settler colonial studies

The Biopolitics of Settler Colonialism: Right Here, Right Now

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Settler colonialism is exemplary of the processes of biopower theorised by Giorgio Agamben and Michel Foucault. However, settler colonialism remains naturalised within theories of biopower and theories of its relation to coloniality. White supremacist settler colonisation produces specific modes of biopolitics that sustain not only in settler states but also in regimes of global governance that inherit, extend, and naturalise their power. I extend Patrick Wolfe's theory that a 'logic of elimination' constitutes settler colonialism in the genocide and amalgamation of Indigenous peoples, by indicating that this also indigenises and naturalises white settler nations as projections of the West. Agamben's work illuminates how Indigenous peoples are eliminated in a state of exception to Western law, which by functioning to erase consanguinity – as the patriarch in Roman law eliminates the defiant son – explains Indigenous peoples' seemingly contradictory incorporation within and excision from the body of white settler nations. This biopolitical process specific to settler colonialism also structures the manner in which white settler societies demonstrably universalize Western law, both within their bounds and in global arenas. My call to denaturalise settler colonialism in social theory is but a first step towards broader study of how the biopolitics of settler colonialism structure current modes of biopower and require concerted critique at the intersections of Indigenous and settler colonial studies.

If, following Patrick Wolfe, settler colonialism produces settler societies by pursuing the elimination of Indigenous peoples via amalgamation and replacement, then it is exemplary of biopower. Adapting Giorgio Agamben, we find that Europeans establish Western law and a new People on settled land by practicing an exception to the law that permits eliminating Indigenous peoples while defining settlers as those who replace.[1] Settler colonialism performs biopower in deeply historical and fully contemporary ways. As scholars increasingly theorise biopower as definitive of our times, with many insisting that this quality of biopower is colonial, we must confront our inheritance of settler colonialism as a primary condition of

biopower in the contemporary world. The work of Michael Foucault and Agamben and of their interlocutors must be resituated within a new genealogy of settler colonialism that can shift interpretations of biopower today.

For more than five hundred years, Western law functioned as biopower in relation to ongoing practices of European settler colonialism. Settler colonialism has conditioned not only Indigenous peoples and their lands and the settler societies that occupy them, but all political, economic and cultural processes that those societies touch. Settler colonialism directly informs past and present processes of European colonisation, global capitalism, liberal modernity and international governance. If settler colonialism is not theorised in accounts of these formations, then its power remains naturalised in the world that we engage and in the theoretical apparatuses with which we attempt to explain it. Settler colonialism can be denaturalised by theorising its constitution as biopower, as well as how it in turn conditions all modern modes of colonialism and biopower. My argument critically shifts recent theories of the coloniality of biopower by centreing settler colonialism in analysis. Wolfe has observed in histories of the Americas that a settler colonial 'logic of elimination' located Indigenous Americans relationally, yet distinctly from Africans in the transatlantic slave trade or colonised indentured labour, thereby illuminating (as Mark Rifkin notes) the 'peculiar' status of Indigenous peoples within the biopolitics of settler colonialism.[2] Western law is troubled once European subjects are redefined as settlers in relation to the Indigenous peoples, histories, and lands incorporated by white settler nations. I argue that this tension is engaged productively by Agamben's tracing of the state of exception to *homo sacer*, and notably its derivation in Roman law from a thesis of consanguinity. I adapt this quality to illuminate why and how Western law incorporates Indigenous peoples into the settler nation by simultaneously pursuing their elimination. I further argue that these deeply historical processes ultimately enact biopower as a persistent activity of settler states that were never decolonised and of the global regimes that extend and naturalise their power. By the twentieth century – amid a formal demise of colonial empires, putative decolonisation of the global South, and global capitalist recolonisation – the universalisation of Western law as liberal governance was ensured by the actions of settler states. A

genealogy of the biopolitics of settler colonialism will explain that the colonial era never ended because settler colonialism remains the naturalised activity projecting Western law and its exception along global scales today. Theories of the biopolitical state, regimes of global governance, and the war on terror will be insufficient unless they critically theorise settler colonialism as a historical and *present* condition and method of all such power.

THEORISING SETTLER COLONIAL BIOPOWER

Foucault and Agamben theorised biopower as a present activity that inherits and transforms the deeply historical conditions of Western law. Foucault incited this theory by examining the modern proliferation of procedures to produce the life of the nation in relation to deadly regulation of its others, a process that he argued displaces the power of the sovereign 'to take life or let live' with a governmentality that enacts 'the power to "make" live or "let" die'.[3] Judith Butler emphasises that, for Foucault, governmentality in the modern state or in global regimes acts as an 'extra-legal sphere' – 'an art of managing things and persons, concerned with tactics, not laws' – that then 'depends upon "the question of sovereignty" no longer predominating over the field of power'.[4] Hence, governmentality acts in the name of the very sovereignty that it exceeds, producing 'a lawless sovereignty as part of its own operation of power'.[5] Agamben adapts Foucault's account of modern biopower as governmentality when he claims that its extra-legal appearance is a recent adaptation of qualities intrinsic to Western law; as he says, '*it can even be argued that the production of a biopolitical body is the original activity of sovereign power*'.[6] Citing the Roman legal origins of Western law, Agamben links sovereignty to a power to designate subjects of the law as *homo sacer*, the sacred man who may be killed without being sacrificed or made subject to homicide. The placement of *homo sacer* in a zone of 'bare life' establishes Western law precisely by placing it in abeyance in this case. The sacred man enters a 'state of exception' to the law that simultaneously reinforces its rule. Agamben notably defines the exception by reference to the camp as 'in a decisive way the political space itself of modernity', which by forming a permanent 'space for

(bare) life' creates a 'materialization of the state of exception' as 'the rule'.[7] Agamben thus reinterprets the biopolitics of the modern state as an effect of Western law's constitution by the state of exception. In this reading, the function of governmentality to 'make life' is compatible with the state of exception remaining intrinsic to law, as consigning certain subjects to a state of bare life ('let die') re-establishes a power to produce and defend life among those who remain.

