“A NEW FISCAL RELATIONSHIP:” A SETTLER BUREAUCRAT’S PERSPECTIVE ON FISCAL RELATIONS BETWEEN CANADA AND TREATY 6 FIRST NATIONS, THEIR HISTORY, PRESENT, AND FUTURE

by
Luke Javed Sommers

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University of Alberta

ABSTRACT

This thesis addresses the research question: What might truly "nation-to-nation" fiscal relationships look like between Canada and Alberta Treaty 6 First Nations if Treaty 6 were taken seriously? The thesis goes about exploring this question by reviewing the history of Treaty 6, based on the assumption that understanding Treaty 6 in its historical context is critical to understanding how it should be applied today. It is established that Treaty 6 created nation-to-nation relationships that were based on the desire for mutually-beneficial relations in a shared space, and that treaty included fiscal obligations for Canada. The history of Treaty 6 fiscal relations is briefly examined from 1876 to 2015, and the conclusion drawn that fiscal relationships did not live up to the expectations of Treaty 6 over this period. With Chapter 3, the perspective switches to the contemporary, looking at the rhetoric and action taken by the 2015 Trudeau government, and concludes that despite rhetorical ambition, substantive changes are limited and those that have been implemented appear to be continuing the pattern of Canada failing to take Treaty 6 seriously. The final half of the thesis offers recommendations for how Treaty 6 fiscal relationships could be changed such that they would be consistent with treaty-based, nation-to-nation fiscal relationships. Some of these recommendations are relatively pragmatic and would come at little political, fiscal, or constitutional cost to Canada, while others are more dramatic, and would involve a fundamental reshaping of Canada as we know it.

ACKNOWLEDGEMENTS

While usually this would be the space to acknowledge individuals by name, I must begin first by acknowledging the countless individuals I have had the chance to work and interact with in my time working for the federal government department now known as Indigenous Services Canada: the First Nations Elders, chiefs and councils, administration employees, and members; as well as the government coworkers who have collectively motivated, inspired, influenced, humbled, and supported me as I have thought about the hard questions having to do with relations between Canada and Indigenous peoples. There are too many to name specifically, but it is only out of this real-world context that this thesis could have been researched and written.

Within the academy, my fellow Faculty of Native Studies students have been tremendously impactful, and in particular I want to thank Johanne Johnson and Avery Letendre for their always fascinating and thought-provoking conversations (and editing assistance).

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Table of Contents

PROLOGUE

Inspired by Cree and Saulteaux academic Margaret Kovach, I want to begin my thesis with a prologue explaining my positionality. Kovach describes the role prologue can play in an Indigenous methodology[1] and, while I am not employing an Indigenous methodology in this thesis, I think positioning oneself is a valuable practice, particularly within the context of Indigenous Studies.[2] Many scholars have emphasized and demonstrated the situatedness of academic research and the importance of recognizing it, but Palawa sociologist Maggie Walter does so particularly well:

> How a researcher perceives the world in which his or her research topic is located is inevitably, but complexly, influenced by the filters and frames of life experiences and social, cultural, economic, and personal identity location . . . We are not just researchers, we are *socially located* researchers.[3]

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[1] Margaret Kovach, *Indigenous Methodologies: Characteristics, Conversations, and Contexts* (Toronto: University of Toronto Press, 2010), 3-4, 112.

[2] Currently my faculty's name is "Native Studies," but generally there seems to be a clear preference for the term "Indigenous Studies," so I will utilize the latter term throughout this thesis.

[3] Maggie Walter and Chris Andersen, *Indigenous Statistics: A Quantitative Research Methodology* (Walnut Creek, CA: Left Coast Press, 2013), 86.

Of course, even in my attempts to be upfront and honest about my own positionality, I will necessarily only be highlighting those aspects of my "life experiences and social, cultural, economic, and personal identity location" that I consciously consider important and relevant to my thesis. Needless to say, I am almost certainly ignoring some aspects, and perhaps even highlighting some that might be less relevant than I think. In any case, the following describes where I am coming from, and in particular why this project is important to me.

I am a white, male settler, born and raised in Canada. I grew up holding many, if not all, of the ignorant biases, negative assumptions, and racist stereotypes about Indigenous peoples that are so prevalent in Canadian settler society. Between 2003 and 2011, I completed two degrees in Religious Studies,[4] both of which focused heavily on the role of worldviews in Ancient Near Eastern society and extant texts, particularly Hebrew biblical literature. This study of worldview and differences in worldview is informing my work and thinking in Indigenous Studies in valuable and highly relevant ways.

Following my time studying religion, I became employed with the Government of Canada and began pursuing an accounting designation, which I ultimately received in 2015. In 2014 I began working for what-is-now-known as Indigenous Services Canada (ISC),[5] where I have been employed for five years. I have had the opportunity to work in at least nine different roles in my time with

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[4] Bachelor of Arts, Taylor University College (2007); Master of Arts, McGill University (2011).

[5] Since 2014, my department has been known as Aboriginal Affairs and Northern Development Canada (AANDC); Indigenous and Northern Affairs Canada (INAC); and, (for) now, Indigenous Services Canada (ISC). In this thesis I will consistently use the acronym ISC to refer (sometimes anachronistically) to the federal bureaucracy primarily responsible for First Nations relations throughout Canada's existence.

ISC, which has given me fairly broad exposure to the department's operations in Alberta. The bulk of my experience has been as a Field Services Officer, a role in which I work quite closely with Treaty 6 First Nations in Alberta on issues relating to funding agreements between Canada and First Nations. I visit the First Nations I work with regularly, and I am in communication with their leadership, administration staff, and membership on a daily basis. It is safe to say that I have strong professional relationships with these communities, but at this point genuine personal attachments as well.

Just prior to joining ISC, I can point to two specific, roughly simultaneous life events that began my thinking about colonialism in Canada in a new, more open-minded way. The first was inspired by the death of Nelson Mandela. I vividly remember watching TV coverage of his death while on the treadmill in a hotel gym in Grande Prairie, Alberta in December 2013. Right then, right there on the treadmill, I put his autobiography[6] on hold through the Edmonton Public Library app. His autobiography is large and the version I read was divided into two volumes, so I read it over several months. I remember my outrage at the injustice of South African apartheid and Mandela's own mistreatment, and at some point I realized how similar apartheid and South African settler colonialism was to Canadian colonialism. I came to grips with how easy it was to recognize this injustice halfway across the world, and ignore it right here in "my own" country.

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[6] Nelson Mandela, *Long Walk to Freedom: The Autobiography of Nelson Mandela* (New York: Little Brown, 1994).

The second event was the Truth and Reconciliation Commission's (TRC) final national event, held in Edmonton in March 2014. Up until then, the work of the TRC had motivated me to learn more about residential schools, and so my understanding of the "facts" was already fairly good going into the event. But, I was not prepared for what I experienced when I walked over to the Shaw Conference Centre on an extended coffee break. I wandered into the hall in which a survivor was sharing testimony, and within ten minutes left in tears, overcome emotionally and unable to take any more. The appalling facts I already knew about the history of residential schools—and generally the impact of colonialism on Indigenous peoples in Canada—quickly became contemporarily relevant to me.

Since 2014, it is not an exaggeration to say I have spent every day thinking about the injustice of Canadian colonialism—certainly historically, but also, of far more significance, *currently*. This thesis, then, is not just an interesting academic exercise to fulfill the requirements of a degree program, or a valuable professional achievement that could advance my career (although presumably it is both of those things): this is part of a project that has become what drives my life more than anything ever has. "Canada," as sold to me and millions of other Canadians, is a lie, and we continue to be lied to about whom we are;[7] the lies need to stop, and the reality needs to change.

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[7] "For Canadians, the story of Canada is one of discovery, lawful acquisition, and the establishment of peace, order, and good governance" (Kiera L. Ladner, "Take 35: Reconciling Constitutional Orders," in *First Nations, First Thoughts: The Impact of Indigenous Thought in Canada*, ed. Annis May Timpson [Vancouver: UBC Press, 2009], 279); compare to the Royal Commission on Aboriginal Peoples which uses the term "living lie" (*Report of the Royal Commission on Aboriginal Peoples*: *Volume 2* [Ottawa: Canada Communications Group – Publishing, 1996], 1).

INTRODUCTION

> No relationship[1] is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.[2]

As a public servant working with First Nations within the Government of Canada, I hear political rhetoric such as the above on a frequent basis. Since the waning days of the Truth and Reconciliation Commission (TRC), the rhetoric of "nation-to-nation relationship" has been utilized by Canadian political parties in speeches and talking points, including in the 2015 federal election platforms of at least three of Canada's major political parties.[3]

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[1] While the word "relationship" is nearly always singular when used by Canadian politicians within the context of the relationship(s) between Canada and First Nations, an important contention of this thesis is that in fact these need to be thought of as relationship*s*, and I will therefore never use the singular word to refer to more than one relationship between Canada and First Nations.

[2] Quoted from every cabinet minister mandate letter Prime Minister Justin Trudeau has written up to at least January 2019; see, e.g., Prime Minister of Canada Justin Trudeau, "Minister of Rural Economic Development Mandate Letter" (accessed June 2, 2019; https://pm.gc.ca/eng/minister-rural-economic-development-mandate-letter-january-29-2019).

[3] The Liberal Party of Canada ("We will renew the relationship between Canada and Indigenous Peoples. It is time for Canada to have a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition, rights, respect, co-operation, and partnership" ["A New Nation-to-Nation Process" (accessed March 31, 2016; www.liberal.ca/realchange/a-new-nation-to-nation-process)]); the New Democratic Party ("It is time for a new era that embraces a true Nation to Nation relationship built on respect and, above all, makes meaningful progress when it comes to

Despite its frequent use in ill-defined ways by politicians, the term "nation-to-nation relationship" is not merely a politically expedient "progressive" talking point. Its history as a term referring to ideal relationships between Canada and First Nations includes use in the report of the Royal Commission on Aboriginal Peoples (RCAP),[4] the TRC's final report[5] and "Calls to Action,"[6] and it is certainly an assumption inherent in the historical treaties,[7] and even the 1763 Royal Proclamation. Understanding how Canada and First Nations should relate has always been a pertinent topic, but defining the meaning of "nation-to-nation" relationships has taken on a renewed relevance in the contemporary political climate in which Canada's prime minister describes the relationship with Indigenous peoples as the most important.

A. Research Question

In an attempt to contribute to the definition of nation-to-nation relationships the research question for this thesis is:

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bringing about change . . . We will work on a Nation to Nation basis with Indigenous communities" ["Building the Country of our Dreams: Tom Mulcair's Plan to Bring Change to Ottawa" (accessed March 31, 2016; xfer.ndp.ca/2015/2015-Full-Platform-EN.pdf), 36]); and the Green Party ("Our shift in attitude will mean true nation-to-nation dialogue and negotiations" ["Aboriginal Policy" (accessed March 31, 2016; www.greenparty.ca/en/policy/vision-green/people/rights/aboriginal)]).

[4] RCAP, *Report of the Royal Commission on Aboriginal Peoples* (five volumes).

[5] TRC, "Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada" (accessed October 28, 2018; http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf).

[6] TRC, "Calls to Action" (accessed October 28, 2018; http://www.trc.ca/websites/trcinstitution/File/2015/Findings/ Calls_to_Action_English2.pdf), 4.

[7] For clarity, in this thesis I use the term "historical treaties" to refer generally to treaties between the Crown (whether English or British or Canadian) and First Nations prior to the 1970s; "numbered treaties" to refer specifically to those treaties known as Treaties 1-11; and "modern treaties" to refer to treaties agreed to from the 1970s onward.

> What might truly "nation-to-nation" fiscal relationships look like between Canada and Alberta Treaty 6 First Nations if Treaty 6 were taken seriously?

Breaking this down, I have already noted how "nation-to-nation" has become a popular talking point for Prime Minister Trudeau's Liberal Government, and similar language has become ubiquitous in speeches, letters, and announcements.[8] While I am fairly scornful of politicians' (ab)use of this language, the idea of nation-to-nation relationships nonetheless has potential to accurately describe ideal relationships between Canada and First Nations.

I have narrowed this research question to focus specifically on *fiscal* relationships because a) the fiscal aspect of the relationships is the area in which professionally I have the most expertise and experience; b) it is the area in which I am also the most interested in/believe I have the greatest capacity to enact change in; and c) it is an aspect of the relationships that has received considerable attention recently, especially from the Government of Canada and the Assembly of First Nations (AFN). On this last point, the federal government has labeled a "New Fiscal Relationship" as one of its top five priorities when it comes to

[8] For example, in the initial mandate letters Justin Trudeau gave his Cabinet ministers; subsequent mandate letters following the announcement in August 2017 that the Department of Indigenous and Northern Affairs would be dissolved (e.g., Prime Minister of Canada Justin Trudeau, "Minister of Indigenous Services Mandate Letter" [accessed December 16, 2017; https://pm.gc.ca/eng/minister-indigenous-services-mandate-letter]); and a speech he gave to the Assembly of First Nations early on in his mandate (Prime Minister of Canada Justin Trudeau, "Prime Minister Justin Trudeau Delivers a Speech to the Assembly of First Nations Special Chiefs Assembly" [accessed August 22, 2016; http://pm.gc.ca/eng/news/2015/12/08/prime-minister-justin-trudeau-delivers-speech-assembly-first-nations-special-chiefs]).

Indigenous policy;[9] the AFN has likewise made it a high priority;[10] and the Government of Canada and AFN jointly published a document in December 2017 entitled "A New Approach: Co-development of a New Fiscal Relationship between Canada and First Nations."[11] This report outlined a "shared vision" and "recommendations for action" that do not necessarily have widespread enthusiastic support from First Nations across Canada, and in particular in historical treaty regions.

On the surface the significance of funding and fiscal relationship appears obvious: in Canada today, money is essential for governments to hire employees to deliver services, fund transfers to various recipients, pay contractors and consultants to design, build, and study, and so on. But Shiri Pasternak has commented on how:

> fiscal relations have long played a key role in the disciplinary management of Indigenous populations, particularly since the institutionalization of individual welfare distributions on reserve and formalized "contribution agreements" from the federal government to band councils. Although it remains a relatively unexamined technique of governance, the use of government transfer funds increasingly forms part of a core strategy to consolidate state control over Indigenous peoples in Canada.[12]

If Pasternak is right, and I believe she is, then if "government transfer funds" were to be made within a context of fiscal relationships consistent with Treaty 6, "state

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[9] Rachel Gilmore, "Philpott unveils ambitious to-do list for new Indigenous Services department" (accessed September 2, 2018; https://ipolitics.ca/2018/01/23/philpott-unveils-ambitious-list-new-indigenous-services-department/).

[10] AFN, "Fiscal Relations" (accessed September 2, 2018; http://www.afn.ca/policy-sectors/fiscal-relations/).

[11] AFN and the Government of Canada, "A New Approach: Co-development of a New Fiscal Relationship between Canada and First Nations" (accessed January 1, 2018; https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-ACH/STAGING/textetext/reconciliation_new_fiscal_rel_approach_1512565483826_eng.pdf).

[12] Shiri Pasternak, *Grounded Authority: The Algonquins of Barriere Lake Against the State* (Minneapolis: University of Minnesota, 2017), 191.

control" over First Nations would necessarily be eroded (if not eliminated). In other words, my contention is that fiscal relationships are not only significant on the surface level, but that they can and do impact the larger, existential relationship between Canada and First Nations as well.

Given the constraints of an MA thesis, it is helpful to limit the geographic/political scope of the research question, and I have chosen to specifically look at relationships between Canada and Treaty 6 First Nations in Alberta[13] because they are the relationships I am simultaneously most professionally interested in and knowledgeable about. Beyond my professional interest and knowledge, however, I have also begun to realize personally that in a small, "settler sort of way," Treaty 6 land is where I belong.[14] I was not born here, but I have lived here longer than I have lived anywhere else combined, and it is the land I have most engaged with, the land I have thought about the most, the land I have hiked, cycled, and driven on for countless kilometres. It includes water I have swam and canoed in, and animals—the eagles and hawks, deer and bison, wolves and bears, elk and moose—I have watched in wonder. I am a settler, and an urbanized settler at that, but if I am "from" anywhere, it is Treaty 6 territory.

The last part of the research question, and perhaps the most important, is the phrase "if Treaty 6 were taken seriously." I am choosing to ground the

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[13] Treaty 6 territory covers parts of both Alberta and Saskatchewan, but I limiting my focus in the research question to the Alberta "half."

[14] A realization I came to from reading Roger Epp's collection of essays, many of which deal with his own relationship to land, *We Are All Treaty People: Prairie Essays* (Edmonton: University of Alberta, 2008).

exploration of nation-to-nation fiscal relationships in Treaty 6 because, primarily, Treaty 6 First Nations have been telling Canada for more than 140 years that Treaty 6 needs to be the basis for their relationships with the Crown. While Canada's record in terms of living up to historical treaties is spotty (at best),[15] historical treaties remain critically important to First Nations,[16] and I am absolutely persuaded that if relationships between Canada and Treaty 6 First Nations are to be reconciled, this must happen within a context of taking Treaty 6 seriously: settler "Canadians might not universally recognize their significance, but treaties will continue to play an important role in Canada for the foreseeable future."[17]

While grounding my research question in Treaty 6 is primarily a reflection of what I have heard from First Nations, it is also a decision consistent with my own understanding of the importance of treaties—an understanding I think more settlers need to come to. Although treaties are generally valued more highly by First Nations than settlers, I would argue that we have this exactly wrong: it is us as settlers who should cling to them most, because they are our only moral and legal justification for being on this land. As will be evident throughout this thesis,

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[15] "Existing treaties have been honoured by governments more in the breach than in the observance" (RCAP, *Report of the Royal Commission on Aboriginal Peoples*: *Volume 2*, 3).

[16] E.g., "To the Indians of Canada, the treaties represent an Indian Magna Carta" (Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* [Edmonton: M.G. Hurtig Ltd., Publishers, 1969], 28); "Treaties were originally the starting point for the process of defining the Aboriginal peoples' relations with newcomers, and they continue to be what our peoples regard as our Magna Cartas" (Chief Roy Whitney, "Preface" in Treaty 7 Elders and Tribal Council, *The Spirit and Original Intent of Treaty 7* [Montreal: McGill-Queen's University Press, 1996], xv); see also Vine Deloria, Jr., *Custer Died for Your Sins: An Indian Manifesto* (New York: Macmillan, 1969), 28-53; and: treaties continue "to be the mechanism preferred by most Aboriginal people today" for "defining intergovernmental relations between Aboriginal and non-Aboriginal people" (RCAP, *Report of the Royal Commission on Aboriginal Peoples*: *Volume 2*, 2).

[17] Jim Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), 283.

it is in the treaties, after all, that First Nations agreed to share this space with us. Settlers did not conquer or buy this land; instead, we entered into treaty relationships with the nations it belonged to and in this way were allowed to come and settle here. In other words, Treaty 6 is not just important because First Nations say so; it should be important to *all of us*, and settlers in particular.

All of this being said, I think most of the observations, criticisms, and suggestions I make regarding the fiscal relationships between Canada and Treaty 6 First Nations in Alberta are more-or-less also applicable to other contexts (especially historical treaty contexts, but others as well), just as I also think my main arguments regarding what these fiscal relationships should or might look like do not *necessarily* depend on my understanding of Treaty 6 and the relationships it established.

Finally, although not explicitly stated in the research question, I am, of course, asking the research question as a settler scholar/bureaucrat, and my answers are therefore shaped by my personal context and positionality. I am writing this thesis primarily "by a settler, for settlers." This approach is important for several reasons including that, while I consider myself a settler whose ideas are well-informed by Indigenous thinking, I do not want to in any way represent myself as speaking for Treaty 6 First Nations. "By a settler, for settlers" also speaks to my methodology, which I address in Chapter 1. Of course, I would hope that Indigenous readers still find my attempts at answering this question to be of interest, just as I benefit from exposure to and engagement with Indigenous perspectives. Ultimately, I believe that to actually answer this research question

in "real life," sincere negotiation will be required between Indigenous and settler representatives, and projects such as this thesis are prerequisites to what I hope will be future negotiation. In other words, my answers to this research question are not meant to be prescriptive, but rather intended to inspire and challenge and motivate further discussion, consideration, experimentation, and, ultimately: mutually beneficial and successful negotiations.

B. Why this Project and Others Like it Matter

It may already be obvious, but I want to briefly explain why I consider settler research projects focusing on what nation-to-nation relationships between Canada and First Nations might or should look like to be especially important and timely. I will focus on this in two ways: 1) generally in the contemporary Canadian political climate and 2) for my professional context specifically.

1. Contemporary Political Climate

As I write in the summer of 2019, we are now in the final months of the Liberal federal government's term that began in October 2015. Early on in its mandate, this government's frequent use of various political rhetoric that emphasized their desire to reset relationships between Canada and First Nations raised expectations significantly. These expectations have largely been replaced with disappointment and frustration among Indigenous peoples, although some significant changes have been initiated or implemented, which I will discuss later in this thesis. I believe that both the government's rhetoric and substantive action deserve critical analysis, for at least three main reasons.

First, I observe a certain seductiveness that Trudeau's rhetoric regarding

Indigenous issues seems to have, and, as long as the action is falling short of living up to the rhetoric, I think it is crucial that there be thoughtful evaluation and critique such that there can be some type of accountability. In other words, it is essential that Canadians and Indigenous peoples alike not be fooled by rhetoric and limited action to think that real change is taking place. This project offers a type of measuring stick against which the government's (in)action can be compared. When Trudeau does things like speak at the United Nations General Assembly and tout his government's Indigenous-friendly attitude,[18] or the Minister of Crown-Indigenous Relations makes an announcement,[19] Canadians and Indigenous peoples need to be able to say "while x, y, or z may be an improvement or a step in the right direction, in fact, changes that look like a, b, and c are what your government *should* be doing, and x, y, and z, are far, far short of that."

Second, were a future government to *legitimately* want to establish nation-to-nation relationships, it is essential that work be done to think through what this would look like, especially since it would represent such a radical change from what currently exists. I would make the point that what these relationships would look like is something many Indigenous people already are quite clear-eyed about, so it is perhaps especially crucial that settlers do this work, since any future

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[18] Prime Minister of Canada Justin Trudeau, "Prime Minister Justin Trudeau's Address to the 72th Session of the United Nations General Assembly" (accessed December 16, 2017; https://pm.gc.ca/eng/news/2017/09/21/prime-minister-justin-trudeaus-address-72th-session-united-nations-general-assembly).

[19] E.g., Indigenous and Northern Affairs Canada, "Minister Bennett to Make Important Announcement on Government of Canada's Commitment toward Reconciliation" (accessed December 16, 2017; https://www.canada.ca/en/indigenous-northern-affairs/news/2017/12/minister_bennetttomakeimportantannouncementongovernmentofcanadas.html).

negotiation of relationships will necessarily require both settlers and Indigenous peoples to be involved. This is not to say that Indigenous scholars should not invest in thinking about what the relationships should look like, only to emphasize the importance of settlers thinking about it as well. Ideally there would be well-developed collections of research on this topic from both Indigenous and settler perspectives available if Canada ever finds itself ready to move in this direction.[20]

I should note further on this second point that I am actually quite pessimistic that there will ever be the political will in Canada to actualize anything nearly as dramatic as what I outline as an ideal way forward regarding fiscal relationships. I do not want to come across as naïve. Rather, I am fully aware of the depressing reality that despite numerous changes over time in the way Canada relates to First Nations, ultimately all of them have simply involved another form of colonialism and assimilation, and I am not optimistic this will ever fundamentally change. Nonetheless, I still think it is valuable to have this

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[20] While negotiations of numbered treaties to ensure they are contemporarily relevant to relationships between Canada and First Nations such as I am hoping for with Treaty 6 have not actually taken place in Canada, they were at least rhetorically acknowledged as necessary and possible in the failed Charlottetown Accord of 1992, as quoted by RCAP (*Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 51-2):

> (2) The government of Canada is committed to establishing treaty processes to clarify or implement treaty rights and, where the parties agree, to rectify the terms of the treaties, and is committed, where requested by the Aboriginal peoples of Canada concerned, to participating in good faith in the process that relates to them.
> (3) The governments of the provinces and territories are committed, to the extent that they have jurisdiction, to participating in good faith in the processes referred to in subsection (2), where jointly invited by the government of Canada and the Aboriginal peoples of Canada concerned or where it is specified that they will do so under the terms of the treaty concerned.
> (4) The participants in the processes referred to in subsection (2) shall have regard to, among other things and where appropriate, the spirit and intent of the treaties, as understood by the Aboriginal peoples concerned.
> (5) For greater certainty, all those Aboriginal peoples of Canada who have treaty rights shall have equitable access to the processes referred to in this section.

type of work done, because: a) it is difficult to effectively criticize current realities without an understanding of what ideally would take place (see next subsection below); b) my pessimism could, of course, be proved wrong; and c) while what I am doing here is far more ambitious than a merely pragmatic project, I do include pragmatic recommendations, which, conveniently, leads me to my third point.

Third, and ultimately, I think some combination of the above two reasons perhaps best explains why this project and projects like it are important. In other words, the road maps these projects come up with can simultaneously serve as a measure by which to hold Canadian governments accountable (i.e., "you are failing to live up to nation-to-nation relationships, because you are not doing a, b, and c, and are doing x, y, and z") and provide suggestions for action that are still at least somewhat consistent with nation-to-nation relationships (e.g., "this" policy choice is better than "that" one because it is more consistent with nation-to-nation relationships). Certainly, piecemeal changes are inadequate, tend to reinforce colonial authority, and fail to respect First Nations sovereignty, but they have potential to still represent improvements in relationships.

A related point to this third reason has to do with the fact that frequently when Canada and other settler entities (e.g., provincial and municipal governments, universities) take these piecemeal steps towards, say, "reconciliation," they do so with a sense of self-righteous generosity and superiority. Projects such as I am calling for should promote an understanding amongst settlers of how dramatic and radical change would actually have to be to truly be consistent with any sense of justice or reconciliation, and one result

should be increased settler humility and gratitude as we recognize the "drop in the bucket" aspect of, for example, appointing an Anishinaabe judge or installing Dene art in public spaces.

2. My Professional Context

The prior subsection outlined three of the reasons this project and others like it are important given the contemporary political climate. Here, I want to emphasize the importance of these projects within my own professional context. I will talk about this context as it applies to me personally, but I am using my own experience as somewhat representative of bureaucrats (or, perhaps, anyone) working in the Canada-First Nations relations space.

To begin, it is easiest to briefly recount my memories of my first day as an ISC employee. I realized somewhat suddenly that not only were the *impacts* of colonialism alive and well in Canada—a realization I took away from that TRC event in March 2014 that I discussed in the prologue—but that *colonialism* itself was alive and well in Canada, and that now my job as a Government of Canada employee was to enforce it. I was shocked. I think many Indigenous peoples do not quite understand to what extent even well-educated Canadians such as I was then are entirely ignorant (granted, perhaps somewhat willfully-so) of how colonial a country we remain. Since that day I have only more and more come to understand the extent to which ISC, and myself as an ISC employee, colonize First Nations, and I certainly would not describe myself as ignorant now!

My motivation for doing Indigenous Studies was not, then, primarily to learn about colonialism in Canada, but rather to begin thinking through what it

would look like for this to change. Most settler Canadians are desperately in need of education when it comes to understanding the contemporary colonial context, but most of us working at ISC are not—it stares us in the face daily.[21] What is far less obvious is what the situation *should* look like.

These projects are, then, important for my personal professional context, because I and other ISC bureaucrats need to have a framework within which to analyze the work I do that is more constructive than simply "ISC policy/legislation is colonial and should be different." For most of us, our jobs do not afford us the opportunity or perspective to critically think about what nation-to-nation relationships between Canada and First Nations would actually look like, even though we hear this rhetoric on a daily basis. Projects like these require some distance and freedom such as the academy provides, as well as the hard work and research thoroughness such as an MA thesis represents. Why these projects may be especially suited for Indigenous Studies is the subject of my next section.

C. The Role of this Project and Settler Scholars in Indigenous Studies

I have already explained some of the reasons this project has general political relevance for Canadians and specific relevance to my professional context, but it also has tremendous academic relevance, especially in the context of Indigenous Studies. As a public servant, I can imagine similar projects taking place within the federal government bureaucracy, as well as within other venues, but, while

[21] I would not say most ISC bureaucrats are critically thinking about the colonial nature of the work they do, but most are at least aware that the situation they work within and perpetuate is not ideal.

these might be useful, I would emphasize the need for projects such as these to also be completed within the academy in order to ensure critical and independent thought be applied. Moreover, I think that this project is not only ideally situated within Indigenous Studies, but can also, I hope, serve as a template and/or inspiration and/or challenge for future work done within Indigenous Studies by settler scholars. Ultimately, my contention is that settler scholars have a place within Indigenous Studies, but they should be very mindful of their role.

1. This Thesis as Indigenous Studies

The main benefit of completing this thesis within the context of the Faculty of Native Studies as opposed to another faculty is that Indigenous Studies has allowed me to engage with and be challenged by Indigenous scholars in a way other academic fields would not. For example, Indigenous Studies pushes settlers to understand their own complicities in and privileges from colonial systems;[22] provides insightful critiques of the Canadian state in general and Indigenous policy in particular;[23] and asserts an understanding of Indigenous nationhood that is dramatically and diametrically opposed to settler assumptions.[24] As an Indigenous Studies student, my worldview has evolved, my imagination expanded, and my own understanding of the pervasiveness and insidiousness of Canadian colonialism, paternalism, and racism been deepened. All of these impacts have contributed to the formation of my research question and how I

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[22] E.g., Harold Johnson, *Two Families: Treaties and Government* (Saskatoon: Purich Publishing, 2007).

[23] E.g., Arthur Manuel, *Unsettling Canada: A National Wake-Up Call* (Toronto: Between the Lines, 2015).

[24] E.g., Shalene Jobin, *Nehiyawak Narratives: Drawing Out Indigenous Economic Relationships* (forthcoming, June 2018 draft).

think about answering it.

2. Settlers in Indigenous Studies

After four years of part-time study at the Faculty of Native Studies, I have also thought a lot about where settlers fit within the larger Indigenous Studies project. My tentative conclusion is that settlers working within Indigenous Studies need to be very cautious about the work they do, and in this regard it has been helpful for me to think about and categorize most of the work done within Indigenous Studies as focused on either 1) resurgence[25] of Indigenous peoples/nations and their cultures and worldviews or 2) dismantling of colonial systems. Obviously, these are both nearly always complementary decolonial focuses (and sometimes they might even be indistinguishable), and nearly always reciprocal: Indigenous resurgence almost inevitably results in challenges to colonial systems, whether implicitly or explicitly, just as dismantling colonial systems creates room for Indigenous resurgence. But, despite their complementary and reciprocal relationships, I find these two distinctions helpful as I think about settlers' roles. It has become clear to me that generally speaking settler scholars should avoid work focusing on the resurgence piece. I have various reasons for this conviction,[26] but most importantly, I believe that if settler Indigenous Studies

[25] Some Indigenous Studies scholars do not like the term "resurgence," and I am not particularly attached to it. Terms such as "nation-building" or "insurgence" could be just as readily substituted.

[26] For example: 1) colonialism has been perpetuated by settlers studying, examining, categorizing, classifying, recording, accounting for, and gazing on Indigenous peoples, and, if we are trying to be decolonial, we should err on the side of not doing this anymore; 2) I do not think settlers have much to offer Indigenous peoples when it comes to their resurgence; and 3) I do not see any pressing need for settler scholars to research Indigenous peoples, since there are plenty of well-qualified, fully-competent Indigenous scholars who can do this work where it seems necessary to them.

scholars are focusing on Indigenous resurgence, we are not as directly focusing on dismantling the colonial systems we have set up and perpetuate. Settler scholars need to take more responsibility for doing this work. The contributions of Indigenous scholars are essential, but ultimately it is not Indigenous peoples' responsibility to end the colonialism we as settlers have imposed: it is ours, and settler Indigenous Studies scholars need to do more of this work. It is my hope, then, that this thesis contributes to dismantling colonial systems, and perhaps also encourages other settler Indigenous Studies scholars to do similar work.

D. Summary

In summary, it is as an Indigenous Studies student and scholar, motivated especially by the contemporary political environment and my own professional context, that I am asking this research question:

> What might truly "nation-to-nation" fiscal relationships look like between Canada and Alberta Treaty 6 First Nations if Treaty 6 were taken seriously?

In my first chapter, I will start the process of answering this question by discussing my methodology, providing a brief literature review, and introducing the remaining chapters of this thesis.

CHAPTER 1: METHODOLOGY AND LITERATURE REVIEW

A. Indigenous-Informed Settler Methodology

For this thesis I have chosen to describe my methodology as "Indigenous-informed settler methodology." In using this name, I hope to simultaneously acknowledge a) both the influence and my awareness of the conversation within Indigenous Studies regarding Indigenous methodologies, and b) the fact that I, as a settler scholar writing a thesis that is primarily intended to persuade settlers, will be employing what is fundamentally a settler methodology. Necessarily, this means that my methodology "recipe" is impure, made up of at least three "ingredients:"[1] Indigenous methodologies; historical-critical hermeneutics; and critical theory.

1. Indigenous Methodologies

Much of the discussion surrounding methodologies in Indigenous Studies naturally focuses on methodologies that are Indigenous, or discussing what makes

[1] This eclectic methodology is consistent with Shalene Jobin's observation: "Indigenous Studies literature . . . use[s] a pragmatic approach, utilizing whatever theories and research methods the scholars judge to provide the most effective analysis" ("Indigenous Studies, Determining Itself" [*Native Studies Review* 23:1-2 (2016)], 121).

a methodology Indigenous, or finding ways to "indigenize" settler/Western methods, and so on. While these topics are not specifically relevant to my own methodology, the conversations around Indigenous methodologies have influenced me immensely and certainly inform my thesis research.

For example, my respect for oral tradition has been expanded through engagement with Indigenous methodologies, and this is particularly relevant in the context of researching the history of Treaty 6. Too often settlers privilege written documentation over oral, and this bias has led to significant misunderstandings regarding Treaty 6. Settlers have also too often failed to adequately understand the spiritual context of treaty-making for Indigenous societies, a point driven home for me by the *Treaty Elders of Saskatchewan* volume edited by Harold Cardinal and Walter Hildebrandt, as well as my own experience learning from Indigenous Elders in a 2017 on-the-land hide-tanning course.[2] As a settler writing for settlers, I do not engage with Indigenous spirituality and worldview as I discuss fiscal relations between Canada and First Nations, but my awareness of Cree concepts such as *wahkotowin* and *miyo-wicehtowin*[3] have nonetheless informed my understanding of treaty relations.

The biggest impact Indigenous methodologies have had on me has been to force me to question and challenge my own (settler) worldview in ways I had not

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[2] University of Alberta, "Wahkohtowin Law and Governance Lodge" (accessed June 15, 2019; https://www.ualberta.ca/native-studies/programs/indigenous-governance-partnership-program/wahkohtowin-law-and-governance-lodge).

[3] Roughly "all-things-are-related" and "good relations," respectively (see Sheldon Cardinal, "The Spirit and Intent of Treaty Eight: A Sagaw Eeniw Perspective" [Master's thesis, University of Saskatchewan, 2001], 23; Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream is that Our People will One Day be Clearly Recognized as Nations* [Calgary: University of Calgary Press, 2000], 14).

previously. For example, although not directly relevant to this thesis, Indigenous Studies has forced me to question my assumptions about non-human beings and human beings' relationships with them.[4] While it might seem as if non-human beings have little to do with fiscal relationships between Canada and First Nations, these types of epistemological and ontological challenges to my worldview have given me opportunities to (re)imagine the relationships between Canada and First Nations in far more creative and less-constrained ways than I otherwise would have. The influence of Indigenous methodologies and worldviews on my thesis research has been critical, and I believe my research is far more robust and meaningful as a result.

