

BREAKING SYSTEMATIC DISPOSSESSION : INDIGENOUS LAND AND RIGHTS RESTORATION THROUGH LAND BACK

as presented by
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Examples of Colonial Laws and Policies That Shape Current Canadian Frameworks

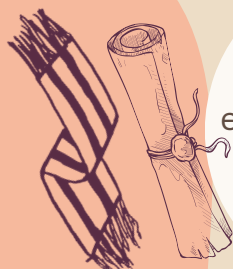
The Doctrine of Discovery (1452)

This Doctrine allowed European powers to claim lands by "discovery," ignoring Indigenous authority and establishing British Crown sovereignty. Today, 89% of the land in Canada is considered Crown Land. The Doctrine enables the government to grant access to industries and private entities. Despite partition from the United Kingdom and even deeming the Doctrine as racist within federal courts (the Tsilhqot'in decision), the Doctrine is still prevalent within Canadian legal documents to justify Canada's claim to Indigenous lands.



Royal Proclamation (1763)

This prohibited Indigenous people from selling land to anyone except the Crown. Britain gave itself the exclusive right to claim lands for future expansion, reinforcing Crown ownership over territories. However, the Royal Proclamation did recognize Indigenous Sovereignty over non-surrendered lands when conducted through Treaties (binding formal agreements). Despite the Proclamation, Treaty Territories had been interpreted as alienated lands under the jurisdiction of provinces.



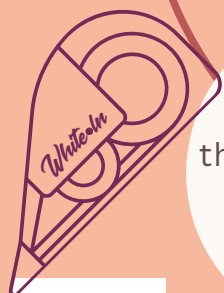
Indian Act (1876)

The Indian Act enforced the administration of "Indian Affairs" on Indigenous Nations, which asserted regulations for nearly all aspects of Indigenous life, governance, and land use. This Act also implemented the mandate of Residential Schools for Indigenous children; the assimilation of Native children "into Canadian society" causing mass violence, rupturing generational care and knowledge, and amounting to the active genocide of Indigenous peoples. The last federally-funded residential school, Kivalliq Hall in Rankin Inlet, closed in 1997.



Transfer of Natural Resources Act (1930)

This Act dismissed First Nations negotiated Treaties with the Crown. Nations and Bands without Treaties are presumed to live under Canadian law, even though they did not "alienate" their lands under the provisions of the Royal Proclamation. Alienation of resource management leads to the erasure of Indigenous Law, as Indigenous Law is embedded within Traditional Practices and care for territories. This Act prevented Indigenous peoples from contesting or even taking part in decisions made at the expense of sacred sites on Treaty Territories.



The White Paper / Indian Policy (1968 - 69)

Disregarding Indigenous demands to honour established Treaty Rights, restitution and self-determination, the White Paper proposed political and legal assimilation of Indigenous peoples as Canadians in the name of a "just society." This would have been done through the abolition of the Department of Indian Affairs and repeal of the Indian Act. In 1970, Alberta First Nation leaders drafted Citizens Plus (the Red Paper) as a constructive alternative and resource for resistance, sparking ongoing policy debates and inspiring this very Red Paper by the Yellowhead Institute. The White Paper was retracted in March 1971, but the policy's essence is ongoing in many ways through "multiculturalism" as a state policy, implemented in October 1971.



Canadian Constitution Act (1982)

Section 35 recognizes and affirms existing Aboriginal and Treaty Rights of Aboriginal peoples in Canada. It notes that the courts have interpreted Section 35 to distinguish between various types of constitutional rights: Treaty Rights and Aboriginal Title. Responses by First Nations have varied. Court decisions have either been deemed either as the subordination of their rights under Canadian federalism, or perceived as a new tool to use as legal leverage. The federal government grants itself rights to infringe on Aboriginal and Treaty Rights.



Indigenous Peoples face major barriers in affirming and negotiating their Rights due to restrictive laws and industry influence. Courts often undermine Indigenous Rights in favour of lucrative resource extraction, allowing federal / provincial governments and corporations to dispossess, regulate, exploit, or sell lands **without Indigenous consent** (see page 3 of this factsheet for *Indigenous Conceptualizations of Consent*).

