Unsettling Expectations: (Un)certainty, Settler States of Feeling, Law, and Decolonization[1]

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Abstract

Guaranteeing "certainty" (for governments, business development, society, etc.) is often the goal of state land rights settlements with Indigenous peoples in Canada. Certainty is also often seen as an unequivocally desirable and positive state of affairs. This paper explores how certainty and uncertainty intersect with the challenges of decolonization in North America. I explore how settler certainty and entitlement to Indigenous land has been constructed in past colonial and current national laws, land policies, and ideologies. Then, drawing on data from fieldwork among activists against land rights, I argue that their deep anger about their uncertainty regarding land and their futures helps to reveal how certainty and entitlement underpin "settler states of feeling" (Rifkin). If one persistent characteristic of settler colonialism is settler certainty and entitlement, then decolonization, both for settlers and for jurisprudence, may therefore mean embracing uncertainty. I conclude by discussing the relationship between certainty, uncertainty, and decolonization.

Keywords: colonialism, certainty, Indigenous, decolonize, "settler states of feeling"

Résumé

Garantir une « certitude » (pour les gouvernements, le développement d'entreprises, la société, etc.) est souvent le but des accords sur les revendications territoriales avec les peuples autochtones au Canada. La certitude est souvent perçue aussi comme étant une situation, sans équivoque, désirable et positive. Cet article explore comment la certitude et l'incertitude recoupent les défis associés à la décolonisation en Amérique du Nord. J'explore comment la certitude des colons ainsi que les droits aux terres autochtones ont été élaborés au sein des lois coloniales du passé, des lois nationales courantes, des politiques foncières, et des idéologies. Par la suite, puisant sur des données de terrain de militants opposés aux revendications territoriales, je soutiens que la colère profonde qu'ils éprouvent face à l'incertitude de leurs terres et de leur future révèle comment les « sentiments de colons » (Rifkin) sont renforcés par la certitude et les droits territoriaux.

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Si l'une des caractéristiques persistantes du colonialisme de peuplement est la certitude des colons ainsi que leurs droits territoriaux, alors la décolonisation pourrait donc signifier, pour les colons et la jurisprudence, que l'on accepte l'incertitude. Je termine en abordant la relation entre la certitude, l'incertitude et la décolonisation.

Mots clés : colonialisme, certitude, Autochtone, décoloniser, « sentiments de colons »

> Canada's striv[ing] for certainty reflects a desire that Indigenous peoples assimilate into Canada, that we sever our connection to the Land. Canada asks that we dig up the roots connecting us to the Land . . . [O]ur Aboriginal Title . . . is "*uncertain*," *because it prevents Indigenous peoples from viewing the Land as a commodity to be bought, sold or traded* (Union of British Columbia Indian Chiefs 2012, emphasis mine).
>
> [W]e recognize that, despite our certainty that decolonization centers Indigenous methods, peoples, and lands, the future is a "tangible unknown," a constant (re)negotiating of power, place, identity and sovereignty (Sium, Desai, and Ritskes 2012, 1).

Certainty is often conceptualized as an unequivocally desirable and positive state of affairs. Many theorists assert, as if it is a self-evident universality, that all people require certainty, a sense that our lives and futures are secure and not at risk (Marris 1996; Giddens 1990). At the same time, as Karl Marx and Frederick Engels (1848, 16) pointed out, capitalism guarantees "everlasting insecurity." Many theorists have explored the uncertainty that characterizes the post-modern, post-Fordist, and/or so-called "post-national" era of "globalization" (Baumann 1997; Beck 1992; Berman 1988; O'Malley 2004). One of the key reasons the Canadian government seeks to resolve Indigenous land rights is to provide "greater certainty over rights to land and resources therefore contributing to a positive investment climate and creating greater potential for economic development and growth" (Aboriginal Affairs and Northern Development 2010).

In this paper, I explore how concepts and processes that construct and produce certainty and uncertainty intersect with the challenges of decolonizing Indigenous-settler relations in Canada, both in law and in the everyday feelings of people opposed to Indigenous land rights. The relationship between certainty, development, and rights and title has been addressed by Carole Blackburn (2005), who argues that treaty negotiations in late twentieth-century British Columbia are a form of governmentality that help to regulate populations and mediate "between Aboriginal-rights claims and the demands of global capital," and that they produce "effects of state sovereignty" (Blackburn 2005, 586). Land rights, if not "legally captured" within a land rights agreement, are seen as making property *uncertain* and are therefore threatening to economic development and "capital and state sovereignty." The goal of the land agreements, according to Blackburn, is the attainment of certainty through (1) *extinguishing* undefined Aboriginal rights, or (2) *fixing, defining, and codifying* such rights so they cannot *threaten certainty* (Blackburn 2005).

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Here, I build on Blackburn's compelling paper, based on my own ethnographic research on conflict over land rights. Blackburn examines concerns over certainty in discussions of rights, title, and economic prosperity in neoliberal British Columbia in the years 1999–2000. She persuasively argues that the concern with ensuring certainty emerges in conjunction with how the "legal terrain has slowly expanded the recognition and protection of the rights of Aboriginal people since 1973" with *Calder v Attorney General of British Columbia* (2005, 589). Here, I engage a longer temporal genealogy of concepts of certainty and uncertainty, showing that certainty is not only a concern for present-day governance and neoliberal states. Indeed, securing settler certainty through law is a much deeper characteristic of the "logic of settler colonialism" (Smith 2012). The critical approach to certainty and uncertainty provided contributes to understanding the underpinnings of settler law and its relationship to contemporary "settler structures of feeling" (Rifkin 2011). It also gestures toward what might be required for decolonization. I argue that if settler jurisprudence and settler "structures of feeling" pivot on axiomatic assumptions about settler entitlement and certainty in land, property, and settler futures, and on materializing "settled expectations," then decolonization, for settlers and for settler law, may entail embracing particular forms of (likely uncomfortable) uncertainty in order to imagine and practice relationships and power in new and creative ways.

