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RESEARCH ARTICLE



From Reconciliation to Economic Reconciliation: The Rise of a State Project and Its Limits

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ABSTRACT

Emergent use of the term “economic reconciliation” marks developing linkages between Canada’s policy for Indigenous–state reconciliation and capital. Increasingly, reconciliation carries fiscal expectations for Indigenous Peoples and economic potential for government and private enterprise. Focusing on the self-directed Indigenous tobacco industry, which operates outside of Canadian legal frameworks, I explore how the state project of reconciliation is evolving to play a greater role in delimiting Indigenous economic authority and jurisdiction.

KEYWORDS

Assertions-based economies; economic reconciliation; Indigenous tobacco industry

Introduction

The Canadian government suggests it is on a path of Indigenous–state reconciliation, but its reconciliatory framework is fraught with contradiction. The 2015 Government of Canada “Speech from the Throne” that opens Parliament included the following passage: “Because it is both the right thing to do and a certain path to economic growth, the Government will undertake to renew, nation-to-nation, the relationship between Canada and Indigenous peoples.”¹ Representative of contemporary discourses of reconciliation, this statement conveys timeliness, achievement, and hope. It also links reconciliation to a capitalist economic program.

In this article, I consider the economic framework of Canada’s policy for Indigenous–state reconciliation. I explore how the state project of reconciliation is evolving to actively regulate First Nations economies, and I highlight incongruences between this focus and the discourses of renewal and recognition through which the project is framed. Although popularly associated with moments of apology and commemoration that appear unconnected to economic policy, Canada’s project of reconciliation is evolving, with growing emphasis on its economic dimensions.² Emergent use of the term “economic reconciliation” marks developing linkages between reconciliation and capital.³ Increasingly, the project carries fiscal expectations for Indigenous Peoples and economic potential for government and private enterprise.

The way that reconciliation is understood and defined in law and popular thought is evolving in response. In 2023, the federal budget allocated \$5 million to Indigenous Services Canada for the development of an “Economic Reconciliation Framework with Indigenous partners that will increase economic opportunities for Indigenous Peoples, communities, and businesses.”⁴ Similarly, transnational capital enterprises publicly align themselves with state policies on Indigenous rights.⁵

In an era that “extends capital to all spheres of life,” integrating Indigenous people and economies into the liberal-capitalist order subtends the project of reconciliation.⁶ Yet not all Indigenous economies are welcomed within the state’s reconciliatory frame. Radcliffe notes extreme variegation in contemporary Indigenous–state–capital economic relationships.⁷ Corporate–First Nations resource projects are broadly championed while independent Indigenous fisheries draw anger and violence.⁸ Why are some Indigenous economies lauded while others are vilified? I suggest there is more to the state project of reconciliation than creating strong First Nations economies. Instead, the project sanctions specific economic subjects and jurisdictional authorities, but at the expense of others, such as the authority to manage the economic jurisdiction of commercial trade. I explore how reconciliation as a state project is evolving to play a greater role in delimiting Indigenous economic authority and jurisdiction.

At odds with state visions for the economic development of First Nations are self-directed Indigenous economies operating under a sovereign ethos, in which land and resources are used not only for their material value but also to infuse Indigenous politics with form and force.⁹ These are “assertions-based” economies that do not observe Canadian legal and regulatory frameworks.¹⁰ Neither seeking nor enjoying state sanction, assertions-based economies enunciate sovereign political capacity as they accumulate wealth. I consider how the workings of assertions-based Indigenous economies in fisheries, and in the cannabis and tobacco industries outstrip the representational, material, and legal limits of the state project for Canadian–Indigenous reconciliation, regardless of its growing fiscal emphases. Focusing on the Indigenous tobacco industry, particularly as it operates within Kanyen’kehá:ka (Mohawk) communities, I foreground a billion-dollar economy rooted in historical practices, international agreements, differential tax law on reserves, and contemporary understandings of polity that are not acclaimed, but criminalized by the state. According to Public Safety Canada, the assertions-based tobacco industry “contribut[es] to the proliferation of organized crime [...] undermin[es] the local legitimate economy and evad[es] taxes that support Canada’s social programs.”¹¹ As the subject of state censure, the Indigenous tobacco industry appears to test the core market truism that “capital will tolerate all manner of exchange [...] so long as [it] does not restrict accumulation for accumulation’s sake.”¹²

To curtail the assertions-based Indigenous tobacco industry, the Canadian government relies on strategies of criminalization and, more recently, joint regulatory agreements with First Nations on the licensure of producers and retailers, taxation rates and remittance authorities, as well as local compliance and enforcement mechanisms.¹³ Agreements emphasize price parity between reserve and provincial retailers and legislative compatibility between First Nations bylaws and provincial and federal laws such as the *Criminal Code* of Canada. I have reviewed antitobacco legislation, jurisprudence, and First Nations–provincial regulatory

agreements. Each provides insight into the significance of tobacco economies for First Nations and the tensions between government and community perspectives regarding their regulation. I hope that adjusting the vantage point from the content of Canada's project of economic reconciliation to what has been excluded encourages more complex understandings of Indigeneity and the political economy of reconciliation.¹⁴ Coulthard notes that the core focus of the Canadian reconciliation project is making Indigenous expressions of polity consistent and compatible with the Crown's overarching and "unilateral assertion of sovereignty."¹⁵ I suggest the promise of economic reconciliation is similarly conditional on consistency and compatibility. Economic reconciliation elevates Indigenous economies that are ideologically and functionally compatible with corporate capitalist systems of regulation and growth, while vilifying the economies of Indigenous people who will not relinquish commitments to sovereign self-authorization, regardless of whether they are capitalist in nature. Before considering how the industry breaches the government's terms for reconciled Indigenous-state relations, it is useful to reflect on the sociopolitical context from which the reconciliation project emerged and continues to operate.

