigenous peoples on "nation-to-nation" terms. It also positioned the framework as part of the government's alignment with the United Nations Declaration on the Rights of Indigenous Peoples "without qualification" (Government of Canada, 2018b: 4). The Minister of Justice even claimed the framework put state-Indigenous relationships on "the path of decolonization" (Government of Canada, 2018c). In historical context, however, the government's clarification was freighted by long-standing critiques that,

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despite rhetoric of Indigenous recognition, Canada pursues the "municipalization" of First Nations through state mechanisms that subvert Indigenous authority to the state, then delegate forms of state authority to Indigenous peoples, and conclude by asserting that delegated authority satisfies demands for Indigenous self-determination. This concern underpinned blistering assessments of the 2018 Indigenous Rights Framework. The *Yellowhead Institute*, a First Nations-led research center, argued the framework advanced a "clear and coherent set of goals, which aim to suppress Indigenous self-determination within Canadian Confederation" (King and Pasternak, 2018: 4). Similarly, Starblanket (2019: 451) argued that despite government efforts to frame the initiative "in the language of Indigenous nationhood…it continues to frame self-government as delegated and flowing from federal recognition."

Canada's denial of municipalization reveals its power as a language of critique. It does so, in part, by recalling aspects of the "municipal" that operate beyond being a synonym for towns or cities, for municipalities as a noun. In law, municipal matters are those internal to states—national, state/provincial, or local—as distinguished from matters of international law. This broader context provides purchase for critiques of municipalization as a colonial effort to curtail Indigenous sovereignty and replace it with delegated state authority. Yet municipalization is rarely centered for analysis. This article situates municipalization historically, and spatially, beginning in the 19th century when Canada embraced municipalizing ideals as part of state-building and followed colonial norms to distinguish international from municipal matters along racial lines. The first section shows how municipalization paced political changes regarding the division of powers in Canadian federalism up to the 1996 Royal Commission on Aboriginal Peoples (RCAP). As settler federalism in Canada evolved in response to Indigenous demands for recognition in the 20th century the racial underpinnings of municipalization provided purchase for critique. This section develops two claims. First, municipalization proceeds as settler states subvert Indigenous authority through state divisions of power that distribute jurisdiction regarding foreign and domestic affairs. Second, municipalization reinforces colonial ideologies that used racial claims to formulate the distinction of domestic from international matters in the first place. This formulation anchors the municipal/international distinction in colonial practices and not, for instance, in the laws or relations through which Indigenous nations treat other nations (cf. Anaya, 2004; Anghie, 2012; Stark, 2013). So, while instances of municipalization seek to delegate domestic authority, the colonial formulation of the domestic/international distinction operates to circumscribe Indigenous self-determination. In this twofold sense, municipalization structures Indigenous dispossession in ways consistent with state divisions of power.

The second section examines dispossession by municipalization. This phrase points to an account of dispossession oriented to economic and political accumulation. This is not a wholly new idea; Tully (1993) showed how the theory of power underpinning Marx's analysis of labor was originally developed to explain power accumulation in state formation. Dispossession by municipalization, however, identifies another facet of dispossession. The argument follows Coulthard's (2014a: 59, original emphasis) insight that to capture economic and political concerns it is critical to refocus understandings of dispossession from the "*capital relation* to the *colonial relation*." How should this be understood with respect to municipalization? Part of the answer is unique to Canada owing to the specifics traced out in the first section of the article. But dispossession by municipalization offers resources relevant elsewhere. For example, as Palmer (2020: 794) demonstrates in her trenchant analysis of the U.S. Supreme Court judgment delivered by Justice Ruth Bader Ginsberg, the market recovery of land by Indigenous people does not establish a basis for recognition of Indigenous sovereignty "in whole, or in part" within American law. My argument is that once municipalization is understood as part of abrogating Indigenous land to state ends it becomes clearer how constitutional divisions of power regarding domestic and foreign jurisdiction structure Indigenous dispossession. This points to an account of settler colonialism that is not primarily

discursive, such as is Wolfe's (1999) oft-cited formulation of settler colonialism as a "structure, not an event." Instead, the state divisions of power that structure jurisdiction regarding municipal and international matters provide the basis for an account of the political spaces through which dispossession oppresses Indigenous peoples (cf. Coulthard, 2014b). In short, and to invert the powerful phrase of Tuck and Yang (2012), settler colonialism is not a metaphor. Its divisions of power are those that must be traced for how they spatialize oppression.

To show how municipalization structures Indigenous dispossession I analyze internal government documents regarding a proposal considered by the Canadian government to transform First Nations lands into private property and to establish new pipeline routes for oil. Since 1995, various privatization proposals have operated consistent with Canada's "inherent rights" policy, which pursues a form of Indigenous self-government that "does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states" (Government of Canada, 2020). Although recent privatization agendas have stalled, these and the failed 2018 Indigenous Rights Framework are indicative of how dispossession by municipalization is pursued. These are not the only examples available; just a year before it retracted references to "municipal-style governments" in 2018, for instance, the Canadian government revived a 20-year-old recommendation from the RCAP to split in two the federal ministry created under the 1876 *Indian Act*; one part dealing with Indigenous peoples as domestic subjects, the other on nation-to-nation terms (*Indigenous Services Canada* and *Crown-Indigenous Relations and Northern Affairs*, respectively). Although the press release from the Prime Minister's Office (2017) claimed the decision was taken to alleviate oppression caused by the "colonial structures" of the state, it is perhaps best seen for the clarity it offers on how that structure hinges on the distinction of international versus municipal affairs.

