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The Saugeen, the Sovereign, and the Settler:  
Applying Agamben to Indigenous-Settler Relations in Upper Canada (1763-1857)

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The Idle No More Movement has encouraged Canadians to acknowledge and confront their colonial histories of indigenous subordination and violence. These are not the histories taught to our children in school, they have been largely silenced through decades of state policy. When these histories are discussed, they focus on the role of the state as the *sole* active agent in indigenous subordination. Apart from the fact that, in theory, Canadian governments and their colonial predecessors have been representative of the settler population...settler agency is left out of the equation. Not only does this present an inaccurate depiction of these histories, but it leaves current Canadians unaware of their roles within and influences over decolonization. But why have Canadians lost their agency within the processes of colonization and decolonization? The more research I do, the more I come to believe that it lies within our conceptualization of sovereignty.

This is why Giorgio Agamben's theory on sovereignty and the state of exception is useful, because it provides us with the very language of sovereignty which is problematic. Having said this, Agamben's theory is still *helpful* in providing a language to *begin* to understand the interplay between indigenous subordination and settler-state sovereignty. But ultimately, in order to properly extend Agamben to Canadian colonization his confined sovereignty thesis, the assumption that the state is sole active agent, and unilateral agency thesis, the assumption that subordination is a process between a sovereign and a sole other, need to be broken down and re-examined to include the agency of others. Only then can we begin to acknowledge increasingly

accurate histories and agencies within our colonial past, in order to recognize our roles and agencies within the present.

Agamben's work in *Homo Sacer: Sovereign Power and Bare Life* specifically addresses European processes of sovereignty, and so I have also considered the work of Mark Rifkin who extends Agamben's theory to indigenous –colonial relations in the United States within his article *Indigenizing Agamben*. I have chosen to extend their theories to the period in Upper Canada between 1763 (the year of the enactment of the *Royal Proclamation* which established Crown sovereignty over the land, while simultaneously protecting indigenous peoples and their lands) and 1857 (the year of the *Gradual Civilization Act*, the first formal piece of legislation enacted to assimilate and subordinate indigenous peoples in Canada). I have chosen this period because it is the time in which indigenous peoples went from recognized allies by the settler government to obstacles to expansion and settlement of the colony. The location of the Saugeen Anishinabek within Upper Canada, and their relations with the colonial government during this period, makes them an ideal focus for exploring this shifting relationship. I will refer to the Saugeen Anishinabek throughout this presentation, as a historically located community of nations that also refers to what is presently the Chippewas of Nawash Unceded First Nation (or Cape Croker), and the Saugeen Ojibway Nation.

In order to extend Agamben and Rifkin, I will first provide a short description and delve deeper into the two limiting theses imbedded within their theories. This theoretical foundation will then be used to explore shifting colonial policy, and then expanded in order to consider the influence of the Saugeen, settlers, and squatters on state sovereignty and indigenous subordination.

### *Agamben, Rifkin, and the Indigenous*

For Agamben sovereign power is established and maintained through its ability to inclusively exclude an exception.<sup>1</sup> To put this in context, indigenous peoples are exceptions in relation to state sovereignty because they pre-date the state and therefore do not fit comfortably within its structure. The state then establishes and maintains its sovereignty by bringing indigenous peoples under its authority, while still recognizing their otherness or exceptionality. In this way the sovereign can neutralize an excess, a group that does not fit (i.e. indigenous peoples). This is a form of subordination. Those placed within this state are contained within a blurry threshold between the inside and outside of the state order.<sup>2</sup> Those who have been exceptionalized in this way are reduced to bare life, a state in which one's *bios* or "way of being proper" has been stripped away.<sup>3</sup> It is in this state that people are most vulnerable to further arbitrary and violent action by the sovereign.<sup>4</sup> Throughout my presentation I will refer to this process as "exceptionalization." For Agamben, the camp, the geographical isolation of the exceptionalized, functions as the epitome of the state of exception. As Rifkin points out, where Agamben saw the camp's embodiment in the concentration camps of WWII, we can see this embodiment within the reserve system.<sup>5</sup>

Rifkin provides two important accommodations to Agamben's theory. First, Rifkin places sovereignty and exception within a primarily geopolitical, rather than biopolitical

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<sup>1</sup> Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 1998. p

