Dear Democracy and Citizenship Workshop participants,  

Thank you for taking the time to read what is an early draft of my first dissertation chapter.  

My title has changed since applying to the workshop. The chapter that I proposed presenting, on Doukhobor-Sinixt relations (horizontal, non-state interactions), will now come later in the dissertation. It became clear to me that it is important to first respond to current debates about the possibility of the state’s transformation in light of public and academic discussion of a state-Indigenous, “nation-to-nation,” relationship.  

In case anyone is interested, or would find it helpful to have a sense of the larger project, I’ve pasted my dissertation abstract below.  

I look forward to the discussion, as well as any comments and questions that might be directed via email: heiberg@uchicago.edu. Thank you in advance!  

**Dissertation Abstract**  

“Questioning the "political” turn to "multinationalism" in Canada: Disclosing non-liberal world-building alternatives”  

Since the 1970s, multiculturalism has been the guiding political policy of Canada's federal government with respect to diversity (Guo and Wong 2015). However, in the 1990s, a new political idiom began to emerge in political analyses of Canadian politics: *multinationalism* (McRoberts 2001). Multinationalism highlights the three "ethnic" collectivities that were part of the *founding* of the Confederation of Canada in 1867: the British (the dominant group), the French and the Indigenous peoples (Guo and Wong 1, 2015). It is well known that Canada is officially bilingual in recognition of its British and French founders, but only recently is it becoming part of mainstream discourse to consider Indigenous peoples outside the framework of culture, and in political terms as nations. This political turn is in part thanks to the 2007 UN Declaration on the Rights of Indigenous peoples to “self-determination” and momentous Indigenous movements, including the Idle No More movement in Canada. Theorists across the political spectrum are asking whether Canada's federalist political structure could be reconstituted to officially recognize Indigenous peoples on a more egalitarian "nation-to-nation" basis (Turner 2006; Tully 2008; Spitzer 2018). For theorists of liberalism, this political turn puts into question the stability of state legitimacy (Ivison 2002) and national unity (Cairns 2002). In contrast, a focal question for Indigenous scholars and theorists of democracy is: what possibilities does a multinational approach offer in terms of enhancing the political freedom of Indigenous peoples (Alfred 2005; Corntassel 2008; Stark 2003; Coulthard 2014), and Canadian citizens more broadly (Tully 2002, 2008; MacDonald 2014)?  

This dissertation investigates this latter question, by focusing on its rendition in the work of the influential Canadian public intellectual, James Tully (Hedetoft and Hjort 56, 2002). Tully argues that if Canada were to prioritize the principle of democracy over the principle of the rule of law, then the civic actions of Indigenous peoples and Canadian citizens could engage in processual change of the Constitution, making Canada more reflective of plural forms of political freedom (2002, 2008). I explore this proposition by looking at a specific site of civic action, the group-initiated reconciliation process between the Russian descended Soukhobors who displaced Indigenous people in the area of Brilliant, British Columbia (Wilkinson, Sutherland 2012). By looking at the possibilities this case presents for what might be loosely characterize as Arendtian plural world-building, a significant risk of the emerging multinational paradigm is brought to light: when Indigenous claims to self-governance are read to be foremost a claim on the state and its federalist structure, we risk reifying the very power and conception of politics that they – and democratic theorists – seek to challenge: Westphalian state sovereignty. When we look at a case between Indigenous people and a non-state settler group, Indigenous claims might be judged for the alternative, substantive political conceptions of the world that they forward, as opposed to their potential affinity to state sovereignty.
Canadian liberal sovereignty through territorial federalism: 
Illustrations from Francophone and Doukhobor history

Introduction
Since the 1970s, multiculturalism has been the guiding political policy of Canada's federal government with respect to diversity. However, in the 1990s, a new political idiom began to emerge in political analyses of Canadian politics: multinationalism. Multinationalism highlights the three "ethnic" collectivities that were part of the founding of the Confederation of Canada in 1867: the British (the dominant group), the French and the Indigenous peoples. While it is widely known that Canada is officially bilingual in recognition of its British and French founders, the multinational turn highlights that it is only now becoming part of mainstream discourse to consider Indigenous peoples outside the framework of culture, and in political terms as nations. This political turn is in part thanks to the 2007 UN Declaration on the Rights of Indigenous peoples to “self-determination” and momentous Indigenous movements, including the Idle No More movement in Canada. Theorists across the political spectrum are asking

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3 Guo and Wong 1.
5 Idle No More, “The Story,” states in part: “Idle No More has quickly become one of the largest Indigenous mass movements in Canadian history – sparking hundreds of teach-ins, rallies, and protests across Turtle Island and beyond. What began as a series of teach-ins throughout Saskatchewan to protest impending parliamentary bills that will erode Indigenous sovereignty and environmental protections, has now changed the social and political landscape of Canada.” As of Feb 2018, available at: [http://www.idlenomore.ca/story](http://www.idlenomore.ca/story)
whether Canada's federalist political structure could be reconstituted to officially recognize Indigenous peoples on a more egalitarian "nation-to-nation" \(^7\) basis. For theorists of liberalism, this political turn puts into question the stability of state legitimacy \(^8\) and national unity. \(^9\) In contrast, a focal question for Indigenous scholars and theorists of democracy is: what possibilities does a multinational approach offer in terms of enhancing the political freedom of Indigenous peoples \(^10\) and Canadian citizens more broadly \(^11\) ?

My dissertation investigates this latter question, by focusing on its rendition in the work of the influential Canadian public intellectual, James Tully \(^12\) and followers of the “dialogic democracy” approach that has been ascribed to him. Tully argues that if Canada were to prioritize “the principle of democracy” over “the principle of the rule of law,” then the civic actions of Indigenous peoples and Canadian citizens could engage in processual change of the Constitution, making Canada more reflective of plural forms of political freedom. \(^13\)

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\(^7\) Not all actors, especially public actors, who employ the phrase “nation-to-nation,” do so with a deliberate engagement of the broader multinational approach. An important commonality between “nation-to-nation” and “multinationalism,” is that both point to a restructured relationship between the Canadian government and Indigenous peoples that engages the latter as political nations. I therefore use the terms relatively interchangeably in this paper. In a later chapter of my dissertation, I will highlight the distinctions between uses of “nation-to-nation,” particularly by Indigenous scholars and actors, and directly engage the potential of the multinationalism framework to conceptually misrecognize Indigenous peoples’ conception of nation-to-nation; in this chapter, I explore the possibility of misrecognition indirectly via the outcome of two other groups’ historical engagements with federalism (the primary structural response to multinationalism).

