

How Capitalism Will Save Colonialism: The Privatization of Reserve Lands in Canada

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Abstract: This paper surveys the ways in which the First Nations Property Ownership Act (FNPOA) is the site of both tension and alliance between state, non-state, and local Indigenous interests converging around a common agenda of land “modernization” in Canada. It is a convergence, I argue, that must be read in the context of a reorganization of society under neoliberalism. The FNPOA legislation is discursively framed to acknowledge Indigenous land rights while the bill simultaneously introduces contentious measures to individualize and municipalize the quasi-communal land holding of reserves. The intersections of alliance around this land modernization project foreground the complex ways in which capitalism and colonialism, though inextricably tied, perform distinguishable economic processes, and how we must be attentive to the particulars of their co-articulation with local formations of indigeneity.

Keywords: indigenous, property, reserve, neoliberalism, privatization

“We need debate on how our people can get out of poverty.”

These words carried the opening message of a conference on the First Nations Property Ownership Act (FNPOA) held in October 2010 at the posh Fairmont Hotel in Vancouver, Canada. The conference cost \$800 to attend. Around 250 people registered, among them lawyers, academics, bureaucrats, businesspeople and First Nations¹ people, mostly British Columbia (BC) based, who sat expectantly at tables in the grand hall waiting to learn more about the urgent private property bill. The conference was called “It’s Time”.

Standing at the podium was Manny Jules, the main organizer of the conference and major proponent of the FNPOA, an opt-out mechanism from the Indian Act that would allow bands and individuals on reserve to hold their lands in fee simple title. The former chief from the Secwepmec Nation spoke in a voice soft but adamant. The Indian Act was holding his people back. It was time to move past its debilitating land ownership restrictions that had hindered economic progress for generations. In particular, the lack of *fee simple*—or private property rights—on reserves had deprived communities of access to home mortgages, therefore credit, and ultimately, access to the market economy.

When Jules rehearsed the precedents for the private property bill, he cited two Supreme Court of Canada victories for Aboriginal fishing rights as successful struggles for *individual rights*, despite the rulings’ broad implications for Indigenous land title and the nature of Indigenous economic rights.² In so doing, he exposed a

central principle behind his work that puts him at odds with Indigenous communities across the country. Communities opposing the private property legislation see Indigenous self-determination struggles—including those for economic rights—as a fight for *collective* territorial rights.³ The difference between individual and collective rights is not simply an internal dispute unfolding among Indigenous individuals, organizations, and nations. Rather, the struggle between individual and collective rights comprises the politically contested terrain of settler-colonialism today. It is a struggle increasingly marked by the interests of non-Indigenous free marketeers intervening in Indigenous self-determination struggles for lands in Canada and worldwide.

This paper surveys the ways in which the FNPOA is the site of both tension and alliance between state, non-state, and local Indigenous interests converging around a common agenda of land “modernization”. It is a convergence, I argue, that must be read in the context of a reorganization of society under neoliberalism. As Altamirano-Jimenez shows, neoliberalism as a form of governance is distinguished in its conjunction of particular practices and knowledge production that emphasize the market and the responsibilities of enterprising subjects *alongside* the recognition of collective and socio-economic rights of “disadvantaged” groups (Altamirano-Jimenez 2013:5). In this case, the cultural recognition of Indigenous difference serves to construct new institutional arrangements for managing Indigenous lands (Altamirano-Jimenez 2013:5). The FNPOA legislation is discursively framed to acknowledge Indigenous land rights while the bill simultaneously introduces contentious measures to individualize and municipalize the quasi-communal land holding of reserves. This cultural recognition of Indigenous difference is meant to disarm resistance while it circumscribes the proprietary aspect of Indigenous sovereignty. Collective Indigenous land interests—expressed in tenure regimes, particular to national and regional identities—conflict with state imperatives to extinguish special “Indian” rights, and with non-state, commercial imperatives to facilitate barrier-free access to Indigenous lands and resources. The intersections of alliance around this land modernization project foreground the complex ways in which capitalism and colonialism—though inextricably tied—perform distinguishable economic processes, and how we must be attentive to the particulars of their co-articulation with local formations of indigeneity.

The reserve privatization bill currently being proposed in Canada exposes multiple, overlapping, and contradictory agendas of Indigenous, state, and private appeals for fee simple property rights on reserves. Ideological and economically driven arguments for reserve privatization by far right thinkers, for example, articulate with the state’s investment in commercial transactions and development, whereas state interests that involve minimizing and off-loading federal responsibility over Indigenous peoples are state objectives alone. First Nations, however, seek to overcome poverty on reserves by getting out from under the Indian Act and its land management system by adopting a more market-friendly regime. The various partnerships and structural relationships between these actors, I aim to show here, is key to the reorganization of Indigenous society along neoliberal lines.

Proponents of the bill evade the long legislative history of state attempts to transform Indigenous lands into fee simple estates, replacing this contentious past instead with a simplistic depiction of colonization as the *denial* of capitalism on reserve lands. Though it is true that the legislation governing the management of

Indigenous peoples in Canada—the Indian Act, 1876, still in effect today—places restrictive controls on the kinds of accumulation and land management allowed on reserve lands, efforts to reframe the solution to this colonial paradigm as private property rights ignores key differences in Indigenous, state, and private proprietary interests in land.

The first section of this paper surveys early precedents of reserve privatization efforts, foregrounding the ways in which the reserve is an actively produced political space where collective land interests have always been perceived as barriers to Indigenous integration and assimilation. The next section brings to light the ways in which alliances between free market, state governments, and Indigenous interests produce new forms and practices of economic knowledge to support programs of land modernization and development today. Calling into question the relationship between this economic knowledge and entrenched political projects, I survey some key ways that recognition of collective Indigenous land rights in the FNPOA are discrepant with Canadian law on Aboriginal rights and the impacts changes in the property regime on reserves could have on both Aboriginal title and inherent Indigenous land interests. Finally, I look at who benefits from the uneven distribution of property under capitalist real estate markets, measuring claims for reserve land modernization against the backdrop of capitalist property markets more generally, and in the context of Indigenous economies specifically. My paper concludes with the observation that titling projects around the world have been contentious endeavors that bracket a range of complex social relations from a singular strategy of title registration. In a settler colony context, these titling projects take on a political dimension that requires further inquiry and understanding of the proprietary aspects of Indigenous sovereignty assertions. Neoliberalism articulates with specific local histories of colonization that provide the critical context to capitalist “solutions” to poverty in Indian Country.