Yet significant tensions appear in the work of Foucault and Agamben – and, hence, also in Agamben's revision of Foucault – in that neither scholar directly theorises colonialism as a context for biopower. Scholars of colonialism respond by arguing that colonialism is intrinsic to processes of biopower in the past and present. Reading Foucault's account of the modern biopolitical state in relation to colonial situations, Ann Laura Stoler definitively demonstrated that its racial, sexual and national power arise at colonial sites or relationally among colonies and metropoles, not as projections from a European source.[8] Following Stoler, modern biopower is the product and process of a colonial world. Achille Mbembe extended such reinterpretations of Foucault in conversation with Agamben by reading the colony *as* exception, which defines Western law amid the globalisation of European capital and empire.[9] Sherene Razack and Sunera Thobani engage all such theories to explain that in contemporary modes of biopower, the colonial returns or never left; and, notably, both centre settler colonialism as a condition of the power they examine.[10] Mark Rifkin signally engages Agamben's theses with settler colonialism by arguing that the 'geopolitics' of conquest place Indigenous peoples in a state of exception that simultaneously troubles the territorial and national integrity of settlers as representatives of Western law.[11] Together, these scholars respond to colonialism's elision in theories of biopower by demonstrating that it conditions biopower *and* critical theory – an intervention deepened by Rifkin's and my work centreing *settler* colonialism for study.

Addressing these critiques requires adjusting the very advance of Agamben's argument that biopower is intrinsic to Western law. Michael Dillon identifies a lingering ahistoricity in Agamben's 'ontologization' of Western law that he argues would benefit from a

return to Foucault's genealogical method, which for Katia Genel will result in 'revisiting and complicating Agamben's formulations and more complexly applying them'.[12] Theorising biopower from within a genealogy of settler colonialism will trace how deeply historical procedures in Western law confronted the specificities of the era of European settlement and shifted in response. In such a genealogy Agamben remains crucial, given that scholars of settler colonialism may trace biopower to situations that existed prior to the eighteenth and nineteenth century era that Foucault linked to the rise of the modern biopolitical state. Already in the sixteenth century and across the Americas, settler colonialism grew to condition colonialism and biopower in settler and other societies worldwide. The continuity of settler colonialism at these sites up to the present then demonstrates that this periodisation meaningfully explains biopower today.

Patrick Wolfe's theorisation of settler colonialism already incites a genealogy of its biopolitical form. Arguing that 'settler colonizers come to stay: invasion is a structure, not an event', Wolfe explains that assertions of sovereignty by settlers ground Western law in 'a logic of elimination'.[13] Noting that scholars after Raphael Lemkin tend to correlate genocide with extermination, Wolfe argues that settler colonialism performs genocide alongside a variety of practices that converge on a purposed elimination of Indigenous peoples.[14] While the erasure and replacement of Indigenous peoples may transpire through deadly violence, Wolfe emphasises that elimination may follow efforts not to destroy but to produce life, as in methods to amalgamate Indigenous peoples, cultures and lands into the body of the settler nation. As Wolfe and Katherine Ellinghaus explain, this amalgamation precisely narrows or erases the possibility of distinctive Indigenous nationalities challenging the prerogative of the settler nation that means to replace them on, now, 'its own' lands.[15]

Wolfe argues that the racialised political economy of 'franchise colonialism' intersects settler colonialism, while bearing distinct implications for Indigenous peoples and for racialised peoples brought by settlers to Indigenous lands. In the Americas, for instance, the earliest settlers enslaved Indigenous peoples while producing racialised labour from the transatlantic slave trade and

colonised indentured labour, resulting in the formation of franchise colonies that in the sixteenth and seventeenth centuries were among Europe's most lucrative colonial projects. Yet Wolfe clarifies that these – and their seeming parallel to franchise colonies that appeared across Africa and Asia into the eighteenth and nineteenth centuries – derived from prior and simultaneous settler colonialism. American settler societies formed distinctly when practicing franchise colonialism: often, by removing European migrants to cultivate 'emptied' land, while amalgamating Indigenous peoples within societies dutiful to settler productivity; and by creating franchises that require prior and ongoing conquest of Indigenous peoples to exist and sustain. Thus, Wolfe reminds us that even societies defined by the franchise-orientation of European global capitalism – notably, the slave plantation economies of the Caribbean or southern British American colonies, or of colonial Brazil – relied on settler colonialism to function. Wolfe argues that plantation slavery pursued the elimination of Indigenous nations by plying a 'difference between one group of people who had survived a centuries-long genocidal catastrophe with correspondingly depleted numbers and another group who, as commodities, had been preserved, their reproduction constituting a singularly primitive form of accumulation for their owners'.[16]

Of course, slavery also produced a centuries-long genocidal catastrophe by commodifying African people not for survivability but exchangeability. Any seeming 'preservation' of Blackness in white settler societies thus was coterminous with the perpetual subjection of Black peoples to spaces of death, while eliding the formation of Black communities precisely through mixture with Indigenous and European peoples. We find here that the biopolitics of settler colonialism arose in the Americas by perpetuating African diasporic subjugation and Indigenous elimination simultaneously. Following Wolfe's reading, settler colonialism establishes Western law within a white supremacist political economy premised upon the perpetual elimination of Indigenous peoples. As Thobani eloquently affirms, Indigenous elimination then crucially defines the state of exception in the Western law of settler societies.[17] While I will examine specific modes of governance placing Indigenous peoples in exception to Western law, I emphasise first that their settler colonisation informs

any *simultaneous* or *subsequent* appearance of the state of exception in settler societies or other sites of European colonisation.