\(^8\) Ivison, Duncan, *Postcolonial Liberalism* (Cambridge UPress, 2002).


\(^13\) Tully, “The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy” (2002); 2008.
calls to restructure the Indigenous-state relationship, this first chapter of my dissertation revisits Tully’s proposition by historically reconstructing the character of Canada’s federalist structure and the civic politics implied by it. By contemplating the federalist structure as the expression of “the rule of law principle” and the two case studies as particular expressions of civic politics, or the “principle of democracy” in a loose sense, this chapter provides a historical reconstruction of these otherwise abstract principles. In so doing, this chapter theorizes Tully’s influential normative proposition from the perspective of the limitations and possibilities of historical practice.

I start with reference to recent calls for a nation-to-nation relationship, followed by Tully’s argument. I will delve into both of these aspects in greater detail in later chapters; for now, a brief overview serves to provide the political and theoretical impetus for investigating Canada federalist political structure with a historical lens. I focus on two examples – Francophone nationalism and Doukhobor utopianism – which bring to light how culturally distinct collectivities which seek political autonomy have been substantially restrained through a territorial conception of federalism. As a form of decentralized rule, territorial federalism theoretically offers the possibility of locally defined and distinct forms of self-government, but in historical reality, forwards liberal politics at the civil (institutional structures) and civic (citizen practices) levels. Territorial federalism’s liberalizing effects are seen in different but related ways in these groups’ histories: Francophone nationhood politics adopted the sovereignty language of the state and Doukhobors adopted private property and other liberal practices associated with the

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14 “In a loose sense” because in speaking about groups’ political activities in early Confederate Canada, democratic freedom was not in full expression as we think about it today. Nonetheless, as Tully and others make clear, this principle is broad enough to describe the activities of political actors “on the ground” across contexts and times: Tully “The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy” (2002): 223, footnote 47.

15 I borrow from the work of Canadian political scientist, Kenneth McRoberts, in conceptualizing a territorially defined federalism.
state’s liberal conception of citizenship. As such, the plurality of these groups’ politics has become substantially constrained within the liberal horizon of territorial sovereignty and individual rights.

In different ways, the “liberalizing” effect of settler colonial politics on Indigenous peoples in Canada is well documented, and yet, Indigenous and non-Indigenous theorists and public actors alike posit an opportunity to orient the state toward Indigenous peoples in a non-dominating federal partnership. Viewing the state from various angles will help add depth to the disclosure of the shape and tendencies of Canadian federalism. The cases explored here, of non-Indigenous groups – “volunteers” to the Canadian project – struggling to achieve space for alternative forms of politics from the Anglo nation-state, accentuates the challenges that lie ahead when claims are made on federalism to go beyond making space for its own citizens’ plurality, and to decolonize\textsuperscript{16} in order to make space for Indigenous political orders on land simultaneously claimed by the state. Finally, while this analysis is principally motivated by the current political discourse on a new Indigenous-state relationship, I suggest we would be mistaken to read the discourse as solely or primarily a claim on the state. Reading it as principally a claim on the state begs the question of the broader politics through which the state is oriented. As we will see, the state has been oriented by a dominating form of legalistic sovereignty for most of its 150-year history. If the state is to be reconstituted by other kinds of political pressure, including from Indigenous peoples and settler citizens, settler citizens must also judge and understand the state’s relationship with Indigenous peoples. This analysis suggests that settler Canadian citizens’

judgment\textsuperscript{17} of federalism and nation-to-nation opportunities requires grappling with the fact that federalism has historically functioned to contain civic plurality – and that if the government repeats this history, it must be held accountable. With such an understanding in mind, critical space might be opened for reconceptualizing and reconstituting federalism to potentially allow for plural and decolonial politics.

\textit{A nation-to-nation relationship: a political future based on our treaty past?}

“For six months — Nov. 2012 to April 2013 — the entire country was invited to an actual dialogue about how to be a good neighbour and family member, and what it means to be a country where indigenous peoples have always led, always taught and always gifted newcomers a future … Everyday Canadians are calling for treaty education, information about residential schools and then asking “why have I never been taught that this is my history?” They are learning, often for the first time, what it means to be Canadian … It cannot be disputed though that the direction of Canada was profoundly changed as a result of [Idle No More] and there is more to come. While force is still a real possibility, Idle No More proved that Canada may be ready for another path too.”\textsuperscript{18}

The “dialogue” that Idle No More ignited in 2012 asked Canadians to look at Canadian history from Indigenous perspectives. About four years after Idle No More’s initiation, Indigenous peoples’ public affirmation of their sovereignty was emphatically juxtaposed to Canada’s national celebration of its 150th anniversary of Confederation (July 1, 2017).\textsuperscript{19} In light of these demonstrations, public discussions increasingly refer to Canada’s treaty history with Indigenous peoples, a topic that is entirely new for many Canadians. The epigraph gestures at a distinction between treaty making and “force,” and this distinction is reflected in the work of other

\textsuperscript{17} The topic of citizen judgment in settler colonial Canada will be more fully developed later in the dissertation.
\textsuperscript{18} Sinclair, Niigaan, “Idle No More: Where is the movement 2 years later? While dances in shopping malls have ended, there is no doubt Idle No More continues to shape Canada,” \textit{CBC} 07 Dec 2014, available at: http://www.cbc.ca/news/aboriginal/idle-no-more-where-is-the-movement-2-years-later-1.2862675 Sinclair is Anishinaabe (St. Peter’s/Little Peguis) and an associate professor at the University of Manitoba, and one of the editors of \textit{The Winter We Danced: Voices from the Past, the Future, and the Idle No More Movement} (2014).
\textsuperscript{19} Linked together by the “Resistance 150” hashtag account symbols and memes circulated on distorted Canadian flags, reading: “Colonialism 150,” “End 150+ Years of Genocide and Land Theft: Now That Would be Worth Celebrating,” “National Day of Action: Unsettling Canada 150,” “Oh Canada, your home on Native land” (a pun on the Canadian national anthem lyrics: “Our home and native land”). As of Feb 2018, the Resistance 150 Twitter account is available at: https://twitter.com/resistance150?lang=en
Indigenous and non-Indigenous scholars in Canada. For example, Tully notes that in the case of Worcester v. the State of Georgia [1832], Chief Justice Marshall of the Supreme Court of the United States proclaimed that when Europeans arrived in what is now North America, the peoples they met were “independent, self-governing nations equal in status to European nations.”