Canada's project of reconciliation

As a contemporary conceptual hallmark, reconciliation is widely embraced and commitments to achieving it are found in legislation, corporate pledges, and the vision statements of governments and police.¹⁶ Prevalent use of reconciliation mandates has helped to establish an influential organizing idea in society, recruiting disparate groups under a unifying, if nebulous banner. While rhetorical support for reconciliation has become the default political position, understandings of its intent and application remain incomplete.¹⁷

Attention to the genealogy of reconciliation as a political project helps to anchor its content and illustrates how it has been subject to significant shifts in meaning and articulation over its relatively short existence. Coulthard notes that the state project of reconciliation arose to respond to and mitigate a period of Indigenous militancy spanning the 1980s and 1990s, including a protracted armed stand-off in the Kanyen'kehá:ka (Mohawk) community of Kanesatà:ke over an adjacent town's intention to expand a golf course into the community's burial ground.¹⁸ Although the project results from, and responds to, the struggles of Indigenous Peoples, it nevertheless distorts and translates these into "state registers."¹⁹ Several distinct, albeit overlapping phases of reconciliation have since ensued.

The "policy chain" of Canada's project of reconciliation is widely perceived to begin in 1991 with the Royal Commission on Aboriginal Peoples (RCAP).²⁰ A massive undertaking convened in response to the events at Kanesatà:ke, RCAP produced a five-volume report urging the state to "restore justice to the relationship between Indigenous and non-Indigenous people in Canada."²¹ The commission's final report was aspirational in tenor. Qualifying reconciliation as an embrace of "the spirit and intent" of a nation-to-nation or treaty relationship, commissioners advocated a substantive contraction of federal power in core areas like governance, lands and resources, and economic development.²² Federal response to the commission's

report was muted, however, and the work of articulating the terms of reconciliation fell principally to the courts.

Canada's reconciliatory sortie overlapped with a global focus on processes of recognition and reparation.²³ A key feature of this period domestically was a heightened level of judicial activity as Indigenous litigants forced consideration of the newly patriated *Constitution Act* and its inclusion of "existing aboriginal and treaty rights" under section 35.²⁴ Although the Supreme Court embraced reconciliation as a core "animating principle" of section 35 rights, McCrossan notes, judicial interpretations have shifted considerably since the first cases were adjudicated in the 1990s.²⁵ Early judgments suggested that the elevation of Aboriginal rights could not be achieved without moderating federal authority, but this orientation was short lived.²⁶ Marking the first substantive realignment in the meaning of reconciliation, the 1996 *Van der Peet* decision emphasized the primacy of Crown sovereignty as an incontestable certainty to which Indigenous groups must reconcile or otherwise be made consistent.²⁷

This shift carried significant implications. Notably, notions of political and economic reorganization were largely displaced by an emphasis on cultural recognition.²⁸ Government embraced such recognition as a "field of power through which colonial relations [could be] maintained" and embedded in the terms of modern treaties, self-government agreements, federal legislation, and in its project of reconciliation.²⁹ Focusing principally on Canada's residential school system, the government set in motion a period of retrospection, apology (with the expectation of forgiveness), and commemoration for historical violence and wrongdoing.³⁰ In 2008, the government formally apologized for the residential school system as a "policy of assimilation," launching the Truth and Reconciliation Commission (TRC) in response.³¹ In 2015, the government pledged to accept and implement the TRC's 94 Calls to Action (Trudeau). A statutory holiday, the National Day for Truth and Reconciliation, was established in 2021 as a "public commemoration of [...] the legacy of residential schools [...] [and] a vital component of the reconciliation process."³²

The government's labours help to determine which ideas are taken up and institutionalized in society. For example, alongside government initiatives, professional sports teams dress their players in orange Every Child Matters jerseys, meant to honour residential school survivors.³³ The state encourages what Baloy describes as a "mediated consumption"³⁴ of events or moments when Indigenous people are "culturally visible," structuring how reconciliation and Indigeneity are interpreted and performed.³⁵ Cultural recognition has been the structural foundation and defining force of reconciliation, yet the project's sociopolitical role has become too important to remain static for long. Just as the state's embrace of a conciliatory approach to Indigenous relations represents a shift in the organization of colonial power, reconciliation continues to be refined as it is operationalized.

Today, reconciliation is undergoing another period of flux as a focus on economics is formally integrated with earlier emphases on recognition and commemoration. Part of a wider, capital-friendly upheaval of the legislative and regulatory structures governing First Nations,³⁶ the development of the commercial potential of reconciliation represents a further strategy for capital accumulation. The term itself is being eclipsed by a new moniker: economic reconciliation.³⁷ Related policy initiatives

include Indigenous–provincial intergovernmental agreements establishing compatible rates of taxation on everything from the sale of fuel to property on and off reserve.³⁸ The National Indigenous Economic Development Board denotes an increase in approval rates under Canada's Additions to Reserves programme in 2017 and 2018 adding to First Nations reserve land bases, as economic reconciliation.³⁹ Industry has also adopted the term. An agreement between the North American energy company Enbridge and 23 First Nations and Métis communities for an 11.57% stake in a pipeline project known as Seven Pipelines, Seven Generations is championed as economic reconciliation.⁴⁰ The term has also surfaced in popular discourse. An opinion piece published in the *Calgary Herald* simply defines economic reconciliation as “natural resource development.”⁴¹ Conversely, economic reconciliation is given shape refracted through what it is not. The term is not extended to self-directed or assertions-based economies such as the tobacco trade.