A short conclusion gathers the insights municipalization offers for understanding dispossession. I also highlight the relevance of centering municipalization amid debates over the ratification of the UN Declaration on the Rights of Indigenous Peoples in Canadian law. One caveat: I focus on municipalization primarily with respect to First Nations. Other Aboriginal peoples in Canada—Métis and Inuit—are affected by similar modes of rule, though municipalization affects them differently (see Andersen, 2014; Christensen, 2017; Stevenson, 2014).

## Municipalization, in Canada

Although parsing the foreign from the domestic is now more common, distinctions of municipal from international law continue to enliven debates regarding "universal jurisdiction," human rights, and extraterritorial acts (see Kirby, 2006; Reydams, 2004). These concerns stand in a long dialogue of legal debate. Throughout the 20th century, theorists debated whether these areas of law share a single source, or if there is a dualism (or pluralism) such that each has particular sources of authority. These concerns were entangled with debates regarding the jurisdictional reach of each domain and the potential implications of decisions in municipal or international law, respectively, on one another (Borchard, 1940; Harris, 1998; Lauterpacht, 1929; Silving, 1946; Seidl-Hohenveldern, 1963). Numerous studies also show, however, that such debates were often premised on assumptions of European colonialism that used racial and ethnic difference to form boundaries marking municipal from international matters (see Anghie, 2012; Lowe, 2015; Mawani, 2010; Pitts, 2018). It is this latter assumption that figures centrally in efforts to understand municipalization as a language of critique in Canada.

Throughout colonial rule, European nations produced boundaries of the "international" through assertions of racial and ethnic difference. This took many forms, two of which are important here. First, colonizers ordered societies and their forms of self-government in a hierarchy topped by European civilization. As Tully's (1993: 152) account of John Locke's role in North American

colonial policy shows, Locke asserted that Indigenous peoples lacked legal institutions and "municipal laws" even though he thought they had proto-European aspects of sovereignty (such as war-chiefs and ad hoc councils for significant decisions). Eurocentrism was not unique to British colonialism or to Locke. It was a feature of how colonial apologists made comparative judgments that reinforced colonial superiority. For instance, colonizers identified Indigenous practices of property ownership as both unique forms of social organization and as underdeveloped versions of European equivalents (Anghie, 2012). These arguments were often backed by evolutionary assumptions that Indigenous peoples who lacked political society (as colonizers defined it), but had recognizably different forms of social organization, occupied earlier stages of civilization (Bhandar, 2018; Mbembe, 2017). A second aspect of establishing the "international" used European conventions to determine which foreign actors could or could not act reciprocally, such as through treaty. Here, racial assumptions regarding the relationships of international norms to the "municipal maxims" practiced domestically by European powers were built through colonial experiences, not in advance of them (Lowe, 2015; Mawani, 2010; Pitts, 2018). For instance, Edmund Burke argued that Britain's "municipal morality" needed to be rethought in light of imperial ambitions and in order to treat fairly foreign peoples in India (Pitts, 2006). By contrast, Alexis de Tocqueville (1862: 423) admired municipal self-government in America, touting it as a model for French experiments in Algeria and infamously describing American dispossession of Indigenous peoples as having been achieved, "tranquilly, legally, philanthropically, without shedding blood, and without violating a single great principle of morality in the eyes of the world. It is impossible to destroy men with more respect for the laws of humanity."

One result of the municipal-international distinction being formulated through colonialism is variance across colonial and settler colonial contexts. In Canada, Tully (2008) identifies two relationships at work. In the first, state actors and Indigenous peoples "recognise each other as equal, coexisting and self-governing nations" and strike reciprocal agreements, treaties, or accords negotiated through consent (Tully, 2008: 226). The second is marked by the imposition of state rule over Indigenous peoples, especially through the 1876 *Indian Act*, a law amended many times as part of Canadian federalism's evolving approach to Indigenous oppression. These relationships mirror the international/municipal distinction, where one set of agreements involve consensual, nation-to-nation reciprocity while the other seeks domestic rule over Indigenous peoples as subjects. Critically for the state, both types of relationships affirm the distinction of foreign from domestic affairs in ways consistent with colonialism and, as such, operate to circumscribe Indigenous self-determination. This colonial ideology underpins critiques by Indigenous scholars. Pictou (2020: 374), for instance, describes state-Indigenous relationships in Canada as a "matrix of domestic and international legal apparatuses for dispossessing land on the one hand, and replacing or repossessing land within capital relations, especially for extracting natural resources, on the other" (cf. Daigle, 2016; Simpson, 2014; Starblanket, 2019).