It is this early contact period referenced by Chief Justice Marshall that Tully and others reference as historical evidence for European political actors’ attitudes of Indigenous peoples as politically equivalent in status, though not in customs, to European states.

The period of relative equality ended when settlers transitioned from a trade-based interest to large-scale agricultural-based settlement and the development of settler policy that attempted to assimilate and dispossess Indigenous people in order to gain control over land. In the 1960s the state moved away from an explicit assimilation agenda to the policy of “multiculturalism.” Within the policy framework of multiculturalism, the government of Canada “recognizes” Indigenous peoples through special Constitutionally entrenched rights. These rights protect Indigenous peoples’ cultural autonomy through a non-interference approach, “as long as they do not engage in ‘internal restrictions’ of a kind that violates fundamental, liberal rights.”

As many have persuasively shown, multiculturalism ensnares Indigenous peoples in a liberal

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20 Tully (2008): 233-4. I do not have time to go into detail here, but it is worth mentioning that while I think that Tully’s historically informed and nuanced perspective on settler states is productive, following others, I see a tension between the “non-sovereign” democratic politics that Tully theorizes and the “sovereignty”-based partnership politics he posits as a positive model for the state and Indigenous peoples. David Armitage questions the strain of “sovereignty” and “rights” talk in Tully, while Patchen Markell raises a worry about sovereignty from another angle, specifically that it creeps into Tully’s conception of democracy because it relies on recognition practices. See: Armitage, David, “Probing the Foundations of Tully’s Public Philosophy,” Political Theory 39.1 (2011): 124-130; Markell, Patchen, “The Recognition of Politics: A Comment on Emcke and Tully,” Constellations 7.4 (Dec, 2000): 496-506.


conception of freedom, where freedom is implied to mean sovereignty from certain legal interference. Protected by certain majority decisions of the wider Canadian public, Indigenous communities are still at the helm of de-politicized “services” (such as education, resource development and family law) administered by state agencies. Multicultural rights thus create a “double bind” for Indigenous peoples’ freedom: they are expected to live up to the group autonomy enshrined in law and then are blamed when they do not “emancipate” themselves according to their Constitutional “accommodation.” In this way, the multicultural approach creates a façade of cultural sovereignty that is implied to provide the basis for “free choices,” based on liberalism’s individualist oriented ontology.

Seen against multicultural politics, the multinational approach has a clear advantage. Whereas multiculturalism, signals a rights-granting power that relies on recognition politics, i.e., the state, and thus Indigenous peoples’ political dependence on the state, multinationalism signals Indigenous peoples’ political distinctiveness independent of the Canadian nation-state. For some Indigenous theorists and leaders, a “nation-to-nation” relationship agreement would “restore the pre-colonial relationship of sharing and cooperation among diverse peoples” and support the resurgence of Indigenous peoples’ freedom to determine their governing practices. Similarly, Heidi Kiiwitonepinesiik Stark states, "Indeed, the existence of treaties confirms a nation-to-nation relationship between indigenous nations and the United States; These treaties recognized and reinforce each nation’s sovereignty.” Finally, Rachel Flowers notes the

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23 MacDonald, 611.
24 For example, see: Coulthard 2014; Simpson 2014.
25 Alfred goes so far as to state that “the only possibility of a just relationship between Onkwehonwe [original people] and the Settler society is the conception of a nation-to-nation partnership between peoples, the kind of relationship reflected in the original treaties of peace and friendship.” See: 156, 2005; Similarly, see Coulthard 163, 2014.
26 Stark, (2013): 341. Here Stark is specifically referencing treaties made with the United States, but she describes the same process occurring with the United States and Canada in: “Marked by fire: Anishinaabe articulations of nationhood in treaty making with the United States and Canada,” The American Indian Quarterly (2012).
connection between a treaty relationship and the role of settler citizens in keeping the Canadian government accountable for its agreements:

"In our struggles of freedom it is essential that we maintain a treaty-like relationship wherein Indigenous peoples and settlers are linked together but neither interferes in the matters of the other. When the state interferes in our business, then it is the obligation of settler subjects to oppose the misconduct of their government. Not for our benefit, but because that is what it means to live lawfully in a treaty relationship."

Indigenous voices are not the only ones calling for a nation-to-nation relationship, as media stories in Canada frequently reference multinational language and the federal government has itself taken the position of rebuilding such a relationship. The federal government’s 1996 report, the Royal Commission on Aboriginal Affairs, affirms the nation-to-nation relationship, which was once again affirmed in 2015 and earlier this year. Tully, who was himself a participant in the Royal Commission on Aboriginal Affairs, argues that a nation-to-nation

28 Four Aboriginal and three non-Aboriginal commissioners were appointed to investigate and report back to the Government of Canada on one over-riding question: What are the foundations of a fair and honorable relationship between the Aboriginal and non-Aboriginal people of Canada? The Commission held 178 days of public hearings, visited 96 communities, consulted dozens of experts, commissioned scores of research studies, reviewed numerous past inquiries and reports. Their five-volume report was released in 1996. For a condensed version, see: Canada, Royal Commission on Aboriginal Peoples. People to people, nation to nation: Highlights from the report of the Royal Commission on Aboriginal Peoples available as of Feb 2018 at: http://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637 ; James Tully was a “Philosopher and Advisor” to the Canadian Royal Commission on Aboriginal Peoples, 1992-95: (Co-author) "The Principles of a renewed relationship", Report of the Canadian Royal Commission on Aboriginal Peoples, volume 1 (Ottawa: Canadian Communication Group, 1996) pp.675-96.
relationship can be modeled on a particular thread of history of European settler relations with Indigenous peoples in what became North America. A defining feature of this period was the fact that political negotiations were *grounded in the plural life ways* of the different collectivities:

“One feature that made the early modern practice of treaty talks effective was that the partners could return to their own customs and ways at the end of the day. Their strength in negotiations was grounded in the actual practice of the way of life they were defending… one has to be grounded in the alternative world one wants to defend and advance through them.”