If a precise definition of economic reconciliation is not immediately clear, more important is its entrance into colloquial discourse, signalling a period of transition in the utility of reconciliation as a political construct. What accounts for this transition? To understand the relationship between reconciliation, economic reconciliation, and the rise of the latter, I consider the development of the reconciliation project within the longer history of state–Indigenous–capital economic relations. Colonial administrations, Canadian governments, and corporate entities have worked in concert to destroy Indigenous economies and, by turns, to exteriorize Indigenous people from the Canadian economy or to manage narrow forms of involvement, deferential to state and corporate interests.⁴² Buttressing law and policy, narratives denoting an Indigenous “alignment with a state of nature,”⁴³ disinterest in market participation, lack of enterprising initiative, and inability to “adequately occupy or administer space” have been used to rationalize the management of Indigenous people and economies conceptually and materially within the capitalist economic domain.⁴⁴ A contemporary addendum to this ideological frame, the reconciliation project's conflation of Indigeneity with apolitical and noncommercial expressions of culture reinforces characterizations of First Nations economies as naturally weak and requiring corrective intervention from the state and capital. At the same time, several decades of Indigenous militancy, judicial litigation, and scholarship counter these legal and narrative frameworks. Resource extraction companies increasingly contend with Indigenous populations who will not be shut out of decisions concerning the use and development of their lands, which, in the words of one energy insider, “scare the hell out of investors.”⁴⁵

The rise of economic reconciliation responds to this evolving landscape, representing a nuanced shift rather than a break from colonial legacies of dispossession and accumulation. The project of reconciliation affords recognition for limited forms of cultural expression but strangles concomitant political, economic, and geographic agency—yet uncritical endorsement of its restrictive parameters is today an established societal expectation.⁴⁶ This is the platform from which economic reconciliation builds, extending the project's conciliatory or “good-feeling” language to the economic realm.⁴⁷ Fung suggests the term is used to bridge “capitalist extraction and progressive liberalism,” packaging reconciliation as a “profitable venture for all Canadians.”⁴⁸ Put another way, economic reconciliation provides a language to refocus the emphases

of the contemporary period, from commemoration and conciliation to marketability and profit potential.

The state project of economic reconciliation markets the development of fiscal relationships with Indigenous groups already bound by the apolitical contours of reconciliation, structuring First Nations' access to capital exclusively through state-sanctioned legal, property, resource, and taxation regimes. It may orient public attention to First Nations economic disparity but in the absence of critical analysis, nearly any economic venture becomes an act of reconciliation even if it reinforces asymmetric distributions of wealth and power. Signing a deal for oil, mineral, or natural gas resource development is economic reconciliation. Independently developing an industry based on tobacco as your own natural resource is not. If this appears paradoxical, it highlights the state's emphasis on Indigenous subservience to assertions of Crown sovereignty even, or especially, when an Indigenous economy is financially valuable. In the next section, I explore the Indigenous tobacco industry as an example of an assertions-based economy that circumvents the state project of reconciliation, particularly as demonstrated through its operational structure and navigation of government criminalization and regulatory strategies. I also consider contradictions and tensions within the industry itself.

The complexities of Indigenous tobacco

Tobacco is a product awash in big numbers and equally big contradictions. Despite being linked to adverse health outcomes and premature death, roughly 21 percent of the world's adult population, or 1.1 billion people, smoke.⁴⁹ The global tobacco market was valued at 900 billion USD in 2022 and is projected to reach 1.1 trillion USD by 2030.⁵⁰ While private companies reap the greatest financial benefits, tobacco taxes represent a critical source of government revenue. In 2019, Canadian governments collected \$8.3 billion in tobacco taxes.⁵¹ But many tobacco markets operate outside government taxation regimes. In 2008, Canadian authorities seized 1,079,529 cartons and bags of untaxed cigarettes, representing \$60.6 million in lost federal and provincial taxation revenue.⁵² Not surprisingly, untaxed tobacco products, commonly referred to as "illicit" or "contraband," capture the attention of government, industry, public health, and nongovernmental organizations.

The WHO Framework Convention on Tobacco Control defines the illicit tobacco trade as "any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct to facilitate such activity."⁵³ This includes cigarettes, fine-cut, pipe, or roll-your-own tobacco, and raw tobacco leaf that is manufactured without government authorization, enters a country without payment of excise duty, or bears a counterfeit trademark. Although this definition encompasses diverse and global phenomena, in Canada, state, media, and scholarly attention disproportionately focuses on the tobacco markets of Indigenous Peoples.⁵⁴ In this context, illicit or contraband tobacco refers to products manufactured in Indigenous communities without federal licence, produced under federal licence but sold tax-free to non-Indigenous people, and those manufactured on Indigenous lands in the United States and sold in Canada.⁵⁵

The percentage market share of the assertions-based Indigenous tobacco economy is difficult to verifiably measure. Since 2009, the government's Canadian Tobacco Use Monitoring Survey (CTUMS) has asked respondents if they purchased cigarettes from a First Nations reserve and to explain how the purchaser developed an awareness of Indigenous tobacco products.⁵⁶ Other calculation methods include comparing rates of self-reported consumer use or butt collections with data on tobacco taxation revenue. However, consumption estimates vary significantly. An independent study from 2013 calculated consumption rates of Indigenous tobacco in Ontario at 11 percent,⁵⁷ whereas a study with links to industry giants such as Imperial Tobacco suggested a rate of 31 percent for the same period.⁵⁸ Smith, Thompson, and Lee note that much of the research on illicit tobacco use commissioned by, or otherwise linked to, the tobacco industry consistently reports higher rates of consumption than independent estimates, often failing to "conform to recognized standards of scientific practice such as peer review and validation." Higher or inflated consumption rates support an industry narrative that tax increases translate into higher rates of illicit tobacco use and justify arguments for lower levels of taxation.⁵⁹