This analytical qualification is necessary to complicate and deepen recent theories of the colony as exception. For instance, Mbembe and Paul Gilroy portray the transatlantic slave trade creating slave societies in the Americas in a state of exception, a claim Gilroy advances by framing them precisely as a camp.[18] Yet Wolfe's reading, which I think affirms theirs, specifies that the transatlantic slave trade formed amid a prior, simultaneous and continuous exception assigned to Indigenous peoples, which conditioned Western sovereignty on the lands where the African diaspora took form. Indeed, the *space*-outside-law defining Agamben's reading of the camp defines slave societies only to the extent that the *lands* placed in exception to terminate Indigenous tenure became available to new biopolitical violences, even as this naturalised the *settler* violence enabling them. The implications of such an analysis echo within and also shift Mbembe's account of colonialism and biopower. Mbembe's reading of 'necropolitics' as the logic of the colony as exception references plantation slavery 'as one of the first instances of biopolitical experimentation', and then frames relations among African diasporic peoples and white settlers as emblematic of the racialisation of colonialism.[19] Mbembe later cites 'the extermination of vanquished peoples' assigned the status of 'savages' within a list of effects of colonisation worldwide, but without specifically naming Indigenous peoples in settler societies.[20] Following Wolfe, we can read extermination as a biopolitics originary to the settler colonial situations that conditioned enslavement on settled land. While Mbembe is aware that settlement in the Americas appears in his story, it remains oblique, seemingly absorbed within a more general object, 'colonialism'. This object then appears in his account to be more definitive of populations framed as suffering it in perpetuity, at the expense of bodies that, here, appear erased from its history.

In Mbembe's emphasis on the genocidal colonial violence perpetrated against Africans and peoples of the African diaspora we hear an unintended echo of the logic of elimination defining settler colonialism. As Wolfe argues, that logic places African diasporic peoples under a perpetual subjugation that attempts to naturalise

their relational formation to Indigenous elimination and the 'emptying' of Indigenous lands. Mbembe further argues that the past of necropolitics informs the present when it recurs in 'late modern colonial occupation'.[21] Given his prior claims, this temporalisation occludes settler colonisation of Indigenous peoples as significant to the past or present of necropolitics, even as it prevents settler colonialism from being definitive of the present despite never having ended. Indeed, for the United States – a key object of Mbembe's critique – the visitation of late modern colonial occupation beyond 'its' borders transpires only to the extent that the United States simultaneously perpetuates colonisation upon the Indigenous peoples it necessarily occupies. Had Mbembe centred this quality in his account of colonialism, we could ask how late modern colonial occupation acts *precisely* and *continuously* as settler colonial, with its global projections being the activity of a settler colonial power that does not cease. Asking this question would resituate our interest in late modern colonial occupation from trying to explain colonialism's continuation despite its nominal demise, to considering how the failure of decolonisation attends on its failure to be sufficiently extended to settler states and the institutions through which they project settler colonial power in the contemporary world.

INTIMATE RELATIONALITIES IN WESTERN/SETTLER LAW

The colonial power of Western law can be traced distinctly by explaining its formation by the intimacies of settler societies – notably, Indigenous replacement via containment, erasure and amalgamation – that perpetually trouble differentiations of settler nations from what they attempt to replace. 'Settler' literally signifies the displacement of Indigenous peoples. Yet a host of scholarship in Native studies explains that settler subjects normatively recall and perform indigeneity as a history they at once incorporate and transcend, inhabit and defer.[22] Settlers thus are inexplicable apart from their relationality to Indigenous peoples, as well as to forms of indigeneity of their own imagining that undergird settler subjectivity. All this structures how European settlers ever come to represent the West. To the extent that they do, their relationality to indigeneity

through settlement also constitutes the West, even if this quality remains naturalised.

To date, critics who adapt Agamben to explain colonial biopower have tended to associate the state of exception with the ejection of racialised primitivity from the West. Thus, a most recurrent definition of the exception in such work is the *externalisation* of racialised and colonised statuses from the body of Europe, whiteness, or their national or global appearance as Western law. Centreing settler colonialism troubles such accounts. If critics ever feel assured that the colonial exception functions through externalisation, this may be an assumption that attends on theory having already normed 'colonialism' so as to elide settler colonialism and its ongoing naturalisation. European settler societies enact Western law – indeed, in ways often validated as exemplary of that law – by occupying and incorporating Indigenous peoples within white settler nations. The indigenisation of white settlers and settler nations thus shifts our reading of their capacity to represent the West. Rather than presuming that the West is defined by enforcing boundaries to preserve purity, we must consider that the state of exception arises in settler societies as a function of settlers' inherent *interdependence* with indigeneity.

Accounts of the intimate relationality of Indigenous peoples and settlers in settler societies are enhanced by theorising biopower. I highlight a quality in Agamben's account of *homo sacer* in Roman law that, I argue, illuminates how Indigenous peoples and settlers have negotiated their conjuncture by plying ties of kinship and its elimination. Agamben cites a story of patriarchal consanguinity as a governmental origin of the state of exception. In Roman law, the potential extension of bare life to any male citizen appears to have derived from a prior correlation of sovereignty to the rule of the patriarch. According to Agamben, the death of *homo sacer* – not murdered, but negated; '*necisque*' as opposed to '*vitae*' – appears in Roman law through the image of the son who, defying the father's rule, becomes life that must be abandoned, to death.[23] Here, the patriarch embodies a sovereign power that may be enacted at any time he deems necessary, and one that exists beyond the power of the law of citizens to abrogate. Agamben suggests that the extension into law of a paternal power to put the defiant son to death binds a

society of law to a thesis of patriarchal consanguinity.[24] Following this model, Roman law distinguished the citizens it protected from those it evicted along their degree of respect for or flouting of filial duty to paternal authority. Here, the state of exception potentially accrues to all citizens to the extent that any might forfeit consanguinal protection by a paternal state. I am intrigued by the travels of this formulation of the state of exception at the inception of Western law. In light of Agamben's account, even if the terms of subjection to Western law shift across places or times, they do so in relation to a law that first posits subjects as a consanguinal People before any are excised. What happens to this quality under European settler colonialism, once Western law endeavours to be established intimately with Indigenous peoples? A question first arises of whether Western law recognises Indigenous people as human. But if it were to do so, it would confront the degree to which Indigenous people become recognisable within the People of the settler nation, which in turn would condition their particular exposure to the state of exception.