31 Tully contends that the British Crown’s early contact policy that recognized the “customary ways” of Indigenous peoples32 was overtaken by modern political thought, particularly of John Locke, and the specific understanding of contract partners as necessarily of agricultural-based civilizations.33 This particular Euro understanding of political partners was simultaneously presented as “universal,” crowding out room for other conceptions of political agreement making. What Tully calls the “problem of hegemony” crystalized with this universalizing conception of contract making: “negotiations unfold within the institutional and discursive matrix of one of the partners, the nonindigenous partners, and the play of consent and dissent takes place within its boundaries.”34 Building off of Indigenous movements, Indigenous theory, democratic theory and an interpretation of political freedom’s tension with law through history to the ancient Greeks, Tully’s proposed way out of the hegemony problem involves the animation of democratic freedom, the site in which plural human customs and creativity have their life.

32 Ibid., 233-4.
33 Ibid., 236.
34 Ibid., 242.


**Reprioritizing democratic freedom over the rule of law**

The problem of hegemony in Canada, in which the legal orders of the state predetermine the possibilities for democratic consent, is characteristic of modern constitutional democracies’ paradox:

(1) modern constitutional forms are said to gain legitimacy from the consent of a pre-constitutional people; while at the same time (2) such a "people" require a constitutional form through which to exercise their constituent power legitimately. The modern constitutional tradition is born from this tension of wanting to maintain an equal foundational commitment to the fundamental principles of the rule of law and democracy and what has been described as the law's facticity and its normativity.”

Tully locates the source of this incoherency to the fact that modern political theory and politics grounds itself in the idea of an abstract position from which ‘the people’ of a soon-to-be constitution, give their consent. But giving consent requires a set of linguistic rules and practices that participants mutually recognize. In other words, there is already a community of some kind that grounds the constituting people; giving consent cannot coherently be imagined to take place abstractly. This is arguably a defining feature of modern liberal states: the rule of law, or the legal structure and norms of the state, determines possible changes within its borders, while being normatively presented as “universal” because it is guided by the transcendent values of liberty and equality. Writing in response to the question of the limits and possible alternatives to “constitutional liberalism,” Tejas Parasher summarizes the hierarchy of state law over democratic pressure: “structural liberalism tries to keep political action bound within the state’s interpretation of the rule of law, whereas modern democracy allows for popular sovereignty to be

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36 In modern political thought, the abstract position and point of view took the shape of “the State of Nature” in Hobbes, Locke and Rousseau, and in contemporary political thought, the “Original Position” in Rawls and “the ideal speech situation” in Habermas. See: Simpson (2008): 516, footnote 16.
exercised in ways that may oppose instituted government.” While Canada might commonly be thought of as a “modern democracy,” Tully argues that it tends toward the legal determinism of a “modern constitution.” Modern and current political negotiations between Indigenous peoples are an example of this: they are presented as taking place within institutions that hear Indigenous peoples’ claims through a lens of neutrality and fairness, but are materially and discursively set within the limits of the state’s laws. Based on the information so far released, we can read the federal government’s recent announcement of a major step toward a “nation-to-nation” relationship as yet another example of modern law at work. The announcement states that Government of Canada will develop – in full partnership with First Nations, Inuit, and Métis Peoples – a “Recognition and Implementation of Rights Framework,” but there is nothing to suggest that it is discontinuous with the multicultural approach of granting special rights. In contrast to a “modern constitution,” Tully describes a “common constitution,” which would be a constitutional structure that could be constantly updated by the common practices of people on the ground including Indigenous forms of governance.

Whether one agrees with Tully that the British Crown ever actually approached Indigenous peoples with a genuine interest in the continuation of their customary practices, Tully’s diagnosis of modern politics and his freedom-centered alternative orientation for settler citizenship provides a productive starting point for analysing the potential of a new “nation-to-

40 Tully (2008).
nation federal-like relationship.”42 A relationship is not a single event, and thus a federal relationship would require practices and norms that orient the state and settler citizens over time. Recalling Flowers’ call for a duly carried out treaty relationship, could federalism provide a suitable political orientation to respond to her more general challenge?: “Until the settler can imagine alternatives to relations of domination-subordination framed as “coexistence”, put those changes into practice and sustain them, Indigenous peoples need not entertain their fantasies or sympathies.”43

For the remainder of this paper, I explore the late modern and contemporary history of the Canadian state’s engagements with two groups of people: Francophones and Doukhobors. I suggest that these cases bring to light the state’s tendencies to use the institution of federalism as a tool of modern liberal governance, or “constitutional liberalism,” meaning that the field of social and civic relations is determined more by the rule of law than vice versa. Without critical re-evaluation and reconstitution, the employment of the federalist structure in Canada would likely be more akin to the state’s unitary sovereignty tactics of the latter half of the twentieth century toward Francophones and Doukhobors than early-contact treaty making. In other words, these histories do not necessarily determine the shape of federalism into the future but rather, following Tully’s method of “political philosophy as a critical activity,”44 uses these cases as part of a genealogical perspective of the formation of federalism in Canada. With this history in mind, “federalism” can be more readily seen as a contingent set of practices, the imposed artificial

42 The full quote from Tully read: “The treaties thus establish a nation-to-nation federal-like relationship or partnership of shared sovereignty between the Crown and the Indian nations that is based on consent and open to renegotiation or “repolishing” over time if the partners deem it necessary”: Tully (2010): 237.
43 Emphasis added, Flowers, 37. It is worth emphasising because the idea of a sustained practice and orientation on the part of citizens in the nation-to-nation discourse is noticeably absent or underdeveloped. As I have already mentioned in another footnote, I plan to develop the idea of settler citizenship judgment, building on the work of Aristotle, Hannah Arendt, Linda Zerilli, and others, elsewhere in the dissertation in detail, but it seems important to note it in this chapter – though I am not sure of the best way to do that. Ideas in this regard are most welcome.
limits of which, can be more readily seen. While we cannot hope to judge federalism from an abstract position and form a new Indigenous-state contract from a “clean slate” – we are necessarily situated and write from within the federalist institutions that we have inherited – telling its history allows us some critical but not abstract distance from it. From a historically critical lens, settler citizens’ judgment of our government’s participation in a federalist relationship with Indigenous peoples might be oriented by more pluralistically open relationships.