Whatever the variability in assessments of market share, for Indigenous communities the "economic value of the tobacco sector is real."⁶⁰ Indigenous communities are involved in all aspects of the trade, including cultivation, manufacture, distribution, and wholesale and retail sales. Tobacco provides secure employment, liveable incomes, and serves as an economic driver for diverse tangential economies.⁶¹ The elected council of the Six Nations of the Grand River estimates that the tobacco industry employs roughly 2,000 people, or 20 percent of the community's eligible labour force.⁶² Noting that reliance on social assistance in the Mohawk community of Tyendinaga is lower than in neighbouring municipalities, elected Chief R. Donald Maracle describes participation in the tobacco industry as an "economic engine [and] the exercise of rights to create an economy and to alleviate [...] poverty."⁶³ In this way, the industry represents a contemporary iteration in an under-recognized field of strong Indigenous economies, which, Opekokew reminds us, have always been "continent wide" and based on "complex patterns of cooperation and trade."⁶⁴

The historical importance of trade to Indigenous sociopolitical organization is difficult to overstate—serving to refresh and invigorate friendships and familial affinities; spread news and information; connect disparate clans, villages, and nations; and organize allyship in times of war.⁶⁵ The tobacco economy retains similar political significance today. For instance, the structure of the industry exceeds reserve boundaries, actively maintaining relations between communities and across nations over wide geographical areas. In many communities, the industry provides one of the few forms of income that is not connected to the Band Council system or the Canadian government, and represents an important source of political and economic independence.⁶⁶ The industry's autonomy is visible in its divergence from market and legal norms. Like the historical economies of Indigenous Peoples, the assertions-based tobacco industry turns on individual access to the resource.⁶⁷ In contrast to the massive energy or mining projects that typify the economic development pathways offered to First Nations, involvement in the tobacco industry does not require communities to engage in limited or minority partnerships with private companies for resource extraction or critical infrastructure development on their

land.⁶⁸ The industry is not dependent on corporate investment, not mediated by government, and is subject to minimal or nonexistent licensure. It does not adhere to Canadian revenue and taxation frameworks and products are sold tax-free at a fraction of the cost of those found in state-regulated retailers. Government arguments against the industry often centre on taxation and particularly on its refusal to collect tax from non-Indigenous consumers.⁶⁹

If economic and political autonomy are correlative, the assertions-based tobacco trade functions as both an economic and a political engine. The late Six Nations elected chief Bill Montour viewed the industry “as the basis for a diversified economy” and a means from which to assert conditions on Indigenous–state relations.⁷⁰ But there is scant scholarship treating the tobacco industry as a form of political struggle not unlike rights or claims litigation, blockades, and land (re)occupations.⁷¹ This omission is hardly surprising. An economy trading in a known cancer-causing agent and bound to market capitalism is imbued with contradiction. However, a failure to critically consider the Indigenous tobacco industry not only relinquishes it to state designations of criminality but also risks tacit endorsement of essentialist “caricatures” for what counts as Indigeneity.⁷² A refusal to disregard the industry reveals a collection of acts that define and defend Indigenous economic power. Assertions-based tobacco provides Indigenous polities with economic viability, disrupts the restrictive template for reconciliation, and, if acknowledged as a representation of contemporary Indigenous life, expands conceptions of Indigeneity to include political and commercial dimensions.

The politics of markets

Cohen emphasizes the highly contingent variability of markets as active sites of struggle over resource distribution and, in this instance, over spatiopolitical questions of Indigenous nationalism and jurisdictional control.⁷³ As market forces have been shown to dilute claims for justice and translate them into market-based solutions, markets and social struggles are often held in polarity.⁷⁴ For instance, mineral resource companies negotiate mining access agreements with First Nations, eclipsing land return struggles and land title litigations.⁷⁵ Kuokkanen notes that most pathways encouraging First Nations market involvement are structured to impair Indigenous governance and economic systems.⁷⁶ A critical survey of the Indigenous tobacco industry challenges the notion of markets as universally moderating forces.

As a complex set of socioeconomic relations embedded within communities and consistently renewing relations among them, the tobacco industry is not depoliticized through market mechanisms but re-enforces Indigenous nationalist histories and their contemporary expression.⁷⁷ The industry alerts us to a mutability in the colonial distributions of power as Indigenous (and particularly, Mohawk) Peoples’ articulations of law, polity, and jurisdiction have led to independent economic strength and viability. Antigovernment and promarket arguments undergird the project of economic reconciliation, but they presuppose a hierarchical institutional relationship between the state and capital on one hand, and First Nations on the other. The Mohawk tobacco industry establishes a different dynamic of power, re-engineering the

colonial-capitalist order by denying outside actors (government or corporate) authority and jurisdiction over the industry, its people, and lands.⁷⁸ The criminalization of the industry reveals a limit to settler capitalists' tolerance for exchange: the accumulation by Indigenous Peoples of significant wealth outside state-defined orders, whether these be fiscal regimes like taxation or political ideals such as reconciliation.

Assertions-based tobacco is a capitalist, forprofit industry that is housed in collective assertions of polity and jurisdiction rather than in ideologies of liberalism and individual rights. It is a lucrative, market-based enterprise that helps to preserve a collective belief in a shared national identity, and retains a political ethos that is typically expunged in capitalist systems of accumulation. The industry can be seen as part of capital, redefining social relations towards market forms but functioning according to its own political and cultural rationalities, "retaining some margin of autonomy."⁷⁹ It is not anticapitalist yet helps to preserve a political identity long slated for assimilation. Even as market forms are integrated within communities, the daily practices of those involved in the industry curtail the reach of Canadian legal authority within Indigenous spaces, visibly demarcating the place of Indigenous jurisdiction.