2. Historical-Critical Hermeneutics

Chapter 2 of this thesis focuses on the history of Treaty 6 and fiscal relationships since then. Vine Deloria, Jr. and others have noted some of the differences in terms of how Western settlers and Indigenous peoples tend to understand and value history,[5] but I think it is safe to say that the history of Treaty 6 *and especially what this history means for today* should matter to both Indigenous and non-Indigenous people who want to take Treaty 6 seriously. To put this in the methodological terms I would have utilized in my previous study of religion and

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[4] E.g., Kim TallBear: "Indigenous peoples have never forgotten that nonhumans are agential beings engaged in social relations that profoundly shape human lives. In addition, for many indigenous peoples, their nonhuman others may not be understood in even critical Western frameworks as living. 'Objects' and 'forces' such as stones, thunder, or stars are known within our ontologies to be sentient and knowing persons" ("An Indigenous Reflection on Working Beyond the Human/Not Human" [*GLQ: A Journal of Lesbian and Gay Studies* 21:2-3 (June 2015)], 234); see also Louis Bird, *The Spirit Lives in the Mind: Omushkego Stories, Lives, and Dreams* (Montreal: McGill-Queen's University Press, 2007).

[5] Vine Deloria, Jr., *God is Red: A Native View of Religion* (New York: Delta Publishing, 1973), 111-28.

in particular historical religious texts, my study of Treaty 6 utilizes a historical-critical hermeneutic, emphasizing the importance of establishing the text's[6] meaning in its original context before applying it to today. In other words, while I hope that Chapter 2 will add value to the academic conversation surrounding Treaty 6's history, that is not its primary intention. Rather, I am primarily interested in drawing out the insights and principles that are most relevant to nation-to-nation relationships, and especially fiscal relationships, today and in the future. The key word in this regard is "context"—it is only through taking the history of Treaty 6 seriously that, I believe, we can take Treaty 6 seriously today.

3. Critical Theory

Based on the findings of my historical research in Chapter 2, the latter half of this thesis critiques contemporary fiscal relationships between Canada and Treaty 6 First Nations, and argues for some ways the relationships could change in order for them to align more consistently with the spirit and promises of Treaty 6. In this regard, a methodology that I have found particularly resonant is critical theory.

Heavily influenced by turn-of-the century thinkers such as Immanuel Kant, Friedrich Nietzsche, Sigmund Freud, and especially Karl Marx, what-became-known-as the Frankfurt School developed critical theory starting in the 1920s.[7] While critical theory has gone through various waves or phases, I find three aspects of at least some versions of critical theory particularly compelling

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[6] I use the word "text," but want to make clear that I am not suggesting Treaty 6 be understood solely as a literal text—see more below.

[7] Raymond A. Morrow, *Critical Theory and Methodology* (Thousand Oaks, CA: Sage Publications, 1994), 14.

and relevant. First, critical theory makes social change an explicit goal. In contrast to the (supposed) neutrality of many other Western methodologies, critical theory insists that academics can engage in moral critique.[8] For example, speaking truth to power and resisting oppressive regimes are understood as legitimate scholarly pursuits.[9] I find this shameless moral advocacy to be refreshing. I value scholarship that is intentional about promoting positive change, and assertive in identifying social injustices or calling out systems of domination.[10] In many ways, I consider my thesis such scholarship.

Second, critical theory rejects positivism and claims of objectivity.[11] Like Indigenous methodologies, critical theory embraces the inherent subjectivity of all research. Critical theorist Raymond Morrow states that:

> Critical theories . . . are . . . often rejected as too ideological . . . [but] this is one of critical theory's peculiar strengths, rather than a weakness to be excised in the name of objectivity.[12]

In this thesis, I am explicit about my subjectivities, and critical theory insists that this need not undermine the academic rigour or scholarly integrity of a project. Perhaps because of its rejection of conventional academic norms, critical theory is, also like Indigenous methodologies, interdisciplinary.[13]

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[8] Morrow, 11.

[9] Stephen Eric Bronner, *Critical Theory: A Very Short Introduction* (Oxford: Oxford University Press, 2011), 58, 102, 115, 122.

[10] Morrow, 10-11.

[11] Andrew Linklater, *Critical Theory and World Politics: Citizenship, Sovereignty and Humanity* (Thousand Oaks, CA: Sage Publications, 1994), 44.

[12] Morrow, 26-27.

[13] Craig Browne, *Critical Social Theory* (Thousand Oaks, CA: Sage Publications, 2017), 104; Morrow, 11-12.

Third, critical theory emphasizes the ability of researchers to live their research.[14] This is not explicitly what I am doing in the case of this thesis, but I find this idea relevant to the matrix of my academic and professional lives. For the second phase of my research, the literature most relevant includes media articles, Government of Canada press releases, policy documents, and so on.[15] But, while my primary research method is text-based, it will also be informed by empirical "research"—i.e., my five years of professional experience working within ISC and observing first-hand how current fiscal relationships between Canada and Treaty 6 First Nations operate. I put "research" in quotation marks, because mostly this has not been primarily academic research as generally understood, but in fact my day-to-day professional experience. This experience includes reading, interpreting, and sometimes being creative with ISC policies, but it has also involved visiting more than a dozen Treaty 6 First Nations and various geographical sites of significance to Treaty 6 and the relationships between Canada and Treaty 6 First Nations. Perhaps most importantly, it also includes discussions with coworkers as well as Treaty 6 First Nations chiefs and councils, band administrators, financial controllers, other administration staff, Elders, and other First Nations members. Often these conversations are friendly, relaxed, and wide-ranging; occasionally they are tense and confrontational—and sometimes these confrontational encounters are the ones I learn the most from to

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[14] N. Martin Nakata, Victoria Nakata, Sarah Keech and Reuben Bolt, "Decolonial goals and pedagogies for Indigenous studies," *Decolonization: Indigeneity, Education & Society* 1:1 (2012), 124; John W. Cresswell, *Qualitative Inquiry and Research Design: Choosing Among Five Traditions* (Thousand Oaks, CA: Sage Publications, 1998), 80-83.

[15] While my professional context of course informs my research, in this thesis I am only utilizing federal government sources and information that are publicly available, mostly through Government of Canada websites.

better understand how colonial and paternalistic Canada's fiscal relationships with First Nations remain. For various reasons, mostly because they occurred in a professional context rather than a formal academic/research one, I will not be able to cite these conversations or experiences specifically; but their collective role in shaping my thinking has been tremendous, and will certainly be important in my thesis.

B. Limitations and Assumptions

As with any research project, this thesis has its limitations and assumptions, some of which I touched on while explaining my research question. But there are three others that I feel are important enough to be stated explicitly and explained now as they also relate to my methodology.

1. What is Treaty 6?

Since my research question suggests Treaty 6 should be taken seriously, it is important to explain what I mean by "Treaty 6." I will discuss this in more detail in Chapter 2, but this assumption is so fundamental to my thesis, that I believe it needs to be made explicit now. For Canada, Treaty 6 usually refers exclusively to the text of the treaty as written up at Fort Carlton and Fort Pitt in 1876[16]—an understanding that in almost all cases works in Canada's favour.[17] But: "the written version [of the treaty] is not the Indigenous Peoples' understanding,"[18]

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[16] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 28.
[17] Harold Cardinal, *Unjust Society*, 153.
[18] Sharon Venne, "Introduction," in *Honour Bound: Onion Lake and the Spirit of Treaty 6* (International Work Group for Indigenous Affairs [IWGIA] Document No 84; Copenhagen: IWGIA, 1997), 8; see RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 3.

and it is not mine either. Canada's text may represent part of what Treaty 6 is, but Treaty 6 is much "more than paper and ink as per the British tradition."[19] In fact, it seems quite disingenuous of Canada to insist on this exclusively textual understanding of treaty,[20] since it is well understood in common law that what is legally agreed to in agreements and contracts is not strictly limited to written text.[21] In any case, an assumption of this thesis is that the "actual" Treaty 6 (i.e., the agreement between First Nations and Canada) was arrived at verbally, and the literal text is only Canada's interpretation (or, possibly, distortion) of what the agreement was. To fully determine what Treaty 6 is, then, requires not only reading the Canadian text, but also the written and oral records of the negotiations. This assumption is not particularly contentious among scholars who have studied Treaty 6, and is certainly consistent with First Nations' oral history regarding treaty; it is, however and unfortunately, in tension with how Canada continues to interpret and implement (to the extent it does) Treaty 6.

2. Who are First Nations?

In the "nation-to-nation" equation, it is relatively easy to identify one of the nations referred to—i.e., the nation-state of Canada as represented by an elected federal government. It is not so easy, unfortunately, to identify the "other" nation.

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[19] David M. Arnot, "Foreword," in Harold Cardinal and Hildebrandt, viii.

[20] Canada sometimes pays lip service to the idea that the treaty is more than the written text, but in practice there is little evidence of openness to this way of thinking ("The federal government has a strong tendency to follow the legal obligations . . . restrict[ing] treaty interpretations to the strict written terms of the treaties" [Richard Price, ed., *The Spirit of the Alberta Indian Treaties* (third edition; Edmonton: University of Alberta Press, 1999), xiii]), despite court cases that have affirmed the value of oral history in interpreting treaties (see Harold Cardinal and Hildebrandt, 48-59).

[21] See Sheldon Cardinal, 70.

For example, we could speak, perhaps of all Treaty 6 First Nations as one nation; or, perhaps, of all Cree as one nation;[22] or perhaps all First Nations in a more limited geographic area as one nation—say, the Maskwacis Cree Nation. What I am getting at here is that Canadian colonialism and in particular the imposition of the *Indian Act* has reshaped what we think of as Indigenous nations, and if Canada is ever to genuinely renegotiate its relationships with First Nations, there will likely need to be movement away from thinking about First Nations as just *Indian Act* bands.[23] This is a complex and challenging issue, but it is one I want to bracket in this thesis. So, one of the limitations of this thesis is that I am choosing for simplicity's sake to assume nation-to-nation relationships are between Canada and First Nations as represented by *Indian Act* bands and *Indian Act*-imposed band councils, even though I recognize that in an ideal world these governance models will change. I consider this to be the most serious limitation of this thesis, as obviously for relationships (and negotiations) to be truly nation-to-nation, both nations need to be appropriately and clearly defined; but not only is resolving this issue an overwhelming task, it is also one that settlers, while we certainly did much to cause the problem, cannot (nor should we) do much to "fix." For the most part these decisions regarding what constitutes a First Nation

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[22] Jobin, *Nehiyawak Narratives*, 50.

[23] RCAP recommended federal legislation ("Aboriginal Nations Recognition and Government Act") to facilitate the "rebuilding" and federal recognition of First Nations (*Report of the Royal Commission on Aboriginal Peoples*: *Volume 2*, 320-31), but the recommendation seems to me to be far too paternalistic and prescriptive. Nonetheless, Canada will need to amend the *Indian Act* and come up with some way to recognize rebuilt First Nations, as this may require federal legislation. The problem with RCAP's recommendation is not the idea of Canada recognizing rebuilt, no-longer-*Indian-Act*-defined First Nations, but the extent to which it would involve Canada's meddling in the process of rebuilding.

and who should govern/represent it are decisions that First Nations need to make for themselves,[24] and Canada's role in this should be minimal.[25]

There is another assumption I have regarding who First Nations (and really all Indigenous peoples in Canada) are *not*. There is a widespread assumption in Canada that Indigenous peoples are Canadian.[26] I want to push against this assumption, because I do not believe First Nations have in fact ever been genuinely asked if they want to be part of Canada[27]—and, actually, I think the historical treaties are about distinct nations agreeing to share jurisdiction, land, and so on—which is very different than First Nations agreeing to join Canadian Confederation.[28] Moreover, while First Nations representatives have occasionally

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[24] And this is work being done, of course, by many Indigenous scholars (e.g., Jobin, *Nehiyawak Narratives*, 243).

[25] The current federal government has acknowledged this issue (see Jody Wilson-Raybould, then-Minister of Justice, who described "reconstitution" of First Nations as "*the* most important thing" [as quoted in John Geddes, "Jody Wilson-Raybould's vision to save Canada" (*Maclean's* [March 2, 2018]; https://www.macleans.ca/politics/ottawa/jody-wilson-raybouldsvision-to-save-canada/)] and suggests the 600 plus *Indian Act* bands are comprised of "some 60-80 Nations or Tribes" [Department of Justice Canada, "Realizing a Nation-to-Nation Relationship with Indigenous Peoples of Canada" (accessed September 20, 2018; https://www.canada.ca/en/department-justice/news/2017/07/realizing_a_nation-to-nationrelationshipwiththeindigenouspeoples.html)]). The Government of Canada has also made a small amount of funding available to further "nation rebuilding" (Crown-Indigenous Relations and Northern Affairs Canada, "Nation Rebuilding Program" [accessed September 20, 2018; https://www.rcaanc-cirnac.gc.ca/eng/1530880050808/1530880135933]). To what extent these efforts will be successful (whether by First Nations or Canadian standards) certainly remains to be seen; the fact that Canada has recognized it as an issue is probably an important first step, but I worry that Canadian involvement and especially funding will simply result in First Nations reconstituted in ways Canada wants them to be.

[26] See Aboriginal Affairs and Northern Development Canada, "First Nations in Canada" (accessed January 11, 2019; https://www.rcaanc-cirnac.gc.ca/eng/1307460755710/1536862806124); Frances Abele and Michael J. Prince, "Aboriginal Governance and Canadian Federalism: A To-Do List for Canada" (*New Trends in Canadian Federalism* [second edition; Francois Rocher and Miriam Smith, eds.; Peterborough, ON: Broadview Press, 2003]), 137.

[27] "Indigenous peoples are not citizens of Canada" (Kiera Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalisms" [*New Trends in Canadian Federalism*], 177).

[28] I completely disagree with RCAP, which claims that "treaties with Aboriginal nations are fundamental components of the Constitution of Canada, analogous to the terms of union whereby provinces joined Confederation" (*Report of the Royal Commission on Aboriginal Peoples*: *Volume 2*, 20). In fact, I see nothing in the text of Treaty 6 nor in the records of the

been included at various constitutional conferences, and Indigenous peoples are (nominally) included in the *Constitution Act*,[29] First Nations are clearly not a true partner in Canada. Ultimately, I think First Nations will, or even should, be part of Canada, but this needs to be negotiated such that First Nations are real partners in federation and not simply included by (colonial) default.[30]

3. "We are all here to stay"[31]

While many of my conclusions and recommendations in this thesis are radical and provocative, they are all based on the fairly conservative assumption that settler Canadians will not be leaving this land en masse; nor, of course, will Indigenous peoples. Moreover, while I view Canada and our predecessor colonizers as more or less illegal occupiers of much of this land, I believe that taking the historical treaties seriously is our only chance as settlers to claim legal right to be here at all—so, in many ways, I think it is Canadians, not First Nations, who should be most eager to take Treaty 6 seriously, because without it I do not believe we have any justification for our continued habitation here.[32]

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negotiations to suggest that Treaty 6 was about First Nations joining Canada, and the RCAP report does nothing to substantiate this assertion.

[29] See Johnson (91-106) for a Treaty 6 Cree perspective on the Constitution and First Nations.

[30] So, again, I take fundamental issue with RCAP, which entitled a "special report" *Partners in Confederation*: *Aboriginal Peoples, Self-Government, and the Constitution* (1993), suggesting Indigenous peoples should be viewed as one of the partners in Canadian confederation. This idea seems to me to be the wishful thinking of overly-optimistic federalists during the constitution-focused era of the 1980s and early 1990s.

[31] Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto: University of Toronto Press, 2014), 3.

[32] See Venne: "To discount the treaty . . . is to make illegitimate foreign people's occupancy;" and: "The colonizers need to acknowledge their treaty rights in order to continue living our lands. They live here because we let them live here . . . This is the meaning of the treaty from our point of view" ("Treaties Made in Good Faith," in *Natives & Settler Now & Then: Historical Issues and Current Perspectives on Treaties and Land Claims in Canada*, ed. Paul W. DePasquale [Edmonton: University of Alberta Press, 2007], 5, 14).

C. Literature Review

One of the reasons my research question appealed to me is that it helps address what I perceive to be a gap in academic literature, particularly among work done by settler academics. Settlers, and especially settler academics, have insufficiently invested in researching and thinking about what Canada's relationships with Indigenous peoples should look like (and especially so in the sorts of ways that respects Indigenous sovereignty and takes [de]colonialism seriously). I consider this extremely troubling, and my hope is that a literature review such as I am undertaking will look very different in the next few years.

1. Critiques of Historical Relationships between Canada and First Nations

There is no lack of academic work, including from settler academics, critiquing Canada's relationships with First Nations historically, and I am particularly interested in this work that focuses on the numbered treaties and specifically Treaty 6 context. While there is a variety of approaches and perspectives on treaties and treaty relationships represented in this literature, contemporary historical research is virtually unanimous regarding Canada's failure to adequately fulfill the promises it made in the numbered treaties in the decades immediately after their negotiation.[33] In this subsection, I review examples of this literature that I have found particularly helpful or significant.

[33] This unanimous contemporary opinion is in sharp contrast to that of George Stanley in 1966, who claimed Canada's treaty relationships with First Nations exhibited "strict honesty, justice and good faith" and that the treaties have "been mutually observed" (*The Birth of Western Canada: A History of the Riel Rebellions* [Toronto: University of Toronto Press, 1963], 214)!

In *Lost Harvests*,[34] historian Sarah Carter focuses on Canada's (lack of) fulfilment of the numbered treaties' agricultural promises in the late 1870s through the early 1900s. Through extensive archival research, Carter demonstrates that despite significant First Nation protestation, Canada failed to provide the promised agricultural or training assistance in a manner consistent with both the spirit and letter of the treaties and, in fact, even occasionally took steps to curtail successful First Nations' agriculture to prevent competition with settlers. While Carter's specific focus in *Lost Harvests* is agriculture, the inconsistent, but consistently insufficiently serious Canadian attitude towards treaty fulfilment she outlines seems to have been characteristic of early Canadian policy towards numbered treaty-adherent First Nations in many respects, as much of the other literature makes clear.

J. R. Miller's *Compact, Contract, Covenant* is a comprehensive survey of treaty-making between settlers and Indigenous peoples in what-is-now Canada, from the late-17th century to the early 21st century. Miller's study is extremely useful in terms of situating Treaty 6 within the full context of Canadian (and pre-Canadian) treaty-making. Beyond simply a historical account of the evolution of treaty-making and the negotiation of treaties, *Compact, Contract, Covenant* also provides analysis of treaty relationships after treaty negotiations. His conclusions on how the two decades of treaty relationships after the negotiation of what he describes as the southern numbered treaties (Treaties 1-7) impacted negotiation of the northern numbered treaties (Treaties 8-11) is instructive:

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[34] Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal: McGill-Queen's University Press, 1990).

> The post-treaty experience of the Plains people with the first seven numbered treaties was so negative that it blighted their existence . . . The federal government adopted the paternalistic approach of the recent Indian Act as the basis of its approach to western Indians . . . The result . . . was that the post-treaty relationship soured, western First Nations suffered grievously, and government provoked suspicion and reluctance among other First Nations with whom it would find itself in treaty talks before the end of the nineteenth century. Canada's failure to honour its treaty commitments after 1877 seriously harmed its southern partners in the short term, and sowed suspicion among potential northern treaty partners in the future.[35]

Miller's findings led him to apply words such as "negative," "paternalistic," and "failure" to Canada's record when it came to its numbered treaty relationships not even twenty-five years after Treaty 6 had been negotiated.

James Daschuk's conclusions regarding Canadian post-treaty policy in *Clearing the Plains*[36] are arguably even harsher. Daschuk's goal in *Clearing the Plains* is to "identify the roots of the current health disparity between the indigenous and mainstream populations in western Canada."[37] The Treaty 6 promises of famine relief and the medicine chest are particularly relevant to Daschuk's interests and in the book's second half he looks at the post-treaty context. Daschuk argues, for example, that the tuberculosis "crisis among First Nations could have been significantly mitigated had the dominion acted in good faith towards its treaty partners"[38] and that "instead of supplying rations to famine-stricken populations . . . as [treaty-negotiator] Morris had promised, rations were used as a mean of coercing Indians."[39] Even without factoring in the

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[35] Miller, 187.

[36] James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life* (Regina: University of Regina Press, 2014).

[37] Daschuk, ix.

[38] Daschuk, xix.

[39] Daschuk, 114.

treaty commitments Canada had made only years before, the inhumane and unethical behavior of Canada in this period as outlined by Daschuk is appalling.

D. J. Hall's *From Treaties to Reserves*[40] offers yet another approach to analyzing Canada's relationships with First Nations after treaty, in this case focusing exclusively on the region of the District of Alberta, which included all Treaty 7 First Nations and the westernmost Treaty 6 First Nations. Hall's book is thorough and well-documented, and as a bureaucrat working in the Treaty 6 portion of what was until 1905 the District of Alberta I find it especially relevant to understanding historical context. *From Treaties to Reserves* is likely the most sympathetic treatment of Canada's relations with First Nations post-treaties, as Hall emphasizes the role misunderstandings and differences in worldview played in terms of expectations regarding treaty fulfilment: "Indian and settler cultures had not really shared a mutual understanding from the beginning."[41] Elsewhere, Hall describes "mutual incomprehension."[42] But even Hall admits that:

> too often Indian policy continued to be administered by people who had low regard for Indians and their potential, and to whom it would never have occurred either to undertake serious self-examination of policy failures or to consult with the victims of those policies about how improvement might be effected.[43]

This conclusion is hardly a positive endorsement of Canadian relationships with its treaty partners.

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[40] D. J. Hall, *From Treaties to Reserves: The Federal Government and Native Peoples in Territorial Alberta, 1870-1905* (Montreal: McGill-Queen's University Press, 2015).

[41] D. J. Hall, 324.

[42] E.g., D. J. Hall, 56.

[43] D. J. Hall, 326-27.

So far all of the literature I have reviewed in this subsection has focused exclusively on the Canadian treaty context, but Jill St. Germain's *Broken Treaties*[44] provides a comparison between Treaty 6 relationships and those between the United States and the Lakota under the Treaty of 1868. Despite what St. Germain describes as the American "broken treaties" "axiom,"[45] in fact she finds that initially the United States "diligently" worked "to implement treaty terms," whereas there was "decidedly lackluster progress on the same project in Canada."[46] For me, the most significant difference in post-treaty relations that St. Germain outlines between the American and Canadian contexts was the willingness of the United States government to acknowledge the dynamism and nation-to-nation character of the treaty relationship. Dialogue over misunderstandings was encouraged, flexibility and good faith were emphasized in administration, and President U. S. Grant even hosted Lakota chiefs in Washington, D.C. in an attempt to promote peaceful and mutually beneficial relations: "the United States worked to revise treaty terms in the pursuit of the objectives established in 1868."[47] In contrast, Canada "maintained a literal interpretation of Treaty Six that admitted no possibility of change to the original deal."[48] Ultimately, Canada's unwillingness to relate to Treaty 6 First Nations on a nation-to-nation basis directly attributed to (the very limited) Cree participation

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[44] Jill St. Germain, *Broken Treaties: United States and Canadian Relations with the Lakotas and Plains Cree, 1868-1885* (Lincoln: University of Nebraska, 2009).

[45] St. Germain, xiv.

[46] St. Germain, xxiii.

[47] St. Germain, 134.

[48] St. Germain, 134.

in the violence of 1885. St. Germain argues that Canada's refusal to engage in a meaningful and comprehensive way led the Treaty 6 chiefs to conclude "that Canada's persistent indifference in the implementation of its treaty promises was not a failing of ignorance but a manifestation of deliberate duplicity."[49] This is not, of course, to suggest that the United States had an unblemished or entirely honourable record when it comes to the Treaty of 1868 (or other treaties), but the contrast with Canada is important: at least initially, the United States related to its Treaty of 1868 partners in a good faith way that respected their sovereignty, whereas Canada quickly abandoned anything that could be reasonably described as treaty-based relationships.

The sources I have reviewed so far all provide important information specific to the decades immediately after 1876, and in particular record how Canada and Treaty 6 First Nations related to each other in these early years after the negotiation of treaty. None of these works focuses specifically on fiscal relations, however, which is a gap I see in the literature. Some of accountant Dean Neu's work does, however, provide a more fiscally-focused perspective. For example, *Accounting for Genocide* (with Richard Therrien):[50]

> looks at accounting's mediative role in defining power relationships and how this role was used in the colonization of Canada's First Nations. [The book] argue[s] that since the early 1800s and continuing into the present, accounting—defined as a system of numerical techniques, funding mechanisms and accountability relations—has been used by the state as a

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[49] St. Germain, 313.

[50] Dean Neu and Richard Therrien, *Accounting for Genocide: Canada's Bureaucratic Assault on Aboriginal People* (Toronto: Fernwood Publishers, 2003); see also Dean Neu and Cameron Graham, "The Birth of a Nation: Accounting and Canada's First Nations, 1860-1900" (*Accounting, Organizations and Society* 31 [2006]: 47-76).

> method of indirect governance in its containment, control and attempted assimilation of First Nations peoples.[51]

This book has had a significant impact on how I think about my career as a Canadian bureaucrat (accountant) working in the area of fiscal relations with First Nations, and the role I play in perpetuating colonialism through the use of accounting as defined by Neu and Therrien. But *Accounting for Genocide* is also useful in terms of my research question in at least two ways. First, its historical findings are valuable to my argument in Chapter 2 regarding how inconsistent with treaty the fiscal relationships between Canada and Treaty 6 First Nations have been since 1876; in fact, Neu and Therrien argue that beyond just inconsistent with the numbered treaties, Canadian fiscal policy was in fact effectively genocidal, with emphasis placed on cost constraints to the detriment of health and well-being for First Nations people. Second, and perhaps more importantly, their arguments about the colonial, paternalistic, and genocidal nature of Canada's "bureaucratic assault" on First Nations have helped shape my recommendations on what fiscal relationships consistent with Treaty 6 should look like.

To conclude this subsection, it should be evident that a significant amount of solid work has been done in terms of critiquing historical relationships between Canada and First Nations. It should also be obvious that there is academic consensus that Canada failed to adequately fulfill the commitments it made in the numbered treaties, including Treaty 6. While no doubt there is much more to be done, and I would be especially interested in more academic attention paid to

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[51] Neu and Therrien, 6.

historical fiscal relations between Canada and First Nations, there is an abundance of academic literature for this thesis to draw on when it comes to providing historical context for contemporary and future Treaty 6 fiscal relationships, and I do so especially in Chapter 2.

2. Critiques of Contemporary Relationships between Canada and First Nations

The subject of critiquing contemporary relationships between Canada and First Nations is also a well-developed field (academically and otherwise), but my observation is that it is a much more popular subject for Indigenous academics than for settlers. Of course, it is critical that Indigenous academics engage in this area, but I again find it somewhat concerning that there is not more settler attention being paid to contemporary relationships. In this subsection I will again provide examples of work that falls into this category that I find particularly valuable or noteworthy.

Examples of work by Indigenous academics focused especially on critiques of contemporary relationships between Canada and First Nations with some application to historical numbered treaty contexts include: Harold Cardinal's *Unjust Society*; Howard Adams' *Prison of Grass*;[52,53] Glen Coulthard's *Red Skin, White Masks*;[54] and Arthur Manuel's *Unsettling Canada*, all of which have had tremendous influence on my thinking. These are a diverse collection of

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[52] Howard Adams, *Prison of Grass: Canada from a Native Point of View* (Calgary: Fifth House Publishers, 1989).

[53] Harold Cardinal's *Unjust Society* (1969) and Adams' *Prison of Grass* (1989) are now several decades old, but were critiques of contemporary relationships when they were published.

[54] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

books written over four decades, but they are all coming from Indigenous authors writing in a western Canadian context (although none are from Treaty 6 First Nations and only one is from Alberta) highly critical of Canadian policy when it comes to Indigenous peoples.

Unjust Society is perhaps the most obviously relevant to this thesis, since it was written in response to the first Trudeau government's infamous "White Paper" (see Chapter 2) and argued that the federal government was failing to take seriously its relationships with and responsibilities to First Nations and in particular its relationships with and responsibilities to treaty First Nations. Cardinal's work was an important factor in the demise of the proposed White Paper, and in shaping future Indigenous critique of federal government policy. Sadly, in many ways Chapter 3 of this thesis is forced to continue many of Cardinal's themes as I critique contemporary fiscal relationships between Canada and Treaty 6 First Nations. In other words, while the specifics are from the 1960s, *Unjust Society* remains relevant fifty years later, because Canada still does not take its treaty relationships and responsibilities seriously.

Prison of Grass, *Red Skin, White Masks*, and *Unsettling Canada* are less directly related to the topic of fiscal relationships between Canada and Treaty 6 First Nations, but they are examples of work that has influenced my thinking more generally as I have approached the topic of relationships between Canada and First Nations. *Prison of Grass*, for example, incisively challenges what was for well over a century the conventional Canadian (settler) narrative about the Northwest Rebellion and its moral framing. Adams' book made me realize how

little critical thought had been applied by settlers to the popular Canadian history I was raised on. This thesis, of course, represents an attempt at such critical thinking.

While *Prison of Grass* is written from a Métis perspective and is now three decades old, *Red Skin, White Masks* and *Unsettling Canada* are more recent, First Nations critiques of Canadian policy as it pertains to First Nations, and they are, if anything, even more harsh and incisive in their criticism of Canada than Cardinal and Adams were. Again this makes an important point: despite what is now at least fifty years of fairly consistent criticism from Indigenous academics, authors, and thinkers, Canada has not changed fundamentally when it comes to its (dis)respect of Indigenous sovereignty and the perpetuation of colonialism. In *Red Skin, White Masks*, for example, Coulthard points out that:

> the federal government's approach to reconciling its relationship with Indigenous peoples . . . first involves the state's rigid historical temporalization of the problem in need of reconciling (colonial injustice), which in turns leads to, second, the current politics of reconciliation's inability to adequately transform the structure of dispossession that continues to frame Indigenous peoples' relationship with the state.[55]

In *Unsettling Canada*, Manuel is also quick to remind (or inform) us that colonialism is not just historical, but alive and well in Canada, and that radical "fundamental change" is necessary.[56] These observations are critical to my analysis in Chapter 3 of the current government's inadequate approach to fiscal relationships, as well as underline the need for radical changes as I propose in Chapter 5.

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[55] Coulthard, 120.
[56] Manuel, 171.

The above four books are merely a sampling of all the Indigenous work that falls into this category of critiquing contemporary relationships between Canada and First Nations. Indigenous authors have critiqued contemporary relationships between Canada and First Nations from many perspectives, in many forms, and with varying degrees of intensity, but all have found ample fodder for critique; Canada's relationships with First Nations continue to be paternalistic, colonial, and racist, even as government policy evolves and rhetoric shifts.

From a settler perspective, Michael Asch is probably the best example for this thesis of an academic doing work that critiques contemporary relationships between Canada and First Nations. Much of Asch's work focuses on a numbered treaty context, especially with *On Being Here to Stay*. This is a well-thought through book, and Asch is a settler academic who takes the numbered treaties seriously in a contemporary context, which is refreshing. Mostly, however, Asch's lens is probably best described as legal or constitutional, so I find little to draw on directly for my thesis. Ultimately though, Asch and I agree on something quite fundamental, and it is worth emphasizing this: "Treaties offer us [as settlers] the means to reconcile the fact that we are 'here to stay' with the fact that there were people already here when we first arrived."[57] This is a crucial assumption of this thesis: not only are treaties key for First Nations as they relate to Canada, but for settlers *treaties are the only ethical justification for our presence in this land*. It is us as settlers who should be most invested in establishing treaty-based relations, since unlike First Nations we have no inherent rights to be here.

[57] Asch, 152.

Although it is not peer-reviewed, a final source worth noting in this subsection is a publication by the Yellowhead Institute (Ryerson University) entitled "Canada's Emerging Indigenous Rights Framework."[58] This document provides analysis of the current Trudeau government's Indigenous policy and specifically the proposed "Recognition and Implementation of Rights Framework" (see Chapter 3). Although published in September 2018, it is already somewhat out-of-date, given the speed with which the current Trudeau government's policy is evolving. Nonetheless, I use it throughout my analysis of current fiscal relationships in Chapter 3, because it represents excellent "real-time" work in analyzing relationships between Canada as represented by the current government and First Nations, including fiscal relationships. Its critique is, however, from a pan-Canadian perspective (which makes sense, since Canadian First Nations policy also continues to be pan-Canadian), and does not focus specifically on the numbered treaty context that I am interested in.

To wrap up this subsection, I have concluded that there is no lack of academic work critiquing contemporary relationships between Canada and First Nations, but generally (and unfortunately) this has had to come from Indigenous scholars more so than from settlers. As I have no doubt by now made obvious, I would like to see settlers do much more of this work. Chapter 3 of this thesis attempts to make a small contribution towards filling this gap.

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[58] Hayden King and Shiri Pasternak, "Canada's Emerging Indigenous Rights Framework: A Critical Analysis" (Yellowhead Institute, 2018) (accessed September 4, 2018; https://yellowheadinstitute.org/wp-content/uploads/2018/06/yi-rights-report-june-2018-final-5.4.pdf).

3. Recommendations for Changes to Relationships between Canada and First Nations

While much of the work critiquing contemporary relationships between Canada and First Nations also includes suggestions for changes, there is also work focusing specifically on recommendations for changes—although of the three categories I am overviewing, I consider this one the least developed and, again, particularly under-developed by settlers. To put this another way, many of the sources I mentioned in the prior section either explicitly or implicitly include recommendations as to how relationships between Canada and First Nations can be improved, but that is not their exclusive aim. In this subsection, my interest is work that is more explicitly focused on recommendations for change (which is the category I would put my thesis in, and especially the final chapters).

In fairness to Canada, the federal government has invested in researching this question (i.e., how should relationships between Canada and First Nations be improved?) on several occasions, most notably with RCAP (a commission that relied on both Indigenous and settler academics) in the 1990s.[59] In fact, had RCAP's recommendations been even mostly implemented it is highly unlikely that I would be writing this thesis today. For the most part, however, these reports, findings, and recommendations have either been ignored or resulted in little substantive change. That being said, RCAP's five-volume report remains a valuable resource, and I utilize it throughout this thesis. My approach to the

[59] In some ways the recent TRC also did work in this area, but its focus was less so nation-to-nation relationships between Canada and First Nations and more so relationships between Canada/Canadians and First Nations people.

RCAP report is nuanced. On the one hand, it is now over twenty years old, and I consider its recommendations insufficiently willing to challenge the Canadian status quo—seemingly imagining a role for First Nations within Canada that more parallels that of provinces than of sovereign nations. On the other hand, the RCAP report is willing to imagine a Canada in which treaties are taken seriously; land is returned to First Nations; and fiscal relations reformed such that First Nations are adequately funded, are recognized as legitimate recipients of natural resource revenue, have their taxation powers recognized, and so on.[60] In other words, many of my recommendations on how to make fiscal relationships consistent with Treaty 6 overlap with the recommendations of RCAP, so I have not hesitated to engage with it as relevant in Chapter 5. Aside from the fact that my project is much narrower in scope than RCAP's was, I believe my thesis's recommendations differ from those of RCAP because I am both offering what I consider very pragmatic recommendations (in Chapter 4) and more radical recommendations (in Chapter 5). This is not a criticism of RCAP *per se*, but simply a point about how I see my thesis situated in the landscape of literature recommending changes to relationships between Canada and First Nations that to date has been dominated by the RCAP report.

An article even older than the RCAP report, "Empowering Treaty Federalism," by Indigenous scholar James Youngblood Henderson,[61] is among the academic work that most resonates with me in terms of how numbered treaties

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[60] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*.

[61] James Youngblood Henderson, "Empowering Treaty Federalism" (*Saskatchewan Law Review* 58 [1994]): 241-329.

might reshape relationships between Canada and First Nations in the future. Written at the tail end of the era of Canada's modern constitutional rethinking, this article offers suggestions on how the Canadian constitutional make-up could include treaty-adherent First Nations. I appreciate Henderson's starting point when it comes to including First Nations in the Canadian federation: "treaty federalism united independent First Nations under one Crown, *but not under one law*."[62] In other words, Henderson refuses to domesticate First Nations, as I believe RCAP and so many others do. Ultimately Henderson offers little that is useful for my research question, because his focus is legal and constitutional, not fiscal. Nonetheless, his article represents what I would consider important parallel work to what I am trying to do in this thesis (after all, for relationships between Canada and Treaty 6 First Nations to be consistent with Treaty 6, there are important legal as well as fiscal questions to be answered).