Industrial projects and conservation efforts restrict Indigenous jurisdiction by blocking access to traplines, waterways, and sacred sites - leading to the erosion of cultural and ecological connections. Injunctions are used to forcibly restrain and/or remove Indigenous peoples when they contest the nonconsensual exploitation of their lands and territories. A study led by the Yellowhead Institute demonstrated that while **76% of corporate injunctions against First Nations were approved, 81% of First Nations' injunctions against corporations were denied.**

The *Land Back* Movement Addresses the Harmful Compounding Effects of Legal and Regulatory Dispossession

Cultural Genocide

The systematic implementation of Western values through Residential schools, Indian Registration rules and Christianization has led to the forced assimilation of Indigenous peoples. Frameworks like the patriarchy, capitalism, black and white morality and exclusionary politics have manifested in dismantling the power of women, the discontinuing of ceremonial traditions, and the rise of homophobia and lateral violence within Indigenous communities. Dispossession of peoples and land leads to divisions of Indigenous traditions, knowledges, languages, and identity. Additionally, lack of recognition of Indigenous sovereignty and authority results in limiting self-determination, severed cultural ties, and the exploitation of divisions within communities by outsiders.



Economic Oppression

Dispossession denies Indigenous peoples the economic bases required for self-sufficiency and growth. In order to more fully regain and exercise self-determination generally, Indigenous people require significant economic bases and sources of revenue. Without access to their lands and resources, Indigenous communities face chronic economic challenges. Nearly every major study addressing the abolition of the colonial relationship in Canada advocates for compensation and reparation in the form of land redistribution. Current resource extraction and colonization have systematically marginalized Indigenous economies.



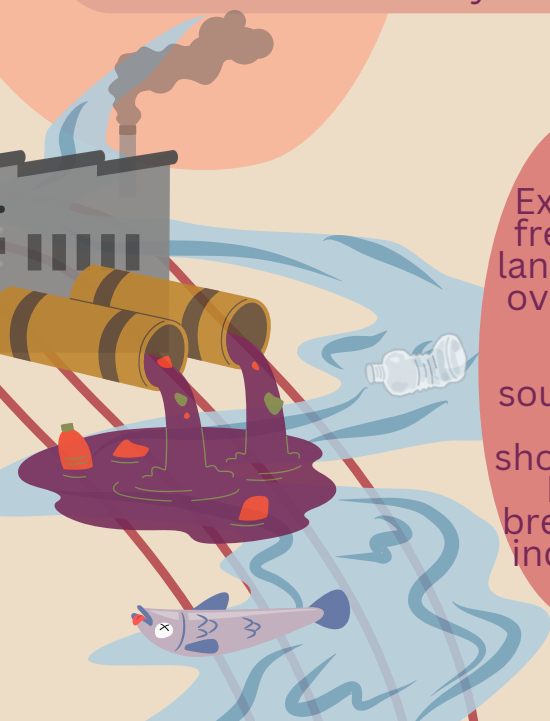
Environmental Degradation

Ongoing industrial activities and extraction lead to significant environmental degradation, which in turn also affects Indigenous livelihoods that depend on healthy ecosystems. Colonial land use practices erode sensitive areas and fragment the land base, inhibiting the establishment of viable and sustainable economies. The matter of *Land Back* is not just a matter of justice, rights or reconciliation, but of environmental protection. Similar to the United Nations, the Yellowhead Institute argues that Indigenous jurisdiction can indeed mitigate the loss of biodiversity and the climate crisis.



Health Toll of Dispossession

Exposure to environmental toxins due to industrial activities frequently compromise the health and food security of both land and people. "Toxins compounded in foodstuffs and rivers over time must be cleaned and relations renewed," highlights the interconnectedness of sovereignty and health as a fundamental human right. Disruption of traditional food sources threatens the lives of many, particularly in the case of low-income, remote communities. Multiple studies have shown that toxins released by industries into water supplies of Indigenous communities have caused adverse effects on breast milk and fertility. This ties land dispossession and toxic industrial run-off to the internationally recognized definition of genocide, as it impedes reproductive rights.



Gendered Injustice and Harm

Indigenous women, Two-Spirit, and queer individuals often face heightened levels of violence and discrimination because of dispossession and denial of Indigenous sovereignty. While these groups are often at the forefront of reclamation efforts, they are found to suffer most from environmental toxification. It is important to recognize the social upheaval, mistreatment and sexual violence brought on by industrial projects and social stigmatization. The exclusion of *femmes* from management, jurisdiction, and decision-making in contemporary policy and politics has led directly to high levels of violence against them. This applies both within First Nation communities, but also when this violence forces their out-migration and further marginalization within towns and cities.



“Ultimately, we assert that **land restitution for First Nations** requires political and economic transformation. Land theft is currently driven by an unsustainable, undemocratic, and fatal rush toward mass extinction through extraction, development, and capitalist imperatives.”

FOUR DISTINCT ELEMENTS OF INDIGENOUS CONCEPTUALIZATIONS OF CONSENT

Building on the notion of **free, prior, and informed consent (FPIC)** established by the United Nations Declaration on the Rights of Indigenous Peoples Act, the following are examples of Indigenous-led, consent-based practices that de-centre state authority, and revitalize Indigenous knowledges, laws and customs.