In this context, centering municipalization helps explain how the state's selective appeal to international registers of "nation-to-nation" relationships squares with domestic dispossession. First, municipalization functions to transform foreign into domestic space. It is not the only such process; conquest is another. Yet for colonial acquisitions to be legitimate in terms of international law, treaties require a principle by which sovereign Indigenous peoples could (in principle) come under the authority of colonial powers without forfeiting their own laws or government. Tully (1993: 172) describes how the "'continuity' principle of international law" enabled this by drawing on the history of British common law in which foreign invasions of England left earlier institutions intact (if modified). The principle of continuity is not neutral, however. Rather, it structures colonial relations regarding when and where different legal orders of the state and Indigenous nations meet (Pasternak, 2014). This frequently results in jurisdictional contests between Indigenous peoples and the Canadian state regarding the legitimate reach of respective legal orders (Borrows, 2015a, 2015b;

Pasternak, 2017). Borrows (2016: 42) describes the crux of accepting the state's racialized formulation of the foreign/domestic distinction concisely: the "denial of First Nations jurisdiction in relation to non-Indians also conceals a colonial boundary that cleverly conscripts Indians into patrolling their own subordination, by fashioning false distinctions between themselves and others on a racialized basis." Here, municipalization proceeds as settler states assert that the principle of continuity preserves Indigenous authority, even though in practice acquiescence to this form of delegated authority circumscribes self-determination along racial boundaries.

There are also material aspects of municipalization in which flitting between approaches to Indigenous peoples in domestic versus international registers structures dispossession in ways consistent with constitutional divisions of power within the state. In this sense, Wolfe's (1999) diagnosis that settler colonialism is a "structure, not an event" can be modified from its discursive orientation to consider the material expression of state divisions of power over foreign and domestic matters. In this regard, municipalization helps diagnose how what may appear to be an incoherent approach to implementing treaties belies the logic of dispossession that structures settler colonial rule. For instance, and taken up further below, retaining "nation-to-nation" commitments at the federal level in Canada while parceling domestic powers to provinces over natural resources is part of distributing jurisdiction over the extraction of value from land in ways that obfuscate state responsibility for Indigenous dispossession. To center municipalization, then, it is important to understand how the distribution of jurisdictional authority arranges power over foreign and domestic matters in ways that create acute moments of dispossession and chronically circumscribes Indigenous self-determination.

Literature on the material aspects of accumulation by dispossession also provides key points of reference for examining how the municipal-international distinction was formed through settler colonialism (cf. Harvey, 2004). One overt deployment occurred as settler states established the border between Canada and the US by oppressing relations of kin, land, and territory (LaDuke, 1999; Coulthard, 2014a; Hogue, 2015; Simpson, 2014). These processes bundled domestic and international agendas with discriminatory laws, treaties, starvation, the spread of disease, spatial surveys, and settlement (Asch 2014; Blomley 2003; Daschuk 2013; Harris 2002; Simpson 2014). These practices also scaled domestic to international economies by governing resource access, establishing exclusionary property regimes, and securing financial arrangements for extractive infrastructure (Bhandar, 2018; Harris, 1993; Karuka, 2019; Pasternak and Dafnos, 2018). By centering municipalization, these material aspects of dispossession can be situated astride the racialization of colonial boundaries parsing foreign from domestic affairs.

Municipalization focuses attention on how the municipal-international distinction is constitutive of settler colonialism. Although this article focuses on Canada, identifying how this distinction functions helps to unite what settler colonial states keep separate: the shared structure through which the division of powers over foreign and domestic spheres coincides with Indigenous dispossession (cf. Byrd, 2011). In the United States, the decision to stop recognizing Indigenous peoples as international actors was settled in the US government's view through the 1871 *Indian Appropriation Act.* The Act removed the president's ability to enter treaties and also delegated authority to the Bureau of Indian Affairs and several other agencies (Fletcher, 2006). This was yet another step in the history of how the municipal-international distinction proceeded in the United States after the 1831 declaration of Native Americans as "domestic dependent nations." The conflicts, paradoxes, and peculiar interdependencies that manipulating the municipal-international distinction has created regarding sovereignty, self-governance, and jurisdiction continue to structure settler colonialism in the United States (see Cattelino, 2008; Estes, 2019; Krakoff, 2004; Tallbear, 2013). The goal here is not to compare Canada and the US, but to flag that settler states differ with respect to how the municipal-international boundary structures Indigenous dispossession.

## Municipalization in Canada

Canada has long relied on racialized boundaries to distinguish municipal from international matters. Influential in articulating and defending colonial distinctions was John Stuart Mill (1838), who argued that, in contrast to India, white settler colonies like Canada—those of "European races"—could govern their own domestic affairs yet should nevertheless be subject to British jurisdiction for military matters and international relations (cf. Lowe, 2015). Mill (1838: 457) made this argument in 1838, after Lord Durham returned from Canada and reported on the desires of British citizens there to have "free municipal institutions" and a "Registry Act, for titles to landed property" for the purposes of self-determination. This colonial division of powers was carried over into the structure of federalism created through the 1867 *British North America Act*, which founded Canada. The Act municipalized Indigenous peoples by unilaterally asserting authority over "Indians, and lands reserved for the Indians" in Section 91 (Nichols, 2019). This was despite international agreements with Indigenous nations detailed in the 1763 Royal Proclamation and in treaty ratifications at Niagara in 1764 that, together, established the "constitutional relationship between First Nations and the Crown" (Borrows, 1994: 4).