A few settler academics have published on ways relationships between Canada and First Nations could be improved. Two relatively bold examples would include Menno Boldt's *Surviving as Indians*[63] and Tom Flanagan with, for example, *First Nations? Second Thoughts*.[64] Neither of these authors engages with the numbered treaty context in what I consider a serious way and (perhaps partly because of this) neither Boldt's nor Flanagan's work seems to have gained much traction academically or politically. Frankly, my readings of these books

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[62] Henderson, 252.

[63] Menno Boldt, *Surviving as Indians: The Challenge of Self-Government* (Toronto: University of Toronto Press, 1993).

[64] Tom Flanagan, *First Nations? Second Thoughts* (Montreal: McGill-Queen's University Press, 2008).

suggest to me that neither author was listening (or, if so, not very genuinely) to First Nations' perspectives and so, for this reason, I do not engage their work in a meaningful way.[65]

An exciting volume co-edited by John Borrows and Michael Coyle (*The Right Relationship*[66]) has recently been published presenting work by both Indigenous and settler scholars engaging with the subject of changing relationships between Canada and First Nations in a historical treaty context, and so it is the closest published work I have found that includes settler academics engaging with these questions. One article worth highlighting, Michael Coyle's "As Long as the Sun Shines," makes an important point that I will echo in Chapter 2:

> historical treaty-making was intended to create a new enduring normative order on lands once occupied exclusively by Indigenous peoples, but henceforth to be shared with settlers and their descendants.[67]

The enduring nature of treaty relationships is mostly obvious to First Nations, but not always to settlers, and it is an important argument of my thesis.

As a whole, this literature review has attempted to provide an overview of the landscape relevant to this thesis. To summarize, in the first subsection I concluded that there is plenty of work, settler and Indigenous, that provides the historical context of Treaty 6 and critiques post-Treaty 6 relationships up until

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[65] While I decline for the most part to engage these authors, Flanagan, and especially *First Nations? Second Thoughts*, has received academic attention, including brief but incisive critique from Roger Epp (124-33), and a more substantive response in an edited volume, *First Nations, First Thoughts* (edited by Annis May Timpson).

[66] John Borrows and Michael Coyle, eds., *The Right Relationship: Reimagining the Implementation of Historical Treaties* (Toronto: University of Toronto Press, 2017).

[67] Coyle, "As Long as the Sun Shines: Recognizing That Treaties were Intended to Last," in *The Right Relationship*, 41.

today; and in the second subsection I concluded that there is plenty of work critiquing contemporary relationships between Canada and First Nations, although not enough by settlers, and little that specifically looks at fiscal relationships. In this third subsection, I have shown that that there is some work that provides recommendations for changes to relationships between Canada and First Nations, with RCAP's report being foremost among it. There is almost none, however, from settlers looking at relationships in a numbered treaty context, with the recent Borrows and Coyle volume including some work that is an exception. What should now be obvious is that there is no work by settlers addressing my research question, regarding recommendations for nation-to-nation fiscal relationships in a Treaty 6 context, and this is where, of course, this thesis come in.

D. Outline

The remaining chapters of this thesis are written such that they each advance a specific argument on their own, even as they build towards the argument of the thesis as a whole. Chapter 2 set the historical context for Chapter 3, in which I examine current fiscal relations in the context of the Trudeau government; Chapters 4 and 5 are future-oriented, attempting to provide some direct answers to my research question. Briefly, the chapters are as follows.

Further to my historical-critical hermeneutic, Chapter 2 explores the history of international relations leading up to Treaty 6; the nation-to-nation relationships established by Treaty 6; and the history of fiscal relationships between Canada and Treaty 6 First Nations from 1876 to 2015. I argue that

consistent with nation-to-nation relationships in the territory for generations prior, Treaty 6 created ongoing, dynamic, nation-to-nation relationships between Canada and adherent First Nations that were intended to ensure mutually-beneficial relations in a shared space. Despite this optimistic goal, Canada's relationships with Treaty 6 First Nations after 1876 consistently failed to live up to the fiscal obligations/expectations of the treaty, or the spirit of nation-to-nation relationships it created.

Chapter 3 reviews the fiscal relationships between Canada and Treaty 6 First Nations since the Liberal Government of Prime Minister Justin Trudeau took power in 2015, arguing that despite rhetorically outlining an ambitious agenda relating to Indigenous peoples, including a "new fiscal relationship" with First Nations, the Trudeau government has either been unwilling or unable to make significant substantive change, and those changes they are implementing regarding fiscal relationships appear to continue the history of fiscal relations inconsistent with Treaty 6.

Chapter 4 switches perspective to the future, beginning to answer my research question while taking into account what-I-consider the three primary constraints Canadian governments face. So, Chapter 4 focuses on ways Treaty 6 fiscal relationships could change with relatively minimal budgetary effect; without significantly negative impact to public support for the Canadian politicians making the changes; and without dramatic challenge to Canada's current constitutional/legislative order. I also assume an interpretation of Treaty 6

based solely on the written text. In other words, the suggestions of Chapter 4 are relatively conservative (and, therefore, more practical) compared to Chapter 5.

In Chapter 5 I go about answering my research question while imagining more radical possibilities. In contrast to Chapter 4, I assume nothing is impossible in terms of budgetary, political, and constitutional/legislative constraints, and that Canada is willing to adopt a more reasonable approach to interpreting Treaty 6 that reflects its spirit and intent, as opposed to the literal words of the Canadian document. Whereas Chapter 4 provides ideas of how fiscal relationships could be become more consistent with Treaty 6, Chapter 5 focuses on what fiscal relationships might need to look like to make them *entirely* consistent with the nation-to-nation relationships established with Treaty 6.

My conclusion summarizes my arguments, and also raises other issues that are less directly related to fiscal relationships, but no less important (for example, return of lands, immigration, and so on). I raise these on a "further work is needed" basis, without going into them in depth. My hope would be that many other scholars would invest in thinking about my research question and related questions as we (hopefully) move towards restoring nation-to-nation relationships based in Treaty 6 and other treaties.

CHAPTER 2: THE HISTORY OF TREATY 6 FISCAL RELATIONSHIPS

The purpose of this chapter is to explore the history of Treaty 6 fiscal relationships up until 2015. While my research question does not have a historical focus, my contention is that what Treaty 6 fiscal relationships should look like today can only be understood within their historical context. In establishing this historical context, I begin by challenging typical settler assumptions regarding international relations in what-is-now the southern half of Alberta[1] prior to Canada's arrival here.

A. What did Nation-to-Nation Relationships Look Like before Treaty 6?

While Treaty 6 itself has received considerable academic (and non-academic) attention, the nature of international relations in this land prior to the numbered treaties has not, as far as I am concerned, received the attention it deserves. This section is not intended as a thorough history, but rather is intended to force settler readers to think about pre-Treaty 6 relationships between First Nations in

[1] In other words, roughly the territory in Alberta now covered by the Alberta "half" of Treaty 6 and Treaty 7. This chapter deals with time before many of the current geographical terms applied (e.g., Canada, Alberta, British Columbia), but from here-on-in, for sake of space, I will refrain from using phrases such as "what-is-now" and simply use current names.

different ways than most of us ever have. Whether we are comfortable admitting it or not, most of us as Canadian settlers have been taught and/or raised to assume—whether consciously or unconsciously—that First Nations historically related to each other (and generally behaved) in inferior, less sophisticated, perhaps "savage" or "primitive," or, hardly better, romanticized, ways. In this section, I want to challenge these assumptions and paint an alternative picture that emphasizes the sophistication of relations and the exercise of sovereignty of Indigenous peoples.

Since words such as "international" and "sovereignty" (and, perhaps, even "nation" itself) have implications and connotations most readers likely associate with European ideas of politics and political relations, they are far from perfect words to describe the pre-Treaty 6 political realities of the Cree, Blackfoot, Stoney, and Assiniboine. Partly I am using these terms simply because I am not sure there are more ideal words in English. Mainly, however, I think words such as these serve my intention to force us, as settlers, to think about the political realities of this pre-Canada geographical space within the framework that we are used to thinking about historical European relationships. Put another way, despite their lack of perfect accuracy, I use these words precisely because they challenge us as settlers to draw parallels between how European nations were exercising sovereignty and relating to each other in the 19th century and how First Nations were doing the same. Hopefully it is clear that I am not trying to suggest that

First Nations in western Canada were "just like" European nations;[2] rather, I want to fight back against the assumptions about how different (read: inferior) First Nations were, and to emphasize that they had nation-to-nation relationships with each other (as well, perhaps, with the Métis and even the Hudson's Bay Company [HBC][3]) long before Canada arrived. In a sense, I am trying to counter the contemporary tendency to domesticate Indigenous peoples by emphasizing the international-ness of their historical relationships.

For me, this new way of thinking about pre-Treaty 6 First Nations relations came about not through studying the academic work that is available, but rather through reading the memoir of Treaty 6 Indigenous[4] interpreter Peter

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[2] For example, for the sake of my argument I emphasize the cohesiveness of First Nations of Alberta, but evidence would suggest that First Nations' band structure contributed to nations that were far less cohesive than their European counterparts, and violent conflict between bands within a single ethnic nation was not unheard of (e.g., see Theodore Binnema, *Common and Contested Ground: A Human and Environmental History of the Northwestern Plains* [Norman, OK: University of Oklahoma Press, 2001], especially pp. 8-15); in other words, the picture I paint in this section necessarily lacks the nuance of a more thorough study of international relations.

[3] Obviously the HBC was not a nation in the ways we think of nations most often; and, yet, in the context of thinking about international relations in western Canada prior to Canada's assertion of sovereignty here, in many ways the HBC related to the other nations in this geographic space as a nation: the HBC entered into negotiated, reciprocal, occasionally violent relationships with First Nations and the Métis, and exercised governance over its own people (employees) while generally respecting jurisdictional boundaries between itself and First Nations (see also: Miller [4]: "Royal authority made [the HBC a] quasi-governmental entit[y];" and Jennifer S. H. Brown on HBC negotiating treaties ["Rupert's Land, *Nituskeenan*, Our Land: Cree and English Naming and Claiming around the Dirty Sea," in *New Histories for Old: Changing Perspectives on Canada's Native Pasts*, eds. Ted Binnema and Susan Neylan (Vancouver: UBC Press, 2007), 30-36]).

[4] Erasmus is frequently referred to as Métis (e.g., Arthur J. Ray, Jim Miller, and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* [Montreal: McGill-Queen's University Press, 2000], 131; D. J. Hall, 47), and, certainly, his mid-1800s Red River heritage is consistent with what we now know as Métis people. But, it might not be the best term, because his father was Scandinavian, not French or Canadien; he spoke English, not French; he was Protestant, not Catholic; and generally his attachment with Red River and the Métis community seems to have been of minimal significance for most of his life (see Chris Andersen, "*Métis": Race, Recognition, and the Struggle for Indigenous Peoplehood* [Vancouver: UBC Press, 2014], for discussion on the definition of Métis). Arguably, his Indigeneity has more to do with his associations with the Cree than Métis (he married Cree women, lived in the Whitefish Lake

Erasmus, *Buffalo Days and Nights*.[5] Because *Buffalo Days and Nights* is a lively and engaging memoir, it brought these political realities "alive" in fresh and sometimes startlingly ways.[6] I intend to draw out some of the insights that help paint the picture of the nation-to-nation context in the decades just prior to Treaty 6's negotiation (roughly 1856-1876). Utilizing the insights I have drawn from *Buffalo Days and Nights* and information from other primary and secondary sources, this section argues that nation-to-nation relationships in Treaty 6 territory

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community with permission from Cree Chief Pakan/James Seenum, spoke Cree, hunted/trapped with the Cree, and so on) so, perhaps, the generic "Indigenous" is the best term.

[5] Peter Erasmus, *Buffalo Days and Nights* (Calgary: Fifth House, 1999 [second edition]).

[6] While tremendously readable, the historical reliability of *Buffalo Days and Nights* requires some comment. This is mostly due to the book's unique provenance. Although Peter Erasmus could write English, *Buffalo Days and Nights* was not, strictly speaking, written by him. Instead, the book fits into the category of "as-told-to" autobiography or memoir. "As-told-to" memoirs pose special challenges for critical readers, although *Buffalo Days and Nights* is free from many of the most significant challenges other examples of the genre present. Nonetheless, much of the context of Erasmus's stories is culturally foreign to (especially settler) readers today; Erasmus employs a more-oral-than-written storytelling method; and, ultimately, the written text of *Buffalo Days and Nights* is the work of Erasmus's amanuensis, Henry Thompson, and subsequent editor, Irene Spry, and not Erasmus himself. For the most part, *Buffalo Days and Nights* employs the "absent editor" strategy which creates "the fiction that the narrative is all the [subject's] own" (David Brumble, *American Indian Autobiography* [Lincoln: University of Nebraska, 2008], 75), whereas, in fact, we as critical readers are encountering a "bicultural" document, a text "in which the assumptions of [Indigenous Erasmus] *and* ["mixed blood" Thompson and settler Spry] are at work" (Brumble, 11). Inevitably, we are reading (at least) "two different sets of narrative assumptions at work, two different sets of aims, and two very different senses of what it means to tell the story of one's life" (Brumble, 12).

Obviously, the challenges of *Buffalo Days and Nights* as "as-told-to" memoir could be reason to question its historical reliability. Spry notes that *Buffalo Days and Nights* "cannot . . . be taken word for word as a source of precise, factual information" (introduction to *Buffalo Days and Nights*, xiv) and I agree. But, I believe that getting hung up on the specifics (i.e., accuracy of dates Erasmus references, or the chronological sequence of the events he describes), leads to under-appreciating what may be most historically valuable about the story—i.e., the general insight it provides into life in the mid- to late-19th century in Canada's three prairie provinces, and especially Treaty 6 territory in Alberta. The often-incidental glimpses *Buffalo Days and Nights* offers into modes of transportation, health care, hunting practices, communication systems, religion, intimate life, and so on, all contribute generously to our understanding of life in these times. In this section, what I am especially interested in, of course, is what *Buffalo Days and Nights* has to tell us about international relations in this geography before Treaty 6.

did not begin with Treaty 6, but had a long and complex history on this land.[7] In fact, prior to Canada's arrival here in the 1870s, First Nations were sovereign nations living together in a shared space with negotiated jurisdictional and geographical boundaries, engaging in political and economic relations, and resolving inevitable conflicts bilaterally, sometimes diplomatically and sometimes violently, as equals. The rest of this section provides examples of these international relations pre-Treaty 6.

1. Defined Territories

In today's world, borders are one of the aspects we most associate with nations, and the maps of the world we most often engage with are coloured to emphasize the respective territories of nations. So, to me, the starkest aspect of pre-Treaty 6 international relations *Buffalo Days and Nights* emphasized was the extent to which the southern half of Alberta was divided into clearly defined national territories.[8] Most significantly, the division was between the northern territory of the Plains Cree (roughly what was eventually covered by Treaty 6),[9] and the southern territory of the Blackfoot[10] (roughly what was eventually covered by

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[7] I am, of course, most interested in the two decades between 1856-1876 because they are so directly relevant to Treaty 6, but "trade, warfare, and diplomacy" in what was "common and contested ground" was occurring "for many centuries" before the 1850s (Binnema, 3).

[8] Clearly, Indigenous conceptions of sovereignty over or possession of territory differed from European (see e.g., Brown, 25), so I am not attempting here to suggest that Indigenous ideas of national territories equated perfectly to European. Nonetheless, the parallels struck me and are useful in challenging typical settler assumptions.

[9] See John S. Milloy (*The Plains Cree: Trade, Diplomacy and War, 1790-1870* [Winnipeg: University of Manitoba, 1988], xvi): "The [Plains Cree] nation was more than an ethnic identity. It was also a specific place."

[10] Mostly Erasmus seems to view the Blackfoot Confederacy as a single entity, although others place more emphasis on the distinctiveness of the nations: "there are three distinct nations" (Donald Ward, *The People: A Historical Guide to the First Nations of Alberta, Saskatchewan, and Manitoba* [Markham, ON: Fifth House Books, 1995], 24); and the members of the Blackfoot Confederacy existed "as politically distinct nations" (RCAP, *Report of the Royal Commission on*

Treaty 7).[11] The territory of other sovereign nations overlapped these to some extent, but Erasmus's reflections most dramatically emphasize the Cree/Blackfoot border. Unsurprisingly, this border between the region's most powerful nations is also referenced in other primary sources. For example, Joseph Dion, a Cree born in 1888 who relates both his own experiences and information learned from his parents and Elders, says "the Blackfoot, enemies of [the Cree], seldom invaded north of the Saskatchewan River."[12] In terms of secondary sources, both David Mandelbaum and John Milloy have gone as so far as to publish maps with a border drawn between the Cree and the Blackfoot,[13] and RCAP defines the northern, eastern, southern, and western boundaries of Blackfoot territory.[14]

Other nations Erasmus mentions include the mostly-keep-to-themselves Sarcees (Tsuut'ina), whom Erasmus considered "friendly," but Blackfoot allies,[15] and who lived in Blackfoot territory;[16] Stoney ("so called because of their preference for the mountainous country where they lived and did most of their hunting"[17]), who were western neighbours of the Blackfoot, but peaceful, and

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Aboriginal Peoples: Volume 1, 61). Further to drawing parallels between 19th century international relations in Alberta and Europe, the three-in-one nature of the Blackfoot reminds me of unification movements in Germany and Italy at the same time, as distinct nations consolidated into federated nation-states.

[11] See Treaty 7 Elders who also talk about the negotiated eastern border of Blackfoot territory between themselves and the Sioux (7).

[12] Dion, *My Tribe the Crees* (Calgary: Glenbow, 1993), 7.

[13] David Mandelbaum, *The Plains Cree: An Ethnographic, Historical, and Comparative Study* (Regina: Canadian Plains Research Centre, University of Regina, 1979), 13; Milloy, x.

[14] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 1*, 61.

[15] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 1*, 61.

[16] Erasmus, 104. Donald Ward goes so far as to describe the Sarcee as members of the Blackfoot Confederacy (24, 34).

[17] Erasmus, 74.

friends of the Cree[18] (a friendliness confirmed by Treaty 7 Elders[19]); and Assiniboine,[20] for whom Erasmus does little but express pity (the extent to which Erasmus understood the Assiniboine to have defined territory is difficult to determine, but he talks about meeting "a camp of Assiniboine Indians" near current Whitecourt/Alexis Nakota Sioux Nation,[21] and also mentions that the Assiniboine traded at Rocky Mountain House—suggesting their territory may have lay roughly west of the Cree's and north of the Stoney's).

There is so much information in *Buffalo Days and Nights* regarding boundaries between national territories, that it would be relatively easy to draw a rough map of southern Alberta showing the division of land between Cree, Blackfoot, Stoney, and (with less confidence) Assiniboine.[22] Of course, although territory was clearly divided, Erasmus seems to have a more fluid understanding of borders than nation-states enforce today. So, for example, the Blackfoot came into Cree territory to visit Fort Edmonton (see below), and the Cree entered Blackfoot territory to hunt buffalo.[23] But, while crossing borders happened, it does not necessarily mean either group had permission from the other to trespass,

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[18] In fact, relationships between the Cree and the Assinboine/Stoney were at times so close, that "some bands were neither Cree nor Assiniboine, but interethnic" (Binnema, 14).

[19] "The Stoneys made numerous treaties with neighbouring tribes over the years, especially with the Cree" (Treaty 7 Elders, 110); see also Mandelbaum, *The Plains Cree*, 8.

[20] Erasmus makes a distinction between the Stoney and Assiniboine, whereas others would be less inclined to distinguish between them. See Donald Ward who indicates that "in Alberta [the Assiniboine] became known as the Stoney" (13).

[21] Erasmus, 91.

[22] For some reason, Erasmus has only one reference to the Chipewyan/Dene in his account, but they were also a nation in what became Treaty 6 territory, and Joseph Dion, in his stories covering roughly the same time period and geography, does mention their at least occasional alliance/friendliness with the Cree (e.g., 71).

[23] Erasmus, 201.

and there is plenty of evidence within *Buffalo Days and Nights* that such trespassing was often responded to with violence.

2. Warfare/Diplomacy

Buffalo Days and Nights includes many references to violence and threats of violence, especially from the Blackfoot, and the wars between the Cree and the Blackfoot are well documented by other sources.[24] During the decades Erasmus describes, there was no permanent peace between the Cree and Blackfoot,[25] although from Erasmus's perspective most of the Cree had little desire to fight—and even the Blackfoot turned down their allies in the United States in fighting against American settlers.[26] The martial superiority of the Blackfoot within southern Alberta is implied more than once, and when Erasmus describes a Blackfoot visit to Edmonton, he also notes that he feared for the Cree nearby—even though Fort Edmonton was in Cree territory and in fact it was the Blackfoot who were "trespassing."

Most of the actual violence Erasmus observed related to horse stealing, which was "looked upon as an honourable calling practiced between tribes but never to my knowledge by individuals outside of the tribes of Crees, Blackfoot, and Peigans."[27] Cree Chief Fine Day described participating in horse stealing

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[24] See also: Walter Hildebrandt, *Views from Fort Battleford: Constructed Visions of an Anglo-Canadian West* (Regina: University of Regina, 2008), 10; Mandelbaum, *The Plains Cree*, 239; Donald Ward, 26; RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 1*, 61.

[25] Although these nations were previously, at least on occasion, allied (Donald Ward, 61; Carter, *Lost Harvests*, 32; Milloy, 31-37)—not unlike, of course, European nations with on-again, off-again alliances between themselves depending on national interests.

[26] Erasmus, 106; see also Treaty 7 Elders, 17-18.

[27] Erasmus, 101.

himself in an interview with David Mandelbaum,[28] and Donald Ward notes that "raiding for horses made enemies, and it was no minor activity. In 1810, Fort Edmonton alone reported the loss of 650 horses in the area."[29]

Erasmus emphasizes the need to deal with potential violence with diplomacy, especially when he talks about participating in the Palliser Expedition's travels through Blackfoot territory. Although Erasmus does not tell any stories that relate directly to international diplomacy between First Nations, diplomatic relations took place during this time period nevertheless, as described by many others. In 1870-71, a "large campaign" took place between the Cree and the Blackfoot,[30] followed by the negotiation of a peace treaty[31] (Erasmus's silence on this may be explained by his preoccupation with family life, fighting off smallpox, and making a living from trapping during this period[32]). Another major peace treaty involving Cree in Alberta (albeit in Treaty 8 territory) was between the Cree and the Beaver[33] and/or Dene,[34] and the present-day Peace River's name continues to memorialize this diplomatic relationship.

What Erasmus does relate is the sophisticated *intra-national* negotiations that took place amongst Cree leadership, including at the Treaty 6 negotiations

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[28] Mandelbaum, "Fine Day Interview #21A" (accessed March 24, 2019; https://ourspace.uregina.ca/bitstream/handle/10294/1838/IH-DM.64A.pdf?sequence =1&isAllowed=y).

[29] Donald Ward, 34; see also Mandelbaum, *The Plains Cree*, 41.

[30] Hildebrandt, 10.

[31] Carter, *Lost Harvests*, 36; Milloy, 116-18; Treaty 7 Elders, 8-9; Venne, "Treaties Made in Good Faith," 3; Donald Ward, 62.

[32] Erasmus, 209-225.

[33] Donald Ward, 105.

[34] Venne, "Treaties Made in Good Faith," 2.

and during buffalo hunts.[35] These stories demonstrate well-established, pragmatic governance models that allowed the Cree to operate in an effective, mostly-unified manner, despite frequent political tensions beneath the surface. For example, during a large buffalo hunt, potential leaders were nominated, campaigned, and a leader was then elected.[36] While inevitably certain members of the hunt were not happy with the leader chosen, absolute obedience to the leader was expected both to ensure the hunt's success and everyone's safety.[37] The political machinations and maneuverings described by Erasmus could easily be transported to the royal courts or political capitals of late-19th century Europe.

3. Economic Relationships

Shalene Jobin has stated that "one key function of a sovereign people is to engage in international trade,"[38] and certainly most Canadian settlers are well aware of the economic relationships between the HBC (as well as other settlers and settler entities) and First Nations throughout what became Canada. These economic relationships in themselves can be thought of as international in nature, and a story Erasmus tells early in *Buffalo Days and Nights* highlights this. The story takes place during a particular Blackfoot visit to Fort Edmonton,[39] and includes a vivid description that brings to mind the pomp and circumstance of contemporary international state visits.[40] Pipe-smoking, gun-saluting, gift-giving, speech-

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[35] See a similar description of intra-national politics amongst the Blackfoot in RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 1*, 69-71.

[36] Hildebrandt, 5.

[37] Erasmus, 201-08.

[38] Jobin, "Cree Peoplehood, International Trade, and Diplomacy" (*Revue generale de droit* 43:2 [2013]), 613.

[39] Erasmus, 45-48.

[40] Miller describes similar accounts of trading protocols as international relations (15-21).

making, and singing all preceded the actual trade of goods, and generally the scene Erasmus describes is not one of a benign customer entering a welcoming department store, but of an elaborate, tense diplomatic engagement of two not-entirely friendly or trusting sovereign powers. The trading took place in "the Indian house," with "guards . . . stationed for the whole of the trading. This was a precautionary measure in case of treachery."[41]

But beyond the well-known relationships between the HBC and First Nations, *Buffalo Days and Nights* alludes to the trade between First Nations themselves.[42] For example, in 1870, a decade after Erasmus had settled around Whitefish Lake, he references a horse he owned which had been "raised by the Kootenay Indians."[43] Since the Kootenay (Ktunaxa) nation's territory is in roughly southeastern British Columbia, Erasmus's ownership of this horse suggests a trading network extending roughly 1,000 kilometres.[44] Elsewhere Erasmus explains that the "Kootenay Pass [was] so called because the Kootenay Indians used it on their trips to the plains,"[45] so presumably the Kootenays were trading with southern Alberta nations; this is confirmed by Treaty 7 Elders: "The Nakoda (Stoney) were contacts of trade with the . . . Kootenay tribes to the west of the Rockies."[46]

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[41] Erasmus, 46.

[42] There is abundant evidence of "an ancient history [of] . . . long-distance trade" between First Nations on the "northwestern plains" which became "increasingly elaborate about two or three thousand years ago" (Binnema, 59).

[43] Erasmus, 206.

[44] See Milloy (47-58) on Cree participation in the Mandan-Hidatsa trading network (including horse trading) earlier in the 19th century.

[45] Erasmus, 108.

[46] Treaty 7 Elders, 6.

Erasmus also suggests the Cree obtained medicinal knowledge from the Stoney, although Jobin references "that most Cree medicines originally came from the Saulteaux."[47] Either way, an international trading network of intellectual property is implied—one that also included trading of ceremonies.[48] Jobin has also described how at least one Cree chief expected payments comparable to tariffs or duties or royalties for use of resources (e.g., buffalo) in his territory,[49] further underlining the sophistication of First Nations economic relationships and the assertion of jurisdiction over certain territory.

Interestingly, while Erasmus never states this explicitly, *Buffalo Days and Nights* does not mention trade between the Cree and the Blackfoot, suggesting that perhaps during much of this period the political tension between these two nations was such that there was no economic relationship.[50] Might this lack of economic relationship be comparable to economic sanctions between geopolitical rivals in contemporary international relations?

4. The Nation-to-Nation Context of Numbered Treaties

The prior three subsections have briefly drawn out some of the aspects of international relations that existed in the late mid-19th century in the southern half of Alberta. The stories Erasmus and others tell make clear that relationships between First Nations in this geography before Treaty 6 were not entirely

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[47] Jobin, "Cree Peoplehood, International Trade, and Diplomacy," 620.
[48] Jobin, *Nehiyawak Narratives*, 53.
[49] *Nehiyawak Narratives*, 60, 132.
[50] Others do reference trade between the Blackfoot and Cree (e.g., Donald Ward, 27, 57; Treaty 7 Elders, 6), although I have not seen evidence that trade was occurring between these nations in the decades Erasmus describes; see Milloy (36) who describes how in 1808 the Cree attempted (unsuccessfully) to impose a trade embargo on the Blackfoot to hurt them economically and militarily.

different than those of European nations in the same time period. Borders existed and were defended and asserted between nations; warfare and diplomacy were conducted as national interests dictated; and economic relationships were established and maintained (and, perhaps, also suspended). In other words, nation-to-nation relationships in Treaty 6 territory did not begin with Treaty 6, but had a long and complex history on this land. In fact, prior to Canada's arrival here in the 1870s, First Nations were sovereign nations living together in a shared space with negotiated jurisdictional and geographical boundaries, engaging in political and economic relations, and resolving inevitable conflicts bilaterally, sometimes diplomatically and sometimes violently, as equals. This was the context into which Canada came in the 1870s to negotiate Treaty 6 and the other numbered treaties. From the First Nations' perspective, Canada was surely viewed as another nation to be negotiated with in a reciprocal way[51]—as First Nations had been doing amongst themselves and even with the HBC for centuries.[52] Including Canada in these international relations would have not seemed impossible or unreasonable, especially given the economic, educational, and medical assistance Canada could offer in exchange. Canada, of course, had a

[51] This is necessarily a simplistic statement; obviously, First Nations recognized that there was much that was unique about Canada. My point is that Canada was the newcomer to geography that was already being shared/divided between nations. Including Canada in this mix of nations would not have been seen as inherently problematic; the HBC, Métis, and (possibly) some of the First Nations were relatively new to Alberta (see Milloy, 5; Daschuk, xii-xv) and had been able to negotiate their own space and jurisdiction.

[52] "Indian treaty nations naturally approached the treaties they made with Europeans on the same basis as the treaties they made with each other" (RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 37).

very different, or, at least, inconsistent, perspective,[53] as we will see in the next section.

B. Treaty 6 and Nation-to-Nation Relationships

If we are to determine what Treaty 6 fiscal relationships should look like, it is critical to understand the relationships Treaty 6 created. At a basic level, the argument of this section is that consistent with nation-to-nation relationships in the territory for generations prior, Treaty 6 created ongoing, dynamic, nation-to-nation relationships between Canada and adherent First Nations that were intended to ensure mutually-beneficial relations in a shared space. These newly created relationships included a fiscal component: for Canada, the treaty created fiscal obligations; and, for First Nations, fiscal expectations.

In contrast to the topic of pre-Treaty 6 international relations, much has been written regarding the numbered treaties that were negotiated in the late 19th and early 20th centuries between First Nations and the British/Canadian Crown in the geographical space "from Lake Superior to the foot of the Rocky Mountains"[54] between 1871 and 1921. These treaties were for the most part necessitated by Canada's "purchase" from the HBC of Rupert's Land and the Northwest Territory in 1870, and represented Canada's attempt to peacefully secure the sovereignty it already believed itself to have over these lands and

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[53] "Canadians seemed incapable of acknowledging . . . [that] treaty-making was already an integral and long-practised convention amongst various Indigenous nations, steeped in traditions" (Neu and Therrien, 70).

[54] Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they were based* (Toronto: Belfords, Clarke & Co., 1991), preface.

everything in them.[55] But while Canada assumed payment of £300,000 and a few other concessions[56] meant it now had *de jure* sovereignty over Rupert's Land, even Canadians could not miss the fact that First Nations and Métis continued to exercise *de facto* sovereignty. Moreover, *The Rupert's Land and The North-West Territory Act* explicitly required Canada to take on the responsibility of dealing with First Nations claims:

> . . . upon the transference of the territories in question to the Canadian government the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.[57]

And, so, almost immediately, in 1871, Canada sent negotiators west to start negotiating Treaty 1.

Whatever the Canadian negotiators believed about Canadian sovereignty over the lands they were negotiating treaties on, the reality is that the written treaty negotiation records; the texts of the treaties as preserved by Canada; and the long-held, basically-consistent convictions of Indigenous peoples all indicate recognition by Canada of First Nations as nations, and owners of the lands. This clear recognition on Canada's part is hard to square with Canada's simultaneous

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[55] "Canadians understood that ultimate title to Rupert's Land and the North-Western Territory had been vested in the British Crown . . . and . . . they also understood that the dominion inherited that title – and the right and duty to govern – when the land was transferred in 1870. . . Canada assumed authority over the region and its peoples before negotiation with them" (D. J. Hall, 21, 29); see also John Leonard Taylor, "Treaty Research Report - Treaty Six (1876)" (accessed November 2, 2018; https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/tre6_1100100028707_eng.pdf).

[56] Frank Tough, "Aboriginal Rights versus Deed of Surrender: The Legal Rights of Native Peoples and Canada's Acquisition of the Hudson's Bay Company Territory" (*Prairie Forum* 17:2 [Fall 1992]), 237.

[57] *The Rupert's Land and The North-West Territory Act* (accessed July 26, 2018; http://www.publications.gov.sk.ca/freelaw/documents/english/statutes/historical/1870-Ruperts_Land_NWT_Act.pdf), 7.

behavior in terms of First Nations policy, including most importantly the passage of the 1876 *Indian Act* by Ottawa in the very year Treaty 6 was first negotiated[58]—but I will comment more on this tragic disconnect in the next section. For now, we will turn to the story of Treaty 6 and the nation-to-nation fiscal relationships it created.

1. The Story of Treaty 6

As its number implies, Treaty 6 was the sixth numbered treaty Canada[59] negotiated with First Nations, but the first treaty that the Treaty 6 First Nations negotiated with Canada. So, while it has much in common with the prior five and subsequent five numbered treaties (as well as many of the other, pre-Confederation historical treaties),[60] it also has a history all its own.

a. Lead-up to the Treaty 6 Negotiations

As an example of what made Treaty 6 unique, in 1871 some of the First Nations chiefs explicitly initiated the treaty negotiations with a letter sent via the HBC to

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[58] "A striking coincidence;" the treaty "embodied a relationship between nations that contemplated a future based on dialogue and accommodation . . . the Indian Act . . . treated First Nations throughout Canada as legal minors and approached them as a problem to be administered" (Ray, Miller, Tough, 202).

[59] Venne is adamant that the treaties were not negotiated with Canada, but with Britain/the British Crown (e.g., "Understanding Treaty 6: An Indigenous Perspective," in *Aboriginal and Treaty Rights in Canada*, ed. Michael Asch [Vancouver: UBC Press, 1997], 174, 189; "Treaties Made in Good Faith," 4), a point she considers important because Canada was not empowered to negotiate international treaties until the 1931 *Statute of Westminster* ("Understanding Treaty 6," 189; "Treaties Made in Good Faith," 8). But, *The Rupert's Land and The North-West Territory Act* did require Canada to negotiate with First Nations, and Morris's mandate to negotiate Treaty 6 came from the Governor General in Ottawa. Of course, I strongly agree with Venne regarding the international nature of Treaty 6, but I believe the treaty is rightly understood to be between Canada/the Canadian Crown and First Nations (see Sheldon Krasowski, *No Surrender: The Land Remains Indigenous* [Regina: University of Regina Press, 2019], 212).

[60] In many ways I am doing a disservice to the history of Treaty 6 by not properly contextualizing it within the other historical treaties, but there is plenty of scholarship that has done so (see especially Miller), and I believe there is also something to be gained by focusing (almost) exclusively on Treaty 6.

Canada, requesting that they be treated with.[61] Canada, still newly united and short on financial resources, delayed negotiating as long as possible, despite the advice of civil servants and military officers.[62] Finally, in 1876, Lieutenant-Governor Alexander Morris had a mandate from Canada to negotiate what would be his final treaty, after previously negotiating Treaties 3, 4, and 5.

"Neither [Canada nor the First Nations] operated from a position of strength"[63] when it came to negotiating Treaty 6. As the delay in negotiating had demonstrated, Canada had little financial capacity (even the purchase of Rupert's Land had required a loan from the British government), and was also weak militarily.[64] For the First Nations, rapidly dwindling bison herds[65] and the occasional onslaught of smallpox (especially in 1869-1870)[66] had severely diminished their economic and military strength; they were well aware of Canada's inevitable encroachment in their territory, and eager to negotiate the best terms possible to allow their people to adjust to the quickly-changing realities. Of course, compounding this situation of negotiating-from-weakness were the challenges of communication in an environment of limited language capability and dramatic differences in worldview: "the two sides . . . were products of profoundly different cultural experiences and had widely disparate

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[61] Morris, 169-71; Ray, Miller, Tough, 135; Robert J. Talbot, *Negotiating the Numbered Treaties: An Intellectual & Political Biography of Alexander Morris* (Saskatoon: Purich, 2009), 95.