Settler Colonial Logics and Settler States of Feeling

This paper emerges from a larger project based on ethnographic studies of local conflict over land rights in Ontario, Canada and Upper New York State, United States. The goal of that research is to understand the lived practices and discourses of people defending and countering Indigenous land rights—as a grounded point of departure to examine the limits and possibilities of decolonization. As someone raised as a member of settler society, working to understand how "settler colonialism and its decolonization implicates and unsettles everyone" (Tuck and Yang 2012, 7), I decided that my research could best explore the "settler problem" (Epp 2003; Regan 2010) and thus critically examine what Andrea Smith (2012) calls the "the logics of settler colonialism." These "logics" are the "social, ideological, and institutional processes through which the authority of the settler state . . . is enacted" (Rifkin 2011, 343). I therefore conceptualized these sites of conflict over land rights as "contact zones" (Pratt 1992, 6) of ongoing practices of settler colonialism, within which I could explore structures and practices that maintain colonialism, as well as the construction of settler subjectivities.

My case studies include the conflict over the land rights case of the Caldwell First Nation in southwestern Ontario, Canada, including members of the Chatham-Kent Community Network (CKCN), the group fighting the land agreement. At the time, the Caldwell agreement-in-principle proposed to resolve the specific land claim by buying land for sale on the open market. The Caldwell could, after purchasing enough land, then apply for reserve status. During fieldwork, signs produced by the CKCN stating "NOT FOR SALE" were ubiquitous, posted on farms, homes, and businesses in the area. In New York State, I researched the land rights cases of the Cayuga Indian Nation and the Onondaga Nation,

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conducting interviews with members of the anti-land rights group Upstate Citizens for Equality, as well as with the solidarity groups SHARE (Strengthening Haudenosaunee-American Relations Through Education), and NOON (Neighbours of the Onondaga Nation). To understand the ethnographic materials, the project moved to develop a genealogy of colonial and national conceptual frameworks and practices, based on the themes that emerged in the ethnographic and interview material.

During my research, farmers and other mostly small-town and rural non-Aboriginal people who were fighting against land rights in their local areas constantly expressed powerful feelings of uncertainty, crisis, and anxiety about the future in the context of the land claims. They felt angry about this uncertainty, treating it as unexpected and unfair. This paper traces how these settlers' feelings of uncertainty and certainty about their entitlement to land in the present have emerged from historical and present-day practices and frameworks of colonialism and settler coloniality, and how they have been embedded in philosophy and settler legal regimes.

One goal of this paper is to show that the deep feelings I encountered when interviewing people should not be conceptualized as extreme or abnormal responses. Instead, they should be seen as normal responses to land-rights actions, *if* they are conceptualized in the context of longstanding axiomatic frameworks of settler colonialism. I see them therefore as important characteristic "settler structures of feeling" that must be taken seriously in any efforts to decolonize, especially because they are also pivotal in jurisprudence and broader dominant culture. They help us to see how coloniality and processes of settlement become naturalized and self-evident, how they move from what I call "fantasies of entitlement" to become embedded in law and in material worlds.

I first introduce key concepts and frameworks used in the paper, then proceed to explore the production of "settled expectations" of dominance and state sovereignty claims over Indigenous lands and the axiomatic assumptions that legitimize them. I then trace a genealogy of colonial and contemporary laws and land policies, exploring how they create settler certainty in land and a broader sense of entitlement to "settler futurity" (Tuck and Yang 2012, 1–3). Finally, I briefly explore how the people interviewed expressed and defended common-sense "settler structures of feeling" that underpin settler jurisdictional imaginaries. I conclude with questions about decolonization and uncertainty.

Uncertainty, Anger, and Settler States of Feeling

The people I interviewed who opposed land claims were angry and resentful that they were forced to feel such uncertainty; they saw it as unexpected and unfair. Many made arguments that the economic uncertainty brought on by Indigenous land rights meant they could not carry out business and farming properly; they could not plan or develop their businesses and their communities. They organized protests, arguing that their cultures and communities were "at risk" (Mackey 2005). Many also spoke longingly of "before," when they *had* been certain and secure in their lives, land, and futures. The way they argued against land rights suggested a feeling that never before had their faith in their secure ownership of

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property, and their trust in the territorial integrity of nation, been betrayed in this way. Uncertainty as a result of Indigenous land rights, I suggest, understandably disrupts longstanding "settled expectations" of entitlement. States of anger about uncertainty implicitly construct an opposite normative state of affairs in which settlers and the settler nation-state did, or believed it did, have certain and settled entitlement to the land taken from Indigenous peoples.