In 1869, the *Gradual Enfranchisement Act* created elected Band Councils through which Canada recognized representation of First Nations by men only rather than through existing structures in which Indigenous women held authority (see Simpson, 2014). The Deputy Superintendent of Indian Affairs lauded the Act in his 1871 Annual Report, arguing that patriarchal, racial practices of assimilation were part of "establishing a responsible, for an irresponsible system…[that] by law was designed to pave the way to the establishment of simple municipal institutions" (cited in Bartlett, 1978: 594). The 1876 *Indian Act* sharpened the municipal-international boundary by reserving authority on Indigenous matters to the federal bureaucracy across a suite of powers affecting land, the status of Indigenous peoples, education, health, and multiple other areas of social and political life. Recently, Nichols (2019) has forensically undermined Canada's reliance on Mill's liberal, individualized subject for how it was used to racialize Indigenous peoples such that their laws and histories were erased as part of the state's mode of rule; while, alternately, the form of "self-government" the state sought to establish among Indigenous peoples had in view a municipal order consonant with the constitutional division of power in Canada.

Late 19th century laws structured 20th century Indigenous-state relationships in Canada. In 1884, the Government of Canada passed the *Indian Advancement Act*, which conferred privileges on "advanced Bands of the Indians of Canada" that would train them for the "exercise of municipal powers." Oriented primarily to eastern Canada, the *Indian Advancement Act* fit with long-standing efforts to municipalize the Mohawk lands of Kahnawá:ke through private property and enclosure of common land (Rück, 2021). Then Prime Minister John A. Macdonald described the *Indian Advancement Act* as providing for Indians who "feel more self-confident, more willing to undertake power and self-government" such that they can "elect their councils much the same as the whites do in the neighbouring townships" (cited in Bartlett, 1978: 596). For several decades, bureaucratic enforcement of the *Indian Act* applied direct and indirect forms of rule. In 1946, a special joint committee was struck to make amendments to the *Indian Act* as part of seeking a new balance of federal and provincial powers alongside the rise of the welfare state. Amendments were passed in 1951, and the 1952 Annual Report of the Indian Affairs Branch described the delegation of powers included in new provisions for the *Indian Act* as "correspond[ing] in a general way with those exercised by councils in a rural municipality" (Bartlett, 1978: 599). Post-war shifts sought to extend services in the remit of provincial jurisdiction to Indigenous peoples, such as for public health care, in ways that conformed with the constitutional division of powers in Canada's emerging welfare state.

Canadian provinces bristled at federal attempts to shift jurisdictional arrangements regarding Indigenous welfare. Changes to Canadian federalism were again considered for their effects on the *Indian Act* during the "Federal-Provincial Conference on Indian Affairs" in 1964. A preparatory report by the Indian Affairs Branch of the Department of Citizenship and Immigration stated the objective of post-war federal policy was to have "Indian communities" self-govern "within the framework of provincial-municipal relationships" (Government of Canada, 1964: 6). The report's position on converting Band Councils into municipalities was subsequently taken up in a two-volume report, *Survey of the Contemporary Indians of Canada* (known as the Hawthorn Report). Municipal issues were treated primarily in volume one, which argued that integration of "Indian communities into the provincial municipal framework should be deliberately and aggressively pursued while leaving the organizational, legal and political status of Indian communities rooted in the Indian Act" (Government of Canada, 1966: 18). The report stated similarly that "Reserves should be treated as municipalities for the purposes of all provincial and federal acts which provide grants, conditional and unconditional, to non-Indian municipalities" except where those may conflict with the *Indian Act* (Government of Canada, 1966: 18). The integration of Band Councils into municipal regimes aligning with changes to Canadian federalism, however, were not pursued owing to a more aggressive state policy in 1969.

In 1969, municipalization shifted from "integration" into the evolving federalism of Canada's welfare state to assimilation through the government's "White Paper" on Indian policy. The White Paper sought to end the differential treatment of Indigenous peoples as either international actors or domestic subjects by wholly consigning them to the latter. The White Paper pursued assimilation of Indigenous peoples to both land tenure and social policy and argued that that recognition of distinct status for Indigenous peoples would lead only to "deprivation and frustration" (Government of Canada, 1969). Instead, it followed Prime Minister Pierre Trudeau's ideas of a "just society" that would "…lead gradually away from different status to full social, economic and political participation in Canadian life." In many respects, the White Paper reflected the turn of post-war liberalism towards a just "basic structure" for society, such as John Rawls argued for, where the creation of a "property-owning democracy" aligned mutual self-interest with the state (see Forrester, 2019). The White Paper, however, was roundly rejected through staunch Indigenous opposition. Years later, a member of the Legislative Assembly in Saskatchewan, Keith Goulet, cataloged grievances against Canada's long-standing attempts to bring Indigenous peoples into the state's fold through municipalization. Referring also to the White Paper, Goulet (1990: 18) was dismayed by how the government consistently failed to respect the fact that, "Indians are asking for constitutionally entrenched self-government and the federal government continues to treat them simply as federal municipalities."