Mapping the economy's spatial footprint shows that it intervenes in the complex relationship between processes of colonial dispossession and capitalist accumulation. Although convenience stores are a typically innocuous feature of the commercial landscape, in the case of Indigenous tobacco retailers they are conspicuous political spaces. As commercial enterprises dependent on public patronage, Indigenous-owned tobacco stores are necessarily highly visible, openly raising the spectre of Indigenous political jurisdiction. Stores with signage advertising assertions-based tobacco products are located throughout reserves, on major roads, and on provincial highways. Their presence counters the imaginary of a spatially coherent state sovereignty and shows that Canadian jurisdictional authority is not universal but diluted within the lived spaces of Indigenous Peoples.⁸⁰

Although not universally supported, the industry enjoys popular and institutional backing within communities, which extends to determinations about how and by whom it is governed. Band council spokespeople refute the notion that Canada has a "jurisdictional right to tax and regulate tobacco on our Territories,"⁸¹ highlighting the experience of "nested" and contested sovereignties.⁸² Operating from the same perspective, First Nations police services refuse to execute the tobacco-related warrants of provincial forces.⁸³ Assertions-based tobacco enterprise denies the state jurisdictional authority across overlapping legal and regulatory fields, including the application and enforcement of the *Criminal Code* and tax law on Indigenous lands. Federal and provincial police forces typically observe reserves' geographical boundaries, focusing enforcement efforts on the seizure of assertions-based tobacco products in transit between communities and postsale outside communities.⁸⁴ Law enforcement officials acknowledge that "claims related to treaty rights and traditional native practices" complicate policing the industry even as it is criminalized.⁸⁵ The government relies alternately on strategies of criminalization and regulation to constrain the industry and its self-directed nature.

Industry containment: criminalization

The history of antitobacco law and criminalization predates Canadian confederation, with bans on smoking first imposed in the 1670s and followed by centuries of moves and countermoves across the domains of legislation, sponsorship, and advertising by tobacco companies, governments, law enforcement agencies, and public and private enterprises such as media companies and sports organizations.⁸⁶ Contemporary efforts to curb assertions-based tobacco demonstrate a substantial allocation of state resources and personnel. Introduced in 2008, the Contraband Tobacco Enforcement Strategy mandates the Royal Canadian Mounted Police (RCMP) to provide organizational support to local anticontraband policing efforts.⁸⁷ In 2012, the Canadian and United States governments established a crossborder naval law enforcement programme known as Shiprider. Officers from the RCMP and the United States Coast Guard jointly staff maritime border vessels to seamlessly patrol Canadian and American waters on either side of the international boundary.⁸⁸ Sited within global efforts to control and “contain flows of finance,”⁸⁹ Shiprider integrates the surveillance and policing of assertions-based tobacco on the waters between New York State, Ontario, and Quebec in the vicinity of the Akwesasne Mohawk Territory. The 2014 federal budget allocated \$91.7 million over a five-year period to establish a geospatial intelligence and automated dispatch centre, including movement-detecting sensors and mobile dispatches to facilitate rapid police response.⁹⁰ In the same year, federal legislation known as the *Tackling Contraband Tobacco Act* came into force, adding to the legislative tools available to police the industry. The Act amends the *Criminal Code* to make the possession, transport, and sale of assertions-based tobacco products a criminal offence.⁹¹ These efforts, along with numerous targetted police operations, have resulted in large numbers of arrests and tobacco seizures.

On March 30, 2016, the Sûreté du Québec (SQ) provincial police issued a press advisory regarding an operation called Project Mygale. Transnational in scope, Mygale was presented as the most significant police action targetting contraband tobacco and Aboriginal organized crime to date.⁹² It involved 700 officers from numerous forces, resulted in 60 arrests and the seizure of more than 52,000 kg of tobacco valued at almost \$13.5 million.⁹³ Mygale received national coverage from the Canadian media, which framed the operation as a story about organized crime, wrongly indicating that raids were conducted in the Mohawk community of Kahnawà:ke.⁹⁴

Police and government representatives from Kahnawà:ke responded with a counternarrative. The Kahnawà:ke Mohawk Peacekeepers (KMP) clarified that no federal or provincial police activity occurred on the reserve and that they would not execute the tobacco-related warrants of outside forces.⁹⁵ Council chiefs rejected the conflation of assertions-based tobacco with criminality and iterated support for the industry as a lawful enterprise based on historical practices and a sovereign prerogative that was supported by governing Mohawk councils and communities. The late Kahnawà:ke Grand Chief Joseph Tokwiro Norton identified tobacco as “our natural product.”⁹⁶ Gina Deer, the tobacco portfolio chief for the Mohawk Council of Kahnawà:ke (MCK), highlighted the longevity of the Kanyen’kehá:ka relationship with tobacco, noting “It’s something that we’ve always done. We’ve taught them, we’ve exposed

them to these products and now we're vilified for [...] utilizing them for economic development."⁹⁷

Settler states have a long history of using the law to criminalize the activities of Indigenous Peoples,⁹⁸ but legislative and enforcement measures have not ended assertions-based practices. Police operations like Mygale bring conflict and uncertainty, but they compel communities to consider their assertions-based economies and corresponding issues such as the politics and terms of reconciliation. The discrepancy between Kanyen'kehá:ka and provincial police accounts of Mygale conveys community preferences for self-directed rather than delegated authorities, regardless of the accompanying risks. Although unintended, a result of the use of state law against assertions-based tobacco can be to clarify and entrench community support not only for the industry, but more expansively, for assertions-based interventions across a broad spectrum of grievances such as land theft, resource access, or hunting and fishing restrictions.⁹⁹

In summary, criminalization represents an important state strategy to contain the industry, but it is not without complications. Police enforcement might disrupt the industry but it can also invigorate Kanyen'kehá:ka political aspirations and latent tensions over the politics of the contemporary colonial relationship, such as what is offered and forbidden under Canada's framework for reconciliation. At the same time, there is a relationship between criminalization and regulation whereby the threat of laws such as the *Tackling Contraband Tobacco Act* induces First Nations to create regulatory environments on-reserve that are compatible with provincial standards.¹⁰⁰ If the terms of economic reconciliation involve the foreclosure of economic initiatives housed in the "legal and territorial autonomy of Indigenous nations," criminalization is an incomplete rejoinder.¹⁰¹ Anticontraband tobacco legislation empowers police to intervene in the industry but securing Indigenous consent for synergistic regulation is far more effective as a method of containment. Not surprisingly, government efforts increasingly focus on the development of tobacco policies, programmes, and intergovernmental agreements, as explored in the next section.¹⁰²