1. RESTORATIVE

Restorative consent highlights Indigenous models of governance and law, moving beyond Western frameworks, all the while supporting authentic governance revitalization (like Tribal Councils, Hereditary Chiefs and women's authority).

HEILTSUK AND THE INDIGENOUS MARINE RESPONSE CENTRE

In response to the 2016 Nathan E. Stewart spill, where over 100,000 litres of pollutants devastated the Heiltsuk territory off the northern coast of B.C., the Heiltsuk Nation centered Indigenous governance by conducting their own environmental inquiry based on Heiltsuk law (ǫ̓vɪ́l̓ás) after Canada and B.C. refused collaboration. Led by women, their investigation incorporated traditional legal frameworks, emphasizing community engagement and self-determination. Rather than focusing solely on compensation, their legal challenge asserted Heiltsuk jurisdiction and rights. Their proposed Indigenous Marine Response Centre (unfunded by Canada) was advanced through a partnership with Horizon Maritime, ensuring Heiltsuk leadership in marine protection and emergency response grounded in traditional legal frameworks to insure ongoing and sustainable relationships to the land and waters.

2. EPISTEMIC

Epistemic consent embraces Indigenous knowledges, languages, land relationships, sciences of land management and traditional customs, all imbedded within Indigenous law and governance.

T̓SILHQOT'IN MUSHROOM PERMITS

Reflective of the importance of intergenerational knowledge, following a forest fire in May 2018, the T̓silhqot'in Nation introduced a permit system for non-T̓silhqot'in mushroom harvesters, as they predicted a flush of mushrooms due to the fire's ash which provides ideal conditions for growth. Using their governance structures to regulate land use, enforce environmental protections and generate local revenue, the generated funds supported campsite maintenance, while inter-family trade increased as a community income source. Creating a precedence, the T̓silhqot'in also asserted jurisdiction over conservation, establishing Dasiqox Tribal Park and enacting an Emergency Moose Protection Law. In 2018, they banned non-Indigenous moose hunting. Though B.C. has not yet recognized it, this ban has led to legal action enforcing the moratorium on T̓silhqot'in territories.

3. RECIPROCAL

Reciprocal consent ensures that Indigenous people can actively determine and maintain the terms consent, with the ability to revoke or change them based on outsiders' good faith adherence.

STK'EMLÚPSEMC TE SECWPEMC NATION AJAX MINE ASSESSMENT

In 2015, the Stk'emlúpsemc te Secwepemc Nation (SSN) filed a Notice of Civil Claim in the B.C. Supreme Court, directed at the B.C. government and KGHM Ajax Mining Inc. The company proposed a 1,700-hectare open-pit mine at Pípsell on unceded land. The sight is also culturally significant to the Secwepemc people, particularly to the women who use the site for sweats and reunion. The Secwepemc requested a federal environmental review, which was at first denied, leading them to conduct their own assessment based on Indigenous law and knowledge. This 300-page report emphasized environmental interconnectedness of the land, water, sky, and community, and opposed the mine using International law. By 2017, the SSN formally withheld consent, gaining support from Indigenous and local organizations. Investor concerns grew, and later that year, the B.C. government denied the mine's permit.

4. LEGITIMATE

Legitimate consent requires representatives respected as legitimate ; such as Band Councils, Hereditary Councils, Women, Youth, Elder, Queer, and urban populations. A decision should not be made until all legitimate/impacted authorities' consent.

SAGKEENG LAWMAKERS AND MANITOBA HYDRO

Sagkeeng's 1997 Hydro Accord with Manitoba Hydro required annual licenses for using the Winnipeg River. The Accord led to the creation of the Sagkeeng Lawmakers Assembly to develop traditional Anishinaabe laws. In 2018, Sagkeeng ratified the O'na-katch-to'o-na-wa Onakonigawin (conservation law) and rejected a new Hydro deal, citing unfair terms and inadequate consultation. This protocol was signed by Chief and Council, Women's Council, as well as the Elder, Youth, and Men's Councils. It also ensured that those community members who are most impacted by a development will be consulted with. The O'na-katch-to'o-na-wa Onakonigawin asserts Sagkeeng's authority over resource extraction, emphasizing environmental protection, Indigenous rights, and economic sustainability. To enforce the O'na-katch-to'o-na-wa Onakonigawin, as of 2019 the Sagkeeng had filed for a judicial review, challenging the province's consultation on the project and for setting aside the environmental review that greenlit the project.

READER, FOR YOU TO CONSIDER :

- These ideas are ever evolving and may vary by Nation and community.
- This is not an exhaustive list; it is open to interpretations, contributions, and questions, with the hope of leading to meaningful change towards decolonization and Land Back.