Municipalization was also re-scaled geographically from reserved lands to regional land claims in response to Indigenous movements in Canada during the 1970s–80s. A key development was the Supreme Court's acknowledgement of Aboriginal title in *Calder v. British Columbia*, which opened the path to an altered Indigenous-state relationship after 1973 (Asch, 2014; Borrows, 2016). Another outcome of Indigenous resistance during this period, however, was a new spatialization of the municipal-international distinction from lands reserved for First Nations to broader areas of land over which the state had yet to settle agreements with Indigenous peoples. Resistance by Cree in James Bay and Inuit in northern Quebec against planned hydroelectric dams, for instance, forced the Quebec and Canadian governments to rework how the municipal-international distinction articulated within settler federalism. The outcome was the James Bay and Northern Quebec Agreement (JBNQA), which is the first of what are known in Canada as modern treaties, or comprehensive land claims agreements. As Nungak (2017: 52) described the negotiations, the province of Quebec mapped a 350 000 $km^2$ area that it labeled as the "Municipality of James Bay" and which was subsequently used to frame negotiations regarding a "regional municipality" arrangement

underpinning the JBNQA. This regional arrangement required the extinguishment of Aboriginal title in exchange for specified land rights, and forced Inuit in northern Quebec into "a stark choice: a non-ethnic regional municipality covering the territory north of the 55th parallel or, alternately, an Inuit-only government applicable on Inuit-owned lands" (Nungak, 2017: 93).

Similar attempts to regionalize municipalization took place on Dene lands in the Northwest Territories, this time overlapping with further shifts to federalism as Canada patriated the 1867 constitution passed by British parliament and eventually adopted the 1982 *Charter of Rights and Freedoms*. As Coulthard (2014a: 82) argues, the framework for a large land agreement in the Northwest Territories was structured in terms of "municipal-type governments at the community or regional level" (cf. Coulthard, 2014b; Mountain and Quirk, 1996). Efforts to regionalize municipalization through modern treaties took on new valence in the years before the *Charter of Rights and Freedoms* was passed. Section 35 of the Charter outlines the rights of Aboriginal Peoples—Indian, Métis, and Inuit—and has provided grounds for legal challenges regarding the nature and extent of those rights. In 1983, a special committee of the federal government released its report on *Indian Self-Government in Canada*. Known as the Penner Report, Canada admitted that the Band Councils created under the *Indian Act* are "more like administrative arms of the Department of Indian Affairs than they are governments to band members" (Government of Canada, 1983: 17). The report highlighted Indigenous opposition to how the state was pursuing projects of Indigenous "self-government" both in reference to municipal models and, often, by treating Indigenous communities as less than existing municipalities.

Canada's interpretation of Indigenous "self-government" remains circumscribed within structures of oppression despite a series of legal victories for Aboriginal peoples in recent decades (Asch, 2014; Borrows, 1999, 2015a, 2015b; Nichols, 2019). Emphasis on "self-government" reflects another shift in municipalization as the federal government began pursuing a policy of "inherent rights" for Indigenous peoples through the 1980s–90s. Canada also began referencing self-government and "inherent rights" to the lack of economic freedom imposed by the *Indian Act*, such as the inability to own private property on reserved lands and leverage it for credit. In autumn 1990, after deploying the Canadian military to suppress Indigenous land defenders at Oka (Quebec), the Prime Minister announced a new "Native Agenda." The next year, in August 1991, the government announced a *Royal Commission on Aboriginal Peoples.* Before the commission could return its findings in 1990, however, the government canvassed for alternatives that would fit its emphasis on lack of economic freedom as the primary impediment to Indigenous self-government. In 1993, ministerial recommendations examined a proposed changed to the *Indian Act* called the *First Nations Chartered Lands Act* (FNCL). The secret cabinet document assessing the FNCL was prepared by the Minister of Indian Affairs and Northern Development and contained provisions that became central to subsequent efforts to delegate economic authority over land without transferring jurisdictional authority over Indigenous territory. The core of the FNCL was the creation of "chartered lands" that First Nations would manage—not own, nor have title to—for economic development. The legislation would operate explicitly on an "opt in" basis so that submission to the delegated authority of the state would proceed via consent of the governed. The FNCL did not pass, but it anticipated later efforts to amend the *Indian Act* in piecemeal fashion to facilitate alignment of Indigenous self-government and land tenure with an increasingly globalized economy (cf. Collis, 2022).

In 1995, the year before the *Royal Commission on Aboriginal Peoples* (RCAP) released its findings the government announced, "Canada's Inherent Right Policy." Much of this policy remains in force. As noted in the introduction, the "inherent rights" framework delimits Indigenous jurisdiction on international matters by asserting that, "Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian Constitution" (Government of Canada, 2020 (1995)). The inherent rights framework was designed

to blunt the RCAP report. In fact, a key submission of the RCAP was a review of the *Indian Act* by John Giokas (1995), who cataloged the pursuit of municipalization by the Canadian government. In addition to providing historical context, Giokas (1995: 224) argued that the "prevailing view is that bands are seen by the courts as something akin to "federal municipalities" operating under delegated federal authority in the same way that municipalities operate under delegated provincial legislative authority." Giokas (1995: 123) noted the "municipal model of Indian self-government has been federal policy since the advent of the band council system" and argued the municipal model was an intrinsic element of state relationships to Indigenous peoples. Critically, Giokas (1995: 322–323, original emphasis) highlighted how the "racist and sexist" *Indian Act* formed "a *system* despite its garb as a mere piece of federal legislation." This system cut across the "federal/provincial geographic, jurisdictional and fiscal landscape" (Giokas, 1995: 323). In short, municipalization structured Canadian federalism not just as policy, but as a mode of rule exercised through constitutional divisions of power.