Precedents of Privatization

The discipline of geography has a long and rather sordid history of producing knowledge that perpetuates colonial realities for Indigenous peoples.⁴ Yet, as Johnston and Murton point out, perhaps “place” is the common ground where Indigenous and contemporary Western thought can meet to dispel the meta-narratives of European sovereignty and civilization (Johnson and Murton 2007). In Western thought, Cole Harris’ (2003) accounting of settlement geography, for example, provides a fine reassessment of place. He documents the allocation system of tiny plots of land “reserved” for Indians in BC so that settlers, led first by colonial officials and then by the provincial Crown, could effectively distribute the rest amongst themselves. Harris urges scholars to explore “the colonial site itself” to produce anti-colonial geographies of knowledge that can expose and give rise to assessments of “the relative weight of different agents of colonial power” (Harris 2004:166). Land titling on reserves is one such crucial colonial site where we can examine this key disciplinary technique of propertization advocated by state and non-state authorities to exercise control over land. It is the continuity of such schemes, as Doug Harris (2010:263) notes, with “a long process of decoupling land from established social bonds and

of reconstructing it as a commodity like any other”, that signals the political stakes of these efforts: the capacity to transfer land between parties. To this day, under the terms of the Royal Proclamation, 1763, the only way ownership of lands can be legally transferred from “Indians” to settlers is through surrender to the Crown and by special leasehold arrangements accounted for through recent amendments to the Indian Act, 1867.⁵

In a real sense, Indigenous peoples in Canada have been fighting versions of the FNPOA since the early 1840s, when Indians rejected reserve subdivision advocated by the Bagot Commission and Methodist missionaries (Milloy 1991). Hoping to paper over this resistance with legislation, provisions for the inculcation of private property rights on reserves were introduced in the Enfranchisement and Assimilation Acts, passed between 1857 and 1869. These acts also met with fierce resistance. Indigenous leaders recognized this subdivision of land was intended to fragment their land base and therefore their social order. Legislative strategies were tried and failed repeatedly, both prior to and following confederation.⁶ The last major initiative to privatize reserve lands prior to the introduction of the FNPOA was in 1969 with the Liberal Party of Canada’s infamous federal “White Paper” on Indian Policy that recommended the transition of reserves into full fee simple ownership.⁷ The justification for privatization at that time was to promote *equality* between Indians and Canadian citizens by rejecting the segregation of Indians onto reserves, but these policy recommendations were never realized due to massive, nationwide Indigenous opposition. Though reserves are legacies of the colonial reterritorialization of Indigenous lands, they remain stable bases of identity and place in present-day life.

Ignoring these domestic precedents, proponents of the FNPOA often make a point of distancing themselves instead from the Dawes Act, 1887—the US bill that led to Indian landholdings being reduced by almost a hundred million acres, or 60% of the reserve land base.⁸ The Dawes Act authorized the President to allocate private acreage to each Indian family living on a reservation through a strict land formula. These lands could be converted into unencumbered private fee simple estates through successful completion of a mandatory 25-year period of agrarian labor (Otis 1973). “Surplus” lands leftover would be redistributed to land-hungry settlers. Hailed as the “Indian Emancipation Act” by boosters, the Act stunted and prevented agricultural production on reserves (which many Indigenous peoples had supported), ultimately weakening economic development (Carlson 1981).

An active political space, reserves have been produced by these historical efforts to define the role of Indigenous peoples in social and economic life. Promises of civility, economic development, and equality accompanied these initiatives, driven mainly by attempts by church and state to carve “individuals” from impenetrable social blocks of tribal life. Privatization does not mean a transfer of ownership in the traditional (though problematic) sense of “public” versus “private” ownership here, but rather the transfer from one type of social system to another: in this case, exchanging colonial regulatory oversight for a more capitalist-oriented real estate market.⁹ While neither is necessarily preferable, the differences between these forms of governance bear examination, since they speak to shifting economic strategies of access to resources by both Indigenous and non-Indigenous interests.

Sites of Alliance

Although the FNPOA has precedents rooted far back in the agenda of colonial settlement, a new alliance of actors has consolidated support for fee simple estates on reserve. These alliances are critical to understanding the ways in which the FNPOA reorders land management along neoliberal lines. The FNPOA made its first public appearance in Tom Flanagan et al's (2010a) book *Beyond the Indian Act*. Flanagan is a well known right-wing pundit and was the national campaign manager to Canada's Conservative Prime Minister, Stephen Harper, whom Flanagan helped to gain power in the 2006 election. A professor of political science at the University of Calgary, he is also a former board member of the Canadian Defense and Foreign Affairs Institute, based at the University's Centre for Military and Strategic Studies, which is financed by some of the world's largest arms contractors (Morton 2013). He is a founding member and past president of the Civitas Society, a conservative, secretive libertarian group that meets annually to discuss ideas and requires introduction by an existing member to gain association.

Bringing together neo-conservative and neoliberal ideas, Civitas is part of a network of institutions developing market-political rationalities to produce what Wendy Brown (2006:693) calls "the contemporary landscape of political intelligibility and possibility". It is a landscape where ideal Indigenous citizens are constructed as enterprising, capitalizing subjects. In *Beyond the Indian Act* (co-authored with Christopher Alcantara and André Le Dressay, with a foreword by Manny Jules), Flanagan melds his neo-conservative politics together with his opposition to Indigenous peoples' special status as titleholders in Canada.¹⁰ According to Flanagan et al (2010a:29):

[t]he intended result [of the FNPOA] is to enable First Nations to use their land and natural resources effectively in the modern economy. As they benefit from capitalizing on their assets, so will other Canadians; for a market economy is a wealth-creating, positive-sum game in which all [sic] can benefit from the progress of others.

Capitalizing on assets is not envisioned (as Indigenous justice movements have demanded) as the honoring of treaties or in the realization of a land claims policy that grants them control over resources on their traditional territories. Rather, land assets are deemed most productively engaged through private property rights.

While we might dismiss the work of Flanagan and others in his camp as right-wing outliers, Dempsey, Gould, and Sunberg encourage us to see how the logic underlying Flanagan's arguments has become naturalized in Canadian law and policy (Dempsey et al 2011). The authors argue that neoliberal interventions into Indigenous politics are based around cultivating a particular citizen subjectivity that Flanagan embraces. For example, proper land management gets depicted as a set of practices that facilitate the acquisition of credit (Dempsey et al 2011:235). Those with access to credit comprise the ideal Canadian citizen because this subject is "self-sufficient, enterprising, and never demands special rights based on history/geography/culture" (2011:235). Universal and detached from colonial history, incidents of dispossession stemming from similar universal claims of Euro-American land entitlement systems in the "new world" are conveniently ignored. These universal claims are racially charged as Western culture is portrayed as an inevitable trajectory, not in the sense of a future perfect Indigenous population, but by revising

history to conflate prosperous intra-national trade, enterprise, and personal property in Indigenous societies with the social relations of capitalist society today. As Dempsey et al (2011:241) write, private property rights reiterate whiteness as the norm, constraining indigenous forms of life and sovereignty. These constraints are produced not only in the discursive realm of neoliberal citizenship, but in the ways in which proponents seek to actively *produce* these social relations of property.