<sup>2</sup> Ibid. p.18

<sup>3</sup> Ibid. p.1

<sup>4</sup> Ibid. p.32

<sup>5</sup> Ibid. p.167-73; Mark Rifkin. "Indigenizing Agamben: Rethinking Sovereignty in Light of the "Peculiar" Status of Native Peoples." *Cultural Critique*. 73 (2009): 88-124. p.94

framework.<sup>6</sup> This is because colonial sovereignty rests on control of territory (geopolitics), the biopolitical is then merely a way of getting to the geopolitical. In an overly simplified example, through state policy indigenous peoples are treated as wards of the state (the biopolitical) in order to dispossess them of their lands (the geopolitical). And second, Rifkin challenges Agamben's notion that sovereignty is a *self-confident* exercise, stressing the importance of recognizing the fragile ground upon which colonial sovereignty is *actually* founded.<sup>7</sup>

While Agamben and Rifkin have presented us with really important language and components to use within the discussion of sovereignty and indigenous exceptionalization, neither has gone far enough. Both assume a *confined* and *unilateral* process of exception...wherein a sovereign power alone can exceptionalize. But how is this a problem?

First of all, in considering the unilateral agency thesis, the assumption that the state is the sole active agent, it is necessary to consider the roles of the exceptionalized other (in our case the Saugeen) within this process. While Rifkin discusses contemporary resistance, there is no discussion in Agamben and insufficient discussion with Rifkin on how the exceptionalized might contribute to, accept, or resist this process. Indigenous peoples have not stood idly by. In one way or another, they have had an impact on this process. To silence *this* agency leads to an impoverished account of history.

Second, in considering the confined sovereignty thesis, the assumption that this is a process between a sovereign and sole other, it is important to consider the influences of settlers and squatters on the sovereign. Settlers, as petty sovereigns, represent a substantive influence

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<sup>6</sup> Rifkin. p.90-1

<sup>7</sup> Ibid. p.90

over a sovereign that is not collectively accountable and is without legitimate authority.<sup>8</sup> On the other hand, illegal squatters represent a *secondary* exception group, where Agamben and Rifkin assume the presence of a *single* exception group. Again, ignoring these roles and the influences they have had on the sovereign *and on each other* leads to the further impoverishment of accounts of our histories.

### ***Shifting Colonial Policy***

Indigenous peoples have not always been in a subordinate role relative to the state. A previous era in which indigenous and settler people were economic and military allies began to shift in 1763, when the British won the 7 Years War and unilaterally enacted the *Royal Proclamation*.<sup>9</sup> This proclamation denoted boundaries between settler and indigenous lands with the view that indigenous lands would be protected against settler encroachment, a rising problem during the 1800s in Upper Canada.

This document *also* used language that implied Crown dominion over lands occupied by indigenous peoples. While it protected indigenous lands from private sale it also allowed for an official system of public purchases to enable the extinguishment of Indian Title.<sup>10</sup> As such, this document marks the Crown's first claim to geopolitically-based sovereignty, and marks the beginning of indigenous exceptionalization as an othered group under the authority of the Crown. But the shift that was ushered in when the English won the war was gradual; it was not until the end of the War of 1812 where a much more distinctive shift occurred. With this war won and economic policy shifting from a mercantile to capitalist based mode of production,

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<sup>8</sup> Judith Butler. "Indefinite Detention." *Precarious Life: The Powers of Mourning and Violence*. London: Verso, 2004.

<sup>9</sup> *The Royal Proclamation*, 7 Oct., 1763, R.S.C. 1985, App. II, No.1.

<sup>10</sup> John Borrows. *Traditional Use, Treaties and Land Settlements: A Legal History of the Anishinabe of Manitoulin Island*. Diss. York University, 1994. pp.70, 67-8.

there was a growing interest in primary accumulation, expansion, and settlement.<sup>11</sup> Indigenous peoples were perceived to be obstacles to this. While colonial Indian policy was by no means internally-consistent during this period, policy did lead to land surrender and relocation strategies. Relocations to reserved lands within the northern reaches of the colony, arguably, represent the first embodiment of an Agamben-like camp.