The settler colonisation of Indigenous Americans demonstrates that questioning their degree of humanity and their genealogical relationship to European patriarchal authority defined their subjection to Western law and its exception. Dale Turner examines these questions by reference to the Valladolid debate of 1550-51, in which Bartolomé de las Casas and Juan Gines de Sepulveda deliberated the deadly treatment of Indigenous Americans under Spanish rule by considering the theological and legal significance of their humanity.[25] The Valladolid debate was contextualised by a Papal bull of 1537 having already decreed an end to formal enslavement of Indigenous Americans by deeming them unequivocally human and capable of salvation. Las Casas argued that Papal recognition of Indigenous peoples' humanity meant that they should be brought to Christian belief and law without force or coercion. In contrast, Sepulveda argued that even if recognizably human, Indigenous peoples remained in Aristotelian terms 'barbarians' who were naturally inclined to enslavement, and furthermore that the Spanish remained bound to punish them for crimes against God's law. Sepulveda thus portrayed Indigenous people as human only to the extent that their abjection followed having defied divine authority, which demanded their treatment as

bare life subject to genocide. Las Casas, by contrast, sought to protect Indigenous people as subjects acceptable to God's law, but only to the extent that they conformed to the Church and sovereign as paternal educators, whom they must not resist lest in violating the terms of their protection they be returned to the ever-present possibility of death.

Interestingly, the position Sepulveda defended played out in Spanish and Portuguese colonies precisely not through modes of separation but of amalgamation. The classification of Indigenous peoples as barbarians facilitated the forced intermarriage and rape of Indigenous women by European men, whose children incompletely inherited a patriarchal lineage even as their suspect primitivity located them proximate to the state of exception.[26] In turn, despite the semblance that Las Casas sought to protect Indigenous people from violence, his position justified subjecting Indigenous and growing *mestizo* constituencies to a racialised colonial economy, wherein promises of salvation and civilisation framed people of Indigenous heritage as children whose potentially wayward inclinations still placed them near the state of exception. While specific to the early Latin American settler colonies, these contrastive positions recur across white settler societies that attempt to eliminate Indigenous nations by amalgamating Indigenous people as potentially protected children whose racialisation leaves their consanguinity open to excision.

Adjudicating life for Indigenous people defines settler law's extension of elimination into governmental procedures of 'recognition' – even, of 'nationality' or 'sovereignty'. For instance, the Dominion of Canada established its relationship to Indigenous peoples under law in the 1876 Indian Act, which in ever-revised form still structures Canada today. The Act pursued elimination through the settler colonial governmentality of 'identity regulation', to use Bonita Lawrence's term.[27] While this procedure may appear to preserve life, in its definition of over six hundred 'First Nations' whose members received 'Indian status' by state decree, the Act also separated myriad communities of common nationality, radically reduced land bases (if any remained), and enabled the state to determine the fact or erasure of their existence. Duncan Campbell Scott, deputy director of the Department of Indian Affairs, argued in

1920 that his effort to place Indigenous people in a 'state of tutelage' sought its own end, in a time when 'there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question'.[28] The settler colonial governmentality that here wrests identity from Indigenous peoples also imposed a patriarchal authority within the law to assimilate them into the settler nation.

Aboriginal women activists in Canada exposed this by challenging the Indian Act's restriction of status inheritance to patrilines. Women who inherited status from their fathers found that it was rescinded for them and their children if they married a person without status. This broadly-applied rule first facilitated marriages of white men with Indigenous women, which absorbed their children through the patriline into the settler nation and its citizenship. Aboriginal women activists specifically targeted the Act's contradictory enabling of Indigenous men with status to confer it to non-Indigenous spouses and their children. Keeping in mind that status and band structure were defined by the Act, we see here that empowering Indigenous patrilineality replicated patriarchal consanguinity as law for settler *and* Indigenous nations, while departures from paternal law remained cause for eviction. As Aboriginal women's movement activists argued, evicting Indigenous women harmed them while simultaneously reinforcing the colonial authority that Indigenous men gained from the settler state. While after long protest the passage of Canadian Bill C-31 reinstated status for recent generations of Indigenous women, Lawrence argues that the Act already had achieved 'statistical genocide': with over 25,000 women between 1876 and 1985 having had status rescinded, estimates range that from one to two million descendants of these women are incapable of asserting legally-recognised Indigenous identity in Canada, and remain removed from relationship with or even awareness of their peoples or lands. Yet alongside this elimination, a governmental effect also arises here, as constituencies that remain Indigenous-identified are narrowly delimited by the patriarchal authority of the state, which by continuing to assimilate indigeneity sustains a practice that, as Scott stated, linked recognition to its erasure.

Indigenous theorists in Canada argue that the subjection of bands to definition by the sovereign power of the settler state

characterises the entire project of 'recognition'. Taiaiake Alfred targets 'sovereignty' itself as a logic that presumes and produces apparatuses of colonial rule while precluding distinctive modes of Indigenous governance. So long as Indigenous politics is constrained in this way, he argues, 'the state has nothing to fear from Native leaders, for even if they succeed in achieving the goal of self-government, the basic power structure remains intact'.[29] Addressing a moment in Canadian politics described for Australia by Elizabeth Povinelli as 'liberal settler multiculturalism', Glen Coulthard specifies that the 'politics of recognition' precisely sustains 'the colonial relationship between Indigenous peoples and the Canadian state'.[30] 'Recognition' reproduces within land claims, capital disbursements, and political authority 'the very configurations of colonial power that Indigenous people's demands for recognition have historically sought to transcend'. Citing Frantz Fanon, Coulthard insists that

> the reproduction of a colonial structure of dominance like Canada's rests on its ability to entice Indigenous peoples to come to *identify*, either implicitly or explicitly, with the profoundly *asymmetrical* and *non-reciprocal* forms of recognition either imposed on or granted to them by the colonial-state and society.[31]

Alfred and Coulthard compellingly argue for the renewal of modes of Indigenous governance that redefine collectivity in excess of settler colonial governmentality. I wish to emphasise in their accounts their specification of Indigenous nations through 'recognition' in a childlike subjection to the authority of the state. For Indigenous peoples in settler societies – notably, those who resist elimination by asserting national difference and distinctive modes of governance – the threat of the exception is ever-present. Coulthard and Alfred highlight the bind Indigenous people face if seeking state recognition of their survival elicits the power of settler sovereignty to eliminate Indigenous difference as a threat by granting, rescinding and managing 'recognition'. Amalgamation as a tool of elimination echoes back to Valladolid as a theme of the settler colonisation of Indigenous peoples. Yet following Agamben, entering into a

recognisable status under the law also opens to elimination and replacement by settler rule.