In Canada, publication of *Beyond the Indian Act* aimed to popularize and normalize reserve privatization through the production of a particular kind of knowledge on economics to justify the initiative. This knowledge production was a lynchpin in the work the FNPOA alliance did to promote the bill: it created its own site for survival (Mitchell 2008:1119). In a similar vein, referring to a property-titling project in Peru promoted by Hernando de Soto, Mitchell (2008:1119) theorizes that, “Every economic project involves multiple arrangements of the simulated and that to which it refers”. As such, *Beyond the Indian Act* was followed by an explosion of articles in the mainstream press trumpeting headlines that made the prospect of both reserve privatization and Indigenous ownership seem novel: “Can property rights heal native reserves?” “Let’s give the First Nations homes of their own.” “Aboriginals ready to own their own land.” And, “Enough Soviet-style native property rules”.¹¹ The economic narrative that emerged was premised on a number of assumptions and claims. These included the denial of prior systems of land holding in Indigenous communities (eg Aboriginals “ready to own their own land” indicates they have not yet properly possessed lands); the designation of state authority as the proper domain to distribute property rights (eg “let’s give” Indigenous peoples their own homes conveys a spirit of generosity, eliding the colonial dispossession of land in Canada); promoting private property as the cure to poverty on reserves (eg “healing” Aboriginal poverty this way); and finally, rendering the issue of collective rights in a Cold War dichotomy of capitalism versus communism (eg characterizing the Indian Act regulations as Soviet-style rules). These premises compose a picture of Indigenous life in Canada that misaligns Indigenous poverty with a range of colonial tropes. It also reframes settler colonialism within an East–West geopolitical framework, with capitalism doubling as the victorious end of both the Cold War and colonial state history. These national imaginaries were dreamed up in part by Flanagan, but also by sympathetic newspaper editorials and thinkers affiliated with other right-wing think tanks.

This active production of knowledge concerning reserve privatization was not simply a media campaign: it represented a powerful alliance with vested economic and ideological interests in the legislation. In Canada, the current alliance of interests promoting reserve land privatization forms a national policy community that includes right-wing think tanks, bureaucrats at the Department of Indian Affairs, elected officials, the Prime Minister’s Office, pundits like Flanagan, and First Nation individuals and institutions. The advocacy coalition formed by this community was showcased at the Vancouver conference on the FNPOA, which was sponsored by the Donner Canadian Foundation, the Department of Indian and Northern Affairs Canada (since renamed Aboriginal Affairs and Northern Development Canada), and the federally funded First Nations Tax Commission.¹² The Donner Canadian Foundation provides seed money and funding for several Canadian right-wing

think tanks, including many programs of the Fraser Institute (where Flanagan is a senior fellow). The Fraser Institute leads the way in shaping the dialogue around Aboriginal policy and legislation, funding, for example, Gordon Gibson's (2009) influential report called "A New Look at Canadian Indian Policy: Respect the Collective—Promote the Individual". This report is widely cited, but its influence can also be found in its implementation. Gibson is an advisor to the Gitksan Hereditary Chiefs in their treaty negotiations with the federal and British governments. He promotes what he calls the "Gitksan Alternative" that recommends the termination of the community's standing as an Indian band in Canada and thus permits the Gitksan to Figures like Flanagan and Gibson interact with First Nations on the ground and in the legislative arena, but they also mix deeply into government and private sector spheres. I have noted Flanagan's involvement with Canada's federal leadership and privately funded academic departments and think tanks. Gibson was Assistant to the federal Minister of Indian Affairs from 1963 to 1968 and has been in out and of federal and BC provincial politics ever since, most commonly as a candidate for the Liberal Party of Canada. Close partnerships between individuals in think tanks, elected officials in various political parties, and industry strengthen the alliance formed around neoliberal agendas like reserve privatization. Architects of the FNPOA bill thus create what Callon et al call "economics in the wild"—an opportunity to deploy economic theories into the public realm to verify untested ideas and assumptions (2002:196, quoted in Mitchell 2005:298). A certain level of cooperation and compliance is necessary between parties to ensure a stable experiment. The current political party in power in Canada has provided such a stage.

Since the Conservative Party of Canada took power in 2006, their platform has boasted the Party's intentions to support "the development of a property regime that would encourage lending for private housing and businesses" to "promote economic opportunity and individual freedom".¹³ To implement this conjoined agenda of private property and individualism, a cooperative stance has been ensured between state and capital, though the motivations and operations of actors may differ significantly. From industry's perspective, reserve privatization may ensure access to land and resources. As the right-wing *National Post* newspaper put it, when a community is blocking a pipeline and property owners directly along the route can be bought out: problem solved (Kheiriddin 2012). But governments must facilitate the terms of access and rights to private capital of public resources, adapting the regulation of property rights to these ends (Clark-Jones 1987:8). Their fates linked, revenues from resources are collected by governments indirectly, from industry; therefore private sector accumulation must be facilitated in order to collect monies from licenses and royalties. Conflict over ownership of "public" resources poses real economic challenges to a state determined to sell these user rights, as well as to industries banking on this mediation. One solution to this legitimacy crisis, as we will see, hangs on the mantle of a circumscribed recognition of collective land rights. For governments, undermining distinct Indigenous rights also serves to weaken state obligations to these communities, reducing pressure on the public purse. Another popular neoliberal solution to resolve the global "Indian problem" of competing ownership claims has been the promotion of free market policies to bring Indigenous lands into the circulation of capital markets.