This survey of municipalization provides warrant for treating municipalization as constitutive of particular policies and as a systematic aspect of how divisions of power within Canadian federalism circumscribe Indigenous self-determination. Further, shifts in divisions of power consistently affect how state policy towards Indigenous peoples is pursued through racist and sexist terms (cf. Simpson, 2014). After the failed Chartered Lands initiative, the Assembly of First Nations examined the RCAP report and the inherent rights policy amid Canada's broader push to appeal to "offshore capital" through expanded free trade agreements that complemented state rollbacks of public expenditures (1997a: 6; 1997b). In this context, Indigenous critique anticipated concerns regarding neoliberal policies then gathering momentum and paced (if it was not ahead of) academic critiques that neoliberalism was not characterized by state absence but by new arrangements for governing international and domestic economies through enhanced roles of markets and private property (Brown, 2015). This history provides resources for understanding how efforts to transform lands reserved for First Nations into private property continues to structure dispossession by municipalization.

## *Dispossession by municipalization*

The municipal-international distinction was formed through colonial rule, and evolving divisions of power within Canadian settler federalism are constitutive of what I term dispossession by municipalization. Dispossession by municipalization operates through racialized boundaries that underpin the accumulation of land and resources for economic gain and political projects that circumscribe Indigenous self-determination. Both are deeply spatial projects. Capital accumulation in settler states was and remains premised on Indigenous dispossession. Yet, as Byrd (2011) shows, it is critical to not reduce dispossession to the "frontier" of capital accumulation owing to settler colonialism being propagated not by frontiers but by notions of "Indianness." Similarly, circumscribing Indigenous self-determination through racialized forms of municipalization seeks not only land but acquiescence to delegated state authority. In this context, municipalization connects economic accumulation to the distribution of political violence in ways consistent with state divisions of power. In short, as this section argues, dispossession by municipalization helps connect land and politics to the distribution of Indigenous genocide through time and space. In this way, the concept gets to the critical intersections of land and genocide identified by Black and Indigenous scholars. As shown above, changes within Canadian federalism had important consequences for municipalization. Similarly, this section shows how renewed efforts to privatize lands reserved for First Nations reflects not the absence of the state but its effort to translate neoliberalism into programs consistent with Indigenous dispossession. In this case, through pipelines connecting domestic resources to international markets.

To develop dispossession by municipalization analytically, this section engages with racial capitalism as it informs Black critiques of settler colonial studies. Especially salient is King's (2019: 69) argument that settler colonial studies engage in "Black dehumanization" when it reduces "settler colonialism to a land-centered project, as opposed to a genocide-centered project." As explained below, King anchors this argument in a powerful account of how giving analytic priority to land over genocide is connected to the priority assigned to settler experience. This concern is directly relevant to racial capitalism in Canada. For instance, Pasternak (2020: 301) argues racial capitalism anchors the dual violence through which Indigenous peoples in Canada are first partitioned from participating in the economy on their own terms and then assimilated to it as "liberal capital citizens." As a result, Indigenous peoples "experience the liminal gray zone of never being fully considered as proper subjects or independent nations" (Pasternak, 2020: 318). This liminal zone is characteristic of municipalization both in particular policies and state aims of circumscribing Indigenous self-determination. The racialized boundary parsing foreign from domestic affairs also affects racial capitalism. Robinson's (1983) powerful exposition of racial capitalism, for instance, traces the formation of racial distinctions that functioned "internal" to relations among European peoples and which evolved through colonial rule (cf. Bhandar, 2018; Mawani, 2010). In North America, these "internal" relations—municipal matters—also characterize Melamed's (2015) account of how colonizers partitioned people of color from the emerging capitalist economy and then sought to reincorporate them on racialized terms. As Barker (2011: 6) states succinctly regarding the US, "The rub, as it were, for Native peoples is that they are only recognized as Native within the legal terms and social conditions of racialized discourses that serve the national interest of the United States in maintaining colonial and imperial relations with Native peoples."

In Canada, efforts over the past two decades to privatize lands reserved for First Nations presents a clear case of dispossession by municipalization that functions in racialized terms. Previously, Schmidt (2018) used internal government correspondence to show how the state explicitly justified its policy through appeals to international programs of land-titling and arguments that made private property a natural outcome of socio-biological evolution. Such arguments have a long tenure in what Moreton-Robinson (2015) describes as the naturalization of white practices as the unmarked racial basis of possession in private property (cf. Bhandar, 2018; Harris, 1993). The corollary is the erasure of Indigenous ownership practices (Hill, 2017). Pasternak (2015) argues Canada's recent privatization efforts are an attempt to municipalize Indigenous economies to comport with capitalist relations between state and market (cf. Fabris, 2017). Critically, however, Canada's efforts were also supported by regulatory changes that circumscribe First Nations self-determination, such as changes to voting requirements for band councils to approve new land tenure arrangements or to "opt in" to new legislation (Schmidt, 2018). The "opt in" clause recalls the *First Nations Chartered Land* initiative discussed above, but recent efforts were also designed to enable resource extraction.