[62] Morris, 168, 171; Talbot, 95-96.

[63] D. J. Hall, 43.

[64] D. J. Hall, 44.

[65] An eventuality First Nations on the prairies were concerned about at least as early as 1857 (Carter, *Lost Harvests*, 43).

[66] Sarah Carter, *Aboriginal People and Colonizers of Western Canada to 1900* (Toronto: University of Toronto Press, 1999), 38.

expectations."[67] Language and worldview are fundamental to successful communication, and become all the more critical in the context of delicate and consequential negotiations involving military security, economic livelihoods, and future relations of multiple nations. So, in many ways, the immediate context of the Treaty 6 negotiations was not ideal for any side.

b. The Negotiations

The 1876 negotiations took place at Fort Carlton (August) and Fort Pitt (September) (in Saskatchewan), and additional First Nations (including many around Fort Edmonton) adhered in 1877 and later (up to the 1950s, in the case of Sunchild First Nation and O'Chiese First Nation). While primarily a treaty with Cree First Nations, Treaty 6 is also adhered to by Saulteaux/Ojibwe, Assiniboine/Stoney, and Dene First Nations—and the Cree, Saulteaux, Assiniboine, and Dene all seem to have been represented at Forts Carlton and Pitt.

In terms of what settlers consider "primary" (i.e., written firsthand accounts) sources, the writings of Alexander Morris, especially *The Treaties of Canada* (1890),[68] and Peter Erasmus's *Buffalo Days and Nights* (which perhaps should not be considered exactly primary given its provenance) are the most well-known records of the negotiations other than the text of the treaty itself. Sheldon Krasowski has identified numerous other written accounts by other eyewitnesses to the Treaty 6 negotiations: transportation contractor John Kerr; North-West

[67] D. J. Hall, 3.

[68] Which includes what is nearly exactly the full contemporaneous report of the negotiations from Secretary to the Commission A. G. Jackes (Morris, 196-244) (Morris apparently made two minor edits to Jackes' report [Krasowski, 205-06]).

Mounted Police officers William Parker and Samuel Steele; Methodist missionary/translator John McDougall; Anglican missionary/translator John MacKay; and Catholic missionary Bishop Vital Grandin.[69]

Besides these written narratives, we also have, of course, the oral history of First Nations Elders, some of which I have accessed through secondary literature. In this regard, the work of Sharon Venne, *Spirit of the Alberta Indian Treaties* (edited by Richard Price), and *Treaty Elders of Saskatchewan* (edited by Harold Cardinal and Walter Hildebrandt) have been especially valuable in my research.[70] Perhaps unsurprisingly, and further emphasizing my point about communication challenges/differences in worldview, the accounts of Elders often suggest a different understanding of what was negotiated.[71] Later I will attempt to incorporate more of this First Nations' perspective into my analysis, but, for now, I will focus on the Canadian version of events.

Despite the desire of both Canada and most of the First Nations chiefs to negotiate a treaty, successful negotiations were far from certain.[72] In other words, these were genuine negotiations—the First Nations were not simply going to accept the terms Morris came with,[73] and Morris was not going to simply concede

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[69] Krasowski, 203.

[70] Other secondary sources providing access to Treaty 6 oral history include: Curriculum Studies and Research Department of the Saskatchewan Indian Cultural College, *Treaty Six: ". . . for as long as the sun shines, the grass grows, and the rivers flow . . ."* (Saskatoon: Saskatchewan Indian Cultural College, 1976); Jobin, "Cree Peoplehood, International Trade, and Diplomacy;" Johnson; RCAP; and Steinhauer.

[71] See, Price, ed., "Interviews with Elders," *Spirit of the Alberta Indian Treaties*, 113-60.

[72] Ray, Miller, Tough, 136.

[73] Métis author Howard Adams disagrees, describing the First Nations as "powerless," "seriously divided" and "economically dependent" (63); but his assertions (granted, made in 1989 and from a Métis perspective) are not supported either by the Canadian historical record or most First Nations' perspectives. Certainly the trend lines were such that Canada's power was

whatever the First Nations demanded.[74] The negotiating chiefs were aware of the terms of prior numbered treaties (especially Treaty 4)[75] and expected to improve upon them, just as Morris was careful to not promise too much.[76] So, for example, the chiefs insisted on provision of food, which, according to Morris, ultimately resulted in the limited promise that Canada would provide food in cases of "a national famine."[77] Treaty 6 also included promises of farming assistance that were superior to those of Treaty 4, as well, famously, as the "medicine chest" clause, which had not appeared in any of the prior numbered treaties.[78] Both sides took the negotiations seriously, and neither side appeared particularly desperate to conclude the treaty unless it was at least to some extent in line with their demands. To put this another way, whatever miscommunications and misunderstandings may have resulted, Treaty 6 represents at minimum a legitimate attempt at a nation-to-nation agreement.

After what seem to have been several tense days, Treaty 6 was concluded at Fort Carlton on August 23, 1876, and according to Morris a document was prepared that was signed by both Canadian and First Nations representatives.[79]

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ascending and the First Nations' waning, but describing the 1876 Treaty 6 First Nations as powerless relative to Canada is going too far.

[74] Jobin, *Nehiyawak Narratives*, 83.

[75] Ray, Miller, Tough, 146.

[76] Although, Miller (157) argues that "the costly concessions that Plains Cree negotiators extracted . . . contributed to [Morris's] replacement as lieutenant-governor and principle negotiator;" and John Tobias also indicates that the Mackenzie government balked at the "too-generous terms" ("Canada's Subjugation of the Plains Cree, 1879-1885," *Canadian Historical Review*, LXIV, 4 [1983], 523) (see also Krasowski, 233).

[77] Morris, 186.

[78] Ray, Miller, Tough, 143.

[79] Although in Morris's account the First Nations representatives are described as signing the treaty (e.g., Morris, 222), in fact "the Chiefs shook hands with the commissioner and then touched the pen. The clerk then made an 'x' on the document . . . this practice . . . was implemented consistently in the . . . numbered treaties" (Krasowski, 70). Krasowski argues that

From there, the Canadian negotiators carried on to Fort Pitt. Despite the protests from the treaty-skeptical Mistahimusqua (Big Bear), most of the chiefs at Fort Pitt also "signed" on to the treaty as negotiated at Fort Carlton[80]—and, in Jackes' account, even Mistahimusqua verbally assented to the terms of Treaty 6, although refused to sign as not all of "his people" were present.[81]

2. Treaty 6 Text versus Verbal Agreement

Even if we ignore for now the First Nations' history regarding Treaty 6, there appears to be tension between the Canadian text of Treaty 6 and the negotiations that Morris and other settler observers recount. While much of what was discussed is reflected in the text of Treaty 6, there are important elements of the Canadian text that none of the Canadian observers mention in their accounts of the negotiations. In other words, there are serious gaps between what is related in the primary source written accounts of the negotiations and the text of Treaty 6 itself. Most significantly, nothing appears to have been said about First Nations agreeing to "cede, release, surrender and yield up to" Canada their land,[82]

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this practice "distanced Chiefs from treaty text and was an important part of Canada's strategic attempt to mislead them about the contents of treaty documents" (70) (in the case of Treaty 6, four councilors did in fact sign the original text [Krasowski 226]).

[80] Morris, 238.

[81] Morris, 242.

[82] Speaking about Treaty 3, Miller suggests that: "Given the First Nations' careful protecting of their lands and their obvious concern about their livelihood, it is doubtful the oral version of the agreement had such a sweeping provision" (172); John Leonard Taylor says, "There is no recorded evidence that the commissioners attempted at the treaty negotiations to explain what they meant by a surrender" ("Two Views on Meaning of Treaties Six and Seven," *Spirit of the Alberta Indian Treaties*, 40); and perhaps St. Germain is most assertive of all regarding the lack of Treaty 6 negotiation relating to land cessation: "Nowhere was there the suggestion of an exchange of land title" (45) and "Morris and McKay . . . explicitly disavowed any intentions concerning land" (67). St. Germain concludes that "Morris had successfully negotiated the contentious land issue, largely by avoiding it altogether" (58-9) (which hardly sounds like successful negotiating to me!).

although this language features prominently in the treaty text (and, of course, in Canada's interpretation of what the numbered treaties represent). Krasowski is adamant on this point: "There is no evidence that Alexander Morris or his fellow treaty commissioners discussed the surrender clause during any of the treaty negotiations."[83] Given that almost certainly none of the First Nations chiefs present at Forts Carlton and Pitt could actually read what they were "signing" (and may not have even had the opportunity to do so even if they were literate), it seems highly problematic that Canada's claim to exclusive sovereignty in this land rests on a text that was never part of the negotiations, and probably not explained.[84]

Nonetheless, ethically troublesome or otherwise, the Canadian text of Treaty 6 is what Canada has legalistically insisted *is* Treaty 6.[85] In what follows, therefore, I will divide my analysis of the nation-to-nation fiscal relationships that were established by Treaty 6 into two categories: first, the relationships as defined exclusively by the text of Treaty 6; and, second, the relationships as outlined if we interpret Treaty 6 to be more than the Canadian text itself (the way I, of course, think Canada needs to interpret it if we take its history seriously).

For now, I want to bring in the first half of this section's argument, which I believe should be self-evident to anyone who reads the Treaty 6 text or the accounts of the Treaty 6 negotiations: Consistent with nation-to-nation

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[83] Krasowski, 272.

[84] Hildebrandt, 17; Krasowski, 272.

[85] "Written documents of treaties . . . took precedence over the oral histories of Indigenous peoples . . . Thus, the accepted histories that subsequently 'remembered' past agreements and which framed current policy decisions were those of the colonial powers, not the Indigenous peoples" (Neu and Therrien, 58; see also p. 70).

relationships in the territory for generations prior, Treaty 6 created ongoing, dynamic, nation-to-nation relationships between Canada and adherent First Nations that were intended to ensure mutually-beneficial relations in a shared space. While this statement is not exhaustive in terms of the motivations for entering into Treaty 6, I consider the establishment of these relationships to be foundational, both to Treaty 6 and to my thesis. Given its importance, I will put some effort into breaking it down.

The statement's first clause, "consistent with nation-to-nation relationships in the territory for generations prior," is based on the argument of the previous section, and is an attempt once again to emphasize the political context of Treaty 6 territory prior to Treaty 6. The relationships Treaty 6 created must be understood within this context.

The "ongoing" nature of the Treaty 6 relationships, while perhaps forgotten or ignored by Canada and Canadians for generations, appears to be well-understood today. The endurance of treaty relations is beautifully captured in the well-known "as long as" metaphors used at the Treaty 6 negotiations (and since) by both First Nations and Canadian representatives: as long as the grass grows, the river runs, the sun shines, the waters flow, and so on[86] (although none

[86] Morris, 213, 235, 236, 238; Ray, Miller, Tough, 143; Assembly of First Nations National Chief quoted in Nancy Macdonald, "Perry Bellegarde on recognizing this land's founding Indigenous peoples" (*Maclean's* [June 21, 2017] https://www.macleans.ca/news/canada/perry-bellegarde-on-recognizing-this-lands-founding-indigenous-peoples/); Johnson, 29; see Price, ed., "Interviews with Elders," 113-60, where Elders use this language frequently in discussing Treaty 6 (and Treaties 7 and 8). Interestingly, Sharon Venne suggests that actually only "the sun shines" and "waters flow" phrases are correct and that these phrases are to be taken quite literally (although in the case of "waters flow" Venne understands it as a reference to women giving birth ["Treaties Made in Good Faith," 1]); but,

of these phrases actually appear in the Canadian text). The family and kin metaphors[87] that occur throughout the negotiations and in the Treaty 6 text also speak to the lasting nature of relations. "Dynamic" is an aspect of Treaty 6 relations that perhaps has not received enough attention, but it logically arises out of the "ongoing:" all relationships that last must also be able to adapt and change. RCAP used the terms "fresh" and "living"[88] to describe treaties, and they resonate with this concept of dynamic relations. Treaty 6, then, was not (as perhaps some historical treaties were) a static contract of land purchase or a temporary alliance for military purposes, but rather a commitment to ongoing and dynamic relations.

Since today settler politicians use the term "nation-to-nation" in a way that seems to affirm Canadian colonialism, its use here is somewhat risky. But most readers should have little difficulty understanding the term at a basic level: the relations Treaty 6 established are relations between nations, not between individuals and a nation, or a nation and a colony, or groups within a single nation.[89] In other words, the relations are typical of those created by most treaties throughout time and around the world, as well as specifically in Treaty 6 territory for generations prior to Treaty 6.

In some cases, treaties are arrived at after violent interactions, and may represent one (victorious) side more-or-less unilaterally imposing terms on the other, defeated side. Treaty 6 was not such a treaty, and rather was negotiated

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regardless, Venne and I agree that the treaty relationships are to last through future generations ("Understanding Treaty 6," 194).

[87] Harold Cardinal and Hildebrandt, 33-34.

[88] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 37.

[89] Ladner, "Treaty Federalism," 177.

with the intention of creating "mutually-beneficial" relations.[90] There were immediate benefits arising from Treaty 6, especially for the First Nations who received annuities immediately, but ultimately the "mutually-beneficial" aspect was also part of the "ongoing" nature. In other words, the benefits for both sides were meant to continue into perpetuity. Among other things, for the First Nations, much of the benefit was of a fiscal nature (see next subsection), and for Canada the benefits included access to land for settlement and avoidance of costly military conflict.

The final term of the argument, "shared space," most obviously refers to the geography Treaty 6 covers. But I have intentionally left out the word "geographic" because I imagine the relationships Treaty 6 created to also allow for mutually-beneficial relations in other types of shared space. While the accounts of the Treaty 6 negotiations make the "shared" aspect clear,[91] the history of Treaty 6 relations has not, of course, included much sharing. Canada even asserts the small reserves First Nations were allotted to be Crown land, and, until judicial decisions of the 1970s and later, denied that First Nations had any rights whatsoever on land outside of reserves. Nonetheless, Treaty 6 was clearly an agreement to share space, and working out what that should look like in a contemporary context will be important. Some ideas of what shared fiscal space might look like are included in the next subsection and will be extrapolated in more detail in Chapter 5.

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[90] Arnot, vii; Harold Cardinal and Hildebrandt, 7.

[91] Even the text of Treaty 6 includes some notion of sharing (e.g., First Nations retained the "right to pursue their avocations of hunting and fishing throughout the tract"), despite the language of "cede, release, surrender, and yield."

3. Treaty 6 Nation-to-Nation Fiscal Relationships

Building on the first half of this section's argument, the nation-to-nation relationships Treaty 6 established had a *fiscal* component to them, and it is this aspect, of course, that my thesis is most interested in. "Fiscal," as defined by Merriam-Webster, means "of or relating to taxation, public revenues, or public debt." Based on this definition, the nation-to-nation relationships Treaty 6 established had fiscal consequences for both sides, which leads me to my argument's last half: These newly created relationships included a fiscal component: for Canada, the treaty created fiscal obligations; and, for First Nations, fiscal expectations. Of course, as with any treaty, there were also obligations of First Nations, but these related to sharing of land and loyalty to the Crown, and as far as I read the treaty, do not have a fiscal component.[92] Canada's fiscal obligations for the most part relate to expenditure of public revenues on some type of service delivery, although there are also obligations that require funding or goods purchased by Canada to flow directly to First Nations or First Nations individuals.

a. Fiscal Obligations as Outlined in the Treaty 6 Text

It is my position that for the most part the fiscal obligations Canada agreed to as outlined in the Treaty 6 text represent a *minimum*. This is logical: the text is clearly Canada's version of the treaty, so this is the minimum Canada should be held to. In other words, the fiscal relationships established by Treaty 6 include everything that appears in the Treaty 6 text *and more*. I will get to the "more" in

[92] St. Germain, 120.

the next subsection, and, in this subsection, focus on what appears in the text. I will simply list the fiscal obligations Canada took on as they appear in the text, noting in brackets whether or not it was time-limited (it is logically reasonable to assume the obligations are ongoing unless specifically stated otherwise); so, the fiscal obligations Canada agreed to and the fiscal expectations First Nations were promised include:

- "A suitable person" to "determine," "set apart," and consult regarding reserve boundaries (once);
- Maintenance of "schools for instruction" (ongoing);
- Some type of law-enforcement (ongoing);
- An "accurate census" (once, "as soon as possible");
- Treaty annuities for all First Nations members ($5/individual) (ongoing);
- $1,500 annually to be expended on "ammunition and twine for nets" (ongoing);
- Four hoes; two spades; "two scythes and one whetstone, and two hay forks and two reaping hooks" (once, "for every family actually cultivating . . . the land");
- One plough; one harrow (once, "for every three families");
- Two axes; one cross-cut saw; one hand-saw; one pit-saw; "the necessary files, one grindstone and one auger;" "enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation;" "four oxen, one bull and six cows; also, one boar and two sows" (once, "for each Band");
- "One chest of ordinary carpenter's tools" (once, "for each Chief for the use of his Band");
- One hand-mill (once, per "Band . . when any Band shall raise sufficient grain therefor");
- Annual salaries for chiefs ($25) and "subordinate officers" ($15) (ongoing);

- Triennial suits of clothing for chiefs and "subordinate officers" (ongoing);
- A flag, medal, "horse, harness and waggon" (or "two carts with iron bushings and tires" instead of a wagon) for each chief (once, "in recognition of the closing of the treaty");
- Assistance in case of "pestilence . . . or . . . general famine" (ongoing);
- $1,000 to be expended in the purchase of provisions for the use of members of "the Band as are actually settled on the reserves and are engaged in cultivating the soil" (once per year for three years);
- "A medicine chest . . . at the house of each Indian Agent" (ongoing); and
- Although not explicitly stated, the references to "Indian Agents" indicate a commitment to some type of Canadian bureaucracy focused on First Nations affairs (ongoing).

Before moving on from this list, I want to note two things. First, I have worded the list more-or-less as the fiscal obligations appear literally—and this extremely strict, literal, legalistic reading of the text tends to be the way Canada treats the treaties today. In Chapter 4 I will argue that even if we limit Treaty 6 to the Canadian text alone we need to read the text in a way that makes sense in a contemporary context; historical context is critical to interpreting Treaty 6, but since it created ongoing and dynamic relationships, interpretation of it (text or otherwise) needs to take into account contemporary realities. Second, even based on a literal reading of the text, the vast majority of the fiscal obligations Treaty 6 established are ongoing, just as are the nation-to-nation relationships the treaty created.

b. Fiscal Relations as Consistent with the Spirit and Intent of Treaty 6

Outlining the fiscal obligations as delineated in the text of Treaty 6 is a relatively easy task. But, as First Nations have always understood,[93] and as more and more Canadians are now understanding, the Canadian text of Treaty 6 has inadequately captured the "spirit and intent" of Treaty 6. The secondary literature on Treaty 6 and the numbered treaties generally is nearly unanimous on this point. In fact, in some ways (most especially the clauses regarding land surrender), the text of Treaty 6 is *inconsistent* with the spirit and intent of Treaty 6 as related by First Nations Elders and, arguably, even Canadian accounts of the negotiations. For First Nations Elders interviewed in Saskatchewan, for example, the Cree concept of *pimâcihowin*, roughly "the ability to make a living" was an important aspect of treaty relationships.[94] *Pimâcihowin* is a concept inclusive of spirituality, and so is greater than just fiscal relations, but there is certainly a fiscal component too, especially relating to "the right of First Nations to maintain a continuing relationship to the land, and its resources."[95] In the context of my research question, I interpret the Elders' emphasis on *pimâcihowin* as a treaty principle to be an assertion that Treaty 6 fiscal relations do not simply involve fiscal obligations that Canada owes First Nations, but also a respect for First Nations fiscal jurisdiction over their own people and land. There are, therefore, elements of fiscal relationships established by Treaty 6 that do not appear in the text. To

[93] "First Nations regarded oral promises as every bit as much a part of the treaty as commitments in writing" (Miller, 164); or, I would suggest, perhaps more, since it was the oral promises they would have best understood, not those written in English!

[94] Harold Cardinal and Hildebrandt, 43-47.

[95] Harold Cardinal and Hildebrandt, 46.

put this another way, fiscal relationships created by Treaty 6 and consistent with the treaty should not be limited to the fiscal obligations/expectations noted in the text. In this subsection I will highlight just two fiscal issues that should rightly be part of Treaty 6 fiscal relationships given the idea of mutually-beneficial relations in a shared space.

i. Natural Resources

As already noted, Treaty 6 First Nations only agreed to share the land as opposed to "cede, release, surrender, and yield" it.[96] While the treaty text might include this language of surrender, the account of the treaty negotiations—even as represented by Canadian officials—did not include any mention of this transfer of ownership.[97] Moreover, given the context of international relations in this land prior to Canada's arrival here, surely it is far more reasonable to assume that the First Nations understood Treaty 6 to be an agreement allowing settlers to share their land—not take it over entirely. This was consistent with the peaceful coexistence of at least several distinct nations (e.g., Cree, Assiniboine, Dene, Métis) already in this territory.[98] Of course, First Nations testimony in this regard seems to be unanimous: they never intended to surrender their land to Canada.[99]

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[96] "The treaty nations maintain with virtual unanimity that they did not agree to extinguish their rights to their traditional lands and territories" (RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 41).

[97] "Elders took it for granted that the treaties were about sharing land, not about selling it" (D. J. Hall, 324); and, "Aboriginal perspectives" understand with "certainty that the land was not surrendered, or sold; rather, Aboriginal negotiators agreed to share and to coexist as equals with non-Aboriginals" (Carter, *Aboriginal People and Colonizers of Western Canada to 1900*, 123).

[98] The "concept [of sharing land and resources] would not have been unfamiliar to Indians of the time" (Taylor, "Two Views," 41).

[99] Beyond my arguments, Venne contends that in fact First Nations men would have had no authority to sell the land even if they had been asked to, since the Cree understood the land to be owned by women ("Understanding Treaty 6," 191-92).

So Treaty 6 represented an agreement for Canada (settlers) to share First Nations' territory, not take it over. (Many First Nations Elders even contend that First Nations agreed to share the land *solely* for agricultural purposes, and that in fact other natural resources were explicitly not part of the negotiations.[100] While this is obviously an important contention, in this thesis I will assume that the agreement was to generally share the land and all of its resources).

An important aspect of any nation-to-nation fiscal relationships consistent with the spirit and intent of Treaty 6 would be reaching an understanding of how natural resources should be managed *and how much of the revenues derived from them should belong to the First Nations*. I will not attempt in this thesis to answer these questions specifically, but I will discuss the topic in Chapter 5. My point here is simply that First Nations' participation in natural resource management and entitlement to at least some share of natural resource revenues should have been an aspect of Treaty 6 fiscal relationships right from the beginning, as would be consistent with living in a shared space, both geographic and fiscal.

ii. Taxation

Another aspect of relations involving shared fiscal space has to do with taxation. If the nation-to-nation relationships created by Treaty 6 were taken seriously, then

[100] E.g.: the "oral history of . . . the . . . Cree uniformly insists that talks concerned only land, not waterways and resources" (Miller, 200); "At the time of treaty signing, it was understood through verbal agreement that the land which was opened to the white settlers was only to the extent of the depth a plough would furrow" (Curriculum Studies and Research Department of the Saskatchewan Indian Cultural College, 27); "Information obtained through oral testimony in the Treaty Six region . . . is that the Indians gave up limited rights in the land, namely, surface rights" (Taylor, "Two Views," 42); see interviews with Lazarus Roan, John Buffalo, and Fred Horse in Price, ed., "Interviews with Elders," *Spirit of the Alberta Indian Treaties*, 115-27; and Harold Cardinal and Hildebrandt, 36.

tax laws would have respected all nations' jurisdictions over their land and people.[101] How exactly this would work could take many forms—and obviously such tax laws or tax treaties negotiated today would be different than if questions of taxation had been specifically addressed in 1876. Again, this thesis will not attempt to address exactly what such tax arrangements should look like (whether historically or in a contemporary context), but I will come back to this topic in Chapter 5. Regardless of exactly how taxation should be or could be or will be worked out, there can be no doubt that taxation is an important element of the fiscal relationships between Canada and First Nations, and that Canada's taxation laws since Treaty 6 have been inconsistent with the notions of "nation-to-nation" and "shared space" that are central to Treaty 6 relationships.

4. The Legacy of Treaty 6

As First Nations have long recognized, and as more and more Canadians are beginning to recognize, Treaty 6 (along with the other numbered treaties) represented an optimistic, positive vision for the future: "to establish progressive partnerships, to share the land, resources and economy."[102] In the words of Jill St. Germain: "Treaty Six established relationships between peoples, an achievement far more significant than literal terms" of the agreement.[103] This brings me back to my argument about the relationships Treaty 6 created: consistent with nation-to-nation relationships in the territory for generations prior, Treaty 6 created

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[101] See Elder Lazarus Roan, interviewed in the 1970s regarding Treaty 6: "It was known that in the future there would be tax, but the Indians were informed that they would not pay one penny for tax. Now we are receiving five dollars per year, and even myself, I have figured out the amount I pay for tax far exceeds that five dollars I get back" ("Interviews with Elders," 117).

[102] Carter, *Aboriginal People and Colonizers of Western Canada to 1900*, 13.

[103] St. Germain, 352.

ongoing, dynamic, nation-to-nation relationships between Canada and adherent First Nations that were intended to ensure mutually-beneficial relations in a shared space. These newly created relationships included a fiscal component: for Canada, the treaty created fiscal obligations; and, for First Nations, fiscal expectations.

For First Nations, Treaty 6 represented the health care, food, and cash they would need as they transitioned with Canadian help from one successful (but ending) way of life to another. For Canada, Treaty 6 meant peacefully opening land for agricultural settlement. In other words, Treaty 6 should have been mutually beneficial, a true "win-win."

As was outlined in the previous section, the stories Peter Erasmus tells in *Buffalo Days and Nights* paint a picture of First Nations exercising sophisticated governance and international relations, making clear that long before Canada's arrival here, international diplomacy already had a long history. Treaty 6 was clearly a continuation, even, perhaps, a culmination of this history, in the sense that it created nation-to-nation relationships not only between nations, but between nations of vastly different heritages and worldviews.

But, despite the optimistic diplomacy of Treaty 6, it was in fact more-or-less immediately after the signing of treaties between Canada and First Nations that nation-to-nation relationships *ended* in this land. Rather than share land, Canada dispossessed First Nations. Rather than respect First Nations governance, Canada imposed its own system. Rather than recognize First Nations jurisdiction over their own land and people, Canada enforced the *Indian Act*. And rather than

remember the history of nation-to-nation relations and Treaty 6 in its optimistic fullness, Canada forgot, perhaps intentionally so. Canada's failure to honour Treaty 6, and particularly the fiscal relationships it created, is the subject of this chapter's final section.

C. Highlights of Treaty 6 Fiscal Relationships: 1876 to 2015

No reader will have left the preceding section in much suspense over how Treaty 6 fiscal relationships unfolded in the years following treaty negotiations. That Canada's late-19th, 20th, and early 21st century relationships, fiscal and otherwise, with First Nations have been colonial, paternalistic, disrespectful, and at least occasionally genocidal is now well known, even among settler Canadians. Nonetheless, a brief and selective review of the history of Treaty 6 fiscal relationships will be helpful to contextualize future discussion, and it is also important to emphasize the continued inadequacy of Treaty 6 fiscal relationships well into the 21st century. I have chosen to use 2015 as the cut-off year for this section, because it is the year the current Liberal government of Prime Minister Justin Trudeau was elected (what fiscal relationships have looked like under his government will be the subject of Chapter 3). It is important to emphasize that this section is in no way exhaustive, but merely provides some important examples that highlight how fiscal relationships have unfolded since 1876. I consider this "highlight" approach adequate, because a thorough understanding of how fiscal relations have unfolded between 1876-2015 is not necessary to answer my research question, and it is not a contentious fact that Canada's fiscal relationships with Treaty 6 First Nations during this time period consistently

failed to live up to the fiscal obligations/expectations of the treaty, or the spirit of nation-to-nation relationships the treaty created.

1. Treaty 6's Immediate Aftermath

Canada's treatment of Treaty 6 First Nations in the years immediately after the negotiations of Treaty 6 was so poor that it begs the question: to what extent was Canada genuine in negotiating Treaty 6 and the other numbered treaties? Did Canada ever intend to honour its treaty promises?[104] I will not try to answer this question in this thesis, but the very fact that it is a legitimate historical question emphasizes how poor Canada's late-19th century record of fulfilment is.

Some, such as Jim Miller, argue that "there is no evidence from the treaty negotiations themselves to sustain"[105] the idea that Canada was negotiating in bad faith, and certainly as I read Morris and read about Morris,[106] I have a hard time believing he was duplicitous. In fact, I see plenty of evidence that suggests to me that Canada or, at least, some Canadians, respected First Nations as nations, and texts such as the Royal Proclamation and legislation such as *The Rupert's Land and The North-West Territory Act* suggest Britain and Canada took First Nations' rights seriously. Moreover, this is the version I (and probably most contemporary Canadians) would prefer to believe.

It is extremely difficult, however, to square this evidence supporting good faith negotiations with all of that which suggests Canada was simply negotiating treaties as a means of "ticking a box" legally and (hopefully) avoiding costly

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[104] Miller, 296.
[105] Miller, 296.
[106] E.g., Talbot.

military conflict such as was occurring in the United States. Perhaps most compelling of all to those skeptics who argue Canada never intended to live up to the treaties is the passing of the *Indian Act* in Ottawa in the same year as Morris was negotiating Treaty 6. These two texts could hardly view First Nations any more differently: in Treaty 6 First Nations are nations, and in the *Indian Act*, wards of Canada[107]—and certainly Canada proceeded to govern taking one of these texts much more seriously than the other. To quote James Youngblood Henderson: "The First Nations' consent in the treaties was ignored and forgotten, and Aboriginal peoples were treated as mentally incompetent savages."[108] This idea of First Nations as incompetent is foundational to the *Indian Act* and has permeated (and continues to permeate) so much of Canada's policy relating to First Nations.

Whatever the case—whether Canada ever intended to live up to the treaties or not, Canada quickly failed to fulfill or delayed fulfilling many of the fiscal obligations of Treaty 6, even if we legalistically and literally limit Treaty 6 to the Canadian text. For example: Sarah Carter has documented how slowly, inconsistently, and reluctantly Canada provided the agricultural transition support promised in the numbered treaties, especially, Treaty 4;[109] James Daschuk has written about Canada's similarly inadequate provision of famine relief and health

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[107] "The federal government adopted the paternalistic approach of the recent Indian Act as the basis of it approach to western Indians, rather than the kin-like relationship of equals that First Nations believed were embodied in the treaties" (Miller, 187); and the imposition of the *Indian Act* was "imbued with a semblance of humanitarianism but [was] incompatible with the kind of relationship implied in a treaty agreement" (St. Germain, 20).

[108] Henderson, 278.

[109] Carter, *Lost Harvests*.

care despite widespread starvation and disease;[110] and on education, even a relatively Canada-sympathetic D. J. Hall has written:

> Did the government fail in its . . . treaty obligations with respect to education? . . . The overpowering evidence from the crushed spirits and ruined lives of thousands of survivors of boarding schools, and the evidence of thousands of others who did not survive, is that it did.[111]

Even treaty annuities were suspended for some Treaty 6 bands that Canada deemed to be rebellious in the aftermath of the 1885 uprising.[112] The reality is that Canada's failures to fulfill its historical treaty fiscal obligations were so profound that today Canada is paying out hundreds of millions of dollars' worth of claims settlements.[113]

Moreover, beyond just failing to live up to its Treaty 6 fiscal obligations, Canada was imposing fiscal policy that seemed to prioritize spending that enforced colonization (e.g., residential schools, surveying of reserves) and minimized spending that would contribute to First Nations economic opportunities (e.g., agricultural assistance) or quality of life (e.g., food, health care).[114] To the extent fiscal relationships were maintained between Canada and

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[110] Daschuk, 99-180.

[111] D. J. Hall, 232; see also Miller, 191.

[112] D. J. Hall, 150; 49 out of 89 bands were labeled "disloyal" (St. Germain, 338).

[113] E.g., $4.5 million to the Beardy's & Okemasis' Cree Nation ("FAQ: The Treaty Annuities Settlement, Legacy Trust, and the Per Capita Distribution" [accessed October 28, 2018; https://bofn9697.com/faq-treaty-annuities-settlement/]).

[114] And meanwhile, even as Canada was failing to fulfill its fiscal obligations per Treaty 6, from 1885 to as late as the 1940s, Canada was also imposing a pass system on at least some Treaty 6 First Nations such that First Nations individuals' ability to travel off reserve for economic (and other) activities were controlled and limited (Jobin, *Nehiyawak Narratives*, 87-89)—a policy that even ISC officials internally acknowledged was illegal and violated treaty (Carter, *Aboriginal People and Colonizers of Western Canada to 1900*, 162-64). There are many other instances in which federal administration of First Nations affairs was not only inconsistent with numbered treaties and unjust and unethical, but also illegal under Canadian law (e.g., in a Treaty 7 context, see former Treaty 7 Indian Agent R. N. Wilson's *Our Betrayed Wards: A Story of "Chicanery, Infidelity, and the Prostitution of Trust"* [Ottawa: s.n, 1921], which documented "complaints . . .

Treaty 6 First Nations in the decades following 1876, they were certainly not what Treaty 6 envisioned, and they most certainly could not be described as nation-to-nation relationships.

2. Natural Resources Transfer Agreements

Fiscal relationships did not improve in the 20th century, either.[115] For Treaty 6 First Nations, 1930 continues to be a landmark year, because it is the year Canada betrayed "its treaty commitments to First Nations" in the Natural Resources Transfer Agreements (NRTA)—"probably the clearest instance of Ottawa's indifference to Aboriginal peoples."[116] In these agreements, Canada transferred jurisdiction over land and resources from the federal government to the western provinces, Alberta included. Needless to say, the transfer of natural resources to provincial governments has proven enormously lucrative in terms of taxation and royalty revenues.

Of course, if Treaty 6 is viewed as an agreement to joint jurisdiction of land and resources between Canada and Treaty 6 First Nations, the NRTAs—agreements that did not in any way involve First Nations' consultation—are understandably highly problematic. After all, how could Canada give away something (i.e., jurisdiction over land and resources) that it did not exclusively

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against the present administration of Indian Affairs" [1], including corrupt management of lands and trust funds [e.g., 5-7]).

[115] And this despite consistent efforts by treaty First Nations to assert their treaty rights. See, for example, a 32 page memo from Department of Indian Affairs attempting to refute claims of Treaty 4 First Nations representatives who had travelled to Ottawa to make complaints regarding governance, education, famine relief, agricultural equipment, lands management, trust funds and so on ("Memorandum in Answer to Representations made by Indian Delegation from the West 1911" [accessed June 23, 2019; http://collectionscanada.gc.ca/pam_archives/index.php?fuseaction= genitem.displayItem&rec_nbr=2059901&lang=eng&rec_nbr_list=2059901]).

[116] Miller, 298.

own?[117] "How did the federal government manage to give away more than it possessed?"[118]

Practically speaking, the impact for First Nations of the NRTAs has perhaps been minimal[119]—after all, prior to 1930, it was not as if Canada acknowledged First Nations jurisdiction over land or resources. Whatever the *de jure* situation, Canada exercised *de facto* control fairly soon after 1876, and certainly after 1885. The economic impact of this loss of control for First Nations, especially as hunting and fishing became less and less viable, was devastating, and remains so to this day. Confined to inadequate and often shrinking[120] reserves, economic opportunities for Treaty 6 First Nations in the new economies of 20th century Alberta were limited, and this was true before and after 1930. But the transfer of this *de facto* jurisdiction from the federal government to the provinces did clearly affirm Canada's position that it was the federal government, not First Nations, that had exclusive jurisdiction over the lands and resources, such that the federal government could transfer it as they saw fit—without First Nations even consulted, let alone compensated. Almost 90 years later, Treaty 6 First Nations continue to argue that the NRTAs are

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[117] "There is also consideration of whether the Federal Government even had the right to transfer the natural resources to Manitoba, Saskatchewan, and Alberta . . . According to the major principle of Canadian property law, specifically *nemo dat qui non habet*, you cannot sell or transfer something if you do not own it. Following *nemo dat*, Canada had no right to transfer these natural resource to the provinces because Canada did not own them" (Sheldon Cardinal, 108).