**Federalism: a means to multi-nationalist expression and “human” potential in Canada?**

The colonial settlement of the French and British in what became Canada has embodied a struggle over whether federalism – the state’s founding legal structure – could satisfy both European nations. Canadian political actors and theorists are not alone in seeing federalism as a structure that can preserve multiple nations within a state. Speaking generally, Barry Buzan argues that the multination state can be of two kinds: “the federative state and the imperial state.”

A “federative state” jettisons the goal of a “nation-state” or a state unified by a single national sense of belonging. Instead, the distinct nations are supported in their pursuit of “their own identities” by a state structure that protects against the dominance of the state structure by any particular nation. The only existing example that Buzan provides is Canada. Canada is an example by virtue of the powers allotted to the traditionally French province of Quebec. That Indigenous peoples are not mentioned is testament to the lack, until recently, of mainstream consideration of Indigenous peoples as one of three peoples present during the founding of Canada. An “imperialist state” by contrast state is dominated by one of the nations. It can be

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46 Yugoslavia is listed as a formerly existing example.
dominated through brute force, or through what might be characterized as strategies of governmentality, or the design and delivery of services that promote a single language and culture. Formally a Confederation between the English and French, Buzan’s example of Canada makes sense; but a genealogical study shows how the ‘federative state’ has been employed to maintain the ‘imperial state’ of the Canadian nation-state, or the aspiration of a unitary Anglicized nation-state.

It is not widely known that Pierre Trudeau, Canada's Liberal Prime Minister from 1968-1979 and again from 1980-1984, made one of the first “Canadian references” to Canada as “multinational state” in 1962. Published in an influential Quebec-based political journal, Trudeau suggested that by abandoning aspirations to a separate nation-state, Quebec could help establish Canada as a model multi-nation state:

the different regions within the country must be assured of a wide range of local autonomy, such that each national group, with an increasing background of experience in self-government, may be able to develop the body of laws and institutions essential to the fullest expression and development of their national characteristics … By the terms of the existing Canadian constitution, that of 1867, French Canadians have all the powers they need to make Quebec a political society affording due respect for nationalist aspirations and at the same time giving unprecedented scope for human potential in the broadest sense.

In line with Buzan’s description of a ‘multination federation,’ Canada’s former Prime Minister suggests that federalism could allow for the expression of French Canadians and not just

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47 Such as “genocide, forced relocations, imprisonment”: Buzan, referenced in Neack, 28.
48 Ibid.
49 The father of the current Prime Minister, Justin Trudeau.
English speakers. The parallel that Trudeau draws between local, nation-based autonomy and humanistic development can be seen in earlier liberal public intellectuals like Lord Acton:

‘The co-existence of several nations under the same State is a test, as well as the best security of its freedom. It is also one of the chief instruments of civilization; and, as such, it is in the natural and providential order, and indicates a state of greater advancement than the national unity which is the ideal of modern liberalism.’

Lord Acton was responding to John Stuart Mill, who is known as an advocate for the development of individuality, but who argued that political institutions ought to track a single national collective. Lord Acton seems to be suggesting that the existence of collective forms of plurality within a state is actually a condition of freedom, highlighting discord in liberal thinkers’ positions on the relation between state and nation.

The cultural origins of Francophone nationhood

Canada’s Francophone population have always had a strong sense of nationhood but its meaning has changed over time. As far back as the 1820s, approximately six decades before Canadian Confederation, Francophone settlers across what became known as North America had a sense of nationhood that was culturally constituted, meaning that their bond was not based in a shared, localized territory, but rather, they were diffusely situated, yet bound by a shared history of customs. It was this culturally rooted sense of nationhood that inspired the early Francophone participation in Canadian Confederation. In contrast, the Confederation of the Anglophone “colonies” (what would become the provinces) was based on the unification of sub-territories.

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51 McRoberts interprets Trudeau to be suggesting that nations can secure institutional autonomy to “legitimately” carry out their particular collective interests (emphasis added, McRoberts, 691-2). Read through the distinction between law and democracy, this implies that national communities that don’t achieve institutional autonomy from the state, do not gain “legitimacy” in the political system of constitutional democracies; their “democratic freedom” is not “constituted.” It is not “officially” political.
53 McRoberts, 685-6.
54 Ibid., 688.
According to Canadian political scientist Kenneth McRoberts, this highlights two principles at work in the history of Canadian federalism: *culture* and *territory*. McRoberts casts Canada as unique in this respect: in contrast to the United States, where federalism ultimately decentralized according to territorial distinctions, and in Russia where it was decentralized according to cultural distinctions, Canada appears to be the only federation to have been founded on *both* of these "*competing* principles."