Although heavily redacted, government records gathered from 2012–2016 show that Canadian efforts to privatize lands reserved for First Nations were considered to facilitate construction of major pipelines that would transport oil west from the province of Alberta to the Pacific Ocean. One, known as Trans Mountain Pipeline which was owned by Kinder Morgan until the Canadian Government bought it, twins an existing pipeline that goes south through Burnaby, near Vancouver; it is currently under construction (see Spiegel, 2021). Another pipeline known as Northern Gateway was initially planned to run across northern Alberta and British Columbia. In 2014, the government considered a plan backed by the Macdonald Laurier Institute—a self-styled "think tank" in Ottawa—to designate the legal right-of-way for pipelines as newly created reserved lands for First Nations and then privatize those lands so that First Nations could collect taxes. The plan would, "designate portions of an energy pipeline corridor as reserve lands, to allow impacted First Nations to collect property taxes…[that] will collectively generate $103.4 million a year" (Access to Information and Privacy, (ATIP) 2014: 2998).

The violent irony of creating new reserves for oil pipelines after a century of defrauding Indigenous peoples of their lands was lost on bureaucrats, who circulated hand-written notes and emails as they sought to overcome the "log jam with respect to pipeline progress" (ATIP, 2014: 4911). At the time, the government was also keen to avoid conflicts with Indigenous land defenders like those that had erupted in 2013 in Elsipogtog, New Brunswick. There, First Nations repelled Southwestern Energy and its proposed fracking operations (Howe, 2015). At one meeting of a special Joint Working Group set up to study private property on reserved lands, "the Deputy Commissioner played a youtube [sic] video of a screaming match that took place at a New Brunswick meeting about fracking" (ATIP, 2014: 5181). Ultimately, the privatization proposal did not come to fruition owing in part to a change in government in 2015. But it was also due to the secrecy of Enbridge, the energy company promoting the Northern Gateway pipeline. Government officials wanted maps and names of Indigenous groups along the pipeline route that might be interested in the idea but noted that it "proved difficult due to Enbridge's decision to not share the name of First Nations it has entered into agreements with and the controversy surrounding the project" (ATIP, 2014: 5406).

How might policies like the one above be understood as dispossession by municipalization? Here, both empirical and analytical aspects of dispossession by municipalization are salient. Empirically, the attempt to privatize lands reserved for Indigenous peoples to enable value extraction from land via pipelines—and to create new reserves expressly for this purpose—presents a clarion case of what Melamed (2015) identified as the "partition" and "assimilation" strategy of dispossession. The notion of a "nation-to-nation" agreement to settle land use arrangements, in this case by creating new reserved lands, contrasts directly with the policing and legal force brought to bear against resistance to the pipelines that were often couched in rhetoric of "foreign" agitators against the Canadian state (Spiegel, 2021). In addition, as Pasternak and King (2019) showed, the use of legal injunctions against First Nations who opposed extractive projects severely limited the scope of Indigenous self-determination. This asymmetry, which uses the municipal-international distinction to the advantage it best serves for capital accumulation, structures state divisions of power in ways that fragment jurisdiction over resource development provincially and Indigenous obligations federally (Stanley, 2016). Fragmentation structures Indigenous dispossession according to state divisions of power, which ensures that lands abrogated from Indigenous peoples emerges ready for extraction in processes of dispossession by municipalization.

Analytically, dispossession by municipalization helps explain how settler states distribute the violence of Indigenous genocide over time and space. It does so by showing how genocide proceeds through spatial claims to land and through divisions of power anchored in racialized, colonial boundaries parsing municipal from international matters. In this way, dispossession by municipalization enhances purchase on what King (2019) argues is a need to understand settler colonialism as a genocide-centered project rather than a land-centered one. This distinction is perhaps best seen in contrast. In Canada, for instance, provincial governments hold jurisdiction over natural resources while the federal government claims authority over Aboriginal affairs. As Behn and Bakker (2020) show in their analysis of environmental impact assessments, Canadian laws structure regulatory processes for resource development projects in ways that compound historical oppression of Indigenous peoples and extend it into the future. In such cases, asymmetry across federal and provincial jurisdictions on matters of environmental protection, permits, and legal relief are constitutive of how municipalization produces space for extractive projects. In influential interpretations of settler colonialism, such as Wolfe's (2006: 388), this kind of asymmetry reflects the fact that "territoriality is settler colonialism's specific, irreducible element." On this interpretation, jurisdictional fragmentation ensures colonial access to land while the violence of Indigenous elimination is incidental to that aim. But as King (2019) powerfully argues, such explanations are

ultimately unsatisfactory owing to how they prioritize settler relations to land as the core explanatory target—betrayed by the term "settler colonial studies."