[118] Johnson, 68.

[119] At least in terms of First Nation's collective jurisdiction over land and resources as I am concerned about in this thesis; but see Sheldon Cardinal, 71-90, for how the NRTAs have impacted the hunting rights of First Nations individuals.

[120] As Canada was continually manipulating "surrenders" to free up land for settlement.

illegitimate,[121] and there can be little doubt that they violate the idea of shared space that is such an important part of the relationships Treaty 6 created.

3. Indian Moneys

The realities of *de facto* jurisdiction of First Nations lands and resources get worse: Canada not only claimed exclusive jurisdiction over land and natural resources off reserve, such that it could transfer this jurisdiction to the provinces; but sections 61-69 of the *Indian Act*[122] also legislated Canadian control of what the *Indian Act* terms "Indian moneys"—revenue derived from sale or lease of land and sale of natural resources (renewable and non-renewable).[123] Early on, sale or lease of land to settlers for agricultural purposes would have been the primary source of Indian moneys, but in the latter half of the 20th century many Treaty 6 First Nations in Alberta began to generate significant revenue from oil and gas activity on reserve. In some cases, the royalties flowing into Treaty 6 First Nations' Indian moneys accounts totaled hundreds of millions of dollars.[124]

Canada recognizes Indian moneys as First Nations' revenue, but Indian moneys are collected, managed, and held in trust by ISC, with release subject to various legislative and administrative requirements and restrictions. As with the *Indian Act* generally, the provisions around Indian moneys are premised on the assumption that "Indians" are incapable of competent administration of their own affairs, including fiscal affairs. Instead, Canadian bureaucrats are tasked with

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[121] E.g., Venne, "Understanding Treaty 6," 196, 200.

[122] Government of Canada, "Management of Indian Moneys" (accessed January 18, 2019; https://laws-lois.justice.gc.ca/eng/acts/i-5/page-9.html#h-28).

[123] Indigenous and Northern Affairs Canada, "What are Indian Moneys?" (accessed January 18, 2019; https://www.aadnc-aandc.gc.ca/eng/1428673130728/1428673159469#chp1).

[124] E.g., Marshall Rothstein, "Ermineskin Indian Band and Nation v. Canada" (accessed July 3, 2019; https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6243/index.do).

negotiating contracts for sales, leases, natural resource extraction, and so on, on behalf of First Nations; collecting the revenue derived from these contracts; managing the funds once collected; reviewing release requests (band council resolutions) from First Nations chiefs and councils to ensure reasonability; and tracking expenditure of the funds to ensure compliance with the *Indian Act*. In other words, management of Indian moneys per the *Indian Act* has created fiscal relationships in which First Nations are deprived of significant control of even the fiscal resources that Canada acknowledges they own.[125] Of course, Canada's own competence to adequately (and ethically) carry out the fiduciary duty it legislated for itself in terms of Indian moneys has been consistently challenged.[126]

Working with Indian moneys was my first job as an ISC employee, and I consider it among the most paternalistic roles within the public service. The assumption that First Nations are not competent enough to manage their own money is obviously grossly inconsistent with nation-to-nation relationships. While some changes to how Indian moneys are managed have occurred and are occurring in the early 21st century,[127] sections 61-69 remain Canadian law, and Canada's motivation for "increasing access to and control of" Indian moneys

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[125] See Neu and Therrien, especially pp. 87, 120-23.

[126] As documented, for example, in 1910 in a Treaty 6 and other numbered treaty context (Robert Sinclair, *Canadian Indians* [Ottawa: Thorburn & Abbott, 1911], 5, 22-24, 26); in 1911 in a Treaty 4 context as evidenced in Department of Indian Affairs, "Memorandum in Answer to Representations made by Indian Delegation from the West 1911," 12-15; in 1921 in a Treaty 7 context (Wilson, 19-20); and 2019 in a Treaty 6 context: "the Crown . . . was negligent, and was in breach of the duties they themselves had prescribed and accepted" (R. J. Hall, "Chevron Canada Resources v. Canada, 2019 ABQB 418" [accessed June 15, 2019; https://www.canlii.org/en/ab/abqb/doc/2019/2019abqb418/2019abqb418.html]).

[127] Indigenous and Northern Affairs Canada, "Increasing First Nations access to and control of their capital moneys within the Indian Act" (accessed January 18, 2019; https://www.aadnc-aandc.gc.ca/eng/1398777190067/1398777303830).

seems to be a desire to decrease its own potential liabilities for mismanagement and the administrative burden involved in managing these funds as opposed to any recognition of First Nations sovereignty over their resources. The *Indian Act* treatment of Indian moneys is yet another example of fiscal relationships inconsistent with Treaty 6—in this case involving direct Canadian interference in First Nations' internal fiscal affairs.

4. Shift from Treaty-Based to Legislative-Based Fiscal Relationships

The way Indian moneys have come to be managed is also indicative of an important change in Treaty 6 fiscal relationships that, while beginning much sooner, was cemented during the middle decades of the 20th century: the shift from relationships defined primarily by treaty towards relationships defined primarily by the *Indian Act* and ISC policy. In other words, Treaty 6 First Nations came to be treated by Canada in more or less identical ways as Canada treated First Nations across the country. There were exceptions to this: for example, treaty annuities continued to be paid only to members of First Nations adherent to the numbered treaties, including Treaty 6. But in terms of the fiscal obligations that were most significant (e.g., delivery of programs such as health care and education), Canada saw little difference between a Treaty 6 First Nation and, say, a First Nation in Atlantic Canada or British Columbia. And, it should be noted in case it is not obvious, the provision of these fiscal obligations continued to be insufficient, especially in comparison to the government services settler

Canadians were receiving,[128] as well as completely inconsistent with the spirit of nation-to-nation relationships.[129] As with the NRTAs, this shift from treaty-based to legislative- or policy-based fiscal relationships likely had little practical impact on Treaty 6 First Nations—no doubt Canada's fulfillment of the Treaty 6 fiscal obligations would have been inadequate and inconsistent with nation-to-nation relationships whether Canada acknowledged that they were treaty-based fiscal obligations or not; but this shift is another important symbolic indicator of Canada's unwillingness to take Treaty 6 seriously.

If the decades immediately following Treaty 6 were bad for treaty-based fiscal relationships, in many ways, the middle decades of the 20th century were worse in the sense that Canada attempted to minimize the very existence of treaty-based, nation-to-nation fiscal relationships altogether, culminating, ultimately, in the White Paper.

5. The White Paper

As with so much having to do with relationships between Canada and First Nations, a major shift in fiscal relations occurred following the 1969 White Paper[130] of Prime Minister Pierre Trudeau and Minister of Indian Affairs Jean Chretien. In essence, the White Paper proposed to end fiscal relationships between Canada and First Nations altogether, albeit it did so using the positive

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[128] See, for example, the 1967 Hawthorn Report: Indian and Northern Affairs Canada, *A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies* (accessed August 31, 2018; https://www.aadnc-aandc.gc.ca/eng/1100100010186/1100100010187).

[129] Neu and Therrien, 112-15.

[130] Jean Chretien, "Statement of the Government of Canada on Indian Policy (The White Paper, 1969)" (accessed August 31, 2018; https://www.aadnc-aandc.gc.ca/eng/1100100010189/1100100010191).

language of "equality."[131] The policy outlined in the White Paper would have eliminated service delivery through ISC, and severely downplayed the importance of treaties:

> The significance of the treaties in meeting the economic, education, health and welfare needs of the Indian people has always been limited and will continue to decline.[132]

In fact, the White Paper went so far as to claim that "the services that have been provided go far beyond what could have been foreseen by those who signed the treaties," and that "the terms and effects of the treaties . . . are widely misunderstood"[133]—by which it obviously meant misunderstood by First Nations, not Canada. The ultimate goal of the White Paper when it came to treaties was to see them "equitably ended;"[134] after all, as Pierre Trudeau famously said:

> It's inconceivable, I think, that in a given society one section of the society have a treaty with the other section of the society. We must be all equal under the laws and we must not sign treaties among ourselves. And many of these treaties, indeed, would have less and less significance in the future . . . I don't think that we should encourage the Indians to feel that their treaties should last forever within Canada so that they be able to receive their twine or their gun powder.[135]

Presumably the equitable ending of the treaties would have meant elimination of treaty annuities, and program and service delivery to First Nations would have become largely the responsibility of the provinces, not Canada or First Nations.

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[131] Neu and Therrien, 129-32.
[132] Chretien.
[133] Chretien.
[134] Chretien.
[135] Quoted by Louise Mandell, "Indian Nations: Not Minorities" (*Les Cahiers de Droit* 27:1 [1986]), 113.

Fiscal relationships between Canada and First Nations would, then, have been effectively eliminated.

The reaction of especially treaty-adherent First Nations to the White Paper was fierce, and successful.[136] Only a few years later, in 1973, the Queen was in Calgary assuring First Nations "that my Government of Canada recognizes the importance of *full compliance with the spirit and terms of your Treaties*."[137] Certainly, Canadian policy did change as a result of the White Paper, but not in the way Trudeau or Chretien imagined.

6. Funding Agreement-Based Fiscal Relationships

In terms of fiscal relationships, the aftermath of the White Paper coupled with neoliberal tendencies of the 1980s and 1990s led to a dramatic change. Canada did begin downloading responsibility for program and service delivery, but not in the way the White Paper envisioned. Instead, First Nations governments became more and more responsible for delivering programs and services to their members, resulting in less spending on direct program and service delivery by Canada and increased fiscal transfers to First Nations.[138] This move was desirable from a Canadian perspective because it appeared decolonial (since it involved increased responsibility for First Nations governments) but also resulted in greater predictability and control over expenditures. Moreover, if fiscal resources proved inadequate to deliver services (as they inevitably would), First Nations' lack of capacity (or incompetence or corruption) could be blamed, at least to some extent.

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[136] See Harold Cardinal, *The Unjust Society*; also Miller, 248-49.

[137] Quoted by Richard Daniel, "The Spirit and Terms of Treaty Eight," *Spirit of the Alberta Indian Treaties*, 47; italics mine.

[138] Neu and Therrien, 132-36.

In essence, this change in the fiscal relationships between Canada and First Nations has brought them to where they are today. The vast majority of Government of Canada spending on First Nations takes the form of direct transfers to First Nations governments, Tribal Councils, or other First Nations organizations. These fiscal transfers are governed by funding agreements, which have for the most part became the defining feature of fiscal relationships between all First Nations and Canada, regardless of treaty adherence. Contemporary fiscal relationships between Canada and Treaty 6 First Nations are, then, as far as Canada is concerned, based on the legal contract of the funding agreement, and not treaty, text or otherwise. Since funding agreements are an important subject in future chapters, I will take time here to explain how they work.

Funding agreements are contracts between the Government of Canada (usually as represented by ISC officials) and a First Nation as represented by their Chief and Council. Duration of funding agreements with First Nations vary (and in some cases First Nations have refused to sign funding agreements), but typically Treaty 6 First Nations would always have an ISC funding agreement in place. Funding agreements can include funding for a variety of programs and services or other purposes, but generally they would always include funding for, at minimum, basic government administration,[139] social services,[140] education,[141]

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[139] Indigenous and Northern Affairs, "Band Support Funding" (accessed January 18, 2019; https://www.aadnc-aandc.gc.ca/eng/1100100013825/1100100013826).

[140] E.g., Government of Canada, "Assisted Living Program" (accessed January 18, 2019; https://www.sac-isc.gc.ca/eng/1100100035250/1533317440443).

[141] E.g., Government of Canada, "Funding for First Nations kindergarten to grade 12 education" (accessed January 18, 2019; https://www.sac-isc.gc.ca/eng/1516633592534/1531315146352).

community infrastructure,[142] and economic development[143].[144] For most Treaty 6 First Nations in Alberta, the funding agreements today are worth millions of dollars each fiscal year, and funding amounts are driven by a multitude of (often very complicated and convoluted) formulae, factoring in population, number of social assistance clients, number of students, remoteness of reserve, and so on. While there are usually initial amounts in funding agreements at April 1 (beginning of the fiscal year), amendments are frequently made throughout the year to increase funding or add line items to the agreements, and each amendment requires signatures of ISC officials and the First Nation's Chief and Council. The possibility of amendments means there is a lot of energy spent both within First Nations governments and within ISC to work out additional funding as required, and this is the space I am currently most involved in professionally.

There is nothing wrong with funding agreements inherently—there needs to be some formal mechanism to facilitate funding for programs and services, and there is no reason a funding agreement could not be consistent with Treaty 6. I will get into this in Chapter 4. For now though it is important to make the point that fiscal relationships between Canada and Treaty 6 First Nations since the White Paper have been *primarily* about funding agreements—not treaty. This is the problem. In essence, fiscal relationships with Treaty 6 First Nations are most

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[142] E.g., Government of Canada, "Capital Facilities and Maintenance Program" (accessed January 18, 2019; https://www.sac-isc.gc.ca/eng/1100100016395/1533641696528).

[143] Indigenous and Northern Affairs Canada, "Lands and Economic Development Services Program: Operational funding" (accessed January 18, 2019; https://www.aadnc-aandc.gc.ca/eng/1472844971011/1472845103933).

[144] Health care, another important Canada-funded program was until recently funded through the Department of Health's First Nations and Inuit Health Branch, not ISC (see Chapter 3).

decidedly not nation-to-nation, but rather very much like the relationships between Canada and all other funding recipients Canada has relationships with.

7. First Nations Financial Transparency Act

A final note I want to make about fiscal relationships prior to 2015 relates to the *First Nations Financial Transparency Act* (FNFTA), legislation passed in 2013 by the government of Prime Minister Stephen Harper, and still in effect as of 2019. The FNFTA mandates publicity of First Nations' consolidated audited financial statements as well as a schedule of remuneration provided to chiefs and councilors;[145] failure to comply with the FNFTA allows ISC to impose various punitive measures, including halted funding. While the FNFTA's paternalism is quite consistent with the *Indian Act* and ISC policy, the FNFTA seems to have been designed not so much to paternalistically encourage transparency and accountability, as to suggest that First Nations leaders lack it in the first place without Canadian intervention.[146] While opposition to the FNFTA is not unanimous among First Nations,[147] it did result in court battles and funding halts, including in Treaty 6,[148] and the inconsistency between this legislation unilaterally imposed by Canada and Treaty 6 nation-to-nation fiscal relationships should be obvious.

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[145] Just by way of context, uploading these documents to ISC's website is a task I complete annually for the First Nations I work with.

[146] See Terry Poucette, "Why do some First Nations struggle with governance?" (*Rocky Mountain Outlook* January 24, 2019; https://www.rmoutlook.com/article/why-do-some-first-nations-struggle-with-governance-20190124).

[147] My perception is that for many First Nations, the FNFTA is perceived, despite its paternalistic nature, as helpful in that ISC takes on the responsibility of publicizing information they would publicize themselves anyway.

[148] Brandi Morin, "First Nations win Federal Court battle over transparency law" (accessed October 28, 2018; https://aptnnews.ca/2015/10/26/first-nations-win-federal-court-battle-over-transparency-law/).

8. Fiscal Relations, 1876-2015

This section on the history of fiscal relations between Canada and Treaty 6 First Nations since 1876 has not, of course, been comprehensive. Such a history would be of great interest to me, and could be valuable to my project, but it is well beyond the scope of this thesis. What I have attempted to do in this section is simultaneously illustrate that fiscal relationships in the 140 years after Treaty 6 failed to live up to the promises and especially the nation-to-nation spirit of Treaty 6, and set the stage for future chapters in which I discuss what the future of Treaty 6 fiscal relationships might look like. I believe that the evidence, even as limited as that which I provided in this section, overwhelmingly substantiates the argument that from 1876 to 2015, Canada's fiscal relationships with Treaty 6 First Nations consistently failed to live up to the fiscal obligations/expectations of the treaty, or the spirit of nation-to-nation relationships the treaty created. The fundamental assumption, underlying the *Indian Act* explicitly and other aspects of First Nations policy implicitly, that First Nations are incompetent to manage their fiscal (and other) affairs lingers. The subject of Chapter 3 is what fiscal relationships have looked like since 2015.

CHAPTER 3: THE 2015 TRUDEAU GOVERNMENT AND A "NEW FISCAL RELATIONSHIP"

There is no doubt that the election of Justin Trudeau's Liberal government in October 2015 marked a dramatic rhetorical shift in Canada's relationships with Indigenous peoples. To what extent these relationships have substantially changed is another question, but the Trudeau government's ambition cannot be denied. Now, as we approach the federal election of October 2019, the contemporary reality of fiscal relationships between Canada and Treaty 6 First Nations deserves to be—tentatively—analyzed.

I interject "tentatively" because it is impossible to know at this point what Trudeau's legacy will be when it comes to Indigenous issues, or what the long term impact will be of what the Trudeau government has done as it relates to fiscal relationships with Treaty 6 First Nations. So, my attempts in this chapter at evaluating the Trudeau government's work is necessarily cautious, and I am limiting the argument of this chapter to a relatively conservative assertion, which is that: despite rhetorically outlining an ambitious agenda relating to Indigenous peoples, including a "new fiscal relationship" with First Nations, the Trudeau

government has been either unwilling or unable to make significant substantive change, and those changes they have implemented regarding fiscal relationships appear to continue the history of fiscal relations inconsistent with Treaty 6.

This chapter will support this argument by first providing a brief context of the Trudeau government's rhetoric regarding Indigenous peoples, and fiscal relationships with First Nations in particular, before outlining the changes the Trudeau government has implemented that will impact fiscal relations.

A. Trudeau Government Rhetoric

Since October 2015, there has been significant frustration with the disconnect between the Trudeau government's rhetoric and its (mostly lack of) substantive action on Indigenous policy issues.[1] However, examining the rhetoric in its own right is worthwhile, because a) a change in rhetoric is required for relationships between Canada and Treaty 6 First Nations to be consistent with Treaty 6; and b) rhetoric in and of itself has potential to drive change. So, in this section, in which I provide nuanced critique of the Trudeau government's rhetoric as it relates especially to the "new fiscal relationship," I am bracketing the "do they mean it?" question and taking the rhetoric at face value.

1. Nation-to-Nation

In the introduction to this thesis I noted that the 2015 federal election campaign saw most of Canada's major federal political parties adopt rhetoric regarding

[1] E.g., Ryan Khurana, "Justin Trudeau Is All Talk And No Action On First Nations Rights" (accessed July 5, 2019; https://www.huffingtonpost.ca/ryan-khurana/first-nations-indigenous-sovereignty_a_23541260/); The Guardian, "Canadian MP says Trudeau 'doesn't give a fuck' about indigenous rights" (accessed July 5, 2019; https://www.theguardian.com/world/2018/ sep/26/trudeau-romeo-saganash-indigenous-rights-parliament); and Matthew Behrens, "Truth, reconciliation and mercury poisoning" (accessed July 5, 2019; https://nowtoronto.com/news/truth-reconciliation-muskrat-falls-dam-project/).

"nation-to-nation" relationship(s) with Indigenous peoples, and in my research question I am also utilizing this term, affirming that I believe it faithfully captures the type of relationships Treaty 6 created (as I also emphasized in the preceding chapter). "Nation-to-nation" is likely the Trudeau government's most common-used phrase when talking about its renewal of "the relationship" between Canada and First Nations,[2] and it marks a decidedly positive shift in tone for the Government of Canada. While obviously many factors have contributed to the current "reconciliatory" climate in Canada, the Trudeau government deserves credit for carrying this forward rhetorically and utilizing the language of nation-to-nation.

As also noted in the thesis's introduction, however, the use of the singular "relationship" in the phrase "nation-to-nation relationship" is extremely troubling. There are many indicators that the Trudeau government understands that there is not a single relationship between Canada and First Nations, and that the question of who, exactly, "First Nations" are (i.e., not *Indian Act* bands) is critical to answer (as discussed in Chapter 1). Various policy steps also suggest at least an occasional willingness to negotiate relationships uniquely,[3] so the question of why the singular "relationship" continues to be used is difficult to answer.

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[2] Although inexplicably the term does not appear in the "A New Approach" report (AFN and the Government of Canada, "A New Approach: Co-development of a New Fiscal Relationship between Canada and First Nations").

[3] E.g., Indigenous and Northern Affairs Canada, "Anishinabek Nation Education Agreement" (accessed October 29, 2018; https://www.canada.ca/en/indigenous-northern-affairs/news/2017/08/anishinabek_nationeducationagreement.html).

While obviously inaccurate, the use of the singular "relationship" is also concerning in light of the Trudeau government's penchant for working with the AFN, sometimes to the exclusion of "actual" First Nations.[4] I will comment more on this below, but in terms of rhetoric, the critique here is that the use of "relationship" and the perceived "coziness" of the relationship between the Trudeau government and the AFN opens the government up to criticisms that the other "nation" in the "nation-to-nation relationship" is the AFN: "It seems that to Canada, the AFN is the other *de facto* 'nation' in this new relationship."[5] Of course, while the question of who the other nations are may be complicated, there is no doubt that the AFN is not a nation, no matter how cooperative and convenient the government finds the AFN as a partner.

2. A New Fiscal Relationship

Like the use of "nation-to-nation," the introduction of a "new fiscal relationship" should be viewed as a positive rhetorical step, since signaling that previous fiscal relationships were inadequate is a necessary initial step towards change. I will spend time going through what changes the Trudeau government has in fact made to fiscal relations in the next section, but it is important to note here that rhetoric around changes to fiscal relations was included in the Liberal's 2015 election platform[6] and was clearly a priority item for the Trudeau government, since it was already in a position in July 2016 to sign a fairly substantial Memorandum of

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[4] King and Pasternak, 4.
[5] King and Pasternak, 4.
[6] Liberal Party of Canada, "A New Fiscal Relationship" (accessed October 29, 2018; https://www.liberal.ca/realchange/a-new-fiscal-relationship).

Understanding (MOU) with the AFN.[7] The MOU (and subsequent discussion) indicates that the goal of this new fiscal relationship is sufficient, predictable, and sustained funding—a direction few could argue does not sound reasonable and positive.

Of course, as part of the "new fiscal relationship" rhetoric, that pesky singular "relationship" word is again appearing, and I have explicated some of the issues with this in the last subsection. Here I want to point out that the "A New Approach" report (released in December 2017) actually outlines that this was a concern expressed by First Nations, particularly in a treaty context:

> While not expressed in every region, for those under a treaty agreement, treaties were considered central to the relationship between First Nations and the Crown. Where a treaty applied, the federal government was obligated to acknowledge the treaty, honour its spirit and intent, and base any agreements between First Nations and the federal government on the treaty. When First Nations entered the treaty relationship with the Crown, they did not give up their sovereignty, their right to self-determination, nor their laws, practices and customs. Each Treaty group has unique relationships with the Crown, and they should not be "lumped together" or treated the same by the federal government.[8]

I consider this input highly relevant and, yet, somehow the government (and AFN) has been able to include this feedback in the report (although even in this paragraph, the singular "relationship" is used twice before finally switching to the plural "relationships"[9]), but apparently failed to recognize its validity and adjust the rhetoric accordingly.

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[7] Assembly of First Nations, "Memorandum of Understanding" (accessed October 29, 2018; http://www.afn.ca/uploads/files/memorandum_of_understanding_between_the_assembly_of_first_nations_and_in....pdf).

[8] AFN and the Government of Canada, "A New Approach," 44.

[9] The plural "relationships" only appears twice in the entire 51 page report—here and on page 21, where the plural is actually referring to the federal and provincial governments, not First Nations. For reference, the singular "relationship" appears 77 times.

Also concerning for me about the "new fiscal relationship" rhetoric is what it does *not* include: namely, any sort of acknowledgement of the role of historical treaties in fiscal relations between Canada and historical treaty-adherent First Nations. This critique is picked up in the paragraph quoted above, and occasionally elsewhere in the report, but the idea of treaties as the basis of fiscal relationships between Canada and First Nations is limited to the comments on participant feedback, not coming from the government or AFN directly.

The closest the government has come to formally acknowledging a role for historical treaties in fiscal relationships is in a Memorandum of Understanding with Onion Lake Cree Nation. The then-Minister of ISC, Jane Philpott, explicitly committed to moving towards a "Treaty Relationship-Based Funding Agreement" specifically for health-related funding.[10] The MOU has not been publicized, but much of the rhetoric used in its announcement appears positive,[11] although it is possibly concerning that the proposed funding agreement only includes health care funding and not a broader envelope encompassing other Treaty 6 fiscal obligations.[12]

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[10] ISC, "Government of Canada signs Health MOU with Onion Lake Cree Nation in Treaty 6" (accessed October 29, 2018; https://www.canada.ca/en/indigenous-services-canada/news/2018/05/government-of-canada-signs-health-mou-with-onion-lake-cree-nation-in-treaty-6.html).

[11] It even contains a reference to "Treaty. . . relationships" (plural)!

[12] Many (probably most) First Nations in Canada have separate funding agreements for their health care funding (which until 2017 flowed through Health Canada as opposed to ISC), so this narrowness of focus may have more to do with logistical/administrative issues than failure to recognize the breadth of treaty commitments.

3. First Nations Financial Transparency Act

On the FNFTA (introduced in Chapter 2), Trudeau promised to repeal the law soon after it was passed (at least as early as 2014),[13] identifying it as disrespectful. Moreover, Trudeau signaled his intention to not only repeal the FNFTA, but work with First Nations on potential replacement legislation:

> I would work with First Nations to make sure that a proper accountability act . . . is done in a way that is respectful of the First Nation communities.[14]

With this suggestion, Trudeau affirms the idea that federal legislation is required to ensure First Nations accountability—a notion inconsistent with respect for First Nations sovereignty—and he even perpetuated the "corrupt Indian" stereotypes the Harper government found so useful when he referred to "excesses we see;"[15] nonetheless, the suggestion that such legislation should be "respectful" and created cooperatively with First Nations represented a rhetorical improvement over the unilaterally imposed FNFTA.

After Trudeau was elected, the phrase "mutual accountability" came into use[16]—again a rhetorical shift that appears positive since it affirms that Canada is accountable to First Nations as well. I will comment on what substantive change Trudeau's government has done in terms of FNFTA in the next section, but again

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[13] Huffington Post Canada, "Justin Trudeau Vows To Scrap First Nations Financial Transparency Act" (accessed October 29, 2018; https://www.huffingtonpost.ca/2014/08/11/justin-trudeau-first-nations-financial-transparency_n_5668640.html).

[14] Huffington Post Canada, "Justin Trudeau Vows To Scrap First Nations Financial Transparency Act."

[15] Huffington Post Canada, "Justin Trudeau Vows To Scrap First Nations Financial Transparency Act."

[16] Indigenous and Northern Affairs Canada, "First Nations Financial Transparency Act" (accessed October 29, 2018; https://www.aadnc-aandc.gc.ca/eng/1322056355024/1322060287419).

we can see that Trudeau's rhetoric marks an improvement over that of prior Canadian governments even as it continues to fail to live up to the spirit of Treaty 6 relationships.

4. ISC Split

Almost two years into his mandate, Trudeau made two surprise announcements, both of which caught most of ISC off guard; neither of which appeared to be especially well thought through; and neither of which involved much (if any) consultation with First Nations. While not necessarily directly related to fiscal relationships, the announcements may impact fiscal relations significantly, so they are worth assessing rhetorically. The first of these was the announcement that Trudeau was splitting ISC into two (I will discuss the second announcement in the next subsection):

> In August 2017, the Prime Minister announced the dissolution of Indigenous and Northern Affairs Canada (INAC) and the creation of two new departments: Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada. This transformation will take time and includes engagement with Indigenous peoples and others.[17]

The fact that the announcement caught ISC staff off guard is troubling from a public administration standpoint, but more relevant to the argument of this thesis, is the fact that the announcement was made before virtually any consultation with First Nations occurred.[18] Trudeau attributed the decision on the departmental split

[17] Government of Canada, "Crown-Indigenous Relations and Northern Affairs Canada" (accessed October 29, 2018; https://www.canada.ca/en/crown-indigenous-relations-northern-affairs.html).

[18] King and Pasternak, 9.

to a somewhat obscure recommendation of the RCAP report,[19] but since this was a more-than-20 year old recommendation, and is buried amongst others that continue to be ignored,[20] this is insufficient justification for failing to consult those most impacted by the change—and hardly indicative of truly nation-to-nation relationships.

In many ways the departmental reorganization[21] seems to have been more about the appearance of change to mask lack of substantive action,[22] but it has been accompanied by positive rhetoric. The Trudeau government's messaging regarding what-is-now being termed "transformation" is consistent with the RCAP recommendation. To paraphrase, the split involves the recognition that the formal, legal relationships between Canada and Indigenous nations (including Inuit and Métis) will last forever, but that, ideally, program and service delivery for Indigenous individuals will no longer be done by Canada and instead taken over by the Indigenous nations to which the individuals belong. There is no denying echoes of the White Paper in this decision, in the sense that it involves the goal of abolishment of the *Indian Act* and Canada moving towards no longer

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[19] "The Commission recommends that . . . The government of Canada present legislation to abolish the Department of Indian Affairs and Northern Development and to replace it by two new departments: a Department of Aboriginal Relations and a Department of Indian and Inuit Services" (RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 5*, 160).

[20] "While it is true that RCAP recommended this action, it is only true if one takes a very superficial, narrow, and isolated view of the recommendation in question" (Veldon Coburn, "The Dismantling of Indigenous and Northern Affairs Canada" [*Policy Options* (September 6, 2017); http://policyoptions.irpp.org/magazines/september-2017/the-dismantling-of-indigenous-and-northern-affairs-canada/]).

[21] In fact, the "split" also involves a merger, as the First Nations and Inuit Health Branch was hived off of Health Canada and merged with ISC.

[22] "Ottawa" seems to be "without a clear vision about the change" (Joseph Quesnel, "Departmental Change at INAC" [Frontier Centre for Public Policy, September 2017; accessed October 29, 2018; https://fcpp.org/2017/09/11/departmental-change-at-inac-must-uphold-rcap-vision/]).

being responsible for program and service delivery to First Nations. At least in terms of the rhetoric, however, it is far more positive than the White Paper was, because with the creation of the Crown and Indigenous Relations department, the Trudeau government is affirming the ongoing nature of relationships between Canada and First Nations (so, unlike the White Paper, there is no suggestion that First Nations should cease to exist as nations). As well, whereas the White Paper laid out a plan in which the provinces would take over program and service delivery, the Trudeau government's language around transformation is that these responsibilities would belong to First Nations.

The lack of significant consultation with First Nations prior to the departmental split remains inexplicable and concerning, and there are many reasons for both First Nations and ISC bureaucrats to be frustrated with the transformation process at least so far (reorganizations of this scale, whether in the public or private sector, are, after all, rarely smooth); but at least in terms of the rhetoric surrounding transformation, in many ways the Trudeau government seems to be "getting it" in a way they perhaps did not in the early years of their mandate. With the announcement of the departmental split, the government appears to have shown an understanding of what "nation-to-nation" means in a deeper and more nuanced way than they had previously.

5. Recognition and Implementation of Rights Framework

The second "surprise" announcement came in February 2018 when Trudeau signaled his intention to create a "Recognition and Implementation of Rights

Framework."[23] The announcement included an ambitious target of tabling legislation in autumn 2018, but this was later indefinitely delayed until after the 2019 election,[24] the victim of external First Nations opposition and internal political disagreement.[25] Nonetheless, the rhetoric surrounding the proposed framework's announcement is worth examination, because it was among the most substantive speeches Trudeau has given regarding Indigenous issues.

As with the departmental split, the Recognition and Implementation of Rights Framework announcement seemed to have been done with little preparation and again without significant consultation. In this case, however, there was a context that explained the timing, at least. The precipitating event was the acquittal of Gerald Stanley, the (white) man who had killed the (Indigenous) young man Colten Boushie. The jury's decision on a Friday (February 9, 2018) to let Gerald Stanley walk free was the impetus for significant national outcry, including protests across Canada that weekend.[26] On Wednesday (February 14, 2018), Trudeau made his announcement in the House of Commons.[27]

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[23] Prime Minister of Canada Justin Trudeau, "Government of Canada to create Recognition and Implementation of Rights Framework" (accessed October 29, 2018; https://pm.gc.ca/eng/news/2018/02/14/government-canada-create-recognition-and-implementation-rights-framework).

[24] Jorge Barrera, "Promised Indigenous rights recognition legislation won't be in place before next election" (accessed July 4, 2019; https://www.cbc.ca/news/indigenous/fn-rights-framework-1.4905705).

[25] Jorge Barrera, "Wilson-Raybould battled Bennett, other ministers over Indigenous rights framework" (accessed July 4, 2019; https://www.cbc.ca/news/indigenous/raybould-wernick-framework-1.5029144).

[26] Globe and Mail, "Colten Boushie and beyond: A primer on the aftermath of Gerald Stanley's acquittal" (accessed October 30, 2018; https://www.theglobeandmail.com/news/national/colten-boushie-gerald-stanley-explainer/article37938180/).

[27] Prime Minister of Canada Justin Trudeau, "Remarks by the Prime Minister in the House of Commons on the Recognition and Implementation of Rights Framework" (accessed

Trudeau's speech in Parliament was likely the most in-depth exposition of his views on the place of Indigenous peoples in Canada we have seen to date. Six months on from the August 2017 departmental shift announcement, the February 2018 speech may again represent a further step forward in the government's understanding of what "nation-to-nation" means. The announcement appears to include a more realistic understanding of the scale of the "government-wide shift" required for Indigenous rights to be fully recognized (i.e., "it won't be easy"). Moreover, Trudeau acknowledged that this recognition of Indigenous rights is fundamental:

> We need to both recognize and implement Indigenous rights because . . . until we get this part right, we won't have lasting success on the concrete outcomes that we know mean so much to people.[28]

I see this as an understanding that improvements to programs and services for First Nations is not enough without fundamental changes to how Canada and First Nations relate (and so consistent with the arguments of my thesis). For those of us involved in the day-to-day of the fiscal relationships between Canada and First Nations, it is easy to focus on program reporting, funding formulae, and cash flows, and be frustrated. Often less restrictive terms and conditions and more reasonable funding levels seem like the answer. But, really, while these administrative and policy changes are important, the changes to fiscal relationships between Canada and Treaty 6 First Nations required in order to make them consistent with Treaty 6 are far more fundamental. In his

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October 30, 2018; https://pm.gc.ca/eng/news/2018/02/14/remarks-prime-minister-house-commons-recognition-and-implementation-rights-framework).

[28] Prime Minister of Canada Justin Trudeau, "Remarks."

announcement of the framework, Trudeau is at minimum paying lip service to this idea as well.

The announcement was followed in September 2018 by an overview document released by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) that expanded on the government's intentions for what it was now calling the "Recognition and Implementation of Indigenous Rights Framework."[29] This overview document added some flesh to the bones introduced in Trudeau's February 2018 speech, but was necessarily tentative given the intention of developing the legislation "in partnership with Indigenous peoples."[30] The rhetoric of the document is consistent with Trudeau's speech, but goes much further in terms of its recognition of the importance of treaty relationships,[31] for example indicating openness to creation of "a treaty oversight body to provide oversight of treaty implementation," and even acknowledging "that past insistence on 'cede, release and surrender' provisions in treaties . . . is inappropriate and outdated"[32]—a highly significant admission that I have never seen in a government document before. The overview document also includes hints of awareness that improved fiscal relations must be an aspect of nation-to-nation relationships, such as indicating that "the legislation could . . . affirm Canada's

[29] CIRNAC, "Overview of a Recognition and Implementation of Indigenous Rights Framework" (accessed July 4, 2019; https://www.rcaanc-cirnac.gc.ca/eng/1536350959665/1539959903708?wbdisable=true).