Industry containment: regulation

The twenty-first century marks the beginning of a sustained increase in developing intergovernmental agreements between First Nations, municipal, provincial, and federal governments.¹⁰³ Part of a systemic reorganization of the legal and regulatory systems governing First Nations,¹⁰⁴ agreements cover a wide array of issues, such as the joint management of infrastructure developments, land use planning, and shared service delivery of fire protection or public transportation. The drift towards state-First Nations regulatory synergy extends to managing economies like assertions-based tobacco. Whether this takes the form of a First Nations bylaw or an intergovernmental agreement, the formal regulation of tobacco economies is becoming normalized governmental practice. By ratifying bylaws or regulatory agreements, band councils assume legal authority for the industry, ending its assertions-based status, negotiating a percentage of its profits, and averting police action.

Across the country, bands are encouraged to enter agreements on licencing, control of supply, and taxation that are “parallel” to provincial law.¹⁰⁵ For example, the Government of Prince Edward Island ratified taxation rebate agreements with all First Nations in the province whereby Indigenous retailers apply the provincial tax and receive rebates equal to the estimated consumption rates of Indigenous buyers.¹⁰⁶ Fifty-nine First Nations in Manitoba have entered tax-sharing agreements with that province. First Nations “impose a band assessment” on tobacco products equivalent to provincial taxation rates.¹⁰⁷ This is remitted to the province and then returned to bands, less the taxes on sales to non-Indigenous consumers.¹⁰⁸ The 2021 federal budget introduced an optional framework for First Nations to implement taxation on tobacco products, “fully harmonized” with the five percent federal goods and services tax (GST).¹⁰⁹ Additionally, some First Nations have established their own tobacco laws. The *Madawaska Maliseet First Nation Cannabis and Tobacco Licencing Law* makes holding a band-issued licence requisite for the production, distribution, and sale of tobacco, controls access to the resource, and limits sales.¹¹⁰ Clearly, multiple regulatory models are in operation, but commonalities emerge in how assertions-based economies are being adapted. All new legal and regulatory frameworks ensure price parity between reserve and provincial retailers, foreclose individual access to the resource, and redirect revenue streams from community members to band councils and governments. The principal instrument structuring this transformation is tax.

Taxation is perceived as an elemental process “constitut[ing] state–citizen relations.”¹¹¹ Being a taxpayer involves making remittances ostensibly in exchange for public services, protections, and rights. It also confers a moral claim to political life countering the narrative of the subsidized nontaxpayer and, in settler colonial societies, tax is central to how First Nations and the state negotiate their autonomies, authorities, and interdependencies.¹¹² The fiscal policy of economic reconciliation rests on an edifying narrative of transition from typecast roles such as untaxed ward of the state, or in this instance criminal tobacco smuggler, to the moral category of empowered First Nations taxpayer. In contrast, communities with assertions-based economies hold that “First Nations [...] do not collect taxes for a foreign government.”¹¹³ The disconnect between these positions is not trivial.

The invitation to reconcile hinges on formal integration into the national economy guided by tax programmes that the state works hard to imbue with an “Indigenous morality” of mutuality and “reciprocity.”¹¹⁴ The Government of Canada asserts that taxes are essential for the expansion of First Nations’ legal, fiscal, and jurisdictional powers.¹¹⁵ The divergent responses of First Nations electing or refusing to tax assertions-based products highlight the complicated relationality when the material and political interests of Indigenous communities intersect with those of the state. Indigenous Peoples’ attempts to “maintain a level of autonomy over land management” and economic development are variedly expressed through the adoption, adaptation, or refusal of government frameworks.¹¹⁶ Integration into government tax regimes is not necessarily attractive when an assertions-based industry provides economically viable futures in a manner that also articulates polity and place.

Conclusion

Canada's project of reconciliation requires that Indigenous expressions of sovereignty and self-governance align with state law.¹¹⁷ The government interprets the legislative and regulatory authority of First Nations as deriving from "existing aboriginal and treaty rights" under section 35 of the *Constitution Act*, self-government, modern treaty and land claim agreements, and legislation, such as the *Indian Act*.¹¹⁸ The Canadian government argues that the assertions-based tobacco industry operates outside of these legal categories, focusing on tax evasion and criminality, and draws on law for the industry's containment. Assertions-based economic activity that competes with the state or capital, such as the tobacco industry, is deemed unlawful even as the state promotes the idea of free market economies. But the industry persists. Showing state legislative and judicial powers to be less definitive than popularly acknowledged, assertions-based economies such as tobacco impel reconsideration of the legal and conceptual framing of Indigenous authorities and importantly, who has the right to define them.

Economic reconciliation, an emergent term, is invoked to reference diverse Indigenous-state-capital economic arrangements, but is poorly defined with limited discussion of its intended outcomes. Does achieving economic reconciliation mean a reduction in unemployment levels, an increase in the availability of services and housing, the elimination of economic disparity, or the facilitation of capital access to Indigenous lands and resources? Considering a form of economy that is excluded from this mandate reveals much about the project's priorities. Although the assertions-based tobacco industry has a positive impact on unemployment levels and standards of living, it cannot be marketed by the state for political or economic gain. The state does not view tobacco manufacturers, traders, and retailers as viable subjects of reconciliation, yet thousands of Indigenous people participate in the industry every day. Operating outside the frameworks regulating the Canadian economy, industry participants collectively assert a form of self-governance inclusive of commercial involvement and control of space.