The idea of a Canada as a “bination” – between the territorially rooted Anglophone nation and the culturally rooted Francophone nation – has been ambivalently expressed in thought and federal practice throughout Canada’s history. After Confederation the bination idea was strong in intellectual and political circles – on the Francophone side. Based on the "little explicit recognition of binationalism" in the Constitution and the fact that the federal government has done little to abide by "consociational norms and practices," McRoberts questions whether the Anglophone descended federal government has ever genuinely identified with the idea of Canada as a binationally founded country. In addition to the lack of state practice officially affirming Francophone nationality, in the aftermath of World War II and the waning connection of the larger British nationality connection, English speaking Canada aspired to a stronger collective identity, instead of seeking devolved powers of institutional autonomy, English speaking citizens saw the federal government itself as their champion. At least partly in response to this pursuit of Anglicizing the Canadian state, in the 1960s, Quebec’s majority Francophone population was developing into a neo-nationalist movement. In turn, the federal Liberal

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55 McRoberts notes the following examples of countries that were founded on the territorial principle “of the US”: Argentina, Australia, Brazil, The Comors, Germany, Malaysia, Nigeria, St Kitts and Nevis, Switzerland and Venezuela. Countries modeled on the cultural principle: Belgium, Ethiopia, India, Pakistan, Russia, the United Arab Emirates and Yugoslavia: McRoberts, 700-701.
56 Ibid., 695.
57 Ibid., 698.
58 Ibid., 699.
government of Lester Pearson affirmed – at least in noticeable comparison to the next Prime Minister, Trudeau, to whom I return to next – the binational compact of the English and French founders by allotting “various asymmetrical arrangements” to the province of Quebec.\(^{59}\) A majority of federal government leaders affirmed this position.\(^{60}\) It would appear that this represented a short-lived period of the binational idea in federal thought and practice.

*From cultural to territorial nationalism*

Whatever positive ideas Trudeau had once expressed about multinationalism, they had little bearing on his practice in federal office.\(^{61}\) Responding to Francophone nationalism and Pearson's offering of asymmetrical powers to Quebec,\(^{62}\) Trudeau sought to unite Canada through the state, and effectively built upon the post-war English nationhood project. Through a strong national government and centrally bestowed individual rights, Trudeau linked individual citizens to the federal government, no matter how geographically or culturally far away they were from the home of the federal office in Ottawa, Ontario. Civic participation in Canada would no longer be fraught along cultural lines. Any federally decentralized rule that individuals take part in would be according to territorial location – linking up decentralized rule with the transcendent values of liberty and equality for each individual. Trudeau’s 1962 Lord Acton-like sentiment that internal nations might achieve their human potential by the practice of local self-government would instead be replaced by a more Millian sentiment: participation in institutions is based on national attachment to equal individual rights. Based on this focus of “the protection of individual rights

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\(^{59}\) McRoberts, 695.
\(^{60}\) Ibid., 696.
\(^{61}\) Ibid., 691-2, 694.
\(^{62}\) Ibid., 696.
and the uniformity of rights across the country,” McRoberts argues that since Pierre Trudeau, Canadian “federalism can only be about territory.”\textsuperscript{63}

With political rights affirmed in the form of liberal individual rights, cultural forms of belonging were channeled away from “nations,” and\textit{ onto individuals} distributed across\textit{ one nation}: Canada. Recalling the multicultural approach discussed earlier in reference to Indigenous peoples, Trudeau’s official multiculturalism and bilingualism federal policy of 1971,\textsuperscript{64} provided recognition of cultural expression to each individual so long as the culture did not violate basic individual rights. This would simultaneously downplay the importance of culture to the Francophone claim to\textit{ political autonomy} and raise the importance of culture, broadly understood, to the national identity of the Canadian nation-state. Francophones’ national status would become diluted among official recognition of all cultures. In fact, McRoberts argues that this federal policy effectually usurped Francophone cultural impetus for nationhood into the Canadian national identity. McRoberts explains that whereas other “majority nationalisms” do not portray themselves in terms of the minority language (Spanish nationalism, for example, doesn’t represent Catalan, Basque, or Galician in central institutions). In contrast, French is given formal equality with English in the national government and presumed to be recognized throughout the Canadian nation. McRoberts argues that in this way, a central basis of Quebec’s claim to nationhood, the French language, is instead attached to the Canadian nation as a whole.\textsuperscript{65}

Rather than bringing Francophones closer to the Canadian nation-state, multiculturalism and bilingualism policy merely strengthened the allegiance of the 75 percent of Canadian citizens who did not already belong to an internal nation\textsuperscript{66} to the Canadian nation-state. This only further

\textsuperscript{63} McRoberts, 701.
\textsuperscript{64} Ibid., 698.
\textsuperscript{65} Ibid., 700.
\textsuperscript{66} Ibid., 698.
deepened the line between Canadian (Anglicized) and Francophone nationality. Indeed, from this point on, the federal (Bloc Quebecois) and provincial (Parti Quebecois) Francophone parties transformed their political attention to an aspiration to “full sovereignty”: secession to an independent nation-state.67 The scripts about nationalism and the federal structure seemed to have flipped: whereas the Francophone nation was once pursued on the basis of culture, it turned to sovereign territoriality; and whereas the Anglophone colonies of Canada west were defined by territory, it turned to the presentation of national unity based in cultural appreciation (while in practice being cultivated through the state apparatus). By vying for institutional powers through the state’s legal structure, the model of politics as state sovereignty came to dominate politics on both nationhood fronts. We might interpret Quebec’s articulation of itself as equally deserving of nation-state status as creating a more equalized challenge to the Canadian state. However, it arguably makes Francophone nationhood more predictable, as its aspirations are now clearly expressed within the structure of constitutional sovereignty, and potentially more manageable for the Canadian state.

The plasticity of territorial federalism: the case of Doukhobor domestic colonies

“Confederation drew upon the federal principle in a most creative fashion.”68 Not only does McRoberts unearth the different ways that different nations have engaged federalism in Canada, but he also suggests that theorists of the Canadian context, Philip Resnick and Will Kymlicka specifically, draw an artificially hard distinction between “internal nations” and ethnic groups, occluding a fuller understanding of Canada’s plurality. McRoberts notes how some collectivities

67 McRoberts, 697.
68 Ibid., 695.
may have political aspirations that are not expressed through nationalism.  

My own community, the Doukhobors are a case in point, and are slowly, but increasingly referenced as a group that blurs our understanding of who should be, or have been, considered for federally devolved, “consociational” powers. As Arneil brings to light, the Doukhobors’ and other non-Franco and non-Anglo ethnic minorities’ political activities in the early years of Canadian Confederation – overshadowed by Anglophone and Francophone national rivalries – were in fact formative in the development of Canada’s multicultural policy. Building on McRobert’s characterization of territorial federalism together with Arneil’s conception of Doukhobor domestic colonies, I will argue that while the Doukhobors exerted culturally defined political power on the Canadian government, the state engaged them in the spirit of territorial federalism.