[30] CIRNAC, "Overview."

[31] The words "treaty" or "treaties" appears 31 times in the document, compared to only three times in Trudeau's speech.

[32] CIRNAC, "Overview."

intent to enter into government-to-government fiscal relationships with recognized Nations."[33]

Despite these positive rhetorical signs, I have significant criticism of the rhetoric in Trudeau's speech and the subsequent overview document. Most importantly, the Trudeau government fails to understand that nation-to-nation relationships would include recognition that First Nations are not Canadians, and that the Canadian Constitution (section 35, and the rest of it) should not apply to Indigenous peoples unless they explicitly say so (which, obviously has never happened, because they have never even been asked). If the Trudeau government wants to base the framework on section 35 for Canadian legal purposes, I have no issue with this, but the rhetoric surrounding the announcement goes further than this, suggesting that nation-to-nation relationships must fit "within Canada's current constitutional framework."[34] The primary problem with this is that it is entirely inconsistent with nation-to-nation relationships to impose one nation's constitution on another. Treaty rights do not stem from the Canadian Constitution—they are based in the treaties themselves, and the treaties need to be the basis for a reset of relationships between Canada and First Nations (when, of course, treaties are applicable). If a framework is required to facilitate this reset, then so be it, but ultimately the recognition needs to be that the basis of the relationships are treaties, not the framework. Trudeau's speech suggests he has yet to understand this. Treaties could be negotiated such that First Nations explicitly choose to join the Canadian federation and sign on as partners to the

[33] CIRNAC, "Overview."
[34] CIRNAC, "Overview."

Canadian Constitution (see Chapter 5), but Trudeau did not make this invitation in his speech, nor does the CIRNAC overview document suggest this. Rather, the assumption is that First Nations should join Canada in developing framework legislation which would reaffirm *Canadian* sovereignty and Indigenous rights as defined by the *Canadian* Constitution.

Additionally, there is the obvious problem that if this framework was truly being developed "in full partnership with First Nations, Inuit, and Métis people,"[35] it would not have been announced unilaterally as an attempt to mitigate criticism of Canada's justice system. Moreover, the timeline ("it is our firm intention to have the Framework introduced this year, and implemented before the next election"[36]) continued a pattern of setting overly-ambitious expectations. The fact that it has now been delayed indefinitely confirms this assertion.

Obviously what the Recognition and Implementation of Rights Framework ultimately looks like (if it ever comes to pass) will have significant impacts on all aspects of the relationships between Canada and First Nations and could come to define the legacy of the Trudeau government as far as Indigenous issues are concerned. All of this remains to be seen and is at minimum contingent on Liberal re-election. What can be concluded for now, however, is that in the speech announcing his intention to create this framework, Trudeau demonstrated a further maturing in his rhetoric regarding relationships between Canada and Indigenous peoples, and in particular the meaning of "nation-to-nation." In CIRNAC's subsequent overview document, the rhetoric reflects even a greater

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[35] Prime Minister of Canada Justin Trudeau, "Remarks."
[36] Prime Minister of Canada Justin Trudeau, "Remarks."

degree of recognition of the importance of treaties, and the significant admission that "cede, release and surrender" language is inappropriate. Nonetheless, despite positive signs, there is still a major disconnect in the words and assumptions of the Trudeau government and what nation-to-nation relationships need to look like, especially in a numbered treaty context.

B. The Trudeau Government's Action on First Nations Fiscal Relations

Given the ambition of the Trudeau government's rhetoric, it should come as no surprise that substantive change has not lived up to expectations. To some extent, this is probably simply the reality of democratic politics—politicians over-promise and under-deliver. Primarily, over-promising politicians are surely motivated by the desire to get elected; but it should be recognized that just because a promise does not get implemented does not necessarily mean it was not sincerely made. In other words, while Trudeau and his government have not fulfilled all of their promises regarding Indigenous issues, this is not the same thing as saying they were deceptive about what they wanted to do. I will not in this thesis argue one way or the other regarding the Trudeau government's sincerity. What I will do, in this section, is argue that objectively speaking the Trudeau government's action has fallen short of its rhetoric, and that while some of the action can be seen as moving closer to Treaty 6-consistent fiscal relationships, ultimately the Trudeau government has continued the trend of Canadian governments falling short of the spirit and intent of Treaty 6 when it comes to fiscal relationships with Treaty 6 First Nations.

As noted in my introductory comments to this chapter, analyzing the results of the Trudeau government's action is risky, since we do not yet have the benefit of hindsight, and Trudeau may well secure another mandate. In other words, actions of the Trudeau government remain a "work in progress," and it is always difficult to say things confidently about how in progress work will turn out. Still, we do have an almost complete four year mandate to assess, so I believe this is a worthwhile task. I will begin by comparing the Trudeau government's action to the items discussed in the prior section, and then add a final subsection regarding changes to funding levels the Trudeau government have made.

1. Nation-to-Nation

While I had some positive things to say about the Trudeau government's rhetorical use of "nation-to-nation," substantively I can point to no changes they have made that could be described using this term. While I indicated in the prior section that I believe I have seen a maturing in Trudeau's understanding of what nation-to-nation means, I still find his understanding inadequate, and, in any case, I do not actually see any changes that are consistent with the more mature understanding the Prime Minister now seems to have.

Moreover, as I commented on previously, while I do not think the Trudeau government actually sees the AFN as a nation, their actions suggest they do. The AFN is convenient to work with logistically, and also tends to be more conciliatory than individual First Nations chiefs might be, and I am probably less

critical of Canada working with the AFN than some are;[37] but if nation-to-nation relationships are to become reality, the singular "relationship" has to become the plural "relationships" and the relations needs to be with "real" nations (as defined by First Nations themselves), not the AFN.[38]

2. A New Fiscal Relationship

On the "new fiscal relationship," there has been progress made, much of it encouraging. I have selected a few initiatives to comment on specifically in this subsection, recognizing that I cannot possibly cover all the items that might fall under the heading of "a new fiscal relationship."

a. "A New Approach"

I have many criticisms of the AFN and ISC's December 2017 "A New Approach" report, but it at least represents some good work done in terms of consultation and identification of important issues (e.g., sufficiency, predictability, sustainability). The report fails (as previously alluded to) to recognize the role of treaties in fiscal relations, and seems more focused on the granular rather than the big picture. In that sense, I would suggest it seems like its goal is less altogether "new" fiscal relations, and more just "updated" fiscal relations—but updated in a positive direction, nonetheless.

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[37] E.g., Russell Diabo, "Don't be fooled by Trudeau's First Nations charm offensive. The Liberals' real agenda will be decided behind closed doors" (accessed October 31, 2018; http://rabble.ca/blogs/bloggers/2017-03-23t000000/dont-be-fooled-trudeaus-first-nations-charm-offensive-liberals-real); Dennis Ward, "Our people are demanding fundamental change says Russ Diabo" (accessed December 22, 2018; https://aptnnews.ca/2018/12/18/our-people-are-demanding-fundamental-change-says-russ-diabo/).

[38] Besides the fact that the AFN is not a government nor a nation, it is also in a deeply conflicted position, since its existence and legitimacy depends almost entirely on Government of Canada recognition and financial support (Abele and Prince, 158).

b. Elimination of Set Contribution Funding

One such update that is close to completion is the move to ensure funding provided to First Nations can be carried forward from one year to the next.[39] The Government of Canada's Treasury Board authorities allow for various "types" of contribution funding, with different terms and conditions attached to each. The "set" contribution type includes the requirement that the funding be spent by March 31 (fiscal year end) of the year it was provided, with any surplus to be recovered.[40] The elimination of the use of set contributions will allow for (at minimum) surpluses to be carried over to the following fiscal year. This is the type of change that is granular, but can have a big impact in terms of allowing for responsible financial management as opposed to rushed, ineffective end-of-year spending or (perhaps worse) recovered funds that could have been effectively spent (in an extreme example) on April 1 of the next fiscal year.

c. Ten-Year Grant Agreements

Another, more substantial, change stemming from the report is the creation of new "ten-year grant" funding agreements.[41] Treasury Board makes a distinction between grants and contributions, and the difference is important for context. According to Treasury Board's "Policy on Transfer Payments," a "contribution:"

> Is a transfer payment subject to performance conditions specified in a funding agreement. A contribution is to be accounted for and is subject to audit.[42]

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[39] AFN and the Government of Canada, "A New Approach," 1.

[40] Government of Canada, "Funding approaches" (accessed October 31, 2018; https://www.aadnc-aandc.gc.ca/eng/1322746046651/1322746652148).

[41] AFN and ISC, "A New Approach," 18.

[42] Treasury Board of Canada, "Policy on Transfer Payments" (accessed October 31, 2018; https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13525#).

The set contribution described in the previous subsection is an example of this form of funding. By contrast, a "grant:"

> Is a transfer payment subject to pre-established eligibility and other entitlement criteria. A grant is not subject to being accounted for by a recipient nor normally subject to audit by the department. The recipient may be required to report on results achieved.[43]

The key to why grant funding would be preferred by First Nations versus contributions is that middle sentence in the definition of grant: "A grant is not subject to being accounted for by a recipient nor normally subject to audit by the department." Currently a small portion of funding First Nations receive from ISC is grant funding, but most of it is contribution funding, requiring onerous accounting and reporting, and the possibility of departmental audits. There are also significant restrictions around how most contribution funding can be used, frequently limiting the flexibility of First Nations governments to spend in areas and in ways they would prefer.

The first of these grant agreements began on April 1, 2019,[44] so their impact remains to be seen, and there is little information publicly available to assess. Certainly I see grant agreements as funding agreements that are more consistent with relationships established by Treaty 6 simply in that they demonstrate increased respect for First Nations.[45] Grant agreements decrease

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[43] Treasury Board of Canada, "Policy on Transfer Payments."

[44] Government of Canada, "10-year grant" (accessed July 4, 2019; https://www.sac-isc.gc.ca/eng/1527080791657/1527080813525).

[45] Some have offered critiques of grant agreements (e.g., Candice Maglione Desjarlais, "A Critical Look at the New Fiscal Relationship and Contribution Funding Agreements with First Nations" [accessed July 7, 2019; https://yellowheadinstitute.org/2019/03/04/new-fiscal-relationship-contribution-funding-agreements/]), but unfortunately I feel like some of them are based on inaccurate or incomplete information. Nonetheless, Desjarlais has many legitimate criticisms of grant agreements; for example: "grants are subject to an Act of Parliament," i.e.,

administrative burdens and facilitate greater flexibility in First Nations budgeting and decision-making. To quote AFN National Chief Perry Bellegarde:

> The move to ten-year grants means our governments can take a strategic approach to long-term planning and maximize the effectiveness of all resources. This builds stronger First Nations governments and will make a real difference on the ground for our families.[46]

I am not as optimistic as the National Chief, but there is no denying that he has identified potential benefits of grant agreements.

While the grant agreements are an improvement on previous variations of funding agreements, they are not available to all First Nations, but only those deemed eligible.[47] ISC is adopting a somewhat different approach in terms of determining eligibility than it would have previously, utilizing criteria "co-developed" with the AFN and the First Nations Financial Management Board (FMB).[48] Since these two organizations are First Nations led (albeit almost entirely Government of Canada-funded and, in FMB's case, the creation of federal legislation[49]), this approach does represent a potentially positive shift in how Canada is operating within the fiscal relations space that would at least be more consistent with the spirit and intent of Treaty 6. On the other hand, while

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subject to parliamentary appropriations, which means in theory they are not guaranteed—certainly inconsistent with treaty relationships. But Desjarlais fails to realize that to the extent she has legitimate critiques, they also apply to funding agreements other than grant agreements, so even if grant agreements are imperfect, they can still represent an improvement, which is what I assert.

[46] Quoted by FMB, "10-Year Grant," (accessed July 4, 2019; https://fnfmb.com/en/10-year-grant).

[47] See Neu and Therrien on ISC's history of determining a First Nation's eligibility for previous iterations of flexible funding arrangements based on "imperialistic . . . definitions of what constitutes a responsible government" (136).

[48] Government of Canada, "10-year grant."

[49] Originally the *First Nations Fiscal and Statistical Management Act*, and now the *First Nations Fiscal Management Act* (FMB, "Our Story" [accessed October 31, 2018; https://fnfmb.com/en/about-fmb/our-story]).

FMB in particular is involved in assessing eligibility against the criteria, "ISC will make the final decision on eligibility,"[50] so perhaps little has changed substantively. Cynically one could say that Canada is still paternalistically determining which First Nations are responsible enough to manage a more flexible funding agreement, only in this case their paternalistic determination process includes input from their "favourite children," the FMB and AFN. In other words, grant agreements may not represent truly "new" fiscal relationships, but more of the "same old" done differently.

d. Treaty-Based Funding Agreements

What I believe have much more potential to contribute towards fundamental change in fiscal relationships are the treaty-based funding agreements Onion Lake Cree Nation[51] and other First Nations are working on. As far as I am aware, there is no detail publicly available about what such a funding agreement might look like, but the Trudeau government's willingness to at least sign the MOU with Onion Lake should be recognized. Nonetheless, while I am hopeful these negotiations could represent fiscal relations done differently (for starters, it appears to be closer to a truly nation-to-nation relationship than, say, the Canada-AFN negotiations are), it is hard to be sure without more detail, and, in any case, this initiative appears to be largely due to the leadership of Onion Lake as opposed to the Trudeau government.

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[50] Government of Canada, "10-year grant."

[51] ISC, "Government of Canada signs Health MOU with Onion Lake Cree Nation in Treaty 6."

3. First Nations Financial Transparency Act

Interestingly, Onion Lake also took a leadership role in opposing the FNFTA, and was in court with Canada over the issue when the Liberals were elected in October 2015. As I have already noted, Trudeau committed to repeal the FNFTA, but, for now at least, it remains Canadian law: this, it would seem, is a clear example of a broken promise when it comes to the Trudeau government's management of fiscal relationships with First Nations. That being said, the Trudeau government did move quickly (December 2015) to cease "discretionary compliance measures" (i.e., funding halts) relating to non-compliance with the FNFTA and stopped all court action.[52] In January 2017 the Trudeau government began "engaging" First Nations on the future of the FNFTA, and this engagement wrapped up in June 2017.[53] Since the "update" on the Government of Canada's website (which indicates it was last updated February 2018) regarding FNFTA remains that this engagement took place, this issue appears to be a much lower priority for both the federal government and First Nations than it was in 2015, no doubt partly because the more-or-less non-enforcement of the FNFTA has reduced its importance to First Nations. That being said, it certainly remains symbolically important in the sense that it is a paternalistic law relating to fiscal relations between Canada and First Nations, and ISC continues to comply with the law, publishing financial information publicly as required.

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[52] Indigenous and Northern Affairs Canada, "Statement by the Honourable Carolyn Bennett on the First Nations Financial Transparency Act" (accessed October 31, 2018; https://www.canada.ca/en/indigenous-northern-affairs/news/2015/12/statement-by-the-honourable-carolyn-bennett-on-the-first-nations-financial-transparency-act.html).

[53] Indigenous and Northern Affairs Canada, "A new approach for mutual transparency and accountability between First Nations and the Government of Canada: Engagement 2017" (accessed July 4, 2019; https://www.aadnc-aandc.gc.ca/eng/1470082330610/ 1470082515046).

4. Departmental Transformation

The split, or "transformation," of ISC into two new departments is now nearly two years old. At this point it is fair to say that transformation has contributed to frustration and confusion, both internally and externally, over what exactly the impacts of the split will be to relationships with First Nations—but this is no doubt to be expected when a large organization reorganizes, and presumably the frustration and confusion will dissipate.

More concerning from the perspective of fiscal relationships is a point the Yellowhead Institute has made regarding how roles and responsibilities are being divided between CIRNAC and ISC. ISC has taken over the funding agreements with First Nations—the agreements that facilitate funding for programs such as health and education, while CIRNAC is to concern itself with what might be considered higher-level issues, such as treaty rights. But if health and education are viewed as "international treaty obligations owed by Canada,"[54] as of course this thesis argues they should be, then splitting responsibilities in this way suggests (reminds us, perhaps) that Canada does not understand the connection between treaty and fiscal relations. Moreover, since the idea is that ISC will one day disappear, how will the fiscal obligations of treaties be fulfilled? These types of concerns and questions may yet be answered, but particularly given the history of Canada's (non)fulfillment of the spirit and intent of numbered treaties, Treaty 6 First Nations could have reason to be suspicious.

[54] King and Pasternak, 11.

5. Recognition and Implementation of Rights Framework

The proposed Recognition and Implementation of Rights Framework is perhaps more of a work in progress than anything examined so far, and would likely only come to fruition if the Liberal government is re-elected in October 2019 (and even then it is far from certain). As alluded to in the prior section when analyzing the rhetoric surrounding the framework's announcement, this framework could represent a major shift in how Canada relates to First Nations, including fiscally. The extent of the shift will depend on how willing the Trudeau government actually is to listen to First Nations (perhaps especially numbered treaty-adherent First Nations) in the "co-development" process. While there could be some reason for cautious optimism, particularly based on some of the rhetoric in CIRNAC's overview document, it is far too early to come to any further conclusions about the Recognition and Implementation of Rights Framework.

6. Changes to Funding Levels

In my day-to-day interactions with Treaty 6 First Nations, it is the challenge of "sufficiency" in the fiscal relationship that comes up most frequently; in other words, I am constantly reminded that ISC funding is insufficient. The "A New Approach" report and the AFN's 2015 election document—entitled "Closing the Gap"[55]—confirm that sufficiency of funding is a high priority for First Nations across Canada. In this regard, the Trudeau government has done much towards, to borrow AFN wording, closing the gap.

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[55] AFN, "Closing the Gap: 2015 Federal Election Priorities for First Nations and Canada" (accessed October 31, 2018; http://www.afn.ca/closing-the-gap-2015/).

In Budget 2016, the government announced that $8.4 billion in new spending was committed to contribute to "a better future for Indigenous Peoples;"[56] Budget 2017 took "concrete steps to . . . empower Indigenous Peoples" with $3.4 billion;[57] Budget 2018 renewed "the commitment to building a new relationship together with Indigenous peoples, based on recognition of rights, respect, cooperation, and partnership" with another $4.7 billion;[58] and Budget 2019 invested $4.5 billion to take "further steps towards reconciliation."[59] These are not insignificant amounts of money—apparently over $20 billion of new spending—and I have personally seen some of the new houses, schools, fire halls, roads, and water treatment plants;[60] expanded education programming;[61] and capacity development[62] this funding has made possible. And, finally, Canada is complying with its own human rights tribunal's order to end discrimination

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[56] Indigenous and Northern Affairs Canada, "Budget 2016 Highlights – Indigenous and Northern Investments" (accessed October 31, 2018; https://www.aadnc-aandc.gc.ca/eng/1458682313288/1458682419457).

[57] Indigenous and Northern Affairs Canada, "Budget 2017 Highlights – Indigenous and Northern Investments" (accessed October 31, 2018; https://www.aadnc-aandc.gc.ca/eng/1490379083439/1490379208921).

[58] Government of Canada, "Budget 2018 Highlights: Indigenous and Northern investments" (accessed October 31, 2018; https://www.aadnc-aandc.gc.ca/eng/1520368281802/1520368298215); AFN, "AFN BULLETIN – 2018 Federal Budget" (accessed October 31, 2018; http://www.afn.ca/2018/02/28/afn-bulletin-2018-federal-budget/).

[59] Indigenous and Northern Affairs Canada, "Budget 2019 Highlights: Indigenous and Northern investments" (accessed July 4, 2019; https://www.aadnc-aandc.gc.ca/eng/1553716166204/1553716201560).

[60] E.g., ISC, "New fire hall completed in Frog Lake First Nation in Treaty 6 Territory" (accessed November 10, 2018; https://www.canada.ca/en/indigenous-services-canada/news/2018/08/new-fire-hall-completed-in-frog-lake-first-nation-in-treaty-6-territory.html).

[61] ISC, "Kindergarten to grade 12 education" (accessed November 10, 2018; https://www.sac-isc.gc.ca/eng/1100100033676/1531314895090).

[62] Indigenous and Northern Affairs Canada, "Professional and Institutional Development Program" (accessed November 10, 2018; https://www.aadnc-aandc.gc.ca/eng/1100100013815/1100100013816).

against Indigenous children by increasing funding for child and family services.[63] Investments like these have real impacts on the lives of First Nations people, and critics of the Trudeau government such as myself need to acknowledge this. Working to ensure that the quality of life for First Nations is comparable to Canadians is certainly consistent with Treaty 6's idea of mutually beneficial relations in a shared space, even if this is not necessarily the Trudeau government's motivation for moves towards "closing the gap."

Of course, this last clause also goes to a point worth making. If all the Trudeau government is doing is working to close an inequitable gap, does it really deserve much credit for simply doing the right thing by small-"l" liberal values? Perhaps our gratitude and admiration for the Trudeau government's additional funding for First Nations should be seriously tempered. To put this another way, while I will insist that it be acknowledged that simply increasing funding to First Nations has positive impacts on the lives of First Nations individuals, it is in no way radical or inconsistent with Canadian colonialism or Canada's assertion of sovereignty.

Moreover, there are areas in which the increases in funding have fallen short of the Liberal's election promises (not to mention many other areas where the increases in funding have likely been insufficient to actually "close the gap"). To illustrate this, I will use an example from my professional experience. Critical theory emphasizes the ability (perhaps even the importance) of researchers living

[63] ISC, "Statement by Minister Philpott on the February 1 Canadian Human Rights Tribunal Compliance Orders and immediate actions being taken by the Federal Government" (accessed November 10, 2018; https://www.canada.ca/en/indigenous-services-canada/news/2018/02/statement_by_ministerphilpottonthefebruary1canadianhuman rightstr.html).

their research. In my case, this "research" was simply part of doing my job, and was certainly not research *per se*. Nonetheless, critical theory affirms that as humans our lived experiences can be as much a part of the research process as reading books or conducting experiments. This particular experience was both emotionally and logically powerful for me, and serves to illustrate how increases in funding have often fallen short of expectations raised by rhetoric.

In 2016, I was personally asked on multiple occasions by a First Nation I worked with to follow up on Trudeau's election commitment to increase funding to the Post-Secondary Student Support Program (PSSSP) by $50 million per year between 2016-2019 ($200 million total).[64] The PSSSP does more-or-less what the name implies for First Nations post-secondary students—support them while in school. Eligible costs include tuition, books, travel support, and living allowances, usually up to $50,000 per year per student.[65] If we use the $50,000 per year amount for argument's sake (obviously many students require less, so for my purposes this is a conservative estimate), then $50 million extra per year would mean 1,000 more First Nations post-secondary students. Unfortunately, despite the $8.4 billion of new spending announced in Budget 2016, $50 million for PSSSP was not included. In Budget 2017, PSSSP funding of $80 million was announced, $40 million in each of 2017 and 2018. Finally, Budget 2019 included

[64] Liberal Party of Canada, "Post-Secondary Education" (accessed November 1, 2018; https://www.liberal.ca/realchange/post-secondary-education/); Liberal Party of Canada, "Choosing Investment Now: The Liberal Fiscal Plan and Costing" (accessed November 1, 2018; https://www.liberal.ca/costing-plan/).

[65] ISC, "Post-Secondary Student Support Program" (accessed November 1, 2018; https://www.sac-isc.gc.ca/eng/1100100033682/1531933580211).

a more substantive increase for PSSSP, $327.5 million over five years; exactly how much of this amount is allocated to 2019 is not clear in the budget document,[66] but it looks like, finally, in the last year of his mandate, Trudeau has fulfilled his promise of $50 million/year.[67] Nonetheless, assuming $50 million in 2019, out of the $200 million that was promised for 2016-2019, only $130 million has been provided. The only-partial-fulfillment of this election promise has meant (in theory) that in 2016, 1,000 First Nations students were unable to attend post-secondary school, with another 200 missing out in each of 2017 and 2018. To put this another way, collectively First Nations in Canada have lost out on at least 1,400 years of post-secondary education![68] And, this, of course is based on the conservative estimate that it actually costs $50,000 per year, per student; if we assume an average of, say, $40,000, the number of years increases to 1,750.[69]

I could go on regarding the PSSSP, both because it objectively illustrates some of the impact of broken or only-partially-fulfilled election promises, and because it is subjectively very meaningful to me, but I think the point has been made. There is some disagreement about whether or not post-secondary education was a fiscal obligation Canada took on in Treaty 6,[70] but, regardless, the

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[66] Department of Finance Canada, "Investing in the Middle Class: Budget 2019" (accessed July 4, 2019; https://www.budget.gc.ca/2019/docs/plan/budget-2019-en.pdf), 49.

[67] Out of a total of $531 million for "supporting Indigenous Post-Secondary Education," $79 million was allocated for 2019 (Department of Finance Canada, 307), which is approximately 15% of the total. Based on this, we can assume 15% of the total $327.5 million PSSSP funding is also allocated for 2019, which would be approximately $50 million.

[68] 1,000 (2016) + 200 (2017) + 200 (2018) = 1,400.

[69] 1,250 + 250 + 250 = 1,750.

[70] Personally I think so, but I would consider this to be an item that would be part of my-hoped-for-future-negotiations. See Sheila Carr-Stewart, "Post-Secondary Education as a Treaty Right Within the Context of Treaty 6" (*First Nations Perspectives* 4:1 [2011]: 84-109); Carr-Stewart and I agree that the treaty promise of education was made in the context of ensuring First Nations would have the skills and knowledge necessary to prosper in a post-bison, settler economy; today, that would logically include post-secondary (and other forms of adult) education.

additional $200 million was an election promise and should have been met. Overall, while the Trudeau government has increased funding such that the funding "gap" is narrowed, even the over $20 billion announced to date has not matched the expectations or need.

C. Fiscal Relations at 2019

This chapter has attempted to paint the picture of where fiscal relations between Canada and (Treaty 6) First Nations are at as the Trudeau government's mandate comes to an end. The "Treaty 6" is bracketed, because it should be obvious that except for the one item (treaty-based funding agreement) Onion Lake Cree Nation is working on, the Trudeau government has continued Canada's trend of treating numbered treaty-adherent First Nations just as all other First Nations in Canada—and the use of the singular "relationship" gives little reason to hope this will change.

In the first half of this chapter I was able to give the Trudeau government some credit for a fairly significant shift in how relationships between Canada and First Nations (and Indigenous peoples generally) are being talked about. Perhaps most encouragingly, I believe I have identified a maturing in the rhetoric that Prime Minister Trudeau in particular uses when talking about relationships with First Nations—from his statement on the FNFTA in 2014 in which he perpetuated stereotypes about First Nations corruption to his announcement of the Recognition and Implementation of Rights Framework in 2018 in which he acknowledged that without a fundamental change in how Canada relates to Indigenous peoples there will not be "lasting success."

Despite my cautious optimism, however, I was able to identify significant concerns with the rhetoric the Trudeau government has used, probably most importantly the continued assumption of Canadian sovereignty over the lives and lands of Indigenous peoples. In many ways, what Trudeau seems to have in mind with the Recognition and Implementation of Rights Framework (which would be passed, of course, by Canadian parliament within the box of the Canadian Constitution) would simply further entrench Canadian colonialism. Certainly, I was not able to identify any rhetoric coming from the Trudeau government that reflects what I consider to be an obvious understanding of what nation-to-nation truly means, let alone a grasp of the types of relationships Treaty 6 created.

I should also make the point that I am deeply concerned about the use of rhetoric that raises expectations that are unlikely or impossible to meet. I would be critical of this in any context, but especially in the context of a long history of Canada making promises to First Nations (whether in treaty contexts or otherwise) and not living up to them. I fear one legacy of the Trudeau government may be an even further mistrust of Canada by First Nations. This will not be good for the future of relationships between Canada and First Nations, and it will certainly not lay the groundwork for successful future negotiations of Treaty 6 relationships.

In the second half of this chapter, I looked beyond the rhetoric at what the Trudeau government has actually done when it comes to a "new fiscal relationship." Once again, some positive steps have been taken. Trudeau is not the first prime minister to recognize that fiscal relations between Canada and First

Nations need changing, but his government has, probably, done more than any one prior, and certainly the over $20 billion in new funding is significant. I am one of a very small percentage of settlers in Canada who has regular exposure to life on reserves, and I understand how much of a difference extra funding can make. I do not want readers to think I take these investments for granted.

Unfortunately, however, my conclusions are that a "new fiscal relationship" is better termed an "updated fiscal relationship," since it seems to be lacking in much that is fundamentally new. Moreover, promises have been made and expectations raised, but in many cases delivery and fulfillment has been slow, partial, or non-existent. Despite feedback in the "A New Approach" report that specifically speaks to the connection between treaties and fiscal relations, the only possible evidence of action that would suggest the Trudeau government understands that would be its initiative on the treaty-based funding agreement with Onion Lake, of which little is publicly known. Mostly, all I see is evidence that whatever else the Trudeau government ends up doing, it is unlikely to change fiscal relations with First Nations in a way consistent with Treaty 6. Which leads me back to the argument of this chapter: despite rhetorically outlining an ambitious agenda relating to Indigenous peoples, including a "new fiscal relationship" with First Nations, the Trudeau government has been either unwilling or unable to make significant substantive change, and those changes they have implemented regarding fiscal relationships appear to continue the history of fiscal relations inconsistent with Treaty 6.

This conclusion is what has compelled me to write this thesis. If the Trudeau government's direction has not taken Treaty 6 seriously, what would?

So, having reviewed the history and now the contemporary realities, we get to Chapter 4, and back to my research question:

> What might truly "nation-to-nation" fiscal relationships look like between Canada and Alberta Treaty 6 First Nations if Treaty 6 were taken seriously?

CHAPTER 4: CHANGES TO TREATY 6 FISCAL RELATIONSHIPS THAT COULD HAPPEN IMMEDIATELY

My pessimistic conclusions in Chapter 3 regarding the Trudeau government's direction in terms of fiscal relationships with First Nations generally and Treaty 6 First Nations in particular begs this question: if not that (i.e., what they are doing), then what? In essence, it is now, having reviewed the history and contemporary realities of Treaty 6 fiscal relationships, that we can get at the heart of my research question:

> What might truly "nation-to-nation" fiscal relationships look like between Canada and Alberta Treaty 6 First Nations if Treaty 6 were taken seriously?

I propose to go about answering this question from two different perspectives in this and the next chapter. In this chapter, I am taking a relatively conservative approach that assumes changes to fiscal relationships have to be of minimal financial impact to the Government of Canada; not challenge Canada as currently constituted existentially; and come at little to no cost in terms of public opinion. I will also limit myself to thinking about fiscal obligations/expectations as limited to what is in the Canadian text of Treaty 6 which I outlined in Chapter 2. My next

chapter will tackle my research question in a more radical way, but I want to limit myself in this chapter by the constraints I have outlined for at least two reasons.

First, the suggestions of this chapter are examples of changes that could be made *immediately*. Whereas more radical changes would require significant financial, political, temporal, legislative, legal, constitutional, consultative (and so on) investments, the suggestions of this chapter do not. I should be clear: my suggestions are still ambitious in that they represent significant change, but they could be done fairly quickly and require little in terms of the investments I listed above.

Moreover, whereas the most important element required for the suggestions I outline in Chapter 5 is legitimate negotiation with Treaty 6 First Nations, I propose that the suggestions of this chapter could be done unilaterally by Canada. "What!" readers might ask, "has not Canadian unilateral change to Treaty 6 fiscal relationships been the problem all along?!" My answer to that question is that while a major critique of Chapter 2 and to a lesser extent Chapter 3 was that Canada ignored First Nations whilst implementing fiscal policy, the suggestions of this chapter are so basic and so obvious, that I am confident they could be implemented and have universal buy-in with Treaty 6 First Nations (this is not to say, of course, that these suggestions would universally be accepted as adequate in terms of fulfilling the nation-to-nation spirit of Treaty 6). Furthermore, my observation of current relations between Canada and (especially historical treaty-adherent) First Nations is that there is so much (understandable) distrust, that a necessary precursor to successful future negotiations of these

relationships is likely to be Canada taking unilateral steps to demonstrate its seriousness and good faith. The steps outlined in this chapter represent a chance for Canada to rebuild the trust it has successfully eroded since 1876.

Second, while this thesis is not attempting to be particularly pragmatic, I think it useful to spend a little time being at least somewhat pragmatic, and that is what this chapter represents. Pragmatically speaking, it is highly unlikely that any Canadian government would ever take the more drastic and radical steps I propose in the next chapter without first taking more pragmatic steps such as I outline in this one. In other words, more likely than not, if fiscal relationships are ever changed such that they are consistent with Treaty 6, there will need to be starting points, and the suggestions of this chapter can serve as those.

It is from this perspective, then, that I am writing this chapter. There could be many different ways to start "new fiscal relationship(s)" within a Treaty 6 context, and any of my recommendations could be implemented independent of the others. The argument of this chapter is, therefore, that, if truly motivated to begin nation-to-nation fiscal relationships with Treaty 6 First Nations consistent with Treaty 6, Canada could start by taking immediate and unilateral steps that would have minimal impact on budgets; public opinion; and Canada as currently constituted and allow Canada to continue interpreting Treaty 6 according to the Canadian text. Examples of these steps include: inflation-adjusting treaty annuities; acknowledging the treaty-based nature of treaty-related programs and services and guaranteeing their funding/delivery at levels comparable to what

Canadians receive; and modifying the text of funding agreements to reflect Treaty 6 more thoroughly.

A. Treaty Annuities

We saw in Chapter 2 that among the fiscal obligations Canada took on within the text of Treaty 6 were ongoing expenditures relating to treaty annuities (as well as a similar annual expenditure relating to ammunition and twine). To recap, these were items included in the list of fiscal obligations I derived from the Treaty 6 text in Chapter 2:

- Treaty annuities for all First Nations members ($5/individual) (ongoing);
- $1,500 annually to be expended on "ammunition and twine for nets" (ongoing); and
- Annual salaries for chiefs ($25) and "subordinate officers" ($15) (ongoing).

If Treaty 6 fiscal relationships are taken seriously as ongoing and dynamic, it should be immediately obvious to almost all observers (and, perhaps especially, accountants such as myself), that treaty annuities should not have remained at the nominal dollar amounts agreed to in 1876.[1] As we all now know (although First Nations may not have in 1876), the value of money changes over time due to

[1] While all numbered treaties include a fixed amount for treaty annuities, the 1850 Robinson Treaties include what is known as the "escalation clause" (Janet Chute, "Moving on Up: The Rationale for, and Consequences of, the Escalation Clause in the Robinson Treaties" [*Native Studies Review* 18:1 (2009): 53-65]), leaving the door open to annuity increases (which have not occurred since 1874); Justice Patricia Hennessy of the Ontario Superior Court recently ruled that "as the historical and cultural context demonstrates . . . the parties were and continue to be in an ongoing relationship," ordering Canada and the Province of Ontario to negotiate a settlement and annuity increases (Jorge Barrera, "Ontario appeals Robinson treaties annuities case, but open to settlement negotiations" [accessed June 2, 2019; https://www.cbc.ca/news/indigenous/ontario-appeals-treaty-annuities-ruling-1.4988675]).

inflation.[2] Five (or $15 or $25) dollars in 1876 had far more purchasing power than five dollars does in 2019 (or 1919, or 1969, or 2119). Likewise, $1,500 spent on ammunition and twine in 1876 would have bought a lot more ammunition and twine than it does in 2019 (or 1919, or 1969, or 2119). Writing these sentences feels obnoxious, partly because I am trying to be, but mostly because Canada's continued payment of five dollar treaty annuities *is obnoxious*.

Before I move on from this, I want to relate two personal anecdotes that are relevant to this topic, grounding this in critical theory's claim that lived experiences can be part of the research process. These anecdotes in particular illustrate why the suggestion I am about to make would not only cost little in term of public opinion, but may in fact find significant support among settler Canadians.