I cited a thesis of consanguinity in Agamben's account of Roman law not merely, or even literally to invoke *mestizaje/metissage* as a phenomenon of settler societies or of the place of Indigenous peoples or their descendants within them. Nor do I suggest that indigenising white settler nations eclipses their concurrent definition by hypodescent, which in opposing whiteness to blackness attempts to erase the sexual violence of slavery and deny consanguinity across the colour line, all of which – as Gilroy and Sylvia Wynter argue – contributes to making the African diaspora definitive of Western modernity.[32] By citing Wolfe, I indicated that the settler colonisation of Indigenous Americans, the transatlantic slave trade, and all colonised indentured labour invoke a global history of colonial modernity in which Indigenous and African diasporic peoples appear relationally. My argument has been that when slavery and its legacies exclude blackness from whiteness, this also intersects a prior and simultaneous indigenising of settler whiteness. We saw glimmers of these positionings in a relational contrast in the Valladolid debate. Without conflating either claim across distinct contexts, Sepulveda's position appears to echo when Fanon, Mbembe or theorists of colonial biopolitics link the state of exception to subjects who exist not just beyond the law but beyond humanity, within what Mbembe calls 'animal life'.[33] Such a reading appears to explain the irremediability of blackness in Western modernity and settler nations. It also appears in postcolonial critiques that presume that this mode of racialisation defines the colonial exception.

My argument is that such readings are *conditional* on another that they occlude, and that in turn is conditioned by them. In the sixteenth centuries, as colonisation took shape in the settler societies of the Americas, a relational position purposefully formed. Countering the overtly genocidal violence of Sepulveda's contravention of Indigenous humanity, Las Casas argued, for his time, a more compassionate, inclusive, and – I will return to this – *liberal* mode of settler colonial governance. Las Casas affirmed Indigenous humanity under God's universal law and the necessity of its defence within a settler society. Yet his claim functioned precisely as a logic of elimination, in that recognising people of Indigenous

heritage as subject racialised populations barred them from any difference that could trouble settler rule. As the incompletely consanguine children of Western law, they remained ever on the verge of eviction from it if they troubled the terms of their protection: amalgamation. Their proximity to exception arose under settler rule precisely by considering the degree to which Indigenous peoples may be *included* in the body of the West and its law. Far from being arbitrary, this concern was requisite to a settler society defining its relation to racialised differences on the lands it remade. A capacity in Western law to simultaneously incorporate and eliminate, recognise and except racialised and primitive difference was learned in settler projects of Indigenous elimination that established Western law on lands beyond 'the West'. To the extent that they succeeded, settler colonialism made Western law spatially nonspecific and demonstrably universal, long prior to late modern mechanisms of global governance, and as their genealogical condition.

Today, the ongoing naturalisation of settler colonialism positions settler states as exemplary of liberal governance universalised within and as Western law. A noted example transpired at the 2009 G20 Summit, when Prime Minister Stephen Harper found it useful to portray a gentle face for Canadian leadership by pointedly asserting that Canada 'has no history of colonialism'.[34] The significance of his comment was its clarity – notable for a leader quite familiar with critiques of Canada bearing a colonial relationship to Indigenous peoples. Harper obliquely invoked here the baggage of states such as the United Kingdom, France and Japan that negotiate tense relations with former conquests when governing global economics. On a global stage, Harper's Canada separates from colonial legacies in Africa and Asia to assert a moral neutrality that is conveniently consistent with the universality of international law. The confidence in Harper's statement would be implausible if his audiences – broader than we may care to think – truly believed that Canada practices colonisation. From theses of *terra nullius,* to justifications that 'guns, germs, and steel' made Indigenous replacement inevitable, to a sense that settler states 'decolonised' after rule devolved to white citizens: settlers readily present as other than colonists.[35] Yet while Harper might believe that as a Canadian he inherits something other than conquest, I suggest that his exoneration hinges less on such belief, and more on a general

appearance that 'Canada' exemplifies the universalisation of liberal modernity on the global stage. Interestingly, Harper's statement appeared barely a year after his government responded to years of Indigenous activism by issuing a state apology for the Residential School system. As a primary agent in the genocidal histories Lawrence recounts, Residential Schools forcibly relocated Indigenous children to sites where they were killed by disease or neglect, or survived to be assimilated into settler society via enforced separation from and erasure of familial and community ties. As an educative mode of disciplinary power, Residential Schools situated internees and all Indigenous peoples as children: wards of a state whose paternalism appears not only in past abuse but in the present apology, which suggests that the state will better manage the Indigenous people over whom it retains a power to protect or destroy. The apology's consistency with Harper's disavowal of colonial history naturalises settler colonialism both 'at home' and 'abroad'. We see here that the ongoing coloniality of settler states conditions their practice of liberal governance as not only Western, or even originally Western, but as universal *through* its instantiation by settler colonialism.