**Doukhobor political utopianism**

The Doukhobors originated in the politically tumultuous Caucasus region during the 17th century as protestant peasants who emphasized communal self-sufficiency and pacifism, embraced in their adage, “toil and peaceful life.” Subjected to violence, torture and exile due to their protest of Tsarist hierarchical rule and their refusal to pledge allegiance, the Doukhobors were looking to emigrate from Russia at the same time that the Canadian government was soliciting immigrants to break the land in the western part of the country in the late nineteenth century. Several anarchist sympathizers, including Peter Kropotkin and Leo Tolstoy, and their friend, James Mavor (a professor at the University of Toronto), suggested to the Canadian minister of

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69 McRoberts, 701, footnote 53.
70 For a recent example, see Spitzer, 13: Surveying the terrain of ‘national groups’ in Canada, Spitzer rhetorically asks, “Do African-Nova Scotians deserve internal self-determination? Do Doukhobors?”
immigration, Clifford Sifton, that the Doukhobors would fit well into the government’s plan to accelerate cultivation of the prairie region.\textsuperscript{73} When the Doukhobors arrived between 1899 and 1900, it was under terms that were already negotiated on behalf of them by their sympathizers. They were granted certain cultural, religious and economic concessions in exchange for their commitment to contribute to the agricultural needs of the newly formed country. They were exempt from military service, as well as civil registration and were permitted to live and work on land communally. The latter two concessions were requested by the Doukhobors in order to help them live self-sufficiently and avoid sharing their “interior life” with the government.\textsuperscript{74} While aiming to avoid the permeation of their community by government policy, isolation was imagined as a way to in turn, permeate the larger society with an alternative set of values and practices. They sought to be separated from society in order to cultivate practices that would challenge the kinds of politics they resented in autocratic Russia and to establish the “vanguard” in the modern state of Canada that would challenge the immorality of militarism, private property, capitalism, individualism and sovereignty.\textsuperscript{75}

Based on the fact that the state agreed to allow the Doukhobors to live in “domestic colonies,” one might read this as evidence of liberalism’s accommodating flexibility – through federally devolved powers – of even outright non-liberal practices of self-government. Enabling the Doukhobors to bypass foundational conditions of the immigrant-state contract in Canada, the segregation the Doukhobors achieved gave them relative distance from other settlers and the state to live according to centuries-old practices brought with them from Russia. Many Doukhobors


\textsuperscript{74} Elkinton, Joseph, The Doukhobors, their history in Russia, their migration to Canada (Philadelphia, Ferris & Leach, 1903): 138.

\textsuperscript{75} Arneil (2017): page 30 of earlier Word version of manuscript; (2018): 6, 20.
fondly look back on this period as the “communal period.” However, pursuing the longer history of the Doukhobors in light of Arneil’s conceptualization of domestic colonialism in Canada, illustrates how the short-lived autonomy they achieved would ultimately be served the state’s aspiration to sovereignty over Indigenous land and over the immigrating population.

As Arneil’s nuanced look at colonial history illustrates, European imperial powers often practiced a form of “domestic colonialism” within their home states, including settler states, like Canada. Arneil describes the common understanding of “colonies as overseas locations where European states extended power over foreign peoples and lands via processes of domination, dispossession and assimilation, linked inextricably to empire.” While this is absolutely the most common, mass scale, and violent history colonialism, the nineteenth and twentieth centuries saw extensive use of colonies “within states,” “targeting fellow citizens,” specifically “minority groups of fellow citizens based on classes, race, disability and/or religious and political beliefs.” Domestic colonies served to “solve” the “problems” posed by these groups and existed simultaneously with settler colonialism, indeed through the displacement of Indigenous peoples from their territory.

As “problematic settlers,” the Doukhobors’ political and ethnic origin did not fit the federal government’s Anglicized nation-building project, however, they were ideal settlers in terms of the state’s state-building project: placing agricultural settler labour over top of Indigenous land. In Arneil’s words: “the contradiction of the Doukhobor colony is in the fact that it simultaneously served the objectives of the settler state even as it challenged the very Lockean

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76 Woodcock and Avakumovic.
78 Ibid., 4.
79 Ibid., 14.
principles of private property and state sovereignty upon which that state was founded.”

The state’s construction of domestic colonies would “solve” this contradiction over time, through the combination of segregation and agricultural labour, which modern liberal ideology accepted as having the effect of “improving” subjects. Tracing the etymology, Arneil illustrates the integral relation between colonial settlement practices and citizen conditioning:

“the etymological origins of Latin words colonia (agricultural settlement), colonnus (farmer) and colere (cultivation) show how foundational agrarian labour is to the word colony. While largely overlooked in contemporary post-colonial understandings of colonialism and colonization, I argue agrarian labour remained absolutely central to a critically important thread of colonial thought and practice beginning in ancient Greece and Rome through John Locke’s early modern colonialism to twentieth-century domestic colonies.”

Through domestic colonies, the state could, according to modern liberal standards, improve people and land simultaneously. While the Doukhobors saw the normative good of their relative autonomy within their colonies to be the challenge it posed to the state’s orders, the state saw the normative good of the domestic colonies to be a challenge to the Doukhobors, themselves, in terms of planting the seeds of their eventual dissolution. In the state’s view, agricultural labour would eventually turn the Doukhobors into assimilated liberal citizens.

**From an alternative political vision for society to a private culture**

While culturally and politically inspired from the Doukhobors’ perspective, I argue that from the state’s perspective, Doukhobor domestic colonies were effectively territorially defined spaces. The government never affirmed the value of the Doukhobors’ alternative practices of self-
government; rather, the government provided the Doukhobors a realm of political autonomy based on the longer term lens of the development of individual liberal subjects. Doukhobor colonies would be fertile ground for the cultivation of modern liberalism’s picture of the universal citizen: one oriented by a world of private property and individual rights. Eventually, the Doukhobors would be like other citizens who might reside in territorially defined regions, but would be subject to jurisdiction that was unified from the centre. From this angle of history, light is shed onto the intimate relationship between Canada’s federalist structure and the projects of settler and domestic colonialism.