First, as an ISC employee, I have had the privilege of participating in numerous "treaty pays," and, in fact, I temporarily served as the Alberta Region manager responsible for treaty annuities in 2017. These experiences are among the highlights of my career so far, as they have involved visiting First Nations throughout Alberta, from Morley at the Stoney Nation (Treaty 7) to Smith's Landing along the Slave River, where Treaty 8 was signed, as well as many First Nations in Treaty 6 territory. Given the remote and/or interesting travel treaty pays often involve, these are inevitably experiences I talk about with family and friends. Reactions from settlers to my stories of treaty pays always follow the

[2] "Of course, over time, these dollar amounts became worth less and less" (Neu and Therrien, 58); "the value of these annuities . . . has been severely eroded" (RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 72).

same pattern: absolute shock that Canada continues to hand out five dollar bills. The consistent reactions amuse me, but they are also illustrative: all Canadians understand inflation and the idea that payments (whether to do with wages or purchases or pensions and so on) must increase over time in order to maintain their value.

My second personal anecdote involves a story that I still find humiliating. It also relates to a work experience, this time as a Field Services Officer. As a Field Services Officer, my job involves working with First Nations on a wide range of issues, mostly having to do with ISC funding. In this role I interact primarily with senior First Nations administration officials, but also frequently with chiefs and councils. On one of my visits to a Treaty 6 First Nation I used to work with early on in my ISC career, the Chief had a list of questions for me, including one that he was passing on from an Elder. "The treaty promises us bullets," Chief explained, "and the Elder said he used to get a box every year a long time ago. He would like to know why that stopped." At the time I vaguely knew that Treaty 6 mentioned twine and ammunition, but I had no sense for what exactly it said, and, in any case, no idea how Canada fulfilled this provision, if at all. I let the Chief know I would get back to him.

Back in Edmonton, I set about finding out the answer to the Chief's question. Sure enough, the text of Treaty 6 promised expenditures for twine and ammunition, and I confirmed that there was no funding for this included in the funding agreement. Eventually, I found the answer. Canada "fulfills" this provision of the treaty text in this way: $1,500 is divided by the population of

status Indians who are members of Treaty 6 First Nations. The population in 2016 worked out to approximately 150,000, so something close to one penny per person. Then, Canada multiplies this amount by the population of each First Nation and annually issues a cheque in this amount to each First Nation respectively.[3] For the First Nation whose Chief had asked me the question, the amount they received worked out to roughly $35! It was no wonder the Elder no longer received his bullets.

This story's absurdity has an element of humour to it, certainly; but I was closer to tears than to laughter as I thought about how to communicate this to the Chief. I was humiliated by how indicative this was of how my employer and my country viewed the treaty that was so sacred and profoundly meaningful to the First Nation I worked with.

These stories hopefully make the point that Canada could receive considerable support from its citizens were it to acknowledge that within the spirit of Treaty 6 (and, really, any good faith agreement), treaty annuity amounts should be adjusted to factor in the impact of inflation. There are various arguments over the formula such adjustments would require. For example, Ray, Miller, and Tough have suggested that in the 1870s five dollars per person was more-or-less enough for a family's "winter outfitting."[4] Using this as a basis for adjustment, we could calculate an average cost for three to four months' worth of groceries

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[3] See Globe and Mail, "Treaty money 'a joke,' but no laughing matter" (accessed November 2, 2018; https://www.theglobeandmail.com/news/national/treaty-money-a-joke-but-no-laughing-matter/article1105793/).

[4] Ray, Miller, Tough, 74.

and other basic supplies today and say that amount, roughly, should be the amount of the treaty annuities. Or, others have compared land values,[5] and said five dollars in the 1870s could purchase five acres of land at Red River, and so the value of an equivalent amount of land today should be the value of treaty annuities.[6] Both of these approaches are reasonable, albeit perhaps somewhat complicated.

While I am not necessarily opposed to either of those methods, I think a far more basic and straightforward way to adjust treaty annuities is to simply adjust the nominal 1876 amounts by Canadian inflation rates from 1876 today. For even greater simplicity, I suggest amounts be rounded to the nearest dollar.[7] The Bank of Canada website has an inflation calculator going back to 1914.[8] For the purposes of this hypothetical suggestion, I will use it and assume the average annual inflation from 1914-2019 was also the average annual rate for 1876-1914 (I realize this is likely an incorrect assumption, but I think it is adequate to move forward in a hypothetical context); that rate is 3.04%. Based on this assumed annual inflation rate, the $5 Treaty 6 annuities should have been adjusted to $6 in 1880; $7 in 1885; $8 in 1890; $9 in 1894; $10 in 1898; $11 in 1901; $12 in 1904;

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[5] E.g., InFocus, "Re-direct money from Indigenous affairs departments and into the pockets of status Indians: researcher" (April 18, 2019; https://aptnnews.ca/2019/04/18/re-direct-money-from-indigenous-affairs-departments-and-into-the-pockets-of-status-indians-researcher/).

[6] Jean Allard, "Big Bear's Treaty: the road to freedom" (accessed November 2, 2018; https://www.thefreelibrary.com/Big+Bear%27s+Treaty%3a+the+road+to+freedom.-a0127013004).

[7] Not unlike how maximum annual contributions to tax free savings accounts are calculated, which are indexed to inflation but rounded to the nearest $500 (Government of Canada, "Contributions" [accessed November 1, 2018; https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/tax-free-savings-account/contributions.html]).

[8] Bank of Canada, "Inflation Calculator" (accessed June 25, 2019; https://www.bankofcanada.ca/rates/related/inflation-calculator/).

$13 in 1907; $14 in 1910; $15 in 1912; and $16 in 1914. According to the Bank of Canada's inflation calculator, $16 in 1914 would be $370 in 2019. Similar calculations for the $15 and $25 Treaty 6 annuities result in $1,088 and $1,806; and for the $1,500 twine and ammunition amount, the 2019 inflation-adjusted amount is $108,377.

None of these inflation-adjusted amounts are outrageous; they would not bankrupt Canada (by my math, the additional cost to Canada in 2019 would be approximately $55 million[9]) and Treaty 6 First Nations members would not become rich overnight. Symbolically, however, inflation-adjusting treaty annuities would go a long way towards making it clear that Canada is intent on taking Treaty 6 seriously as the foundation of fiscal relationships with First Nations. To further demonstrate this seriousness, Canada could also provide lump sum retroactive payments to each First Nation in the form of trust funds (Canada has a lot of experience working with First Nations to set these up since many claims settlements involve trust funds) which could be used to benefit communities collectively; if lump sum payments prove too onerous for one year's budget, perhaps Canada could spread these payments out over several years[10]—with appropriate inflationary indexing built in, of course.

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[9] Based on: $370 - $5 = $365; $365 x 150,000 = $54,750,000; $108,377 - $1,500 = $106,877; I do not know how many chiefs and councilors are in Treaty 6, but there are less than 50 *Indian Act* bands, so I am assuming 50 chiefs ($1,806 - $25 = $1,781; $1,781 x 50 = $89,050) and 300 councilors ($1,088 - $15 = $1,073; $1,073 x 300 = $321,900); added up: $54,750,000 + $106,877 + $89,050 + $321,900 = $55,267,827.

[10] Inflation-adjusted payments for retroactive inflation-adjust treaty annuities would work out to approximately the same $55 million figure as the difference to bring 2019 up-to-date. $55 million multiplied by 143 years is nearly $8 billion, so this is a much more significant amount of money.

Unlike, say, providing more funding for child and family services, as the Trudeau government has recently done, inflation-adjusting treaty annuities will not have a direct, long-lasting impact on the lives of Treaty 6 First Nations people. Nor will issuing cheques for $370 instead of handing out $5 bills[11] end colonialism, restore First Nations lands, or in-and-of-itself acknowledge First Nations sovereignty. But, it could represent a symbolic step of true reconciliation with Treaty 6 First Nations, because it would be acknowledging that Treaty 6 and the relationships it created should be taken seriously.[12] Another aspect of this step which goes toward it being an ideal first step is that it would impact most First Nations members (since all are directly eligible for annuities), whereas other steps (such as those I recommend below) might only be understood by those politically-engaged or working for First Nations governments. Inflation-adjusting treaty annuities would come with relatively low financial cost for Canada;[13] would in no way threaten Canada as currently constituted, since Canada is already paying treaty annuities without any existential tension; and could, in fact, find widespread settler support were Canadians to understand how Canada currently "fulfills" these text-based treaty obligations.

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[11] Of course, given what seems to be mostly viewed as a lovely tradition of treaty pays, the handing out of $5 bills could continue, with additional amounts paid out by cheque (or direct deposit).

[12] This move to inflation-adjust treaty annuities would also be a symbolic break from the past, when Canada "regularly manipulated the nature of annuity payments in the attempt to encourage certain sorts of [First Nations] behavior" (Neu and Therrien, 19).

[13] With annual federal government expenses far in excess of $300 billion (Globe and Mail, "Federal budget highlights: Twelve things you need to know" [accessed November 1, 2018; https://www.theglobeandmail.com/news/politics/2018-federal-budget-highlights/article38116231/]; CBC, "Budget 2019: Highlights of Bill Morneau's fourth federal budget" [accessed July 10, 2019; https://www.cbc.ca/news/politics/bill-morneau-budget-2019-highlights-1.5061661]), $55 million would be less than 0.018%.

B. Treaty-Related Programs and Services

My next recommendation for how Canada could take Treaty 6 seriously as the basis of fiscal relationships with Treaty 6 First Nations incorporates symbolic change with substantive action. This recommendation stems from those fiscal obligations Canada took on in Treaty 6 that involve ongoing delivery or funding of programs and services. Drawing from Chapter 2 where I outlined the fiscal obligation in the text of the treaty,[14] these are the five obligations I identify as being of this nature:

- Maintenance of "schools for instruction" (ongoing);
- Some type of law-enforcement (ongoing);
- Assistance in case of "pestilence . . . or . . . general famine" (ongoing);
- "A medicine chest . . . at the house of each Indian Agent" (ongoing); and
- Although not explicitly stated, the references to "Indian Agents" indicate a commitment to some type of Canadian bureaucracy focused on First Nations affairs (ongoing).

At present most Treaty 6 First Nations receive funding in their funding agreements for education, social assistance, and health care, which could be (and are by many) understood to be more-or-less the modern-day equivalents of the

[14] Before I go on, I should acknowledge a fiscal obligation I hear about frequently from First Nations and especially Elders, the idea of a treaty promise of housing or shelter. Despite its presence in the oral tradition, the subject is not mentioned in the Treaty 6 text, nor in the record of negotiations as recorded by Morris/Jackes and Erasmus, nor have I found any Elders' oral testimony in this regard as recorded in the secondary literature. In the context of Treaty 4, Elder Gordon Oakes has suggested that the Queen "promised . . . housing" (quoted in Harold Cardinal and Hildebrandt, 36) and Krasowski notes that housing was a topic brought up by during Treaty 1 negotiations (80, 84) and that "wood for building homes" is a promise included in the Treaty 6 oral history (215), but he does not provide a citation for the latter point so I have not been able to follow up on this reference. Perhaps this potential fiscal obligation would be an item appropriate for First Nations to bring up in future Treaty 6 negotiations. Regardless, since in this chapter I am limiting my recommendations to what is in the treaty text, I am not including housing or shelter.

promises included in the maintenance of schools, aid in case of pestilence/famine, and medicine chest clauses.[15]

In terms of what I understand to be the maintenance of a First Nations-focused bureaucracy, Canada has done so since before Treaty 6 was negotiated through today, despite the White Paper's efforts to terminate it; how ISC has operated has not generally been consistent with Treaty 6, of course, but it has existed and been engaged with Treaty 6 First Nations nonetheless. The creation of CIRNAC (discussed in Chapter 3) appears to be a reaffirmation of Canada's intention to keep this bureaucracy in place in perpetuity.

The law enforcement clause receives very little attention, but it is in the treaty text, and policing is a high priority for at least the Treaty 6 First Nations I work with. At present very few First Nations in Canada receive federal funding for policing, although there is a program through a different government department, Public Safety Canada, that can provide this.[16] Canada might argue that police (usually Royal Canadian Mounted Police in a Treaty 6 context) do provide services to First Nation reserves, and that the commitment to law enforcement in the treaty text is not necessarily a commitment to provide funding for policing or station Canadian police on reserve, which is not an unreasonable argument. In fact, it is probably inconsistent with the nation-to-nation nature of Treaty 6 relationships for Canada to post Canadian police on reserve.

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[15] Taylor, "Treaty Research Report."

[16] Government of Canada, "Policing in Indigenous Communities" (accessed November 2, 2018; https://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/brgnl-plcng/index-en.aspx).

It is my argument then that, whatever the case historically, Canada is currently engaged in either funding or directly providing programs and services that it committed to in the text of Treaty 6. I have alluded to the fact already and will argue it in greater detail later that the *way* Canada funds and delivers these programs and services is inconsistent with the spirit of the relationships Treaty 6 established, but it is important for now to simply establish the fact that Canada is currently funding or delivering these five treaty-related programs and services.

For the purposes of this section's recommendation, my concerns regarding Canadian funding and delivery of treaty-related programs and services is twofold. First, Canada funds and delivers these programs and services *without acknowledging that they are doing so in fulfilment of Treaty 6*.[17] This lack of acknowledgement likely contributes to the tension noted in the prior chapter regarding the split of ISC which has resulted in funding for some of these programs and services flowing through the department (ISC) which is meant to one day disappear. Were this funding to be recognized as in fulfilment of treaties, then it would more comfortably fit with the other department (CIRNAC) which is intended to last and engage with treaty rights.

The first half of this section's recommendation regarding treaty-related programs and services is, then, very simple. Canada should formally acknowledge that funding and delivery of education, social assistance, health care, policing, and ISC/CIRNAC (whatever its iterations) in a Treaty 6 context is

[17] E.g., "Health Canada provides funding for health services for First Nation people but the department refuses to recognize that they do so because of a treaty obligation" (Paul Barnsley "Treaty chiefs fight for medicine chest protection," *Windspeaker* 19:12 [April 3, 2002] [https://ammsa.com/publications/windspeaker/treaty-chiefs-fight-medicine-chest-protection]).

done in fulfilment of the fiscal obligations it agreed to in the text of Treaty 6. Canada could go about doing so in many ways, and at this point (given the lack of this acknowledgement for generations) it would likely be most meaningful if the prime minister himself (herself) gave a speech in which he (she) affirmed this. This affirmation could also be incorporated into funding agreements with Treaty 6 First Nations (see next section); be made explicit in Government of Canada communications; and eventually become a simple, accepted part of relationships between Canada and Treaty 6 First Nations such that bureaucrats like myself begin talking about these programs and services in this way.

The second concern I have about treaty-related programs and services is the sufficiency of the funding provided and adequacy of the programs and services delivered. In the words of the AFN, this issue comes down to "closing the gap" between the quality of programs and services Canadians enjoy versus those available to First Nations, especially those living on reserves. In the previous chapter I was able to acknowledge significant efforts by the Trudeau government to close this gap, and my impression is that certainly in the area of kindergarten-Grade 12 education many Treaty 6 First Nations would feel like good progress is being made. In other areas, however, policing being for me the most readily available example, the Treaty 6 First Nations I work with would say the funding provided is insufficient (in most cases it is nil) and the programs and services delivered inadequate (in most cases, response times for policing are high, and a permanent police presence in the community is considered necessary).

To go with this second concern, the second half of my recommendation is not necessarily that Canada fund or deliver treaty-related programs and services to whatever levels chiefs and councils ask them to, but rather that Canada commit in a transparent and accountable way to at minimum fund and deliver treaty-related programs and services at a level comparable to that which Canadians receive. This commitment would not only be entirely consistent with the spirit of Treaty 6, but also the right thing to do, especially for a government that assumes Treaty 6 First Nations are as much Canadian as settlers are (an assumption I disagree with, of course). In many cases, possibly even policing, I think Canada is now (finally) close to doing this, so this commitment would not necessarily be expensive to fulfill; but Canada could do a much better job of transparently communicating an analysis of how it is doing this and demonstrate its willingness to be held accountable (it could even engage one or both of its favourite partners, the AFN and FMB, to help). A formal commitment such as this would also mitigate the risk that recent increases in fiscal transfers to First Nations could be cut in the future.

Put together, the recommendation of this section is that Canada formally:

1) acknowledge that funding for and delivery of treaty-related programs and services is in fulfilment of the fiscal obligations it agreed to in Treaty 6; and

2) commit to:
   a) funding and delivering treaty-related programs and services at a level at least comparable to that which Canadians receive;
   b) transparently communicating analysis showing that it is doing so; and
   c) being held accountable by First Nations for both a) and b).

This recommendation can be accomplished at relatively low cost (the first half costs nothing); should in no way threaten Canada as currently constituted since all

of these programs and services are currently being funded or delivered; and should, if anything, receive significant support from settlers as fulfilling agreements and providing equitable programs and services are consistent with widely-accepted Canadian values. Like inflation-adjusting treaty annuities, this recommendation regarding treaty-related programs and services could be a significant first step by Canada in signaling the centrality of Treaty 6 in its fiscal relationships with First Nations.

C. Funding Agreements Language

The final recommendation I have in this chapter relates to the texts of the funding agreements Canada has with Treaty 6 First Nations. This recommendation is purely symbolic, and would come, therefore, at no financial cost to Canada. The issue this recommendation attempts to address is the fact that funding agreements between Canada and First Nations across Canada are all virtually the same in terms of wording. This is consistent with the history of Canadian fiscal relationships with First Nations as outlined in Chapter 2, in which we saw that in essence Canadian First Nations policy (and especially fiscal policy) has come to treat all First Nations the same regardless of treaty-adherence, geography, and so on. My recommendation is, then, that the wording of funding agreements with Treaty 6 First Nations be changed such that Treaty 6 is acknowledged as the basis of fiscal relationships. This recommendation could be consistent with my last recommendation, but it could also be done independently.

Template texts of funding agreements are publicly available online. There are a few versions, but the one I will focus on is entitled “INAC: First Nations and

Tribal Councils National Funding Agreement Model for 2018-2019."[18] The vast majority of the text in this template is non-negotiable (one of many ways fiscal relationships between Canada and First Nations are not consistent with the idea of nation-to-nation), but there is some optional wording that relates to treaties, "authorized" after requests from numbered treaty-adherent First Nations. There are two "whereas" clauses which may be included "if the Council wishes to include a reference to Treaties:"

- Her Majesty the Queen in Right of Canada entered into Treaty No. [Treaty No] with certain First Nations within the Province of [Treaty Province Territory Optional].

- The parties acknowledge the historical and contemporary importance of the treaties to the relationship between Her Majesty the Queen in Right of Canada and the First Nation(s) of [Treaty First Nation(s) name(s)].

There is additional optional wording relating to treaties in the "non-derogation" section. Again, "if the Council wishes," this wording could be included:

> Nothing in this Agreement will:
>
> > be construed to diminish, abrogate or derogate from, or prejudice any treaty or aboriginal rights of the [First Nation Name . . .]
> >
> > be construed as modifying Treaty No. [Treaty No] or creating a new treaty within the meaning of the Constitution Act, 1982.

I do not have any particular issues with any of this wording—I especially like "the parties" acknowledging the "historical and contemporary importance of the treaties"—but the term "authorized" (which, of course, refers to the fact that none of this wording would even be optional in the agreement unless Canadian lawyers

[18] Government of Canada, "INAC: First Nations and Tribal Councils National Funding Agreement Model for 2018-2019" (accessed November 2, 2018; https://www.aadnc-aandc.gc.ca/eng/1510064504267/1510064550836).

allowed it) is entirely inappropriate. The fact that the wording is optional "if the Council wishes" is also noteworthy; should not Canada, as the other party in the treaty, "wish" that this wording be there? Finally, even if the Council wishes to include all of the optional wording, references to the *Indian Act* would still exceed those to Treaty 6, again emphasizing where Canada's priorities lie.

Mostly, however, my concerns, and the focus of my recommendation, are that "whereas" and "non-derogation" clauses are token wording, entirely irrelevant to the content of the agreement itself. Their inclusion or exclusion from the agreement do not change the agreement one iota, at least as far as Canada is concerned. It is highly problematic that funding agreements could exist between Canada and Treaty 6 First Nations without reference to the treaty that created the fiscal relationships in the first place!

There are other ways the funding agreement wording is inconsistent with Treaty 6 fiscal relationships, with one example being 2.0 Term:

> . . . the term of this Agreement will be from the [Multi-Year Start Date Day] day of [Multi-Year Start Date Month], [Multi-Year Start Date Year] until the [Multi-Year End Date Day] day of [Multi-Year End Date Month], [Multi-Year End Day Year].[19]

Granted, this wording is only regarding the duration of the *agreement*, not the fiscal relationship, but were Canada to acknowledge Treaty 6 as the basis for the fiscal relationships with Treaty 6 First Nations, surely this wording would be quite different, acknowledging that the fiscal relationships will last in perpetuity.

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[19] Government of Canada, "INAC: First Nations and Tribal Councils National Funding Agreement Model for 2018-2019."

I could go on identifying wording in the funding agreement template that is inconsistent with fiscal relationships based in Treaty 6, but the point is that since the funding agreement template was prepared for use across Canada, it is obviously in no way designed for fiscal relationships specific to a historical treaty context, let alone a numbered treaty context, let alone a Treaty 6 context. Correcting this, such that funding agreements with Treaty 6 First Nations explicitly acknowledged and incorporated more thorough reference to Treaty 6 would be a relatively simple first step towards Canada taking Treaty 6 seriously in its fiscal relationships with Treaty 6 First Nations. Out of my three recommendations in this chapter, it would likely be the cheapest, and it should in no way threaten Canada as currently constituted, nor have any cost in terms of public opinion. All this recommendation involves is a slight shift in policy that accepts the unique nature of Treaty 6 fiscal relationships.

D. Summary

This chapter has been an initial attempt at answering my research question. I have offered three examples of changes to fiscal relationships that could be made which would be of minimal financial impact to the Government of Canada; not challenge Canada as currently constituted existentially; and come at little to no cost in terms of public opinion. Moreover, they are entirely consistent with a literal, text-based reading of Treaty 6—the interpretation Canada currently insists on. In summary, these recommendations are:

- Inflation-adjust treaty annuities (including for chiefs and councilors and ammunition and twine);

- Acknowledge the treaty-relatedness of treaty-related programs and services (education; law-enforcement; social assistance; health care; and a First Nations-focused bureaucracy) and commit to funding/delivering these programs and services at levels comparable to what Canadians receive; and

- Modify funding agreement wording such that it would be consistent (or at least more consistent) with fiscal relationships based in Treaty 6.

These are only intended to be examples of what could be first steps towards changing fiscal relationships between Canada and Treaty 6 First Nations if Treaty 6 were taken seriously as the basis of these fiscal relationships. If space permitted I could offer many more ideas. But these three at least demonstrate that changes could be made immediately and relatively easily were Canada to sincerely want to do so. In my next chapter, I will move on to suggest longer term, more difficult changes that would need to be made for fiscal relationships between Canada and First Nations to be truly consistent with Treaty 6.

CHAPTER 5: LONGER TERM CHANGES TO TREATY 6 FISCAL RELATIONSHIPS

The previous chapter took a relatively conservative approach towards starting to answer my research question, providing three examples of ways fiscal relationships between Canada and Treaty 6 First Nations could change to make them more consistent with Treaty 6. The suggestions of Chapter 4 would all be of minimal financial expense to the Government of Canada; would not threaten Canada as currently constituted; and would require little to no sacrifice of political capital by whatever party was in power. These recommendations were examples that could represent first steps towards the much more thorough and radical reshaping of Treaty 6 fiscal relationships that would be required if Treaty 6 were taken seriously. In other words, the complete answer to my research question is far more dramatic than the pragmatic examples of the prior chapter, and in this chapter I intend to answer my research question in a more fulsome way, without limiting myself by constraints as I did in Chapter 4. I will also no longer confine myself to defining Treaty 6 according to the Canadian text.

There should be no doubt about it: colonialism and in particular Canadian government policy since Treaty 6 have had a profoundly negative impact on Treaty 6 First Nations, including their economies and governance; likewise, decolonizing, or at least attempting to change things going forward such that they are consistent with Treaty 6, will come at a high cost to Canada, including economically and in terms of how Canada is constituted today. The suggestions in this chapter are, then, either extremely expensive economically or extremely radical constitutionally, or both. Needless to say, economically expensive and constitutionally radical decisions would almost certainly also be politically unpopular and face considerable public opposition. These recommendations cannot be considered pragmatic or realistic, at least not in the near term.

Another critical point about this chapter's recommendations is that also unlike those of Chapter 4, these are not suggestions that should be unilaterally implemented by Canada. Given their more fundamental and substantive nature, they are suggestions that would only be appropriately implemented following serious and fulsome negotiations. In a way, this chapter could serve as a reference or even a template for Canadian (or, potentially, First Nations) negotiators to consider how radically fiscal relationships need to change and areas that would have to be negotiated; it is not meant, however, to be prescriptive. I should emphasize here that I am intentionally avoiding the use of the term "renegotiation," because some First Nations Elders have explicitly stated that the historical treaties cannot be renegotiated.[1] While I personally do not think the

[1] E.g.: "Commissioners heard many . . . tell us not to tamper with their sacred treaties" (RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 66).

term "renegotiation" is necessarily negative or threatening, I have decided the term is best avoided to respect these Elders and the historical context in which Canada existentially threatened treaty relationships (e.g., with the White Paper). I affirm, then, of course, that the relationships Treaty 6 created must last in perpetuity; what I am suggesting in terms of negotiations is simply a re-contextualizing of these relationships, consistent with their dynamic nature as described in Chapter 2.[2] So, I am calling for contemporary Treaty 6 negotiations that allow the relationships between Canada and Treaty 6 First Nations to fit the contemporary context in a way consistent with Treaty 6; this is not about negotiating treaty away or repudiating what was negotiated in 1876, but rather ensuring Treaty 6 relationships are contemporarily relevant.[3] For me, this is best done through a serious and fulsome negotiation process.

A final point about how this chapter's recommendations differ from those of Chapter 4 is that these recommendations would most likely need to be implemented simultaneously, or at least as part of a single negotiated package.[4]

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[2] I agree with RCAP: "what is sacred about the treaties is not the specific provisions . . . but rather continuing relationship . . . The relationship is sacred, but the details of the relationship subject to definition" (*Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 66).

[3] Again to quote RCAP: "The treaties must be acknowledged as living instruments, capable of evolution over time and meaningful and relevant to the continuum of past, present and future" (*Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 66).

[4] While I consider it entirely inadequate in terms of its (lack of) respect for First Nations' sovereignty, and it was not done in a treaty (or provincial) context, the closest example that has actually occurred in contemporary Canada of negotiations such as I have in mind would be the Umbrella Final Agreement and the associated individual First Nations' self-government agreements negotiated in the Yukon (see e.g., Council of Yukon First Nations, "Umbrella Final Agreement" [accessed January 21, 2019; https://cyfn.ca/agreements/umbrella-final-agreement/]). These negotiations were comprehensive, involved multiple First Nations, and led to Canada and the Yukon ceding some jurisdiction to First Nations. Among many other topics, the negotiations included taxation, natural resources management, and led to removal of the adherent First Nations from the *Indian Act*. My reading of the Umbrella Final Agreement is that it simultaneously demonstrates that 1) successful and comprehensive negotiation of relationships between Canada

In Chapter 4, it was more or less irrelevant if the three recommendations were implemented simultaneously, independently, or collectively. In this chapter, I think the recommendations have the best chance to succeed if they are enacted together all at once, or at least in close succession.

Given space constraints, I have once again narrowed my recommendations down to three. In a nutshell, the argument of this chapter is that: if they are to become consistent with the spirit and intent of Treaty 6, fiscal relations between Canada and Alberta Treaty 6 First Nations need to be changed dramatically through fulsome negotiations. Examples of the dramatic changes that would be required include: removing the application of the *Indian Act* to Treaty 6 First Nations; renegotiation of the Alberta Natural Resources Transfer Agreement; and changes to federal and provincial tax laws to respect First Nations sovereignty over their people, land, and resources.

A. The *Indian Act*

While most First Nations and Canadians (at least those aware of the *Indian Act*) would agree the *Indian Act* has to go, I am not necessarily recommending complete repeal in this thesis.[5] What is essential, however, if Treaty 6 fiscal relationships are going to take Treaty 6 seriously, is to have the *Indian Act* no longer apply to Treaty 6 First Nations. We saw in Chapter 2 how entirely inconsistent the *Indian Act* is with Treaty 6, and in particular how inconsistent the

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and First Nations are entirely possible; but 2) that the historical precedents lack anything close to the dramatic and radical change that would be necessary for fiscal relationships between Canada and Treaty 6 First Nations to be consistent with Treaty 6.

[5] There may be other, non-treaty contexts in which the *Indian Act* is the only formal basis for unique relationships between Canada and First Nations, so there would need to be some type of treaty or other agreement in place in these contexts prior to complete repeal of the *Indian Act*.

Indian Act view of First Nations (i.e., wards of Canada) is with the relationships Treaty 6 created (i.e., nation-to-nation). So, simply, it has to be removed from application to Treaty 6 First Nations.

Of course, Canada has wanted to be rid of the *Indian Act* with varying degrees of enthusiasm since 1969, and so in many ways it is only still in place because First Nations have opposed its abolishment. But First Nations (especially numbered treaty-adherent First Nations) opposed its abolishment, at least in part, because the White Paper proposed to not only do away with the *Indian Act* but do away with treaty rights as well. What I am proposing here does not, of course, involve the abolishment of treaty rights—quite the opposite.

In many ways having the *Indian Act* no longer apply to Treaty 6 First Nations is the easy part of this recommendation. The *Indian Act* already does not apply to certain First Nations in Canada (which Canada describes as "self-governing").[6] What will be the more radical piece is what will have to replace the *Indian Act*[7]—and I am not refering to Trudeau's Recognition and Implementation of Rights Framework discussed in Chapter 3.

Clearly, whereas currently the *Indian Act* is the primary framework through which Canada engages with First Nations, a framework (Treaty 6) already exists to guide the relationships between Canada and Treaty 6 First

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[6] Indigenous and Northern Affairs Canada, "Differences between Self-Governing First Nations and Indian Act Bands" (accessed November 8, 2018; https://www.aadnc-aandc.gc.ca/eng/1100100028429/1100100028430).

[7] This concept of having unique frameworks (or agreements, or treaties) governing relations between Canada and individual First Nations is in fact how relations between Canada and those First Nations which Canada recognizes as "self-governing" currently works, whether it is, for example, the Umbrella Final Agreement in the Yukon or the Tla'amin Nation Final Agreement with the Tla'amin in British Columbia (Tla'amin Nation, "Final Agreement" [accessed January 21, 2019; http://www.tlaaminnation.com/final-agreement/]).

Nations, and this has been obvious to Treaty 6 First Nations since, well, Treaty 6 came into being. Representative officials of Canada signed Treaty 6, of course, and it was ratified through a vote in the Canadian parliament, so I do not believe additional legislation or a new framework should be required; on the other hand, if the federal government feels that for some reason this is desirable, it is not necessarily problematic.[8] But a blanket, pan-Canadian framework that talks about a singular relationship between Canada and First Nations and reinforces Canadian sovereignty will not be close to sufficient.

I feel almost embarrassed to be putting this "replace the *Indian Act* with Treaty 6 as the basis of relations between Canada and First Nations" recommendation forward, because I am only repeating what Treaty 6 First Nations have been saying for over 140 years. Somehow, however, Canada has not heard or understood this message, and as discussed in Chapter 3, appears to be continuing to have difficulty hearing and understanding.

While the *Indian Act* is federal legislation, and Treaty 6 is clearly an agreement between the federal Crown and First Nations, the reality is that since 1905 and especially since 1930 (when the Alberta Natural Resources Transfer Act [NRTA] "gave" Alberta control over "its" natural resources), "another" Crown has entered the context in which Treaty 6 First Nations in Alberta operate; i.e., the Province of Alberta. My recommendation in the next section will significantly

[8] RCAP recommended the federal government pass what it described as "treaty legislation" (*Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 51-52) that would more or less function as umbrella legislation defining Canada's commitment to treaty-based relations. Again, I do not think this should be necessary—Treaty 6 was ratified by Parliament and Canada should take it seriously on that basis alone; still, if legislation such as a framework or "treaty legislation" is necessary I also do not see this as a problem.

challenge provincial jurisdiction as we know it, but I am unwilling to suggest that the Province of Alberta will disappear entirely as an entity. Therefore, I think it makes sense that in future Treaty 6 negotiations, the relevant provinces need to take part.[9] Moreover, while I am unenthusiastic about it, I think Canada should suggest that these future negotiations be broken down such that Alberta Treaty 6 First Nations are negotiating at one table with Canada and Alberta and Saskatchewan Treaty 6 First Nations at another table with Canada and Saskatchewan. For all kinds of reasons this does not seem ideal to me, but the inescapable reality is that after nearly 115 years of existence, these two provinces are now significant players in Treaty 6 territory, and including both of them in the same negotiations seems like a recipe for longer and more complicated negotiations than would be the case if Treaty 6 First Nations divided themselves according to the provincial boundaries Canada imposed.[10]

The impacts of implementing this recommendation specific to the fiscal relationships between Canada and Treaty 6 First Nations would include the (default, if not explicit) acknowledgement (as recommended in the last chapter) that funding and delivery of treaty-related programs and services are based on Treaty 6 (since now there would be no other framework for these to be based on). Also consistent with a recommendation of Chapter 4, the funding agreements (if

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[9] Which the Charlottetown Accord also acknowledged (RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 52).

[10] Of course, how Treaty 6 First Nations end up "reconstituting" themselves could impact this significantly. Maybe it would actually make more sense for there to be many negotiation tables—say, a Maskwacis Cree table and a Fort Pitt Cree table and a western Alberta Stoney table. My point in this paragraph is more that the reality of the provinces mean they should be included in negotiations, and including both of them at the same table could prove unhelpfully and unnecessarily complicated.

these continued as the mechanism through which funding flowed) would have to reference treaty and could obviously no longer include references to the *Indian Act*. Moreover, as part of the future Treaty 6 negotiations, formulae would have to be established to ensure adequate levels of funding are provided (appropriately adjusting for inflation and population growth), and these formulae could no longer be unilaterally imposed by Canada, but would need to be negotiated in a truly nation-to-nation way. As part of the negotiations I would expect mechanisms to be put in place for dispute or issue resolution, and review of these funding formulae would need to happen with some regularity by representatives of both Canada and Treaty 6 First Nations. Finally, since the *Indian Act* would no longer govern the management of "Indian moneys" (discussed in Chapter 2), First Nations would gain complete control over revenue derived from their land, whether rents and leases or the proceeds from renewable or non-renewable resources.

Out of my recommendations in this chapter, this one regarding the replacement of the *Indian Act* with Treaty 6 as the basis for relations between Canada and Treaty 6 First Nations would likely be the most palatable to the Government of Canada, since there has long been a desire by Canada to eliminate the *Indian Act* which is rightly seen as an archaic embarrassment to a modern and supposedly-progressive country like Canada. Moreover, replacement of the *Indian Act* is already understood by Canada to be a goal in self-government negotiations. But despite its initial appeal, in fact my recommendation is not, of course, that the Government of Canada get out of the business of relating to First

Nations (as the White Paper hoped), but in many ways "double down" in its relationships with Treaty 6 First Nations, recognizing that they will carry on in perpetuity, only now based on the relationships created by treaty and not racist legislation unilaterally passed and imposed by Canada.

B. Renegotiation of the Natural Resources Transfer Agreement

One of the main reasons Alberta (and other relevant provinces) need to be involved in future Treaty 6 negotiations is that the Alberta Natural Resources Transfer Agreement needs to be renegotiated.[11] This need not in any way involve the provinces ceding back jurisdiction to the federal government over natural resources, but it absolutely does require that the provinces cede jurisdiction to First Nations. Once again, this is not a suggestion in any way unique to me—First Nations have been quite vocal in raising this issue.[12] Their point has been (as briefly discussed in Chapter 2) that Canada had no right to transfer jurisdiction over natural resources to the provinces, since First Nations had never transferred this jurisdiction to Canada (at least not exclusively),[13] and I agree. The NRTA is

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[11] For clarity, Saskatchewan and Alberta have distinct, albeit very similar, NRTAs. Of course, my comments in this thesis are specific to the Alberta context, but likely relevant to Saskatchewan as well. Renegotiating these agreements such that they would become consistent with Treaty 6 needs to happen in both provinces, but differences in context or priorities could result in differences in the renegotiated NRTAs. For example, potash is a natural resource quite significant to Saskatchewan, but not Alberta, so a renegotiation of the Saskatchewan NRTA might include attention paid to potash that would not be necessary in the Alberta context.