Canada's promise of economic reconciliation is not extended to people engaged in assertions-based economies, and particularly those such as tobacco that generate significant revenue. The assertions-based tobacco industry shows that the project of economic reconciliation is also designed to constrain Indigenous economies that are considered too strong, both financially and politically.¹¹⁹ If the government uses law to criminalize such economies, it also seeks to foreclose the corresponding enunciations of sovereign polity raised by their operation. Those involved in assertions-based activity reject the status of state-subject, even if this rejection places them outside of reconciliation frameworks.¹²⁰ Communities that defy criminalization and choose not to enter tax-sharing arrangements demonstrate a preference for a complicated and, in many ways, experimental relationship with the state involving both independence and interdependence. Povinelli suggests that zones operating outside of the normative legal order be viewed "as spaces in which, at least potentially, a new ethics of life and sociability could emerge."¹²¹ Assertions-based economies present an opportunity to implement untried visions for Indigenous-state relations beyond the normative frameworks of law and

regulation, to embrace a more complex and responsive version of (economic) reconciliation.

Notes

1. Parliament of Canada, "House of Commons Debates."
2. Green, "Economics of Reconciliation"; Canada, Department of Finance, "Budget 2023."
3. See Martens, "Economic Reconciliation"; Stackhouse et al., *92 to Zero*; Gale, "This Is What Economic Reconciliation."
4. Canada, Department of Finance, "Budget 2023."
5. Goodale, "Dark Matter." For example, Suncor Energy Inc., "Valuing Indigenous Worldviews," describes itself as on a "Journey of Reconciliation [...] continuing to learn about Indigenous culture, history and lived experiences and challenging ourselves to think and act differently." The company hosts Indigenous awareness seminars and cultural learning events like traditional medicines harvesting walks.
6. Million, *Therapeutic Nations*, 18; Green, "Economics of Reconciliation."
7. Radcliffe, "Geography and Indigeneity," 375; Atleo, "Between a Rock."
8. Bedford, "Emancipation as Oppression."
9. See Montsion, "Disrupting Canadian Sovereignty."
10. Chippewas of the Thames First Nation, "Indigenous Law Making," 85.
11. Public Safety Canada, "Report on the Status." Dickson-Gilmore, "Aboriginal Communities and Crime Prevention," 90, designates the assertions-based tobacco industry as "Aboriginal-based organized crime" but acknowledges the distinctly political character of the industry, defying a colonial "history of state-sanctioned marginalization and deliberate underdevelopment" (102), and providing a "very real and tangible level of social and economic development that neither community nor outside governments have been able to replicate" (107). A review of the seizures made by the Canadian Border Services Agency at the Akwesasne border between 2006 and 2010 shows that "cigarette shipments are not typically mixed with other illegal commodities" nor do they involve criminal organizations. See Daudelin, Soiffer and Willows, *Border Integrity*, 20.
12. Christophers, "From Marx to Market," 19.
13. COTTFFN, "Indigenous Law Making," 7.
14. Altamirano-Jimenez, *Indigenous Encounters*. She describes Indigeneity as "a dynamic field of governance constituted by different actors on different scales producing knowledge, articulating discourses, exercising power, constructing and contesting identity, engaging in place-based struggles and claiming ways of being in the world," (17).
15. Coulthard, *Red Skin, White Masks*, 107.
16. Canada, Department of Justice, *Principles*, 3; RCMP, "Indigenous Reconciliation."
17. Wylie "Towards a Genealogy"; Van Lier, "Reconciliation 2.0."
18. Coulthard, *Red Skin, White Masks*, 120.
19. McCreary and Milligan, "Limits of Liberal Recognition," 730.
20. Million, *Therapeutic Nations*, 4.
21. RCAP, *Restructuring the Relationship*.
22. RCAP, *Restructuring the Relationship*, 38.
23. Fraser, "From Redistribution to Recognition?"; Wylie, "Towards a Genealogy."
24. S. 35, Schedule B to the *Canada Act 1982* (UK), c. 11.
25. McCrossan, "Shifting Judicial Conceptions," 155.
26. Walters, "Jurisprudence of Reconciliation"; McCrossan, "Advancing Dishonourable Relations."
27. Coulthard, *Red Skin, White Masks*, 124; Wylie, "Towards a Genealogy," 618.
28. Fraser, "From Redistribution to Recognition?"
29. Coulthard, *Red Skin, White Masks*, 17; Corntassel, Chaw-win-is, and T'lakwadzi, "Indigenous Storytelling."