The passionate anger about uncertainty expressed by the non-Native people I interviewed should not be surprising. It makes sense that if people feel their property and their expectations of a particular life and future might be suddenly and unexpectedly destroyed, they will feel endangered, uncertain, and angry. We can imagine that generations of settlers have grown up with ubiquitous narratives about how their families (and other families like theirs) have worked hard on the land to build the nation. Such narratives have never before seemed to be at odds with the national narrative or with the settled laws of the land. The people I spoke to seemed to have been thrown into a state of vertigo. Their settled worlds seemed upside down.

To say that such feelings are not surprising is not to condone them. Nor is it to blame people, individually or collectively, for experiencing or acting on them. The point here is that, no matter how emotionally potent or understandable these emotions may be, they are not simply individual emotions that naturally occur. In settler nations, one "pernicious aspect of colonial power is that it shapes perceptions of reality," and in doing so, creates an illusion of the deep "permanency and inevitability" of existing power relations (Waziyatawin 2012, 72), an illusion or fantasy of certainty, of the predestined nature of "settler futurity" (Tuck and Yang 2012, 1).

Such feelings undoubtedly reflect numerous intersecting anxieties and contexts—in part, ubiquitous popular interpretations of the danger and risks of land rights to "equality" and economic prosperity, promoted widely by mainstream media and other sources. It is significant that these perceptions persist, even though many scholars and activists have demonstrated that engaging with the state through government-sponsored programs, including land claims, is not a route to autonomy or to decolonization (Alfred 2009, 2001; Alfred and Corntassel 2005; Christie 2005). They argue that these programs are, instead, most often based on an assimilative logic of incorporation into existing power structures that "promises to reproduce . . . configurations of colonial power" (Coulthard 2007, 438). In this sense, although land-rights agreements and so-called "self-government" processes are designed precisely to avoid uncertainty and threats to settler futures, they are often, in the public imagination, perceived as embodying a myriad of catastrophic and unpredictable risks and dangers to existing relationships and political and economic arrangements.

Some of the anger about uncertainty also likely reflects how late-modern subjects may experience precarity in this era of flexible accumulation and neoliberal economics, and it should thus be understood within a proliferation of "a broader set of anxieties over economic security, citizenship entitlements, and national sovereignty" (Blackburn 2005, 587). Blackburn suggests that although certainty is "what is sold to investors," it is "not necessarily created for all

residents . . . whether they are Aboriginal or non-Aboriginal" (Blackburn 2005, 594). More broadly, although certainty is constantly being mobilized as a fantasy and a goal (Blackburn 2005, 594), neoliberal economics at the same time produces day-to-day uncertainty and insecurity in labour, personhood, and futures.

In this paper, I propose that such feelings should be taken seriously, not only for the above reasons, but also as entry points to understanding important characteristics of what Mark Rifkin (2011) calls "settler structures of feeling," specifically how such feelings connect with broader historical and present-day *settler* social structures and laws. Drawing on Raymond Williams's concept of "structures of feeling," Rifkin suggests that longstanding institutionalized frameworks and material relations of settlement create certain "modes of feeling" among non-Native people in settler colonies. He argues that

> Processes and institutionalized frameworks of settlement – the exertion of control by non-Natives over Native peoples and lands - give rise to certain modes of feeling, and, reciprocally, particular affective formations among non-Natives normalize settler presence, privilege, and power. Understanding settlement as a structure of feeling entails asking how emotions, sensations, and psychic life take part in the (ongoing) process of exerting non-Native authority over Indigenous politics, governance, and territoriality (2011, 342).

He asks, "[H]ow does that feeling of connection to this place as citizens of the state actively efface ongoing histories of imperial expropriation and contribute to the continuing justification of the settler state's authority to superintend Native peoples?" (2011, 342). Given that the transformation of Indigenous lands into settler homes is an "experienced materiality" (Harris 2004) of broader global processes of hierarchical identity making and material appropriation, tracking them involves examining how individual and collective emotions—as well as their broader social and legal common-sense frameworks—both reflect and reproduce key assumptions of settler coloniality.

They are therefore *settler* "structures of feeling" when they reflect and/or reproduce foundational conceptual frameworks that are essential to settler colonial and national projects. This is specifically the case when, first, they naturalize the assumption that settlers are naturally entitled to the appropriation and ownership of Indigenous territories; and when, second, they normalize the assumption that non-Native governments and people naturally have authority over "Indigenous politics, governance, and territoriality" (Rifkin 2011, 342). Most importantly, they are *settler* "structures of feeling" when they draw on and reproduce what I see as *the* pivotal settler colonial and national assumption: that the Crown *always already had and continues to have superior underlying title to Indigenous lands*. In other words, when they assert and defend the certainty that Indigenous territory is always already domestic space within a superior jurisdiction and thereby enact the subordination of Native polities to the "jurisdictional imaginary" (Rifkin 2009) of the settler state.

The Politics of Certainty: "Settled Expectations"

The politics of settler certainty is powerfully evoked in the 2005 case *City of Sherrill v Oneida Indian Nation of New York* (544 US 197) of the US Second Circuit Court of Appeals. The Court rejected the Oneida Indian Nation's proposal to turn the

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traditional lands they had purchased on the open market into trust lands. The stated reason, according to the Court's opinion, was that to do so would disrupt what it called the "reasonable," "justifiable expectations" (544 US 197, 202) and the "*settled* expectations" (544 US 197, 200 and 218; italics added) of the "non-Indian" residents of the area. The Court argued that "[g]iven the longstanding, distinctly non-Indian character of the area and its inhabitants" in which, for "generations . . . non- Indians have owned and developed the area that once composed the Tribes historic reservation" (544 US 197, 202), to allow the land into trust would "seriously disrupt the justifiable expectations of the people living in the area" (544 US 197, 215) Significantly, "longstanding observances and settled expectations" were seen as "prime considerations" (544 US 197, 200, and 218).