By engaging King's (2019) critique, dispossession by municipalization offers a way to understand the production of settler colonial space through the material ways that dispossession reflects state divisions of power. For instance, Wolfe's arguments regarding the priority of land in settler colonialism depends on a differential reading of racialization with respect to Black and Indigenous peoples. For Wolfe (2001: 867) Indigenous dispossession is "centered on land" and contrasts with how "blacks' relationship with their colonizers—from the colonizers' point of view at least—centered on labor." To make these claims, however, Wolfe must not only center the colonial "point of view" but also make two moves effectively critiqued by King (2019). First, Wolfe must also reduce Black experiences of slavery to labor—such as by claiming that the "one-drop" rule was a way of expanding the labor pool by classifying more people as Black (Wolfe, 2006). Yet reducing slavery to labor misses what Hartman (1997:6) explains as "the barbarism of slavery [which] did not express itself singularly in the constitution of the slave as object but also in the forms of subjectivity and circumscribed humanity imputed to the enslaved" (cf. McKittrick, 2006; Sharpe, 2016). Second, Wolfe downplays Indigenous genocide by distinguishing it from attempts to "eliminate the Native" through racial efforts to reduce the number of Indigenous peoples by establishing minimums for "blood quantum" (Tallbear, 2013). Partitioning genocide from territorial acquisition allows Wolfe (2006: 387) to maintain that the frontier encounter—not racialized accounts of "Indianness" (Byrd, 2011)—structures settler-colonial society to be "inherently eliminatory but not invariably genocidal."

The inconvenient problem for Wolfe is that settler colonialism is genocidal. In 2015, Canada's Truth and Reconciliation Commission (2015: 1) explicitly linked genocide to state efforts to "destroy the political and social institutions" of Indigenous peoples by seizing land, restricting movement, and oppressing linguistic, kinship, and spiritual relations. What dispossession by municipalization offers here is a tool for connecting racialized violence to the structures of power through which settler states distribute genocide over time and space. In Canada, the structure of federalism divides power over municipal and international matters in ways that distribute violence; both particular policies and the mode of rule through which the state circumscribes Indigenous self-determination structure the distribution of genocide as municipalization keeps pace with evolving power arrangements regarding domestic and foreign matters.

Dispossession by municipalization also suggests additional lines of analysis regarding how Canada's efforts to privatize lands reserved for First Nations attenuate Indigenous prospects for self-determination and thereby operate to distribute genocide through state mechanisms. For instance, for Schmidt (2018) and Pasternak (2015), privatization is a point of convergence for capitalism and colonialism. Once municipalization is situated historically, however, recent proposals regarding private property reveal further aspects of dispossession that align with Nichols's (2020: 13, original emphasis) argument that colonialism is not "an *example* to which the concept [of dispossession] applies but a *context* out of which it arose." For Nichols (2020), dispossession takes place through a recursive logic that only allows Indigenous "ownership" for the purpose of transferring land to state regimes of public or private tenure. This is explicit in the pipeline example above, where reserved lands would be created expressly to afford pipeline construction. Similarly, recent privatization proposals operate through a logic that is not settled in advance but is instead pursued through contemporary state agendas. Under the guise of recognition, the state at once oppresses Indigenous opposition to pipelines (as well as other so-called "foreign" agitators) while using the international-municipal distinction to circumscribe options for self-determination to forms of private property that have as their sole use the extraction of value from Indigenous lands.

## Conclusion

In 1999, Miguel Alfonso Martinez, the United Nations Special Rapporteur on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Populations, drew on international studies of Indigenous peoples in Australia, Canada, the United States, New Zealand and elsewhere to argue that the distinction of municipal from international law remained salient for two reasons. First, it was necessary to confront the inappropriate use of municipal courts on matters of treaty. Second, for "treaties without an expiration date," the municipal-international distinction ought to evoke histories of jurisprudence (from the Roman empire to European colonization) to ensure the continuation of treaty obligations until "all the parties to them decide to terminate them" (Alfonso Martínez, 1999: 43). In Canada, the pertinence of these remarks was well captured by Indigenous opposition to Canada's 2018 Indigenous Rights Framework, which forced the state to publicly deny its municipalizing intent. Future endeavors may similarly require opposition. Perhaps most notable in this respect is the processes of ratifying international laws like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). As Asch (2019: 4) argues, settler states like Canada may ratify UNDRIP into municipal law in ways that "ultimately legitimates the hegemony of a colonizing state's power rather than liberation from it."

In this context, municipalization offers resources of two kinds. First, by connecting particular policies to the structure of settler rule, it provides a language for critique mobilized by Indigenous activists and scholars. In this sense, municipalization responds to Melamed's (2015: 78) call for "…a more apposite language and a better way to think about capital as a system of expropriating violence on collective life itself." Second, dispossession by municipalization shows how constitutional divisions of power structure settler states as spatial projects at scales of reserved lands, regions of modern treaties, and potentially also for a pipeline right-of-way. These power relations evolve in ways consonant with how settler states both relate to land and distribute violence across time and space. The geographic specificity of these harms—forcefully responded to by Borrows (2016), Coulthard (2014b), Simpson (2014), Moreton-Robinson (2015), Daigle (2016), Simpson (2017), and Estes (2019) among others—cannot be sufficiently addressed within the racialized boundaries of colonial states. Remedies require spaces not circumscribed by colonial boundaries of the "international" or state divisions of power over municipal and international matters. In the words of many Indigenous voices, an end to genocide and land back.

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