On this latter point, to wit, at the Vancouver conference focused on the FNPOA, Jules invited a man to the podium whom he called “the world’s greatest living economist” to speak in favor of the bill: Hernando de Soto. Mentored by Chicago School founder Frederick Hayek and his close collaborator Antony Fisher, De Soto is the man behind the Institute for Liberty and Democracy (ILD) who made a name for himself arguing that global inequalities can be attributed to a lack of formal property rights in the developing world (see De Soto 2000). De Soto’s visit to Canada was likely his first foray into promoting the ILD strategy for adoption in an advanced capitalist nation, though unlike in the global South, he was not commissioned by the state to pilot any programs. He was invited by parties in the alliance for reserve privatization to speak as a high authority of neoliberal ideology. Admitting he knew almost nothing about Indian reserves in Canada, it was a moment of profound irony when De Soto characterized the “standard terms of property” as *pure fact*, stating that the stability of fee simple property rights made them the foundation of the free market system the world over. De Soto uttered these words while standing atop a dense terrain of disputed provincial territory, with the vast majority of Indigenous lands in BC unceded by Indigenous nations. These lands are disputed *despite* a modern provincial Torrens system—a system of land title registered through the state to guarantee indefeasible title—that the FNPOA is pushing reserves to adopt.¹⁴ In other words, free market capitalism cannot resolve the primary “Indian problem” this settler colony has attempted to reconcile for almost two centuries: the unextinguished Indigenous laws and political orders that form the proprietary aspect of Indigenous sovereignty on these lands. To overcome this obstacle, cooperation by First Nations has been essential for the state and industry to attain.

Proponents have mostly achieved First Nations support for the reserve land initiative through one organization—the First Nations Tax Commission (FNTC)—therefore designating the initiative as “First Nations-led”, despite the wide array of parties aligned towards its realization. The FNTC has been advocating the act for years at the House of Commons Standing Committee on Finance to secure endorsement.¹⁵ As a federally funded institution, the Minister of Indian Affairs appointed Jules to his position as Chair and the FNTC works cooperatively with the Department. For example, the FNTC and Indian and Northern Affairs Canada reached out together in consultation to gauge the support of 33 First Nations singled out as the “most successful” First Nations communities.¹⁶ A selective outreach, those not invited to the consultation table included outspoken critic Harley Chingee, who stated on behalf of BC First Nations signatories to the First Nations Land Management Act Agreement (FNLMA), that investment is booming under the FNLMA without fee simple property.¹⁷ Major opposition followed the Vancouver conference precisely because not a single opportunity had been presented to participants to voice their opinions or ask questions, especially considering how much contention arose regarding materials and information presented.¹⁸

It should come as no surprise that there is division amongst Indigenous peoples regarding these critical matters. Heralding this reality is the complicated response American Indians had to attempts made in the Indian Reorganization Act, 1934, to reverse the disaggregating effects of allotment invoked by the Dawes Act. Many

who got lands through allotment did not want to give them up for the collective economic empowerment of the wider tribe (Deloria and Lytle 1984). They had developed understandable attachments to their personal plots, securing an independent economic base for themselves and for their future generations. In Canada today, wealthier bands like Osoyoos and West Bank welcome the legislation, but they are also better positioned geographically to benefit from commercial investment, located in peri-urban and desirable real estate markets. As Williams writes, property has been a central organizing principle in Indigenous societies since long before white contact (Miller 2013).¹⁹ He points out that an eagerness to participate as equal players in the market economy is not an aberration of Indigenous culture, but a vital sign of the health of Indigenous cultures to adapt to external orders.

The question that remains, however, concerns the nature of this new property system and whether it constrains or enables the broader economic self-determination of Indigenous peoples, as promised. The participation of First Nations in the neoliberal alliance I have been describing reflects the ways in which state–Indigenous–private interests converge in dynamic, local processes that persist in the context of ongoing and shifting entanglements with colonial formations. To reiterate Altamirano-Jimenez’s point, neoliberalism works through the cultural recognition of Indigenous difference. The key persuasive argument for Indigenous peoples to adopt the FNPOA has been the specific claim that the initiative will recognize Indigenous collective title as the formative step prior to implementing individual property rights. Resistance to these claims plays a crucial role in shaping the “economics in the wild” of FNPOA legislation.

Title and Sovereignty

Coulthard identifies a politics of recognition that has sought to reconcile Indigenous claims of nationhood to the aspirations of the state through the accommodation of Indigenous identity to Crown sovereignty (Coulthard 2007:438). Though varying in theory and practice, Coulthard writes of these efforts that, “most involve the delegation of land, capital and political power from the state to Indigenous communities through land claims, economic development initiatives, and self-government processes” (2007:438). Though he does not name neoliberalism as a motivating force, he marks the emergence of this discourse over a period of the past 30 years, where the rise of the politics of recognition coincides with profound reactions to Keynesianism by a range of neoliberal think tanks, institutions, and eventually, elected governments of powerful countries in the 1980s, such as the UK’s Prime Minister Thatcher and US President Reagan (McCarthy and Prudham 2004). These leaders sought to intensify public faith in the “self-regulating market”. On the ground, as many scholars have noted, these processes of neoliberalism have been messy and incomplete (Larner 2000). Local articulations of neoliberal governance often produce awkward discrepancies between the ideal of the enterprising individual citizen and the stark defense by social movements over collective or commonly held resources. As Altamirano-Jimenez found, these discrepancies are often resolved through specific, place-based entanglements between Indigenous peoples and colonial formations, producing “indigeneity” as such.²⁰

The FPOA produces a kind of indigeneity in the way it emphasizes the recognition of Indigenous collective land rights, referred to as “permanent community-held land” and “underlying title” in the promotional literature.²¹ The proposal is that fee simple estates will constitute “underlying title” to the land, which will be held by the First Nation with the option of granting fee simple rights of ownership to individuals in the band.²² I want to unpack a number of questions that arise out of this formulation: first, can a First Nations in fact hold underlying title to their land under Canadian property law? Second, how will the transfer of property relations from Crown title to First Nations’-held fee simple title impact Aboriginal and inherent Indigenous title? Currently, under section 2 of the Indian Act, reserve land is vested in Her Majesty for the use and benefit of a band. As Jules writes, “We don’t own our land. Our land is held in trust by another government.”²³ But can First Nations regain their self-determination through this proposed new form of ownership?

To answer these queries, we must begin by sorting through the history of colonial property rights in Canada and its antecedents in the British common law. The common law was patriated to Canada through the regulatory concept of the doctrine of reception, which expressed the principle that where British subjects traveled, they carried their common law as birthright, thus maintaining the personal jurisdiction of the Crown in the colonies (Henderson et al 2000:74). So what did colonists carry over in British land law regarding underlying title to the land? The doctrine of tenure that claims that *Crown title* underlies all land has been evolving since the eleventh century. As Henderson et al (2000:70) explain:

In English common law, the doctrine of tenure of the Crown is the given context for every subdivision of rights. It cannot be historically justified, but exists as a fiction of the common law. Its purpose is to ensure that all estates, possessions, or interests are registered, and the resulting titles are viewed as the evidence of legitimate entitlement to use the land.