The *City of Sherrill v Oneida Indian Nation of New York* decision demonstrates that the defense of "settled expectations" of certainty has powerful legal authority. "Settled expectations" gestures powerfully toward the conceptual frameworks that inform the key settler-colonial assumption that enables the establishment, continuation, and certainty of the settler colony: this is, as previously mentioned, the founding assumption that the Crown *always already has superior underlying title to Indigenous lands*.

According to the "doctrine of discovery" (Miller 2005) and the doctrine of *terra nullius* (Asch 2002)—strikingly similar (and related) colonial theorizations of why non-Indigenous governments claimed entitlement to superior title to Indigenous land—Indigenous people were not (and are still not) recognized as having full ownership or title to their territories. The legal decision mentioned above cites the "doctrine of discovery" and explains it by saying that "fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign—first the discovering European nation and later the original States and the United States" (544 US 197, footnote 1,203). This defining colonial assumption (with continued legal standing today) was based on a belief in the natural superiority of Western civilization, which gave the Crown a stronger and more legitimate sovereignty over the territory, simply through its arrival and assertion of its claim, and despite the vibrant collectives of Indigenous people living in the territory.[2]

This longstanding pattern, in which colonizers assume entitlement to claim sovereignty over Indigenous lands, continues to be re-enacted *post-facto* in law as well as in the discourses of the people I interviewed. Colonization and settler nation-building has entailed the repetitive embedding and realizing of settler assertions of certainty and entitlement, and the repeated denial of Indigenous personhood and sovereignty, all embedded in the interpretation of early moments of colonial/settler assumptions of sovereignty over territory.

Elsewhere (Mackey, in preparation) I undertake a detailed genealogy of how certainty and entitlement to land and superiority have been created and naturalized over centuries of colonization and nation-building, a complex process only briefly alluded to here for lack of space. These so-called "logics" of colonial and

[2] Such an approach is consistent with other settler colonies. In the 1992 *Mabo* decision in Australia, Justice Brennen's interpretation "was in accord with established legal doctrine" in that "any questioning of the settled colony doctrine" was unacceptable (Reynolds 1996).

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settler national sovereignty over land are what I call elaborate and illogical "fantasies of possession" and "fantasies of entitlement," which continue to provide a sense of the certainty and the settled nature of existing settler property relations: they influence a broader culture informed by what I call "settled expectations" of certainty. This certainty emerges from a set of stories that are grounded in delusions of entitlement, which are based on irrational and illogical arguments that should make sense to no one, not even those who created them and turned them into laws. They are socially embedded, unconscious expectations of how the world will work to reaffirm social locations, perceptions, and benefits of privilege that have been legitimated through repeated experiences across lifetimes and generations. Even though they are "fantasies," they have powerful effects in the world through their materialization in law.

Indeed, according to Rifkin, the very existence of Indigenous societies "has generated and continues to generate a fundamental tension within the jurisdictional imaginary of the [nation] . . . troubling the effort to posit an obvious relation between the rightful authority of the state and the territory over which it seeks to extend that authority." This fundamental tension results in what Rifkin calls an "endemic crisis in legitimizing settler sovereignty" (Rifkin 2011, 343). Indigenous peoples making a priori claims to land, sovereignty, and ways of being indicates that the settler project is not complete, reveals settler certainties as fantasies of entitlement, and shows how the precarious and illogical claims to settler sovereignty must be constantly reinvented and defended. In this way, colonial and settler-colonial relations only *became* certain or "settled" by materializing the powerful underlying, legitimating fantasies of mastery over nature and others. In other words, the certainty of settler entitlement to Indigenous land has been *made to seem* certain, over time and in specific spaces, and has required a great deal of energy.

Enlightenment philosophies articulated by John Locke and Thomas Hobbes, among others, bolstered colonial powers' assertions of sovereignty over Indigenous land with a false legitimacy based on ideologies of (1) the social contract and the state of nature, (2) productive labour and its link to civilization and recognizable government, and (3) Western theories of property and personhood that are also built on ensuring certainty in futures. Entitlement to land depended on colonists and settlers defining Indigenous people as inferior, based on such modern and so-called universal conceptual frameworks and including a myriad of embedded racial logics. This leads to the sense of entitlement that denies Indigenous peoples the recognition of their rights to their homelands. Both official legal systems and local resistance to land rights depend on the longstanding and deeply common-sense modern concept that constantly casts Indigenous people as less civilized, as living in a "state of nature." This rationale justifies the supposed superiority of colonial and settler claims to sovereignty over land and the transformation of land into property.

In fact, Western property regimes are designed to create and maintain certainty of expectation. Jeremy Bentham writes, "Property is nothing but the basis of expectation . . . consist[ing] in an established expectation, in the persuasion of being able to draw such and such advantage from the thing possessed" (quoted in

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Harris 1993, 1729). The "functional importance of property," Thomas Merrill and Henry Smith (2001, 363) argue, "is the security of expectation it created with respect to the future control of particular resources." Inherent in the liberal notion of property, therefore, is the idea that it is secure and certain, not only now, but also in the future. It is tied to *expectations* of certainty. The property-based concepts of *terra nullius*, doctrine of discovery, state of nature, and the practices that emerged from them, were and are mobilized to legitimize and defend settler fantasies and expectations of certainty.