[12] See Sheldon Cardinal, Desjarlais, Venne, and so on; even RCAP proposed renegotiation of NRTAs that would "ensure that First Nations obtain the full beneficial interest in minerals, oil and natural gas located on reserves" (*Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 619)—certainly a far weaker recommendation than I am making in this section, but nonetheless also an acknowledgement that the NRTAs require renegotiation.

[13] As mentioned in Chapter 2, many First Nations Elders contend that no rights to natural resources were transferred to Canada in Treaty 6. As also mentioned in that chapter, my working assumption is that Treaty 6 involved sharing space in a mutually beneficial way, such that natural resources management should be included as part of the shared space. This is consistent with the understanding of numbered treaties by many First Nations, including AFN National Chief Perry

not consistent with Treaty 6, and there is no way fiscal relationships between Canada and First Nations can be consistent with Treaty 6 without the NRTA changing. There has been significant First Nations criticism of Canada for failing to include a discussion around return of lands and resources as part of "reconciliation,"[14] and this recommendation attempts to address at least the latter half of the "lands and resources" issue.

The previous section involved removing the *Indian Act*'s application to Treaty 6 First Nations, and doing so would restore management and control of natural resources on reserve lands to First Nations. But what has to happen with renegotiations of the NRTA is much more expansive, and I can imagine at least two possibilities for how this might work out. One would involve exclusive First Nations control of natural resources on reserve, and joint control (either with Canada or perhaps more likely with Alberta) of natural resources off reserve. This would be the method most obviously consistent with the idea of treaty relations involving sharing space. This first possibility could also result in what would more-or-less be "settler reserves"—small spaces that might be considered under exclusive Canadian or Albertan control. An obvious example might be the

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Bellegarde: the treaties "intended for us to mutually benefit from sharing the land and its resources" (Macdonald, "Perry Bellegarde on recognizing this land's founding Indigenous peoples").

[14] E.g., Diabo; Bellegarde quoted in Turtle Island News, "Perry Bellegarde sworn into second term as AFN National Chief" (accessed November 6, 2018; http://theturtleislandnews.com/index.php/2018/07/25/news-alert-perry-bellegard-has-held-onto-his-seat-as-assembly-of-first-nations-national-chief/); Pamela Palmater quoted in The Guardian, "Canada indigenous leaders divided over Trudeau's pledge to put them first" (accessed November 6, 2018; https://www.theguardian.com/world/2018/feb/18/canada-indigenous-first-nations-justin-trudeau-pledge-reaction); and Chief Judy Wilson quoted in CBC, "First Nations leaders react with caution to Justin Trudeau's Indigenous rights plan" (accessed November 6, 2018; https://www.cbc.ca/news/indigenous/first-nations-reaction-trudeau-indigenous-rights-plan-1.4536098).

City of Edmonton and surrounding area. The second possibility I can imagine would involve more extensive dividing up of territory, so that First Nations would control the resources in, say, half of the Treaty 6 territory in Alberta, and Canada/Alberta the other half. Some combination of these two possibilities could also occur. For example, certain natural resources might be more readily divided than others, so control of natural resources, whether divided or joint, might depend on the type of resource.[15] It might also be the case that those issues more generally relevant to natural resources management (e.g., safety regulations, level of carbon emissions permitted, pollution prevention regimes) might be decided by a joint First Nations-Canada/Alberta board or commission and the specific control of natural resources could be divided.

These "imaginings" are obviously very hypothetical, preliminary, and tentative, and necessarily so both because we are so far away from future Treaty 6 negotiations and because the details actually require negotiation. But the scope of what I am recommending should be clear: a fundamental and radical rearranging of what natural resource management and control looks like in Alberta, with potentially profound impacts on environmental protections and resource royalty regimes. Ultimately, what we are talking about here, consistent with truly nation-to-nation relationships, is a sacrifice of sovereignty for Canada/Alberta as they recognize the legitimate sovereignty of First Nations over their natural resources.

One possible outcome of fiscal relationships negotiated in this way might be increased First Nations buy-in on natural resource extraction or utilization or

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[15] The Yukon Umbrella Agreement, for example, separated out "forestry" as a standalone clause in the text of the agreement (Council of Yukon First Nations).

transportation projects. Or, perhaps another way of saying the same thing is that natural resource extraction or utilization or transportation projects that did not have First Nations support would not even get started in the first place. In a truly shared space, "consultation" becomes not simply a constitutional box to check for Canada, but instead would have to become an integral part of how the natural resources industry operates. This might lead to a significant improvement in Canada's global reputation in terms of environmental protection, responsible resource management, and ability to accomplish major resource extraction/utilization projects in a cooperative and mutually-beneficial way.

Like repeal of the *Indian Act*, renegotiation of the NRTA is a requirement of fiscal relationships consistent with Treaty 6 that First Nations have been arguing in favour of for a long time. It would be a step far more consequential and radical for Canada (and Alberta) than even repeal of the *Indian Act*, in many ways altering Canada and especially Alberta as we know it. But such dramatic change is what will be required if Canada is to begin relating to Treaty 6 First Nations on the basis of Treaty 6.

C. Taxation

As noted in Chapter 3, taxation was not discussed at Treaty 6's original negotiations, but it is a highly relevant subject for nation-to-nation fiscal relationships between Canada and Treaty 6 First Nations. To quote James Hopkins: "tax policy and sovereignty are intertwined."[16] Again, there is also a

[16] James Hopkins, "Bridging The Gap: Taxation and First Nations Governance" (National Centre for First Nations Governance, May 2008; http://fngovernance.org/ncfng_research/hopkins.pdf), 2.

provincial component to taxation in Canada, emphasizing once more that Alberta's participation in future Treaty 6 negotiations is important. Unlike my prior two recommendations, changing how taxation works in Canada is not something I have heard First Nations discuss frequently.[17] Status Indians in Canada already do not pay Canadian or provincial income tax if they are working on reserve (or if employed by a business located on reserve that meets certain eligibility requirements),[18] nor do they pay Goods and Services/Harmonized Sales Tax (GST/HST) on purchases delivered on reserve;[19] but this is because of the *Indian Act* section 87,[20] not any recognition that First Nations are sovereign and that Canada does not have inherent jurisdiction to tax First Nations people.[21] Recently there is a trend towards development of taxation regimes of various types on reserve. For example, the FMB (introduced in Chapter 3) is involved in creating property tax laws for First Nations,[22] and through the *First Nations Goods and Services Tax Act* Canada even allows for First Nations to work with the Canada Revenue Agency (CRA) to collect First Nations Goods and Services

[17] Although it was given some attention by RCAP, which also concluded that it was "an appropriate subject for treaty processes" (*Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 74).

[18] Government of Canada, "Employment income" (accessed November 6, 2018; https://www.canada.ca/en/revenue-agency/services/aboriginal-peoples/information-indians.html#hdng3).

[19] Government of Canada, "Goods and services tax/Harmonized sales tax (GST/HST)" (accessed November 6, 2018; https://www.canada.ca/en/revenue-agency/services/aboriginal-peoples/information-indians.html#hdng16).

[20] Government of Canada, "Information on the tax exemption under section 87 of the Indian Act" (accessed November 6, 2018; https://www.canada.ca/en/revenue-agency/services/aboriginal-peoples/indians.html).

[21] Which, of course, Canada evidently believes it has, since First Nations people off reserve do pay income tax and GST/HST.

[22] First Nations Financial Management Board, "Local Revenues" (accessed November 6, 2018; https://fnfmb.com/en/tools-and-templates/local-revenues).

Tax on sales on their reserves.[23] These are useful and important steps towards increasing revenue generating opportunities for First Nations, but they are more consistent with "First Nations as municipalities"[24] type of thinking than they are a recognition of First Nations sovereignty.

One proposal regarding a serious change in Canadian taxation policy to the benefit of First Nations came from Menno Boldt in 1993.[25] His recommendation was that income tax would be collected from all status Indians (whether on or off reserve) and transferred from Canada to respective First Nations. In other words, First Nations governments would receive the income tax from their members (regardless of where they worked, whether on reserve or elsewhere in Canada) instead of this money going into federal or provincial treasuries. It is a unique proposal, albeit not one that would necessarily generate significant revenue.[26] Boldt did not seem motivated in making this proposal by a recognition that Canadian taxation jurisdiction should not apply to First Nations, although it could be consistent with such a recognition. But Canada would still be collecting income tax without First Nations agreeing that it should do so, and were a First Nations member to not indicate their status number, the income tax would still be retained by Canada. Moreover, First Nations would in no way have control over rates of taxation, or deductions, exemptions, and so on—these would still be subject to the Canadian *Income Tax Act* and relevant provincial legislation.

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[23] Government of Canada, "First Nations Goods and Services Tax" (accessed November 6, 2018; https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/gst-hst-indigenous-peoples/first-nations-goods-services-tax.html).

[24] Ladner, "Treaty Federalism," 184; see also Neu and Therrien, 134.

[25] Boldt, 248-55.

[26] In 1993 Boldt estimated it would result in a loss for Canada (and therefore corresponding gain to First Nations) of only $65 million (250).

RCAP's report also included recommendations regarding taxation. One of these (2.3.19) was a fairly bold recommendation in that it called for return of lands and resources:

> Financial arrangements provide greater fiscal autonomy for Aboriginal governments by increasing access to independent own-source revenues through a fair and just redistribution of lands and resources for Aboriginal peoples, and through the recognition of the right of Aboriginal governments to develop their own systems of taxation.[27]

Recommendation 2.3.20 adds that First Nations should also be given income tax powers. Unlike Boldt, RCAP's recommendation was that this income tax should only apply to those (member or not) on reserve (or, "Aboriginal-controlled territory"), and that First Nations should exercise control over taxation rates.[28]

In 2008, the National Centre for First Nations Governance published a paper, "Bridging The Gap: Taxation and First Nations Governance," that included a list of nine "tax policy objectives"[29] that could represent fruitful starting points for thinking about how Canadian tax policy could change to better respect First Nations sovereignty. The paper does not elaborate on any specific recommendations, however, and, ultimately, its imagination is limited to thinking about First Nations as part of Canada, and so is not particularly helpful in terms of how tax policy would need to change in the context of Treaty 6 fiscal relationships.

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[27] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 292.

[28] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 289-93.

[29] E.g., "an Aboriginal RRSP" and intergovernmental agreements to avoid double taxation (Hopkins, 14-15).

A more recent proposal focuses specifically on First Nations taxation powers as they relate to lands and natural resources. Douglas Sanderson's proposal in "The *Indian Act* and the subsidization of the south"[30] is consistent with my previous recommendation, involving recognition of First Nations sovereignty over land and resources outside of reserves. Sanderson makes the point that "authority to tax First Nations' traditional territories does exist"—a point that is arresting when juxtaposed with his next clause: "but these powers reside not with First Nations but with the provinces and federal government."[31] The argument that First Nations should have taxation powers over their land and resources is certainly radical given how Canada is currently constituted, but perhaps the most jarring part of Sanderson's proposal relates to modifying Canada's equalization system:

> Without being able to tax the wealth of First Nation traditional territories, federal and provincial government budgets would suffer gaping deficits. But we already have a way to redistribute wealth in this country; it is called fiscal federalism. The general principle is this: provinces that do well pay into the fund, while provinces that are not doing well receive equalization payments under a complex funding formula. Indigenous people could participate in this same system, taxing the resource industries that operate in their territories, applying some of those funds to the operation of their communities, and returning the rest to the fiscal funding formula for redistribution to the south [i.e., non-Indigenous Canada].[32]

I do not necessarily like this proposal, since it seems to imply First Nations become merely province-like entities in Confederation rather than nations, but I

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[30] Douglas Sanderson, "The *Indian Act* and the subsidization of the south" (*Policy Options* [September 18, 2017]; http://policyoptions.irpp.org/magazines/september-2017/the-indian-act-and-indigenous-subsidization-of-the-south/).

[31] Sanderson.

[32] Sanderson.

do appreciate what the argument points out: "Indigenous communities are, and always have been, subsidizing"[33] Canada.

The previous examples of proposals to change Canadian tax policy are not necessarily inconsistent with my own recommendation, but I consider all of them inadequate in that they do not involve Canada (and Alberta or other provinces) recognizing that they have no authority to tax First Nations people, land, or resources, because First Nations did not concede this jurisdiction to Canada in Treaty 6.[34] To what extent and how First Nations choose to tax their own people, land, and resources needs to be up to them,[35] as consistent with the relationships created by Treaty 6.[36] Moreover, to be clear, these taxation powers need to extend beyond reserves, as Sanderson advocates, to include whatever other lands and resources are returned to them entirely or jointly controlled/managed. So, assuming, as noted in the previous section, that First Nations jointly control and manage natural resources with Alberta, then their taxation powers need to extend to these natural resources to the extent they control them (i.e., if split 50/50, then taxation powers should also be 50/50).

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[33] Sanderson.

[34] The proposals above seem to fall into the category of "negotiated inferiority," the delegation of powers without the recognition that jurisdiction is already *de jure* vested with First Nations, even if the *de facto* situation is otherwise (see Ladner, "Treaty Federalism," 186).

[35] See the Stk'emlupsemc te Secwepemc Nation in British Columbia who are attempting "to levy a resource development tax" in their territory as part of the Trans Mountain Pipeline negotiations (Jason Markusoff, "A Pipeline with a Mountain in front of it," *Maclean's* [January 2019], 35).

[36] In at least some numbered treaty contexts, First Nations insist that in fact Canada explicitly promised to not impose taxation on First Nations, regardless of location on or off reserve; e.g.: "The people of Treaty 8 were concerned that the treaty would lead to . . . the imposition of taxes. They were assured by the treaty commission that this would not occur, but this assurance was not properly recorded in the written version of the treaty right" (RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 74).

Boldt's proposal involved Canada continuing to collect tax from First Nations—problematic because Canada would not be recognizing its lack of taxation authority over First Nations. However, it may be the case that the CRA is the bureaucracy First Nations would choose to collect the taxes they impose—much as most provincial taxes are collected by the CRA. CRA could be seen as a cost-effective and relatively efficient option instead of creating a uniquely First Nations tax collecting bureaucracy. At present the CRA is managed by a Board of Management made up of federal and provincial appointees[37] and, if Treaty 6 First Nations elected to have CRA collect tax on their behalf, then they too should have a seat on this board. Perhaps the CRA could even be renamed the Canada-First Nations Revenue Agency (CFNRA) if deemed desirable.

This section's recommendation that Canada/Alberta concede taxation jurisdiction over First Nations people, land, and resources back to First Nations is a further critical piece to transforming fiscal relationships between Canada and Treaty 6 First Nations such that they are consistent with the relationships Treaty 6 established. Like this chapter's prior two suggestions, it will change how Canada is constituted, since Canada and the provinces will have to recognize that they are not the only entities in this land with taxation powers.

D. Summary

This chapter's three recommendations for more fundamental ways fiscal relationships need to change between Canada and Treaty 6 First Nations if they

[37] Government of Canada, "Board of Management" (accessed November 6, 2018; https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/board-management.html).

are to be consistent with Treaty 6 are only intended to provide a sense of the scope of the changes necessary, not exhaustively cover all the aspects of the changes required. To most settlers, these suggestions will seem radical and dramatic—and, indeed, they are, given how Canada is currently constituted. Replacing the *Indian Act*, renegotiating the Alberta Natural Resources Transfer Act, and conceding taxation powers would each on their own be radical changes to the Canadian political and economic landscape—never mind all three done simultaneously and along with other changes coming out of future Treaty 6 negotiations! While I am not necessarily optimistic they will ever happen, I am absolutely convinced changes such as these are required for truly nation-to-nation fiscal relationships to begin.

Collectively, the three recommendations would contribute positively to the fiscal positions of Treaty 6 First Nations in the future, and as a result the fiscal stress on Canada to fund First Nations should actually decrease. This is because Canada did not take on fiscal obligations relating to, for example, capital projects in Treaty 6; in an ideal world in which Treaty 6 relationships proceeded in a way consistent with Treaty 6, infrastructure and operating and maintenance needs such as roads, bridges, utilities, water and wastewater, community buildings, and so on would not be paid for by Canada (as they are now, albeit in most [if not all] cases insufficiently[38]), but First Nations themselves. Canada also currently provides (extremely limited) economic development funding to First Nations, and this, too,

[38] E.g., see Renew Canada, "Building First Nations infrastructure" (accessed November 6, 2018; https://www.renewcanada.net/building-first-nations-infrastructure/), which estimated a $30-40 billion First Nations infrastructure deficit.

would no longer be necessary in a Canada in which First Nations exercised appropriate control and management of natural resources. Of course, those programs and services explicitly committed to in Treaty 6 should continue to be funded and/or delivered by Canada.

Something I have not addressed in this chapter is that, assuming Canada ever does acknowledge the need for fundamental changes such as these going forward, what about the past? Obviously, the past is in the past, but that does not mean historians and accountants could not provide some calculation of what, in essence, has amounted to money and resources stolen from First Nations in a betrayal of Treaty 6 relationships, not to mention a failure to fulfill the fiduciary duty Canada took on. Already there have been limited claims settlements that have attempted to address some of these failings (e.g., withheld treaty annuities), but obviously with the scope of what this thesis is recommending, the amount would be in the billions, perhaps hundreds of billions of dollars, possibly even over a trillion dollars. It would likely be such a large amount that Canada would not be able to pay this back, at least not in a short period. I do not have a recommendation in this regard, because my research question is focused on the future, not how to remedy the past. It would, however, certainly be a question to be considered.

This chapter and the prior offered recommendations for changes that could be made that would directly impact fiscal relationships between Canada and Treaty 6 First Nations, first from a relatively conservative perspective and then, in this chapter, from a perspective more radical. In combination, they have not only

provided six specific ways fiscal relations could change, but, perhaps more importantly, they have provided a more general sense for what fiscal relationships between Canada and Treaty 6 First Nations would look like if Treaty 6 were taken seriously.

CONCLUSION

As I wrap up this thesis, I want to review what was covered in Chapters 2-5, provide a concluding answer to my research question based on this thesis's findings, and offer thoughts on future research possibilities stemming from the conclusions of the thesis.

A. Treaty 6 Fiscal Relations: History, Present, and Future

Chapter 2 of this thesis explored the history of Treaty 6 nation-to-nation relationships, based on the contention that how fiscal relations should change depends on a foundational understanding of the relationships Treaty 6 created. The first section of Chapter 2 demonstrated that nation-to-nation relationships in Treaty 6 territory did not begin with Treaty 6, but had a long and complex history on this land. In fact, prior to Canada's arrival here in the 1870s, First Nations were sovereign nations living together in a shared space with negotiated jurisdictional and geographical boundaries, engaging in political and economic relations, and resolving inevitable conflicts bilaterally, sometimes diplomatically and sometimes violently, as equals. This was the context into which Canada

came in 1876 to negotiate Treaty 6. In the next section of Chapter 2 I argued that, consistent with these pre-Treaty 6 international relations, Treaty 6 created ongoing, dynamic, nation-to-nation relationships between Canada and adherent First Nations that were intended to ensure mutually-beneficial relations in a shared space. These newly created relationships included a fiscal component: for Canada, the treaty created fiscal obligations; and, for First Nations, fiscal expectations. While the numbered treaties could have represented the culmination of the long history of nation-to-nation relationships in this land, instead, tragically, they represented the beginning of Canadian colonialism. My final section in Chapter 2 provided some of the "highlights" of fiscal relationships after Treaty 6 to now, arguing that from 1876 to 2015, Canada's fiscal relationships with Treaty 6 First Nations consistently failed to live up to the fiscal obligations/expectations of the treaty, or the spirit of nation-to-nation relationships the treaty created.

In Chapter 3, my attention moved to the contemporary context of Treaty 6 fiscal relationships under the 2015 Liberal government. An almost-complete-four-year mandate of the Trudeau government has provided much to analyze, albeit much remains a work in progress. My unfortunate tentative conclusions were that despite rhetorically outlining an ambitious agenda relating to Indigenous peoples, including a "new fiscal relationship" with First Nations, evidence to date suggests that the Trudeau government has been either unwilling or unable to make significant substantive change, and those changes they have implemented

regarding fiscal relationships appear to continue the history of fiscal relations inconsistent with Treaty 6.

The history of and my pessimism regarding contemporary changes to Treaty 6 fiscal relationships led me to Chapter 4, in which I began providing answers to my research question. Since my conclusions from Chapters 2 and 3 were that Treaty 6 fiscal relationships have been and are continuing to be inconsistent with Treaty 6, what changes would be required for an ideal (or, at least, better) future? Chapter 4 tackled this question within the context of certain limitations, arguing that if truly motivated to begin nation-to-nation fiscal relationships with Treaty 6 First Nations consistent with Treaty 6, Canada could start by taking immediate and unilateral steps that would have minimal impact on budgets; public opinion; and Canada as currently constituted and allow Canada to continue interpreting Treaty 6 according to the Canadian text. Examples of these steps include: inflation-adjusting treaty annuities; acknowledging the treaty-based nature of treaty-related programs and services and guaranteeing their funding/delivery at levels comparable to what Canadians receive; and modifying the text of funding agreements to reflect Treaty 6 more thoroughly.

In Chapter 5 I provided three more recommendations of ways Treaty 6 fiscal relations could change, but did so while no longer assuming the restrictions of Chapter 4; my argument was that if they are to become consistent with the spirit and intent of Treaty 6, fiscal relations between Canada and Alberta Treaty 6 First Nations need to be changed dramatically through fulsome negotiations. Examples of the dramatic changes that would be required include: removing the

application of the *Indian Act* to Treaty 6 First Nations; renegotiation of the Alberta Natural Resources Transfer Agreement; and changes to federal and provincial tax laws to respect First Nations sovereignty over their people, land, and resources.

B. Research Question Answer

The research question for this thesis was:

> What might truly "nation-to-nation" fiscal relationships look like between Canada and Alberta Treaty 6 First Nations if Treaty 6 were taken seriously?

In combination, Chapters 4 and 5 provided six recommendations for changes that would be required for Treaty 6-consistent nation-to-nation fiscal relationships, but the answer to my research question is, of course, much more than six individual recommendations. The recommendations, especially those of Chapter 5, should, however, contribute to a general sense for how radically and how profoundly Canada would need to change in order for Canada to live up to the relationships created in Treaty 6. In other words, while specifics are important, the essential answer to my research question is more general. Truly nation-to-nation fiscal relationships between Canada and Treaty 6 First Nations that take Treaty 6 seriously would look fundamentally different than they have historically and continue to today. They would respect First Nations *as nations*, not as subjects of Canadian laws, such as the *Indian Act* or the Canadian Constitution. They would respect the idea of mutually-beneficial shared space, and not deny First Nations access and control over their share of natural resources, such as the NRTAs did

and do. They would respect First Nations' jurisdiction over their people, land, and resources and not infringe on this jurisdiction in areas such as taxation. Ultimately, they would be relationships that are ongoing and dynamic, optimistic and positive about a future together, side-by-side.

As I made clear in the introduction, I am not naïve: the answer to my research question is radical, and therefore, sadly, unlikely to be implemented. But I believe it is only by understanding the answer that we can even begin to work towards it. Even if we only get part of the way there, it will represent an improvement over the historical and contemporary situations. In other words, we cannot allow the perfect to become the enemy of the good. True reconciliation will require us to make best efforts, acknowledging that even inadequate changes may still be moving us in the right direction.

C. Future Research

Based on the research findings of this thesis and the answer to my research question outlined in the prior section, I want to make suggestions for areas of future research that would further flesh out the idea of treaty-consistent, nation-to-nation relations. These examples of areas future research should take place are not directly related to fiscal relationships, but impact them indirectly. In other words, they are areas that would also need to change for fiscal relationships to fully reflect the answer to my research question.

1. Return of Lands

Perhaps the most important area I did not directly address in this thesis relates to the return of lands. In Chapter 5 I focused on return of resources, because I think

it is the more important half of the "land and resources" phrase in a Treaty 6 context (and thus the need to renegotiate the NRTA); but, return of lands also needs to be part of future Treaty 6 negotiations. With the removal of the *Indian Act* as applicable to Treaty 6 First Nations (as also recommended in Chapter 5), First Nations would regain control of their reserve lands (which are currently deemed by Canada to be Crown land under federal jurisdiction[1]). But there is little doubt that, as with natural resources, First Nations at minimum need to exercise more management and control over land outside of their reserves (their "traditional territory" may be the best way to think about this), if not actually exclusive management and control. I think it is clear that Treaty 6 involved the idea that settlers would take up land for settlement, so I do not think that Canadian ideas of private property for settlers are inconsistent with Treaty 6. Perhaps, then, what would have to be divided or shared more equitably would be Crown land that remains outside of reserves in Treaty 6 territory. [2] Whatever the scenario that results, return of land needs to a topic included in future research and future Treaty 6 negotiations.

2. Law-making

As currently constituted, Canada has divided law-making authority between the federal and provincial governments, depending on whether the issues being legislated fall under federal or provincial jurisdiction. These governments can

[1] Government of Canada, "Land Management" (accessed November 6, 2018; https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738).

[2] See Sheldon Cardinal, 106-07 for one idea of what such return of lands might look like in a Treaty 8 context.

delegate certain powers to subordinate entities, such as territories, municipalities, and First Nations. So, the *Indian Act*, *First Nations Land Management Act*,[3] and *First Nations Fiscal Management Act*,[4] for example, provide for areas in which Canada "allows" First Nations to pass laws, ranging from trespassing by-laws, to financial management laws, and so on. This relationship between First Nations (by-)law making and Canada is not dissimilar to relationships between the provinces and municipalities (which are creatures of their provinces according to the Canadian Constitution and therefore delegated their law-making powers by the province).[5] In other words, the subordination of First Nations' law-making powers to the Canada government is entirely inconsistent with the nation-to-nation nature of Treaty 6 relationships.

In this thesis I mostly avoided (although I touched on it in Chapters 1 and 3) what is actually a very important, existential question for both Canada and First Nations: do First Nations want to be part of Canada? Throughout this thesis I simply assumed that First Nations are not Canadians, but it could make sense for both sides to have as a goal of future Treaty 6 negotiation that First Nations be included in the Canadian Constitution as nations and equal partners in Confederation. Given the geographic, historic, and now even cultural ties Canadians and First Nations share (not to mention the shared space idea central to

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[3] Indigenous and Northern Affairs Canada, "First Nations Land Management Act" (accessed November 6, 2018; https://www.aadnc-aandc.gc.ca/eng/1317228777116/1317228814521).

[4] Indigenous and Northern Affairs Canada, "First Nations Fiscal Management Act" (accessed November 6, 2018; https://www.aadnc-aandc.gc.ca/eng/1393512745390/1498849002682).

[5] Government of Canada, "The constitutional distribution of legislative powers" (accessed November 8, 2018; https://www.canada.ca/en/intergovernmental-affairs/services/federation/distribution-legislative-powers.html).

Treaty 6), this may be logical. But let me be clear: my reading of history, and especially the Treaty 6 negotiations, persuade me that Treaty 6 First Nations have never been asked to join Canada. They were asked for, and provided, a commitment to be loyal to the Crown, but that is not the same thing as joining Canada. So First Nations need to legitimately be asked and, assuming this is the decision they make, their entry into Confederation needs to involve negotiations, including appropriate, exclusive law-making powers.

Regardless of whether or not Treaty 6 First Nations choose to join Confederation, however, Canada and Alberta need to concede their lack of sovereignty in making laws that impact First Nations people, land, and resources, whatever the Canadian Constitution might say. How this will work out (again, regardless of whether or not First Nations are part of Canada) would be complicated to figure out and perhaps even more complicated in practice, which is why it would be an important area for future research.

3. Immigration

As I read it, Treaty 6 as originally negotiated left issues of immigration up to Canada. There does not seem to have been an understanding that First Nations would exercise any decision-making regarding who would be entering this land, nor even about where they would settle once they did so. I suggest, however, that immigration may be an important area for future joint jurisdiction, because now that this land is so disproportionally populated (and privately owned) by settlers, I think it is reasonable that First Nations have influence over immigration policy, or at minimum that it is developed with their input. Interestingly, the Government of

Canada under Stephen Harper sought out First Nations[6] input on immigration policy,[7] so this idea is not unprecedented, although it may have only occurred the one time in 2012. In any case, this would be an area I would like to see future research explore further.

4. Provincial-First Nations Relations

Although the Province of Alberta did not exist in 1876, since 1905, and especially 1930, Alberta has become a significant entity in terms of impact on Treaty 6 relationships, despite federal jurisdiction in First Nations affairs. Because of this, in Chapter 5 I suggested that Alberta be part of future Treaty 6 negotiations, especially because of the need to renegotiate the NRTA and makes changes to taxation laws. But these recommendations were more focused on the province removing itself from First Nations jurisdiction rather than working out areas where jurisdiction would overlap. In terms of future research, I would like to see a focus on areas of jurisdiction that would require provincial-First Nations cooperation as opposed to simply having the province vacate jurisdictional space in recognition of First Nations sovereignty.[8] An example could be infrastructure

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[6] Or, more accurately, they consulted First Nations representative organizations, the AFN and Congress of Aboriginal Peoples.

[7] Bruce Cheadle, "First Nations Consulted on 2013 Immigration Targets as Tories Break New Ground" (accessed November 6, 2018; https://www.questia.com/newspaper/1P3-2768401431/first-nations-consulted-on-2013-immigration-targets).

[8] In many ways, RCAP recommendation 2.2.9 initiated this discussion (*Report of the Royal Commission on Aboriginal Peoples: Volume 2*, 64-65):

> The Commission recommends that . . . The governments of the provinces and territories introduce legislation, . . . that
> (a) enables them to meet their treaty obligations;
> (b) enables them to participate in treaty implementation and renewal processes and treaty making processes; and
> (c) establishes the institutions required to participate in those treaty processes, to the extent of their jurisdiction.

Unlike the federal government, the Alberta legislature was not part of ratifying Treaty 6, so legislation such as RCAP recommended may be appropriate and useful.

projects (resource related or otherwise) that would require cooperation, or even make more sense done cooperatively (say, a highway passing through both First Nations and provincial territory). Issues around funding and tendering the construction contract(s); project management; managing the operations and maintenance; law-enforcement along the route; and so on would need to be worked out, and given the frequency with which such projects might take place, having a formal agreement over how this will work might make sense.

This suggestion for an area for future research reflects that renewed Treaty 6 relationships will not only significantly impact Canada, but Alberta as well; and not only in the sense of Alberta having to cede jurisdiction space, but also in the sense that strong partnerships will need to be formed that provide for mutually beneficial relations in this shared space.

5. Mechanism for Dispute and Issue Resolution

A final suggestion I have for an area of future research is what a formal Treaty 6 dispute and issue resolution mechanism might look like. In many ways, I believe some of the problems early on in relationships between Canada and Treaty 6 First Nations were exacerbated because such a mechanism did not exist. There is abundant evidence that up until 1885 Treaty 6 chiefs, and especially Mistahimusqua (Big Bear), had serious concerns with how Canada was managing relationships with them and were seeking to resolve these concerns in a diplomatic way such as would have been consistent with nation-to-nation relationships. In many ways the (marginal) involvement of Treaty 6 First Nations in violence during 1885 is tragic, including because it almost certainly could have

been avoided if there had simply been a nation-to-nation dispute and issue resolution mechanism that both sides could have had confidence in.[9] After 1885 things became even worse in this regard, and, as we saw in Chapter 3, even today Treaty 6 First Nations are not listened to by Canada in a way that takes the treaty seriously. Obviously, if relationships between Canada and Treaty 6 First Nations are going to take Treaty 6 seriously, then a formal way for all parties to communicate their concerns and resolve their disputes is essential,[10] and research needs to be done as to what this might look like.

These five suggestions for future research are likely just beginning to scratch the surface of all the research that will be required as (if) Canada and Treaty 6 First Nations move forward in renewed nation-to-nation fiscal relationships. In many ways answering my research question could be a task extending into perpetuity. After all, as a part of ongoing, dynamic relationships, Treaty 6 fiscal relations should be constantly evolving to fit their contemporary contexts. Hopefully, for now, this thesis serves as a starting point for the near term and a stark wake-up-call that the history and current direction Canada is heading in are far off what Treaty 6 imagined—and divergent from the values of an "enlightened nation" we as Canadians believe ourselves to be.[11]

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[9] St. Germain, 312-20.

[10] Even CIRNAC's "Overview of a Recognition and Implementation of Indigenous Rights Framework" acknowledged the appropriateness of "an institution" providing "dispute resolution services . . . to help resolve issues related to fulfillment of the Government of Canada's obligations."

[11] RCAP, *Report of the Royal Commission on Aboriginal Peoples: Volume 1*, 13.

EPILOGUE

I began this thesis with a prologue reflecting on what led me to Indigenous Studies, and I want to close with an epilogue reflecting on my personal thoughts as I come to the end of not only my thesis, but my Master's program.

As I have made clear, I am not naïve. If Canada even made the limited changes I recommended in Chapter 4 I would be tremendously pleased and surprised: even such basic steps would be a vast improvement over the current reality. For Canada to go "all the way" and truly recreate Treaty 6 relationships such that they were consistent with treaty, thereby radically altering Canada as we know it, would be entirely shocking. I began this project fully aware of its what-would-seem futility, but convinced that this work needs to be done nonetheless. If Canada is ever to be serious about reconciliation, decolonization, nation-to-nation relationships, and so on, we need to know what those entail, and we cannot allow ourselves to be fooled into thinking the work is done with platitudes, token policy changes, and marginal funding increases.

The process of researching and writing this thesis has also brought me to an interesting personal observation that I certainly did not expect, but I think is relevant to concluding this project. While I did not in fact use these exact words in my prologue, my hatred for Canada as currently constituted likely comes through. My sense of betrayal, my anger with Canada's hypocrisy, and my shame over our historic and ongoing colonialism were explicit in the prologue and no doubt evident throughout the thesis. Hate, betrayal, anger, and shame are not terms used lightly, but come out of years of professional, academic, and personal reflection on the relationships between Canada and First Nations, and these feelings are to a large extent motivating not only this thesis, but what I consider my "life's work."

All of the above is what I knew as I began this project. The observation that has come as I have worked on it, is that the extent of my hatred towards Canada in fact betrays my desperate hope, optimism, and, perhaps, love for my country. I say I am pessimistic that we will ever get to a place where Canada and Treaty 6 First Nations have relationships consistent with the spirit and intent of Treaty 6, but in fact I believe that Canada might be the only place in the world that this has any chance of being possible. As a Canadian, I hold to many of the values we (hypocritically) espouse domestically and internationally—values such as living together harmoniously despite significant cultural, linguistic, and historic differences; fidelity to agreements we make; and, perhaps most of all, justice. We have imperfectly but mostly successfully and mostly peacefully managed to create

a country out of two nations,[1] plus large populations of immigrants from other nationalities and backgrounds, and in many ways we are seen as a model nation for having done so. Would it not be entirely consistent with this reputation for us to creatively reconstitute to Canada in such a way that we renewed truly nation-to-nation relationships with First Nations, whether as part of Confederation or not?

To sum up these reflections, and my thesis, I feel like Canada is a rare place in the world in which I could even dream that recommendations like I have made in this thesis could one day become reality. Clinging to Canada as currently constituted means we are insisting on having our country exist in a way inconsistent with our values. As much as the arguments of this thesis involve a radical change for Canada as we know it, in many ways my recommendations are actually about us becoming more true to who we really are, or, at least, want to be. And surely becoming a Canada more true to who we really want to be is worth it, no matter the cost. If nothing else, I can dream.

[1] And also created a federal system with enough "inherent flexibility" to accommodate the unique, Indigenous-majority territory of Nunavut (Abele and Prince, 154)

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