British law established that only the Crown could properly “own” land, in effect securing the ultimate interest of the Crown over all land, despite evidence and historical activity to the contrary. Today in Canada, as we can see in the doctrine of estates, individuals can only *hold* an estate in land. Fee simple is just one kind of freehold estate and it is the closest kind to absolute property, but it still does not constitute underlying title to the land.

Fee simple is also not nearly as strong and definitive as Aboriginal title, especially where the courts refer to this title as based in inherent Indigenous law. In the literature outlining the technical aspects of the bill, the FNTPC never actually use the term “Aboriginal title” to describe the underlying title that will be held by the First Nation under the FNPOA. This in itself raises some cause for concern. The courts have interpreted Aboriginal title variably as a *sui generis* description of inherent Indigenous interests in the land, as a distinct right emerging from intact Indigenous legal orders, and as a common law principle adopted by Canadian courts within the framework of state sovereignty and jurisdiction (McNeil 2006).²⁴ There is no one Indigenous perspective on the meaning of Aboriginal title, but if we look at the cases Indigenous peoples have brought to court that have been interpreted as Aboriginal title, we see dozens of iterations of Indigenous forms of belonging to

the land. For example, in preparation for the trial of *Delgamuukw v. British Columbia*,²⁵ anthropologists Daly and Mills respectively produced rich and detailed ethnographic records of Gitskan and Witsuwit'en land tenure systems.²⁶ While the Gitskan and Witsuwit'en originally went to court to explicitly assert *ownership* and *jurisdiction* over their lands, the case was soon narrowed in the higher courts to be a matter of Aboriginal title and rights (Culhane 1998). The Supreme Court of Canada in *Delgamuukw* recognized Aboriginal title as the collective proprietary interests of Indigenous peoples in their ancestral territories. Thus, Canadian judicial interpretations of Aboriginal title have the potential to provide significant protection of Indigenous lands interests within the Canadian political system. For example, the powerful *Tsilhqot'in Nation v. British Columbia* case recently heard at the Supreme Court of Canada could undermine provincial forestry regulation if the Supreme Court judges these to be in violation of Aboriginal title.²⁷

Aboriginal title underlies many reserve lands across Canada. In *Delgamuukw*, the Chief Justice paraphrases from *Guerin* to argue that the interest in reserve land is the same as unrecognized Aboriginal title in traditional tribal lands.²⁸ Though the Chief Justice is describing reserves on unceded lands, the status of reserve lands elsewhere in the country could be considered Aboriginal title lands as well. Legally, whether or not Aboriginal title underlies reserve lands depends on how reserves were created. For example, the Robinson–Huron Treaty in Ontario exempted reserved lands from the surrender clause.²⁹ Even where lands are not considered Aboriginal title by the courts, many scholars and Indigenous thinkers argue that the cession of lands at treaty negotiations were skewed English interpretations of equitable agreements between nations.³⁰

However, neither the court's interpretation of Aboriginal title nor independent Indigenous understandings of tenure seem compatible with the privatization of reserve lands. Proponents like Jules promise that despite privatization, underlying Aboriginal title remains with the band.³¹ Yet, a key uncertainty here is how the lands can remain both under First Nations' inherent jurisdiction as well constitute fee simple holdings. The courts have argued that Indian lands cannot be governed under both at once. In the case of *Musqueam Indian Band v. Glass*,³² the trial court noted that reserve land could only be transformed into fee simple property by surrender to the Crown. Appealed at the Supreme Court, Chief Justice McLachlin, a dissenting vote in the case, determined: "Once reserve land is surrendered to the Crown, it loses all the characteristics of reserve land. Thus there can be no such thing as fee simple title to reserve land."³³

In the trial court, *Glass* also found that "the value of the land was reduced because of its aboriginal status".³⁴ The judge found that the lands were worth less because of "issues of taxation, servicing, and the uncertainty of the aboriginal interest".³⁵ The Federal Court of Appeal overturned the decision, but in 2000, the Supreme Court of Canada handed down a split decision, maintaining that "because of its *sui generis* character, 'Indian land' was significantly less valuable than other privately held forms of property and discounted leasehold rents owed to the Band by 50 percent" (Hamilton 2006:88–89). The case involved leaseholds to non-Indigenous property holders leasing Musqueam land, and not private property rights, but as the trial judge concluded, there was no material difference between the value of a

long-term lease and a fee simple estate. Either way, by the court's logic, the only way the Musqueam band could get fair value for lands was to cede and surrender their underlying, inherent title to the land. Pursuing a solution to the "defective" nature of Aboriginal title by transforming lands into fee simple paradoxically removes land from the band's jurisdiction, and therefore from its economic stream.

The transfer of Indian lands to fee simple estates also raises questions as to the constitutional obligations of the federal Crown—called fiduciary obligations—that could be compromised by the transfer of jurisdiction from federal legislation under the Indian Act to fee simple property. When "Indians and lands reserved for Indians" are under federal jurisdiction according to section 91(24) of the Constitution Act, 1867, they accrue some measure of protection by virtue of the fiduciary duties of the federal Crown.³⁶ Under provincial jurisdiction, former reserves take on a novel municipal form, yet to be totally defined. The Torrens system—the proposed provincial registry system that would be implemented on reserves under the FNPOA—is a provincial land registry code, governed under Section 92(13) of the Constitution Act, 1867, therefore this transfer of jurisdiction would also mean a significant change in the governance regime and in the management of Indian lands. The off-loading of federal obligations towards Indigenous peoples in Canada to the provinces is also widely perceived by Indigenous peoples as a derogation in treaty agreements, made between federal authorities and Indigenous nations.

Arthur Manuel, Chair of the Indigenous Network on Economies and Trade, warns that, "Indigenous Peoples need to realize if we unconditionally accept Fee Simple as full title in our Indian Reserves it will undermine our Aboriginal Title."³⁷ He reasons that by accepting fee simple on reserves, Indigenous peoples are in effect submitting to Canada's authority to govern Indigenous lands, since Canadian property law governs fee simple property rights. Manuel argues that the federal and provincial governments in Canada should be pressed to acknowledge what its own courts are now saying about Indigenous interests in the land, rather than forcing a new form of extinguishment through initiatives like reserve privatization.

Poverty, Capitalism and Geography

The single most common refrain justifying the FNPOA is poverty alleviation through land modernization. But imagine a small town in Canada—Windsor, Ontario or New Glasgow, Nova Scotia—hit hard by long-term economic recession: does the ownership of private property in these towns in any way infuse development opportunity into these communities?