Law and Certainty

Such fantasies, however, require material backup to become more than just fantasies. Expectations and fantasies need law to be transformed into material *certainties*. The legal frameworks in Canada and the United States are extremely complex and decidedly different, yet one clear similarity between these systems is the legal rationale for the sense of entitlement that I encountered during my fieldwork. Laws have been developed to recognize certain Aboriginal rights and occupation of their territories, yet such recognized rights are only partial. They are limited and secondary, because the ultimate higher sovereignty has been constructed to remain perpetually vested in the Crown or the state. This ultimate, supposedly superior, sovereignty is, as John Borrows (2002, 94–96) puts it, "invented," "conjured" like a "spell," assumed, asserted, and rarely questioned.

The patterns of settled expectations of certainty in property and privilege discussed above underpin jurisprudence about Native title and land rights, including landmark cases since *Calder*, cases that are often seen to have fundamentally "expanded the recognition and protection" (Blackburn 2005, 589) of Aboriginal rights in Canada. These cases continue to reproduce what Gordon Christie calls a "jurisprudential colonial narrative" (Christie 2005, 1), a narrative that provides the conceptual underpinning animating the settler states of feeling discussed in the final section of the paper.

The (1763) *Royal Proclamation* has often been called the "Indian Bill of Rights," because it appears to acknowledge the pre-existing rights of Aboriginal nations, implying Crown recognition of Indigenous nationhood. Yet, at the same time that it recognizes rights, it authoritatively undercuts the most "fundamental" of these rights when it "proclaims Crown sovereignty and ownership over vast reaches of Aboriginal territory (including lands into which at that time no European had ventured!)." (Christie (2005, 4) The *Proclamation* seems respectful because it recognizes Indian Nations as being in "possession of" land. Yet immediately, speaking in the voice of the Crown, the *Proclamation* declares that those lands are "[p]arts of *Our* [Crown] Dominions and Territories." Therefore, at the precise moment when it apparently recognizes Indigenous nations, the *Proclamation* simultaneously transforms non-ceded Indigenous lands into Dominion territory. These territories were seen as being occupied only *temporarily* by Indigenous peoples, as it was assumed that they would eventually be ceded to the Crown. This move, Christie (2005, 5) argues, "unilaterally undercuts Aboriginal sovereignty" by "enveloping Aboriginal nationhood within Crown sovereignty." The sense of Crown entitlement lies in part in what the *Proclamation* assumes yet does

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not explicitly explain or justify: its powerful silences communicate the unspoken assumption that the Crown is naturally entitled to its superior sovereignty. Borrows points out that the *Proclamation* "illustrates the British government's attempt to exercise sovereignty over First Nations while simultaneously trying to convince First Nations that they would remain separate from European settlers and have their jurisdiction preserved" (1997, 171). In this way, the *Royal Proclamation* created, structured, and protected Crown fantasies of certain entitlement to future title through establishment of a jurisdictional imaginary that may have recognized, but also *encompassed*, the sovereignties of Indigenous nations. At the same time, the full, rich, collective place-based sovereignty of Indigenous peoples became irrelevant simply through the colonizers' unquestioned entitlement to define entire nations on their own terms and as implicitly inferior. Indigenous nations exist, they are "recognized," but at the same time they are carefully and "legally" (according to colonial and national law) put in their subordinate place.

At first, Indigenous peoples are contained within colonial jurisdiction, and later, further legally defined in the United States as "domestic dependent nations" in 1831 (case of *Cherokee Nation v State of Georgia*). In Canada's *St. Catherine's Milling and Lumber Company v The Queen*, [1888] UKPC 70, [1888] 14 AC 46 (12 December 1888), the Crown encompasses Indigenous lands and title, bestowing on Aboriginal nations the right to use and enjoy the fruits of the land yet always through the Crown's "good will." (Christie 2005, 9) The Court argued that Aboriginal title was only a restriction on underlying provincial Crown title and would be extinguished when surrendered by treaty. The Court ruled that the treaties transferred Crown lands to exclusively provincial control while eliminating Indian interest in those lands. This is because "post-treaty-making the land was not federal land, over which the federal Crown could issue licenses. Upon surrender by the treaty nations, this land became provincial land" (Christie 2005, 5). One "vitally important subtext" of the dispute about jurisdiction in the *St. Catherine's Milling* case, Christie argues, was that the Court interpreted the wording of the *Royal Proclamation* "not as signalling *recognition* of pre-existing claims," but instead as a "*granting* of rights to pre-treaty Indians" to use and occupy lands reserved for them by the Crown. The difference between recognizing pre-existing rights and "granting" temporary rights lies in transferring superior power to the Crown. Significantly, reserving lands was understood to be "nothing more than a gracious extension of the good will of the Crown" (Christie 2005, 5). This kind of reasoning is still common-sense today, especially when people speak of the government solving land "claims" by "giving" First Nations huge settlements or suggesting that Indigenous peoples "claim" settler land rather than "*re*claim" their pre-existing land rights.