### *Treaties of the “Sovereign” and the Saugeen*

During this period, treaty was used by the colonial government as a method of land surrender. In Upper Canada this led to Saugeen relocation from their southern traditional territories, which reached as far South East as the current town of Arthur, into the Bruce Peninsula. The practice of treaty is one way in which we see the Saugeen as active agents, rather than passive bodies, within the process of exceptionalization. Sadly I do not have enough time to go into as much depth as I would like here. But I have focused primarily on Treaty no.45 ½ (the first land surrender treaty between the Saugeen and the colonial government), and Treaty no.72 (the most highly contested and largest land surrender for the Saugeen).

It was argued by the colonial government that land surrender under Treaty 45 ½ was necessary to protect the Saugeen from settlers, as the government claimed it could not protect their uncultivated, un-ceded lands as they stood.<sup>12</sup> The Saugeen were interested in protecting their traditional ways of life and lands from settler encroachment. They agreed to surrender their lands south of Owen Sound on the belief that the government had their good-will in mind and that this treaty affirmed principles of non-interference, peace, and friendship between nations and

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<sup>11</sup> Terry Wotherspoon and Vic Satzewich. “The State and the Contradictions of Indian Policy.” *First Nations: Race, Class, and Gender Relations*. Canadian Plains Research Centre, 2000. p.21-2.

<sup>12</sup> Canada. *Indian Treaties and Surrenders: From 1680 to 1890 – In Two Volumes*. Ottawa: Brown Chamberlin Printer to the Queen’s Most Excellent Majesty, 1891. pp.112-3.

the colonists.<sup>13</sup> The primary colonial motivation behind this treaty, not provided to the Saugeen, was to remove obstacles to expansion and settlement.<sup>14</sup> Following the enactment of the treaty, the Saugeen, who were unhappy with its enforcement, petitioned the secretary of state for further land protection and remuneration. This led to a declaration by the Crown that the remaining reserve lands along the Peninsula would be protected for the Saugeen and their descendants.<sup>15</sup> But these lands were not all protected. Subsequent treaties led to the further surrendering of land, based on the government's continual insistence that it could not prevent squatters.<sup>16</sup> During negotiations for Treaty no.72, the colonial government circumvented negotiations with the Nawash community; those who stood to lose the most land, and proceeded to negotiations at Saugeen.<sup>17</sup> The treaty was finalized without Nawash.<sup>18</sup>

There are two arguments to be made in regard to these two treaties. The first, since it appears that the colonial government acted deceitfully during the treaty process, it can be argued that the Saugeen were "tricked" into this process of exceptionalization. That while the Saugeen were active agents, there was a greater agency and violence exercised by the colonial government that served to confine and attempted to silence this agency. Second, there is the argument to be made that the Saugeen recognize their role as agents of acceptance or resistance within this process. The Saugeen have accepted, on one level or another, Treaty 45 ½ (certainly not no.72, they are currently involved in a claim against the Crown regarding this later treaty –

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<sup>13</sup> Borrows. p.105.

<sup>14</sup> Ibid. p.104.

<sup>15</sup> Peter Schmalz. *The Ojibwa of Southern Ontario*. Toronto: University of Toronto Press, 1991. pp.139, 136.

<sup>16</sup> Polly Keeshig-Tobias. *The Illustrated History of the Chippewas of Nawash*. Nawash: Chippewas of Nawash, 1996. pp.1-16.

<sup>17</sup> John Borrows. "A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government." *Osgood Law Journal*. 30.2. 291-353. p.324.

<sup>18</sup> Ibid. p.333.

using 45 ½ as evidence for the protection of their territories).<sup>19</sup> And this claim against Treaty 72 exhibits an agency of resistance to the process of exceptionalization, which is important when considering how peoples fight back against a sovereign in order to reclaim their *bios*.

Ultimately, the agency exercised by the Saugeen during this entire process is important to understanding what has actually occurred. Understanding this, in turn, shapes how the Saugeen might be active agents in their own decolonization and reclamation of their *bios*.