George Woodcock, a noted Canadian political historian hoped that the 20th century modern democracy of Canada and its “defined regionalism and federalism,” would, in contrast to the 19th century autocratic Russian state, allow for “pockets of eccentricity,” such as the Doukhobors. But when the Canadian government changed its course of policy to aggressive assimilation tactics, the promise of the Doukhobor collective experiment in Canada waned. Woodcock and Avakumovic write that in 1906, “the authorities began to pursue a new policy deliberately aimed at encouraging individual farming by the Doukhobors … in spite of assurances in 1902 that the Doukhobors would be allowed to live in villages.” They add that the government created an unnecessary technical requirement, the pledge of allegiance, to holding communal land “as an excuse to seize land for which there was public demand.” In response to these changes, the Doukhobors fractured into three groups, with one group accepting the private

85 The Department of the Interior “under Oliver’s leadership to embrace an aggressively assimilationist model articulated in an internal government document. “Doukhobors will need a constant watching until schools and contact with other settlers will transform them and make them think in the same way as an ordinary man does”: Yerbury, J.C. “The ‘Sons of Freedom’: Doukhobors and the Canadian State.” Canadian Ethnic Studies/Études ethniques au Canada 16.2 (1984): 47; Cited in Arneil (2018): 18.
86 Woodcock and Avakumovic, 218.
87 Ibid., 221.
property requirements, one group that continued to fight to live collectively, and one group that had a very small minority that turned to destroying public and private property in protest. Failing to distinguish between this minority and Doukhobors more generally, the public came to associate all Doukhobors with a culturally peculiar “extremism” rather than the product of clashing senses political community. 88 This increased the hostility between the Doukhobors and those in the wider public identifying with the developing Canadian nationalism. Woodcock lamented the Canada’s version of federalist democracy when he finally had a chance to meet the Doukhobors. Adams and Kelly write, “Rather than exemplars of anarchism, [Woodcock] came to argue that the group’s treatment in Canada bore witness to the inability of the modern state to cope with groups whose eccentricities defied the logic of central control and uniformity inherent in the state model.” 89 While still culturally distinct in a liberally structured private realm, the Doukhobors’ political presence, once large in Canada, is now largely absent.

**Conclusion**

The political register of multinationalism presents opportunities for positive change in the relationship between Indigenous peoples and the Canadian state that are precluded by a multicultural framework. It points to the possibility of decentering the sovereignty of the state by structurally enhancing the sovereignty of Indigenous peoples. In so doing, it suggests the possibility that the state would treat Indigenous Nations as not merely deserving of “cultural

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88 While the Canadian public and government pitted the destructive practices of the small group of the “Sons of Freedom” sect as having been brought to Canada from Russia, Woodcock and Avakumovic’s history of the Doukhobors show that none of the more extreme behaviours of the sect were present in Russia – “they are as peculiarly Canadian, as demonstrably the products of stresses generated in a society emerging from the pioneer stage,” 10.

89 Adams and Kelly, 12.
sovereignty” through a non-interference approach, but as political entities that can govern themselves collectively in relation to the state.

I have suggested that reading the opportunities presented by multinationalism through Tully’s distinction between the rule of law and democratic freedom brings texture to the suggestion of the state’s possible transformation, in terms of its legal structure and distribution of political powers. Rather than explore the transformative possibilities of the state abstractly, this paper discloses part of the historical face of Canadian federalism through the contexts of two groups. In the case of Francophone nationhood, claim making on the state ultimately saw the transformation of “French Canada” to the territorially defined province of Quebec, with aspirations for statehood. In the case of the Doukhobors, their once outward focused, utopian progressive politics, were diverted to a private expression of culture, that is not noticeably disruptive of liberal citizenship. The politics of both groups have become more readily identifiable by the state and arguably less nuanced, at least at the surface level. Significantly – and a topic that I will focus on in a later chapter – any gains in political autonomy, including moments of culturally distinct political freedom, that these groups made through the process of making claims on the state, do not appear to have actually decentered the state’s sovereignty. In other words, while degrees of genuine freedom to alternative political traditions could be read in these groups’ histories, it does not appear that they were received by Canadian society or the state, as worthy of consideration as possible alternatives to liberal practices or values, including the overarching rule of the state structure. Federalism has allowed for periods of contained forms of culturally political autonomy, but has stopped short of allowing these pockets of political diversity form affecting the overall structure of the state. Political freedom thus remained under the rule of law, however creatively, the rule of law – as federalism – was applied. McRoberts

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90 McRoberts, 688.
states, “there is no interlocutor for Canada’s internal nation”\textsuperscript{91} and I suggest that the federalist structure has been deployed as a supplement to possible alternative modes of political interlocution. Putting it reductively, as a liberal legal structure, it has already spoken for the future: it “constitute[s] the social field of interactive practices rather than being constituted by (or emerging from) this field itself.”\textsuperscript{92}

These histories point to the state’s tendencies and fit with the guiding modern political thought that took hold in Canada in the nineteenth and twentieth centuries. Understanding the shape of federalism as we have inherited it, is crucially useful to bringing into relief the real alternatives that might be proposed. Having drawn attention to the over-determining rule of law nature of federalism, these histories invite us to explore the “social field of interactive practices,” which is to say, the potential of democratic freedom. As mentioned at the outset, Tully argues that modern constitutional democracies are constrained by their legal element, and that if democratic freedom were released from juridical clenching, the constitution of Canada might become a “multinational democracy” that is deserving of such a name. The perseverance of sovereignty politics in the legal structure of Canadian federalism as seen through the lens of Francophone and Doukhobor history adds historical evidence to support Tully’s notion that the pressure to constitutional change must come “from below” – despite the frustrating ambiguity of what this implies in concrete practice.

\textsuperscript{91} McRoberts, 691.
\textsuperscript{92} Simpson (2018): 17, channeling Tully.