The assumption of an ultimate, supposedly superior sovereignty continues to inform legal decisions today, despite a common perception that Canadian law is at the forefront of the recognition of Aboriginal rights, especially since *Calder* in 1973. Yet if we examine legal cases after *Calder* in terms of if and how they defend certainty for settler property, we find that they ultimately continue to play out the same fantasy of Crown entitlement, making the fantasy law and providing certainty to settler society through the careful *limiting* of Indigenous title and

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sovereignty. *Calder* was a landmark decision because it changed the definition of Indigenous land rights from what it had been previously—a personal and usufructory right—into a notion of Aboriginal title, a legal right. Yet the specifics of Aboriginal title were not defined. In 1982, the *Canadian Constitution Act* introduced section 35, which stated that the "existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed," even though the meaning of Aboriginal title was still unclear. In 1995, the Government of Canada recognized the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*. However, since then, pivotal court decisions have consistently interpreted these *inherent* rights so that they can only exist as long as they can be "*reconciled with*" Crown sovereignty (Borrows 2002, 8). Once again, Aboriginal people must adapt, adjust, and reconcile themselves to the primacy of state sovereignty, which is unquestioned and certain in law.

In the Supreme Court decision in *R v Sparrow,* [1990] 1 SCR 1075, the Court decided that Aboriginal rights that were in existence in 1982 would be protected under section 35, and that they could not be infringed without justification, on account of the "fiduciary obligation" of the Crown to Aboriginal peoples in Canada. It therefore required that the Crown exercise restraint when applying their powers in interference with Aboriginal rights. Thus, on the one hand, *Sparrow* recognized Indigenous rights. On the other hand, the precise moment of recognition coincided with the limiting and encroachment of rights. One implication of *Sparrow* is that Aboriginal rights may be encroached on given sufficient reason, and of course, these rights are therefore not absolute. Consequently, while Aboriginal rights were *recognized* within the law, they were also *limited* in specific ways. Although the Crown would now be required to justify its infringement of Aboriginal rights on the basis of the "honour of the Crown," the measuring and assessing of that infringement is still *within the power of the crown*. In *R v Sparrow*, Justice Lamer stated that, even if the British policy was to respect the Native peoples' occupation of traditional lands, "there was *from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown . . .* " (italics added).

Similarly, in the Supreme Court of Canada's ruling in *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, a decision often proclaimed as a breakthrough for Indigenous rights, Chief Justice Lamer reminds readers that Indigenous rights "are aimed at the *reconciliation of the prior occupation of North America... with the assertion of Crown sovereignty* over Canadian territory" (italics added). Such "reconciliation," as we have seen, has meant that Aboriginal peoples, lifeways, and relationships to territories must still always reconcile themselves to an inferior position in relation to Crown sovereignty, entitlement, and assumed superiority.

As Christie suggests, these judicial rulings reveal that there is "never any question in the Court's mind that the Crown has complete authority" and sovereignty; the Crown decides "what land 'means,' to what uses lands may be put, and how people . . . will live in relation to lands and resources" (Christie 2005, 15). The Crown's superior sovereignty is enacted over lands, peoples, and the relationships between them. Borrows suggests that while the case "somewhat positively changed the law to protect Aboriginal title, it has also simultaneously sustained a legal framework

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that undermines Aboriginal land rights. In particular, the decision's unreflective acceptance of Crown sovereignty places Aboriginal title in a subordinate position relative to other legal rights" (1999, 537). He says (1999, 585–86):

> In *Sparrow*, the Court held that prior to the enactment of the *Constitution Act, 1982*, the federal government could extinguish Aboriginal rights without the consent of a group claiming the right. The final section of *Delgamuukw* confirmed this power . . . The Court arrived at its conclusion without ever questioning whether extinguishment was 'a morally and politically defensible conception of Aboriginal rights.' It simply assumed that '[i]n a federal system such as Canada's, the need to determine whether Aboriginal rights have been extinguished raises the question of which level of government has jurisdiction to do so.'

In other words, in using precedent to define acceptable questions in the Court, the discussion focused only on debates within Canadian jurisprudence about what level of government (federal or provincial) has the right to extinguish Aboriginal rights. It did not allow a discussion of the legitimacy of the very right itself.

The Crown and the nation-state's legitimacy persistently draws on the legal assumption that its sovereignty is necessarily superior to, and stronger and deeper than, any claims of Indigenous people, because *underlying title*—the real "bedrock" title—belongs to the Crown. This is settler law, even if such claims have not been proven or if Indigenous people are not themselves "reconciled" to that interpretation. This is settler certainty—both assumed and defended through law.

Jurisdictional Imaginaries in Practice: Narrating Entitlement

I suggest here that the jurisdictional imaginary of settler entitlement discussed above also underpins the "structures of feeling" that emerged in public discourses and among the anti-land claim activists I interviewed. These become *settler* "structures of feeling" when they naturalize the assumption that settlers are entitled to Indigenous territories, that settlers have authority over "Indigenous politics, governance, and territoriality" (Rifkin 2011, 342), and when they assume, as does the jurisprudence above, that the Crown always-already has superior underlying title to Indigenous lands, that Indigenous territory is (and/or should be) always-already domestic space within the self-evident and naturally unified nation-state.

A letter to the editor of the *Ridgetown Independent* newspaper in Chatham-Kent Ontario, Canada, published March 11, 1999, demonstrates the complex fears and concerns I found during fieldwork. The author introduces his letter as a "clarification" of why readers should not be "troubled" by the "NOT FOR SALE" signs of the Chatham Kent Community Network that were ubiquitous in Chatham-Kent at the time. He explains what he calls "the true meaning" behind them:

> First, I would like to ask [a previous letter-writer who was troubled by the signs] if he/she is living beside a Canadian. Does this Canadian have to follow the same bylaws as you do regarding fire safety, building codes, firearms, access to property or any other bylaws that help ensure that you as his/her neighbour can continue living as you do now? After all, that's what bylaws are for—to ensure that everyone in a community, neighbour-to-neighbour, has equal status and follows the same rules . . .