I have argued that settler law presents an apotheosis of Western law by utilising its consanguinal logic to amalgamate and eliminate Indigenous peoples and thereby enable settler states to performatively universalise the West. To the extent that they succeed, then global governance precisely continues, naturalises, and globalises *settler* colonialism in and as our 'colonial present'.[36] The Western law universalised by settler states formed precisely by incorporating and excising Indigenous peoples as potentially yet incompletely consanguine with the social body. If settler law as Western law is projected as liberal governance, it follows a principle that it may arrive and settle *anywhere*, as itself. Such law then encompasses the provisional humanity of all whom it occupies as racialised and primitive children, whose capacity for defiance nevertheless invests the West with a paternal authority to act as caretaker or killer of 'kin' under its care. My argument modifies our interest to read Afghanistan or Iraq as sites of settler colonialism, once the United States gathers its allies for occupation. Settler colonialism occurs at these sites not, or not only because the U.S. or other states occupy Afghani and Iraqi peoples. It occurs more

importantly because occupation performatively universalises Western governance through the nominal inclusion of Afghanis and Iraqis within its body of law, only to face elimination of their racialised primitivity: if not by being summarily placed 'outside' the law, then by being educated and contained through amalgamation as a potentially ever-endangering difference. Western law attains universality by containing and eliminating differences in the functional extension of settler colonialism as liberal governmentality.

Yet even as the West and its governance are liberated from attachment to place, their globalisation naturalises ongoing settler colonisation of Indigenous peoples in settler states. Indeed, by permanently remaining in a state of exception to settler law as Western law, Indigenous peoples model this status for all others who come under Western law's global reach. The settler colonial elimination of Indigenous peoples requires them to have existed and to tenuously exist in settler societies, for only their perpetual replacement demonstrates settlers' *achievement* of Western law where it would not otherwise exist.

THE GLOBAL SITUATION IN SETTLER COLONIAL TIME

Scholars must examine the past *and* present biopolitics of settler colonialism to challenge presentist horizons in theories of biopower and colonialism. I argued that liberal governance under Western law is presaged and instituted by the biopolitics of settler colonialism. Here, Indigenous peoples are recognised with a provisional humanity for amalgamation by settler nations, where their elimination nevertheless follows whether they defy or conform to a promised consanguinity with settlers who replace. Sherene Razack and Sunera Thobani have modelled the acknowledgment of settler colonialism as a condition of the colonial biopolitics scholars increasingly diagnose in contemporary states and global regimes. Yet my argument extends theirs by requesting even broader enunciation of settler colonialism as an activity directly manifesting as the biopolitics of the present. My account suggests that the growth of liberal modernity by universalising Western law and its exception was facilitated by settler states that circulate and sustain them today. Here I echo Anna Tsing's account of the conditions of theories and

practices of globalisation – 'the global situation' – when I argue that they also arise in relation to the intimate and systemic procedures of settler colonialism.[37] In particular, scholars must challenge ahistoricity in accounts of the coloniality of biopower, as these temporalise colonialisms in various pasts only to link them to supposedly unprecedented power relations in the present. Certainly distinctions within present power relations must be specified. But to posit their temporality as advanced beyond colonialism is to naturalise how settler colonialism acts continuously within them. The persistence and naturalisation of settler colonialism defines the present as colonial, while occluding settler colonialism's action in and *as* the power we wish to critique. Even to mark this would transform most work on coloniality and biopower. Yet while I did intend my words to call for such analysis, my argument more deeply marks the specific biopolitics of settler colonialism as generalised tactics of late modern power relations, which proliferate by naturalising their settler colonial conditions.

Agamben's work is ripe for such analysis given that, by the appearance of *State of Exception*, the superpower status of the United States becomes his central case. Yet given that his prior scholarship concertedly traced a European horizon, citing the United States as exemplary of 'Western' sovereignty occludes its formation *outside* Europe through settler colonial processes that remain opaque to his critique. For instance, when Agamben traces the history of the camp to Spanish Cuba in 1896 and to the twentieth century British conquest of the Boers, he omits knowledge in Native studies that nineteenth-century U.S. expansion used internment camps to relocate Indigenous peoples and to model their militarised containment on reservations.[38] Some scholars date this process to the 1837 Treaty of New Echota – passed by Congress in disregard of Cherokee protest – which through military force contained Cherokee people for removal on the Trail of Tears.[39] Another noted example is the 1862 Dakota War, in which Dakota peoples denounced the breaking of treaties by Congress and the State of Minnesota by fighting back against land theft. The war concluded with the largest mass hanging in U.S. history, of 38 Dakota men at the Lower Sioux Agency; the three-year internment of 1700 Dakota people at Fort Snelling on Pike Island, Minnesota, where over 300 died of starvation and disease; and the forced relocation of survivors hundreds of miles

to militarised reservations.[40] Pike Island sits at the confluence of the Minnesota and Mississippi Rivers, a central site of the traditional spiritual homeland of the Dakota people. Today it remains a Minnesota state park, where the now-forested internment site is overlooked by the massive stone fort, its gun turrets still pointing down at passing bicyclists and day hikers, while historical re-enactors of U.S. soldiers employed by the fort educate visiting children by teaching them how to march in formation while pretending to hold bayonets.[41] Dakota activist, historian and critical theorist Waziyatawin has helped lead annual Dakota Commemorative Marches the 150 miles from Lower Sioux Agency to Pike Island during the cold autumn season when these events transpired. Dakota activists continue to mobilise to 'Take Down the Fort' and return the lands and internment site to the Dakota people.[42] Given that the 1862 events followed Minnesota Governor Ramsey declaring that 'the Sioux Indians of Minnesota must be exterminated or driven forever beyond the borders of the state', the genocidal biopolitics that defined Dakota people for one and a half centuries would seem relevant to a history of the camp within Western modernity.[43]