### *Settlers*

Settlers also complicate this process. The confined sovereignty thesis, the idea that the process of exceptionalization is confined to a relation between the sovereign and a single exceptional other is complicated by the role of settlers as “petty sovereigns”. The escalating need of the colonial government to provide greater room for settlement was influenced by constant influxes of newly arrived subjects. Granted settler presence was encouraged by colonial policy, however, settlers were not just instrumental figures in indigenous exceptionalization. Their growing unrest for greater and cheaper lands within the colony led to their vocalized unrest during the rebellions of 1837, which in turn forced the government to recognize their demands. At the end of the day, settlers are also treaty people. The government entered into negotiations for land surrender, in part, on their behalf. Not only is the role that these petty sovereigns played during this period helpful in understanding events and voices that influenced the actions of the colonial sovereign, it is also central to figuring out what the role of the settler-Canadian is today within settler-indigenous relations. Considering and re-evaluating the current historical state of these relations

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<sup>19</sup> “The Treaty 72 Claim.” *Saugeen Ojibway Nation: Claims Update Newsletter*. March 2011.

is exactly what the Idle No More Movement encourages us to do. Settlers are necessarily implicated in any future process of decolonization because of these historic roles.

### *Squatters and Land Policies*

The confined sovereignty thesis is complicated *even further* when considering the role of illegal, non-indigenous squatters on indigenous lands. The terms and weak enforcement of land policy encouraged squatting.<sup>20</sup> There were many immigrants who were not in a position to wait for a grant to a location; their means were limited and those who were not entitled to rations from the government could not afford to cultivate land which the government might refuse to confirm.<sup>21</sup> While there were many more aspects at play that encouraged squatting,<sup>22</sup> I sadly do not have enough time to address them here. Needless to say, there was a problem.

The Saugeen consistently made the colonial government aware that immigrants were unlawfully settling on, taking lumber from, and improving their lands.<sup>23</sup> The Indian Department consistently responded to the Saugeen that they could not control the squatters<sup>24</sup> and that the Saugeen would be better protected by the government if they would surrender their lands and move north.<sup>25</sup> The government's insistence regarding its inability to help was a major contributing factor to land surrenders. The presence of squatters, therefore, necessarily complicates the colonial sovereign's process. Squatters can be seen as active agents since they were actively engaging, whether intentionally or not, within this process of exceptionalization.

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<sup>20</sup> Lillian Gates. *Land Policies of Upper Canada*. Netherlands: University of Toronto Press, 1968. p.125.

<sup>21</sup> Ibid. p.91.

<sup>22</sup> Ibid. pp.288-9.

<sup>23</sup> Schmalz. pp.141-2.

<sup>24</sup> Ibid. p.141.

<sup>25</sup> Stephanie McMullen. *Disunity and Dispossession: Nawash Ojibwa and Potawatomi in the Saugeen Territory, 1836-1865*. Thesis. University of Calgary, 1997. p.32.

They can also be conceived of as colonial instruments used by the government to complete its exceptionalization process.

Since the squatters contributed to the colonial sovereign's plans they were for years protected by the government.<sup>26</sup> Notably, however, after the signing of Treaty 72, the government put an end to squatting on the lands *it* had claimed.<sup>27</sup> This implies dishonesty in prior claims made to the Saugeen. The fact that squatter populations were consistently perceived to be and cited as unstoppable encroachers of Saugeen lands, throughout and until the culmination of the treaty process, suggests that the colonial sovereign was actually dependent on squatters as a deliberate strategy to exceptionalize the Saugeen.

### ***Conclusion***

So where does this leave us? Our ability to extend and re-consider aspects of Agamben and Rifkin's work is helpful for mapping and exploring the tensions within our current conception of Canada's sovereignty. It is also helpful for understanding how this conception of sovereignty has led to the subordination of indigenous peoples like the Saugeen, and the problematic silencing of settler agency within this same process. We have to consider all actors and influences at play on the sovereign-exception relationship. As briefly explored here this investigation can occur within individual collective histories, like that of the Saugeen Anishinabek, the sovereign, settlers, and squatters of Upper Canada. Through investigating these historic relationships we can begin to understand not only the ways in which our concept of sovereignty has to be broadened, but also what our contemporary roles might be within decolonization. And this, I think, gets at the heart of the Idle No More Movement. It is a

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<sup>26</sup> Gates. pp.189-91.

<sup>27</sup> "The Treaty 72 Claim."

movement that is encouraging us all to acknowledge, discuss, and reclaim these processes of exceptionalization. And simply doing this is a crucial step toward decolonization. What that decolonization looks like shall be left to the imaginations of those who are able to properly engage with these histories, and collectively move past exception.