Here we must ask, as Christophers does, "Where does property 'fit' into the dynamics of value creation under contemporary capitalism?" (Christophers 2010:94). On Indigenous lands, the answer will be based on which reserves can actually develop real estate markets in their remote and largely rural locations across the country. When land is rendered into a pure financial asset through monetization, the wider backdrop of productive capitalism must be assessed to determine from where the value of this capital will accrue. The benefits of property depend less on the "trapped" commodity value of land (what de Soto calls "dead capital") and more on who has the financial power to capitalize on such value. That is because the value

of property in a capitalist society does not lie hidden inside, as David Harvey (1982) reminds us, because the value of property *always comes from elsewhere*. This is its greatest contradiction. If the land itself cannot “produce value”, how would, say, residential rents be paid, even if mortgages could be secured? The labor market for Indigenous peoples is poor, with only 51.9% of all First Nations peoples living on-reserve in 2006 employed, compared with 66.3% of the off-reserve First Nations population.³⁸ Krueckeberg (2004:3) points out the sobering outcome of such a contradiction (quoted in Christophers 2010:104):

When a poor resident receives legal title to land but cannot find work to secure the income to support that property, one of three results tend to follow: (1) No taxes and fees are paid, leaving the “owner” with an encumbered title; (2) [municipal] services are discontinued, which is tantamount to eviction; or (3) the title is sold, and the “owner” is no longer an owner.

Despite this highly contingent context of wealth creation, a stark pretense of universality is omnipresent when proponents discuss the “solution” fee simple offers to Aboriginal poverty. This universality was on display in the fall of 2011 when a national emergency was declared in the northern Cree community of Attawapiskat to address inadequate, insufficient, and dangerously molding housing stock on the reserve. Quick to jump into the fray, a number of FNPOA boosters, including Flanagan, began making gestures towards their initiative as the solution to the severe and devastating crisis.³⁹ Flanagan acolyte and right-wing Frontier Institute pundit Joseph Quesnel was interviewed by the Canadian Broadcasting Corporation on the ongoing nature of “crisis” in Aboriginal communities and possible permanent solutions (CBC 2011). Quesnel asserted that First Nations must raise sole-source revenues and that one way to do this was by developing a real estate market on reserves.

Offering a counter-view on the program, Pamela Palmater, a Mi’kmaq lawyer and scholar, responded to Quesnel with incredulity:

The thing about fee simple, if tomorrow you gave all of those individuals in Attawapiskat individual title for the little pieces of land they own and all of their moldy houses, do you think any one of them, a bank would come knocking on their door and say, would you like a mortgage? (CBC 2011).

The thing about real estate is *location, location, location*. Given the bands supporting the initiative, fee simple lands will likely be concentrated near urban centers or other lucrative real estate markets, potentially forcing a gradual displacement and dispossession of Indigenous lands.

The context of Indigenous treaty lands and resources—the real source of Indigenous economic rights according to Indigenous leaders—as opposed to economic development concentrated on small pockets of reserve lands has furthermore been left completely out of the picture. So has the nature of Indian Act regulations that can cause significant barriers to investment on reserve. Rather than simply attributing these restrictions to lack of fee simple property, studies have found that project approvals can take considerably longer on reserves than off reserve due to structural issues, for example administrative incapacities, lack of necessary physical infrastructure, poor connections between First Nations and business communities,

and insufficient information on the part of First Nations on ways to access capital.⁴⁰ These structural barriers speak to the need for a much more nuanced and complex set of solutions to Indigenous economic issues, managed under Indigenous direction, with an eye towards the macro-economies of traditional land bases rather than simply focused on smaller spatial configurations of the reserve.

Conclusion

The political stakes of this privatization bill are tremendous. They cannot be reduced to general critiques of the uneven distribution of property under capitalist economies. The implications of the reserve privatization bill will invoke consequences specific to the settler colonial context of neoliberalism in Canada. Whereas titling schemes applied around the world have generally sought to convert informal housing settlements into private property allotments, the issue of ownership has not tended to collide with inhabitants' claims of sovereignty against the state. In the context of Indigenous peoples residing on reserves in Canada, these very questions of jurisdiction and authority over land radically change the landscape of privatization and fee simple propertization of land into one of contemporary neocolonial aspirations. As Altamirano-Jimenez (2013:19) cogently writes, "political possibilities are constrained by fixed structural domination". Though legislation on the FNPOA has yet to come before the Senate, the Conservative Government of Canada has reiterated their support for the bill, most recently in a 2012 Economic Action Plan. When the bill is introduced, opposition from Indigenous communities across Canada will be swift and it will be decisive. The strength of Indigenous laws of land has always been evident in the vigilance of their resistance against such proposals, over and over again.

Endnotes

¹ A note on terminology: I use the terms Indigenous, First Nations, Aboriginal, and Indian throughout the paper to refer to the first peoples of this land. "Indigenous" is commonly the preferred term of an international movement of first peoples subject to colonial theft of their lands. However, colonial designations are sometimes referenced within the context of their application. Each of these terms has specific legal meanings. Indian was the first term applied to all Indigenous peoples of the Americas. The term Aboriginal refers to Indians, Métis, and Inuit peoples. The term First Nation refers specifically to a band of people whom were formerly called the Indians.

² In *R. v. Sparrow* [1990] 1 S.C.R. 1075, the Supreme Court of Canada recognized an existing Aboriginal right of the Musqueam Coast Salish people to fish for food and ceremony. In *R. v. Marshall* [1999] 3 S.C.R. 456, Justice Binnie recognized "a treaty right to continue to obtain necessaries through hunting and fishing by trading the products of those traditional activities" for the Mi'kmaq people, at para 56 of his judgment. Both cases have set critical precedents for interpretations of Section 35 constitutional provisions for Aboriginal and treaty rights.

³ Here is a small sampling of Indigenous peoples' statements rejecting the proposal for reserve privatization: Stó:lō Nation, Letter Addressed to Manny Jules (cc'd to All Conference Delegates), "Re: Serious Issues with First Nations Property Ownership Conference—request for apology and retraction", 1 November 2010; Grand Chief Ed John et al (First Nations Summit) to John Duncan (Minister of Indian Affairs), "Re: First Nations Rejection of a Proposed First Nation Property Ownership Act", 20 October 2010; and a resolution representing all elected chiefs was passed in 2010 at the Assembly of First Nations meeting,

rejecting the FNPOA. The resolution called for “a strategic lobby to oppose federal legislation for a First Nation Property Ownership Act”.

⁴ For a good overview, see Johnson et al (2007).

⁵ For example, Manny Jules was responsible for amendment C-115 that created the category of “designated lands” on reserves for the purpose of long-term leaseholds and powers to levy taxes on these lands.