I do not mark Agamben's neglect of histories such as this as an erasure correctable by citation. Rather, I am identifying here a naturalisation and continuation of settler colonialism within Agamben's theoretical apparatus and the horizons of critical theory. Certainly, Agamben's account of the camp elides the encampment of Indigenous peoples as distinctive nations resisting incorporation by a settler nation. Yet, at once, Agamben obliquely *invokes*, without discussing, two more cases of settler colonialism: Spanish removal of Cuban revolutionaries seeking self-rule on lands erased of Indigenous national difference; and British containment of Boer settler colonists so as to pursue their own white settler conquest of African peoples and lands. We see here that white supremacist settler colonialism was already fully present, yet fully occluded in the history of the camp provided by Agamben, whose citational trail leads to twentieth century Europe and National Socialism.[44] But what if we took Agamben seriously, so that whether marked or unmarked, his citations prove the case: that the camp *does* arise within white supremacist settler colonisation, only later to be transported to the Nazi regime? Does our understanding of the camp shift if its definition and containment of racialised populations by the modern

biopolitical state was a lesson learned in settler colonial situations and subsequently applied to Europe? Does the camp's spatialisation of the exception come to exemplify Western law only on its return-arrival to Europe; or, might it have borne that capacity on Indigenous American and African lands? Does its European arrival then constitute a reckoning with what the West could become by following lessons already learned under settler colonialism? And once the camp finally returns again to Cuba – this time, under the United States as supreme arbiter of global law and its exceptions – is settler colonialism irrelevant to its form? Does settler colonialism represent only a historical footnote to U.S. rule at Guantanamo Bay, as representative of an unprecedented scope of power in the contemporary world? Or does the ongoing life of settler colonialism in fact condition and produce all that is new and transformative about that power? Scholars can trace how the U.S. establishment of a 'zone of indistinction' for 'enemy combatants' on settled Indigenous lands learns from the conquest of Indigenous peoples and its naturalisation, which remain the state's foundational and sustained activity.

Regardless of the answers to my questions, the evidence that they have been unimaginable in theory of biopower – even if a theorist cites settler situations – indicates that settler colonialism remains naturalised within theory and requires a new genealogy to be transformed. Scholars must not interpret modern state biopolitics or its extrapolations in global governance as recent rather than deeply historical phenomena. Nor should we let the preeminent role of any settler state in those processes appear to be the action of 'the West', without specifying how settler colonialism acts as the West's leading edge by establishing *grounds* for the globalisation and universalisation of its governance. The biopolitics of settler colonialism sustain in the persistence of settler states, and we must interpret their activities as precisely enacting settler colonialism. These notably include the proliferation of Western modernity and liberal governance using methods first learned and still defended by settlement. National resistance to incorporation in the body of Western law continues to result in being placed in the camp. The power of Western law demands incorporation and justifies excision by containing the differences it encounters in a globalizing world: a

process highlighted already by Indigenous peoples who confront the West and its law as settler colonial.

In conclusion, I hope my analysis illuminates a key implication of Agamben's work: that 'if today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*'.[45] Agamben's statement acknowledges here a longstanding premise of the state of exception, that anyone incorporated into Western law may be assigned to this state: as the defiant son is eliminated by the father in exception to their bond, so the law excises people to constitute a People that returns to conformance with its rule. Yet his statement clearly foregrounds a more recent temporality in which proliferating permutations of the state of exception seem to blur its target, and suggest – using Butler's paraphrase – that today 'we are all potentially exposed to this condition'.[46] I submit that how Agamben's statement reads to you depends largely on whom you think he means by 'we'. Some of us will always appear to be part of 'the People' Agamben perceives within the body of Western law, as if our consanguinity is not in question until confronted by what we do with it. Some of us, however, only appear within the body of Western law once 'recognition' of consanguinity arrives as a violence to destroy collective *and* resistant difference. Thus, today, we are all exposed to bare life not because we appear *similarly* to Western law, but only to the extent that we are all caught *distinctly* in the hierarchies that structure its persistently colonial formation.

While I expect this point is not lost on my readers, it bears repeating. Ongoing reaction to the U.S. Patriot Act or the war on terror by many white Europeans and white settlers suggests that their potential exposure to bare life comes as an unwelcome surprise. Produced by the securitisation of liberal modernity, white liberal subjects might think that the Act or the war abrogate freedoms promised by a law that should protect them – the very law that they invite racialised and colonised peoples to affirm, as if extending its rule leads to liberation rather than subjection. Yet if we situate the Patriot Act or the war on terror in context of settler colonialism, as does Indigenous feminist theorist Andrea Smith, we can ask what shifts 'if we understand the Bush regime not as the erosion of U.S. democracy but as its fulfillment? If we understand

American democracy as premised on the genocide of indigenous peoples?'[47] Such a perspective informs alliances by Palestinians and Indigenous Americans who critique the war on terror for having linked white supremacy, Orientalism, and racial nationalism to reinforce the United States and Israel as settler colonial states. In such a light, Agamben's assertion might suggest that 'we' are all exposed to bare life to the extent that the colonial exception and its universalisation within Western law now mark all peoples for elimination just as Indigenous peoples always were and still are marked. Yet, conversely, if Agamben names an exception that settlers assigned to others now being potentially assigned to them, then for all of us to be exposed to bare life is to potentially position us all as settlers. I write provocatively here to suggest that a normative relationality between 'Indigenous' and 'settler' structures all logics of inclusion and exclusion in settler law and, therefore, in its universalisation as Western law. Scholars must interrogate how this power-laden distinction imbues not only settler societies, but also their conditioning of liberal modernity along global scales. We must theorise settler colonialism as historical grounds for the globalisation of biopower, *and* as an activity producing biopower in the present that requires denaturalising critique.