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> Now, let's talk about what those "NOT FOR SALE" signs really mean to those people who have put them out on their property. What's "NOT FOR SALE"?
>
> i) Their land to another country;
> ii) Their right to have neighbours who follow the same laws they do;
> iii) Their right to purchase land at fair market rates;
> iv) Their family history, which is being totally disregarded because someone else can claim they were here even earlier;
> v) The future of their families to continue building on that land; and
> vi) Their memories, not only of good times, but also of hard work that made that land what it is today.
>
> Finally, the people who have those "NOT FOR SALE" signs up are certainly not racist—in fact they are very proud of this country and all the nationalities of people that have blended together to make it what it is today. The First Nations people are very welcome to buy land and live in south Chatham-Kent with the rest of the Canadians who reside there now (whether they are Irish-Canadian, Dutch-Canadian, African-Canadian or any other Canadians). But the fact is that we are all of one country—working together, living together, being part of this one country together. That kind of loyalty to your country should not be ridiculed. After all, when the Americans came knocking on our borders during the War of 1812, the British, the natives and the United Empire Loyalists together said "NOT FOR SALE"—and that is why we are lucky enough to be here today—as one country.

This letter is revealing because it endeavours to detail what were previously "settled expectations" within the national jurisdictional imaginary. It seems that the land rights action has challenged arrangements previously seen as settled. In response, the letter maps a normative world in which being, and acting as, a specific kind of loyal *Canadian* is the key to appropriate, acceptable, and *expected* behaviour.[3]

The repeated stress on Canadian-ness as a singular set of the "same rules" and regulations that ensure that neighbours can "continue living as [they] do now" shows that expectations about the continuity (and certainty) of these arrangements are important. The repeated assertion of Canada as the primary framework of allegiance is pivotal. The assertion of Canada as "*one* country" based on liberal frameworks of supposedly "equal status" and "the same rules" outlines the boundaries, jurisdiction, and expectations of national belonging. In this jurisdiction, "the First Nations people" are "very welcome" and offered an invitation to join "the rest of Canadians," but the price of admission is that they follow the rules of "one country" and assimilate into the jurisdictional, political, and cultural imaginary of the settler nation.

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[3] Other statements in the letter above reveal complex settler states of feeling that I cannot detail here. Elsewhere, I suggest that statements in the letter about endangered and threatened (iv) "family history"; (v) family "futures" on land, and (vi) "memories" of "hard work" on the land, reveal complex forms of deep "settler anxiety" (Adese 2012; Simpson 2011) emerging from a feeling that land rights threaten longstanding personal and family settler identity narratives. Such narratives work by linking labour to past, present, and future rights to land, and, in this way, implicitly mirror John Locke's "labour theory of value," a theory foundational to legitimizing colonial concepts of *terra nullius* and the doctrine of discovery.

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Many of the CKCN supporters I interviewed also expressed the self-evident assumption that Indigenous peoples and lands are, and should continue to be, encapsulated and assimilated to national boundaries, jurisdiction, and laws in the name of equality, fairness, and economic efficiency. For example, when I interviewed Andrew, a local farmer, he argued:

> I think Canada is a huge success story. [But] I don't think we need to be *taking people based on their race and setting them aside*.
>
> *The ultimate goal has to be integration, not segregation* . . . I think the whole situation of Canada; everybody should be Canadian and *treated equally*. If you're born in Canada or if you become a Canadian citizen, *everybody's equal* (italics added).

Here, it is Canada that is seen to have the right to be "taking people" and categorizing them, or not, based on the needs of the nation, an implicit assertion of settler entitlement to define and encompass Indigenous peoples in the service of the nation.

Others I interviewed also tended to regard the nation and its needs as self-evident and primary. Paul, for example, begins with his discomfort with "special rights" and ends by arguing that Native people "don't contribute" to our nation. Native people, in his view, are simply not separate nations:

> I don't agree with groups of people, whether they're raised based on race, colour, creed, religion, I don't believe that anybody should have special privileges or rights or whatever based on any of that stuff . . . I just disagree with the whole thing that Natives should have separate nations . . .
>
> If you're being funded by the federal government, you're not a separate nation, and most Native people in this area, though they live in their separate nations, they work in our nation. And then they don't contribute to our nation at all, they don't pay taxes or none of that stuff. How do they consider themselves to be an independent or separate nation, or whatever it is?

Another CKCN supporter, Mitch, agrees with Paul, saying that First Nations are not "real nation[s]," thus mirroring the underlying assumptions of the philosophies and jurisprudence discussed above in which settler sovereignty is deemed necessarily superior because Indigenous societies are not "real" nations.

Ronald, a local schoolteacher, cannot understand the idea of Native people as a separate nation. He also affirms the idea of a singular nation when he argues that a reserve is unacceptable because it means special privileges and rights for some people within Canada:

> I don't want a reserve here . . . . Not because I don't want Native people, I have no problems with them living here. I have problems with the reserve: it's a special government, a special right or privilege . . . I think reservations are wrong right from the get go . . .
>
> I just can't understand how they would want to live like that, being singled out within Canada . . . . Long term, that's what I hope will come out of CKCN: political reform of the whole Indian relations act or whatever the hell it's called.