⁶ For an overview of these policies, see Milloy (1991) and Miller (2000). The only enduring legacies of these propertization attempts are the survey policies that resulted in reserve lands allotted to individuals in the form of “location tickets” or “certificates of possession”. But even these allotments were applied unevenly, skipping entire reserves altogether and generally failing to disaggregate settlement in any meaningful way.

⁷ Statement of the Government of Canada on Indian policy (The White Paper, 1969), Presented to the First Session of the Twenty-eighth Parliament by the Honorable Jean Chrétien, Minister of Indian Affairs and Northern Development.

⁸ The official name of the bill is the *General Allotment Act*, 1887, often called the “Dawes Act” after lead proponent Senator Henry Dawes. The first figure—100 million acres—is quoted in Deloria and Lytle (1983); Collier, p. 16—Memorandum Hearings on H.R. 7902 before the House Committee on Indian Affairs, 73rd Congress, 2nd Session, pp. 16–18, 1934. The second figure—60% of the land base—is quoted in Carlson (1981).

⁹ The basic concept of the FNPOA is an opt-out mechanism from the reserve land system under the Indian Act, 1876. The new act creates a mechanism for an opt-in system for fee simple lands to replace the old land system, the Reserve Land Register and the Surrendered and Designated Lands Register.

¹⁰ Flanagan is also the infamous author of the much-maligned book *First Nations? Second Thoughts* (Flanagan 2008), which argues against the recommendations made by the Royal Commission on Aboriginal People, 1995, for an Indigenous third order of government.

¹¹ See, respectively, Ivison (2010), Flanagan et al (2010b), Quesnel (2010), and *National Post* (2010).

¹² Ernst (1992) describes the formation of “policy communities” that work most effectively in “advocacy coalitions”.

¹³ Conservative Party of Canada, *Policy Declaration*, Adopted at the National Policy Convention, Montreal, 19 March 2005. Their policy book states further that “[a] Conservative government, in conjunction with First Nations, would create a First Nations Land Ownership Act, which would transfer Reserve land title from the Federal Crown to willing First Nations” (Conservative Party of Canada, *Policy Declaration*, 19 March 2005). This agenda item was reiterated in the Party’s 2012 Economic Action Plan.

¹⁴ See *Land Title Act* [RSBC 1996] Chapter 250, Part 20—Government Assurance Fund.

¹⁵ On 15 September 2009, Jules made a presentation to the House of Commons Standing Committee on Finance during the Pre-Budget Hearings in Ottawa. Insiders say that the legislation is currently being drafted and will appear in 2014.

¹⁶ The letter and consultation form were leaked by the First Nations Strategic Bulletin in 2010.

¹⁷ Harley Chingee to First Nations Across Canada, “Re: Reject Fee Simple”, Open Letter, 16 July 2010.

¹⁸ See, for example, opposition voiced by the Stó:lō Nation to proponents’ claims presented at the Vancouver conference. Key among these, the Stó:lō chiefs deny the assertion that First Nation members cannot mortgage their property under the current system. They write, “Under the Land Code process we have passed laws that allow members to secure their own mortgages on their own lands with no requirement for guarantees from the First Nation or Minister. In the past few years members and developers have secured millions of dollars in mortgages on our lands” (Stó:lō Nation, Letter Addressed to Manny Jules [cc’d to All Conference Delegates], “Re: Serious Issues with First Nations Property Ownership Conference—request for apology and retraction”, Letter, 1 November 2010).

¹⁹ Here I must also note the trouble with positing “property” as an ideal type that means the same thing in Indigenous conceptions as in Western liberal culture. Property as a social relation is a much more apt definition, though it is not clear that Williams uses it this way.

- ²⁰ Altamirano-Jimenez (2013:16) defines indigeneity as “a product of the articulatory practices of Indigenous peoples and global discourse”.
- ²¹ FNTPC, “The First Nations Property Ownership Initiative, A Discussion Paper: Who Should Own Reserve Lands?” October 2010.
- ²² Manny Jules, “First Nation Property Ownership Initiative: A First-Nations led legislative proposal,” Kamloops BC, March 2010.
- ²³ Jules, “First Nation Property Ownership Initiative”, 1.
- ²⁴ See also: *Hupacasath First Nation v. British Columbia (Minister of Forests) et al* [2006] 1 CNLR 22, where the Crown’s position on the incompatibility between Aboriginal title and fee simple was called into question.
- ²⁵ *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010 (hereafter, *Delgamuukw*).
- ²⁶ Respectively, Mills (1994) and Daly (2005).
- ²⁷ *Tsilhqot’in Nation v. British Columbia*, 2007 BCSC 1700 (hereafter “*Tsilhqot’in*”).
- ²⁸ *Guerin*, at para 120.
- ²⁹ Aboriginal Affairs and Northern Development Canada, Treaty Texts—Ojibewa Indians of Lake Superior, “Copy of the Robinson Treaty Made in the Year 1850 with the Ojibewa Indians of Lake Superior Conveying Certain Lands to the Crown”, accessed online 4 September 2013: <http://www.aadnc-aandc.gc.ca/eng/1100100028978/1100100028982>
- ³⁰ See, for example, Venne (1998).
- ³¹ Manny Jules to the author, interview, Vancouver, October 2010.
- ³² *Musqueam Indian Band v. Glass* [2000] 2 S.C.R. (hereafter “*Glass*”).
- ³³ *Glass* at para 9, quoted in Hamilton (2006:102).
- ³⁴ *Musqueam Indian Band v. Glass* [1997] CanLII 5557 (FC). Accessed online 10 September: <http://canlii.ca/t/4f05>.
- ³⁵ *Musqueam Indian Band v. Glass* [1997] CanLII 5557 (FC). Accessed online 10 September: <http://canlii.ca/t/4f05>.
- ³⁶ See *Guerin v. The Queen* [1984] 2 SCR 335 (hereafter “*Guerin*”), where the Supreme Court of Canada confirmed that the federal government has a special duty to act in the best interests of Indigenous peoples.
- ³⁷ Manuel, “DIA letter on reserve land and First Nation development,” 23 August 2010.
- ³⁸ Statistics Canada, *Canada’s Changing Labour Force, 2006 Census: The Provinces and Territories*, online: 2006 Census Analysis Series, <http://www12.statcan.ca/english/census06/analysis/labour/ov-cclf-25.cfm>.
- ³⁹ See Flanagan (2011) and Curry (2011).
- ⁴⁰ Fiscal Realities Economists, “Expanding Commercial Activity on First Nation Lands: Lowering the Costs of Doing Business on Reserve,” Report, November 1999.