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NOTES

[1] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), Giorgio Agamben, *Means without End: Notes on Politics* (Minneapolis: University of Minnesota Press, 2000), Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology* (London: Continuum Publishing Group, 1999).
[2] Mark Rifkin, 'Indigenizing Agamben: Rethinking Sovereignty in Light of The "Peculiar" Status of Native Peoples', *Cultural Critique* 73 (2009), pp. 88-124; Wolfe, *Settler Colonialism and the Transformation of Anthropology*.
[3] Michel Foucault, Mauro Bertani, Alessandro Fontana, Francois Ewald, David Macey, *Society Must Be Defended: Lectures at the Collége De France, 1975-6* (New York: Picador, 2003), p. 241.
[4] Butler, *Precarious Life*, pp. 96, 94.
[5] Butler, *Precarious Life*, p. 96.
[6] Agamben, *Homo Sacer*, p. 6. Original emphasis.
[7] Agamben, *Means without End*, pp. 39, 41-2. See also Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005).
[8] Michel Foucault, *The History of Sexuality: Volume One, an Introduction* (New York: Vintage, 1978 (1976); Ann Laura Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things* (Durham: Duke University Press, 1995).
[9] Achille Mbembe, 'Necropolitics', *Public Culture* 15, 1 (2003), pp. 11-40.
[10] Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto: University of Toronto Press, 2007); Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2007).
[11] Rifkin, 'Indigenizing Agamben'.
[12] Michael Dillon, 'Cared to Death: The Biopolitical Time of Your Life', *Foucault Studies* 2 (2005), pp. 42-3; Katia Genel, 'The Question of Biopower: Foucault and Agamben', *Rethinking Marxism* 18, 1 (2006), pp. 43-62.
[13] Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research* 8, 4 (2001), p. 388.
[14] Patrick Wolfe, 'Structure and Event: Settler Colonialism and the Question of Genocide', in A. Dirk Moses (ed.), *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History* (Oxford: Berghahn Books, 2008), pp. 102-32.
[15] Katherine Ellinghaus, 'Biological Absorption and Genocide: A Comparison of Indigenous Assimilation Policies in the United States and Australia', *Genocide Studies and Prevention* 4, 1 (2009), pp. 59-79.
[16] Patrick Wolfe, 'Land, Labor and Difference: Elementary Structures of Race', *American Historical Review* 106 (2001), p. 881.
[17] Thobani, *Exalted Subjects*.
[18] Paul Gilroy, *Darker than Blue: On the Moral Economies of Black Atlantic Culture* (Cambridge, MA: Harvard University Press, 2010).
[19] Mbembe, 'Necropolitics', p. 21.
[20] Mbembe, 'Necropolitics', p. 23.
[21] Mbembe, 'Necropolitics', p. 25.
[22] See, for example, Renée Bergland, *The National Uncanny: Indian Ghosts and American Subjects* (Hanover, NH: University Press of New England, 2000); Philip Deloria, *Playing Indian* (New Haven: Yale University Press, 1998).
[23] Agamben, *Homo Sacer*, p. 87.
[24] Agamben, *Homo Sacer*, p. 88.

[25] Dale Turner, 'From Valladolid to Ottawa: The Illusion of Listening to Aboriginal People', in Jill Elizabeth Oakes (ed.), *Sacred Lands: Aboriginal World Views, Claims, and Conflicts* (Winnipeg: Canadian Circumpolar Institute, University of Manitoba, 1998), pp. 53-73.
[26] Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Boston: South End Press, 2005).
[27] Bonita Lawrence, *'Real' Indians and Others: Mixed-Blood Urban Native People and Indigenous Nationhood* (Lincoln: University of Nebraska Press, 2004).
[28] J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989), p. 207.
[29] Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (New York: Oxford University Press, 1999), p. 71.
[30] Glen Coulthard, 'Subjects of Empire: Indigenous Peoples and The "Politics of Recognition" In Canada', *Contemporary Political Theory* 6 (2007), pp. 437-60; Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham: Duke University Press, 2002).
[31] Coulthard, 'Subjects of Empire', pp. 438-9.
[32] Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge: Harvard University Press, 1993); Sylvia Wynter, '1492: A New World View', in Vera Lawrence and Rex Nettleford (eds), *Race, Discourse, and the Origin of the Americas: A New World View* (Washington: Smithsonian Institution Press, 1995).
[33] Mbembe, 'Necropolitics', p. 24. See also Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1967).
[34] David Ljunggren, 'Every G20 nation wants to be Canada, insists PM', *Reuters* (25 Sep 2009).
[35] Jared Diamond, *Guns, Germs, and Steel: The Fates of Human Societies* (New York: W.W. Norton, 1999).
[36] Derek Gregory, *The Colonial Present: Afghanistan, Palestine, Iraq* (New York: Wiley-Blackwell, 2004).
[37] Anna Tsing, 'The Global Situation', *Cultural Anthropology* 15, 3 (2000), pp. 327-60.
[38] Agamben, *Means Without End*, p. 38.
[39] Theda Perdue and Michael D. Green, *The Cherokee Nation and the Trail of Tears* (New York: Penguin, 2007).
[40] Kenneth Carley, *The Dakota War of 1862* (Minneapolis: Minnesota Historical Society Press, 2001).
[41] Much more could be said. My brief comments reflect my familiarity with this park and my witnessing of historical reenactments at the fort. See the Historic Fort Snelling website, <http://www.mnhs.org/places/sites/hfs/schoolhfs.html>, Accessed 1 Nov 2010.
[42] Waziyatawin (Angela Cavender Wilson), *In the Footsteps of our Ancestors: The Dakota Commemorative Marches of the 21st Century* (St. Paul: Living Justice Press, 2006); 'Take Down the Fort' campaign, <http://waziyatawin.net/commentary/?p=61>, Accessed 1 Nov 2010.
[43] Carley, *The Dakota War of 1862*, p. 76.
[44] In turn, each noted case of settler colonialism proceeded in relation to African enslavement: in struggle within white supremacist Cuba not a decade past slavery's nominal abolition; in the conquest of Boer slave-owners by British colonisers of African lands and peoples; and, indeed, in the thieving of the Cherokee homeland for Southern states – despite prior Cherokee participation in slaveownership – while the settlement of Dakota lands secured Minnesota for the U.S. North.
[45] Agamben, *Homo Sacer*, p. 115.
[46] Butler, *Precarious Life*, p. 67.

[47] Andrea Smith and J. Kehaulani Kauanui, 'Introduction: Native Feminisms Engage American Studies', *American Quarterly* 60 (2008), p. 244.