Ronald is not simply against a reserve in his area; rather, he has a broader goal of changing Indigenous-state relations to ensure there will be no competing Indigenous sovereignties within the nation.

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Many people I interviewed expressed, in this way, their sense of entitlement to control and superintend Indigenous people within the jurisdictional imaginary (Rifkin 2009) of the nation–state, defending their expectations and certainty through assumptions of the natural superiority, equality, and rationality of the singular nation. Framed in the language of modernity, progress, and equality, these are nevertheless "settler structures of feeling" because they are underpinned by the assumption that the Crown and the nation-state naturally have superior underlying title to Indigenous lands. They assume that Indigenous peoples, governments, and territories should naturally be encompassed by, and assimilated into, a singular unified settler project.

In this way, "settler structures of feeling" reflect and reproduce the settled expectations embedded in law, expectations that inspire settlers to feel entitled to certainty in the settler project.

Concluding Thoughts

I have argued that the feelings of anger about uncertainty expressed by the people I interviewed represent more than individual emotions. Instead, as my discussion of longstanding ideas and practices of certainty and uncertainty reveals, similar ideas have become normalized and naturalized through law and thus make sense as characteristics of "settler structures of feeling." They communicate "settled expectations" of certainty over land and control of Indigenous peoples that have long been built into colonial and settler projects. The ubiquitous and axiomatic nature of these assumptions makes it understandable that they are used in this way. These are legal and philosophical logics of settler coloniality that come alive as "settler structures of feeling." They make sense within the broader context of how centuries of settler colonial and national culture and law have bolstered their key assumptions and frameworks. What might this normalization of certainty mean for decolonization?

Theorizations about how to decolonize settler colonialism are complex, complicated, and emergent. Although the topic is a site of passionate debate, no one pretends to have the full, authoritative answer on how to decolonize. What is clear is that decolonization entails uncertainty, and that it will be a "messy, dynamic, and . . . contradictory process" that cannot be authoritatively "codified or defined" in advance (Sium, Desai, and Ritskes 2012, II). Taiaike Alfred argues that decolonization will require "deconstructing the institutions that were built on racism and colonial exploitation" in order to effect a "radical rehabilitation" of the state (2009). I suggest that denaturalizing settler beliefs and authoritative practices based on supposedly self-evident certainties about the primacy of settler-state sovereignty over Indigenous lands and peoples is also important, both in terms of law and public policy, and also for settler subjects and national cultures. If the construction of and defence of certainty is at the core of coloniality, then settler *un*certainty may actually be necessary for decolonization.

I began this paper by quoting Sium, Desai, and Ritskes (2012, 1), who say that despite their "certainty that decolonization centers Indigenous methods, peoples, and lands, the future is a 'tangible unknown,'" a site of contestation. As a "tangible unknown," decolonization cannot be pre-visioned; it cannot be certain.

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Decolonization cannot affirm "settler futurity" (Tuck and Yang 2012, 1–3). Therefore, the "settled expectations" and "fantasies of entitlement" I have explored here represent an example of how "Eurocentric thought has dreamed imaginary societies that generate our cognitive prisons" (Henderson 2002, 14). These axiomatic assumptions are the "cognitive prisons" of settler peoples and, by implication, of settler law.

Can law then be decolonized? Can it be shaken from its "cognitive prison"? If settler law has been based on reproducing settler fantasies of certainty and entitlement, can it be unsettled? Christie argues (2007, 16) that law needs to move beyond the idea that "the state (or dominant society) is there, a given, and then imagine Indigenous peoples coming to this centre of power to try to argue (somehow) that they should have a place within the larger system." Indigenous legal traditions should be reinvigorated in ways "that do not begin from these sorts of first premises or assumptions" so that they are not "limited by the simple fact of having the debate take place within the world *built around* the dominant system and its conceptual worldview" (Christie 2007, 16-17). Christie here describes a version of legal thinking that could begin to unsettle the embedded assumptions and expectations described above. Must settler law first be made unsettled and uncertain in order for a more just and decolonizing law to emerge?

Sium, Desai, and Ritskes (2012, IV) point out that it takes humility and courage to be uncertain, that to decolonize is to "live in understanding that not everything is known or unknowable" (2012, XI). Such humility seems anathema to the epistemologies of certainty that inform settler states of feeling and that underpin settler law. Living without the entitlement to know everything (and therefore be certain) will likely lead to settler discomfort, a discomfort that may need to be embraced instead of resisted in order to participate in the difficult work of decolonization. Here, I am not suggesting that such discomfort and uncertainty replicate the so-called "resilience," "flexibility," and "privatization of risk" celebrated and promoted by neoliberalism (Calhoun 2006). Instead, I am imagining a principled, historically aware stance of self-conscious refusal to mobilize axiomatic knowledge and action that have emerged from settler entitlement and certainty. This kind of refusal may open space for genuine attention to alternative frameworks and seed possibilities for creative and engaged relationships and collective projects.

If decolonization is necessarily a "tangible unknown," a "place where no one has ever really been" (Reyes Cruz 2012, 153), it is therefore also a place that, even in its tangibility and grounded uncertainty, will undoubtedly require engagement with the difficult yet necessary task of unsettling attitudes and practices based on settled expectations.

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