References

- Altamirano-Jimenez I (2013) *Indigenous Encounters with Neoliberalism: Place, Women, and the Environment in Canada and Mexico*. Vancouver: University of British Columbia Press
- Brown W (2006) American nightmare: Neoliberalism, neoconservatism, and de-democratization. *Political Theory* 34(6):690–714
- Callon M, Méadel C and Rabeharisoa V (2002) The economy of qualities. *Economy and Society* 31(2):194–217
- Carlson L (1981) *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming*. London: Greenwood
- CBC (2011) Aboriginal housing crises: Interview with Pamela Palmater and Joseph Quesnel. *The Current* 5 December. <http://www.cbc.ca/thecurrent/episode/2011/12/05/aboriginal-housing-crisis/> (last accessed 19 February 2014)
- Christophers B (2010) On voodoo economics: Theorising relations of property value and contemporary capitalism. *Transactions of the Institute of British Geographers* 35(1):94–108
- Clark-Jones M (1987) *A Staple State: Canadian Industrial Resources in the Cold War*. Toronto: University of Toronto Press
- Coulthard G (2007) Subject of empire: Indigenous peoples and the “politics of recognition” in Canada. *Contemporary Political Theory* 6:437–460

- Culhane D (1998) *The Pleasure of the Crown: Anthropology, Law, and First Nations*. Vancouver: Talon
- Curry B (2011) Ottawa proposes First Nations property ownership. *Globe and Mail* 14 December
- Daly R (2005) *Our Box Was Full: An Ethnography For the Delgamuukw Plaintiffs*. Vancouver: University of British Columbia Press
- De Soto H (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books
- Deloria V and Lytle C (1983) *American Indians, American Justice*. Austin: University of Texas Press
- Deloria V and Lytle C (1984) *The Nations Within: The Past and Future of American Indian Sovereignty*. New York: Pantheon
- Dempsey J, Gould K and Sunberg J (2011) Changing land tenure, defining subjects: Neo-liberalism and property regimes on native reserves. In A Baldwin, L Cameron and A Kobayashi (eds) *Rethinking the Great White North: Race, Nature, and the Historical Geographies of Whiteness in Canada* (pp 233–255). Vancouver: University of British Columbia Press
- Ernst A (1992) From “liberal continentalism” to “neoconservatism”: North American free trade and the politics of the C.D. Howe Institute. *Studies in Political Economy* 39:109–140
- Flanagan T (2008) *First Nations? Second Thoughts*. Montreal: McGill-Queen’s University Press
- Flanagan T (2011) How first nations can own their future. *Globe and Mail* 16 December
- Flanagan T, Alacantara C and Le Dressay A (2010a) *Beyond the Indian Act: Restoring Aboriginal Property Rights*. Montreal: McGill-Queen’s University Press
- Flanagan T, Alcantara C and Le Dressay A (2010b) Let’s give the First Nations homes of their own. *National Post Comment Blog* 27 March
- Gibson G (2009) *A New Look at Canadian Indian Policy: Respect the Collective—Promote the Individual*. Vancouver: Fraser Institute
- Hamilton J A (2006) Resettling Musqueam Park: Property, landscape, and “Indian land” in British Columbia. *PoLAR* 29(1):88–109
- Harris C (2003) *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*. Vancouver: University of British Columbia Press
- Harris C (2004) How did colonialism dispossess? Comments from an edge of empire. *Annals of the Association of American Geographers* 94(1):165–182
- Harris D (2010) Book review: *The Law of the Land: The Advent of the Torrens System in Canada* by Greg Taylor. *UBC Law Review* 43(1):259–267
- Harvey D (1982) *The Limits to Capital*. Oxford: Basil Blackwell
- Henderson S Y, Benson M and Findlay I (2000) *Aboriginal Tenure in the Constitution of Canada*. Scarborough: Carswell
- Iverson J (2010) Can property rights heal native reserves? Tom Flanagan makes the case in new book. *National Post* 24 March
- Johnson J, Cant G, Howitt R and Peters E (2007) Creating anti-colonial geographies: Embracing indigenous peoples’ knowledges and rights. *Geographical Research* 45(2):117–120
- Johnson J and Murton B (2007) Re/placing native science: Indigenous voices in contemporary constructions of nature. *Geographical Research* 45(2):121–129
- Kheiriddin T (2012) The time is ripe for First Nations land reform. *National Post* 9 August. <http://fullcomment.nationalpost.com/2012/08/09/tasha-kheiriddin-the-time-is-ripe-for-first-nations-land-reform/> (last accessed 19 February 2014)
- Krueckeberg D (2004) The lessons of John Locke or Hernando de Soto: What if your dreams come true? *Housing Policy Debate* 15(1):1–24
- Larner W (2000) Neo-liberalism: Policy, ideology, governmentality. *Studies in Political Economy* 63:5–26
- McCarthy J and Prudham S (2004) Neoliberal nature and the nature of neoliberalism. *Geoforum* 35:275–283
- McNeil K (2006) Aboriginal Title and the Supreme Court: What’s happening? *Saskatchewan Law Review* 69:281–308
- Miller J R (2000) *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*. Toronto: University of Toronto Press

- Miller R J (2013) *Reservation Capitalism: Economic Development in Indian Country*. London: University of Nebraska Press
- Milloy J S (1991) The early Indian Acts: Development strategies and constitutional change. In J R Miller (ed) *Sweet Promises: A Reader on Indian-White Relations in Canada* (pp 145–156). Toronto: University of Toronto Press
- Mills A C (1994) *Eagle Down Is Our Law: Witsuwit'en Law, Feasts, and Land Claims*. Vancouver: University of British Columbia Press
- Mitchell T (2005) The work of economics: How a discipline makes its world. *European Journal of Sociology* 46(2):297–320
- Mitchell T (2008) Rethinking economy. *Geoforum* 39:1116–1121
- Morton P (2013) Tom Flanagan's last stand. *Halifax Media Co-op* 4 April. <http://halifax.mediacoop.ca/blog/tony-seed/16991> (last accessed 10 September 2013)
- National Post* (2010) Enough Soviet-style native property rules. 3 September
- Otis D S (1973) *The Dawes Act and the Allotment of Indian Lands*. Norman: University of Oklahoma Press
- Quesnel J (2010) Aboriginals ready to own their own land. *Winnipeg Sun* 29 March
- Venne S H (1998) Understanding Treaty 6: An Indigenous perspective. In M Asch (ed) *Aboriginal and Treaty Rights in Canada* (pp 173–207). Vancouver: University of British Columbia Press