30. Million, *Therapeutic Nations*; Baloy, "Spectacles and Spectres," 212; Daigle, "Spectacle of Reconciliation."
31. Harper, "Statement."
32. *An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation)*, S.C. 2021, c. 11.
33. Ledra, "Canadian Teams."
34. Baloy, "Spectacles and Spectres," 211.
35. Robertson, *Imagining Difference*, 161.
36. Collis, "W(h)ither the Indian Act"; Schmidt, "Dispossession by Municipalization."
37. Forester, "Exploring the Rise."
38. Canada, Department of Finance, "Budget 2023."
39. National Indigenous Economic Development Board, *Indigenous Economic Progress*, 84. Established in 1990, the National Indigenous Economic Development Board is a ministerial-appointed board that advises government on First Nations economic development.
40. Enbridge, "Equity Pipeline Project"; The Walrus, "Walrus Talks."
41. Wittevrangel, "Opinion."
42. Carter, *Lost Harvests*; Yellowhead Institute, *CashBack*; Fabris, "Decolonizing Neoliberalism." Fabris cautions that settler colonialism is not reducible to the "exclusion" of Indigenous people from the capitalist economy" (193), which risks eliding the full history and violence of dispossession.
43. Day, "Being or Nothingness," 117.
44. Bledsoe and Wright, "Anti-Blackness," 15.
45. Johnson quoted in Dembicki, "Native Land Claims."
46. Coulthard, *Red Skin, White Masks*, 110–11; Simpson, "Reconciliation and its Discontents."
47. Daigle, "Spectacle of Reconciliation," 708.
48. Fung, "Melancholy of Extraction," 74.
49. World Health Organization, *WHO Report*, 53.
50. Reportlinker, "Global Tobacco Market."
51. Physicians for a Smoke-Free Canada, "Canadian Government Revenues."
52. Public Safety Canada, "Report on the Status," 4.
53. World Health Organization, *WHO Framework Convention*, 4.
54. Smith, Thompson, and Lee, "Both Sides of the Argument," 144.
55. Indigenous involvement in tobacco has undergone significant change in the last 30 years. In the 1990s, large-scale tobacco companies such as Benson & Hedges and R. J. Reynolds Tobacco Company exported unprofitable Canadian cigarette brands to the United States. The cigarettes would then be transported back to Canada through the border community of Akwesasne for sale in unlicensed markets. Tobacco companies thus avoided paying Canadian taxes. Legal proceedings filed against several companies resulted in criminal fines and civil restitutions. Today, Indigenous involvement in tobacco relies on "in-house" manufacturing capabilities principally located on Mohawk reserves in Quebec and Ontario, and is no longer linked to major tobacco companies. See Simpson, "Subjects of Sovereignty."
56. Statistics Canada, "Canadian Tobacco Use," 17. CTUMS was renamed Canadian Tobacco, Alcohol and Drugs Survey (CTADS) in 2013.
57. Guindon, Burkhalter, and Brown, "Levels and Trends," 519.
58. National Coalition Against Contraband Tobacco, "1 in 3."
59. Smith, Thompson, and Lee, "Both Sides of the Argument," 142.
60. COTTFFN, "Indigenous Law Making," 94; Mohawk, "Last Words"; Lickers, *Tobacco*.
61. Blackwell, "Native-Made Cigarettes"; Martin, "Indians Not Taxed."
62. Six Nations Council "Presentation to the Standing Committee," 5.
63. Senate of Canada, "Proceedings."
64. Opekokew, *First Nations*, 3, 38.
65. Tesdahl, "Price of Empire," 4.

66. COTTEN, "Indigenous Law Making," 94. Band councils are the form of government elected by band members to oversee the day-to-day administration of First Nations in Canada.
67. See Bedford, "Emancipation as Oppression," 2010.
68. See Spice "Fighting Invasive Infrastructures."
69. Mohawk, "Last Words."
70. Blackwell, "Native-Made Cigarettes."
71. Notable exceptions include Simpson, "Subjects of Sovereignty"; Simpson, *Mohawk Interruptus*, 115–45; and Pratt and Templeman "Jurisdiction."
72. Atleo, "Between a Rock," 9.
73. Cohen, "Between Perfection and Damnation."
74. Bailey and Wilson, "Theorising Transitional Pathways," 2338; Swyngedouw "Apocalypse Forever?"
75. Cameron and Levitan, "Impact and Benefit Agreements"; Van Lier, "Reconciliation 2.0."
76. Kuokkanen, "From Indigenous Economies," 291.
77. Simpson, *Mohawk Interruptus*, 115–45.
78. Thank you to Shiri Pasternak for helping to clarify my thinking on how the assertions-based tobacco industry differs from neoliberal visions for the development of First Nations economies.
79. Escobar, *Territories of Difference*, 84.
80. Daudelin, Soiffer, and Willows, *Border Integrity*.
81. Mohawk Council of Kahnawà:ke, "Kahnawake and Six Nations."
82. Simpson, *Mohawk Interruptus*, 11.
83. KahnawakeTV, "Kahnawake Clarifies."
84. Simpson, "Subjects of Sovereignty"; Daudelin, Soiffer, and Willows, *Border Integrity*.
85. Parliament of Canada, House of Commons, "Evidence." For example, in 2023, Quebec trial court judge Sophie Bourque stayed the criminal procedures of two Kanyen'kehà:ka men convicted for failing to remit excise tax on tobacco products. The court ruled that section 35(1) of the *Constitution Act* and a pre-Confederation treaty known as the Covenant Chain provide a contemporary right to trade commercially in tobacco (*R. v. Montour and White*, 2023. "Judgment on the Fresh as Amended Consolidated Constitutional Pleading," Superior Court, Province of Quebec. District of Longueuil. No.: 505-01-137394-165). By acknowledging an Indigenous right to trade in tobacco, the Quebec Superior Court is also accepting the present-day existence and viability of Mohawk legal, political, and economic systems. Not a small gesture, this judgment repudiates decades of jurisprudence suggesting Indigenous political and economic enervation be a prerequisite for Indigenous–state reconciliation. The judgement has been described as "momentous" and "game-changing," alternately generating expectations of an overhaul of the framework for Indigenous–state reconciliation or a revision of the ruling on appeal (Deer, "Quebec Judge Rules"; Macnab, "Quebec Decision").
86. Cunningham, *Smoke and Mirrors*, 289.
87. Public Safety Canada, "Report on the Status."
88. Pratt and Templeman, "Jurisdiction"; RCMP, "Evaluation."
89. Mullings, "Criminalization," 170.
90. Canada, Department of Finance, *Road to Balance*, 211.
91. *Tackling Contraband Tobacco Act*, S.C. 2014, c. 23.
92. Sûreté du Québec, "Contrebande de tabac."
93. Sûreté du Québec 2016.
94. Laframboise, "SQ Targets Contraband."
95. Zacharie, in KahnawakeTV, "Kahnawake Clarifies."
96. Mohawk Council of Kahnawà:ke, "Kahnawake and Six Nations."
97. KahnawakeTV, "Kahnawake Clarifies."
98. Stark, "Criminal Empire."
99. Martin, "Indians Not Taxed"; De Costa and Knight, "Asymmetric Encounters."

100. COTTFFN, "Indigenous Law Making," 98.
101. Atleo, "Between a Rock," 358.
102. Public Safety Canada, "Report on the Status," 7.
103. Alcantara and Nelles, *Quiet Evolution*.
104. Collis, "W(h)ither the Indian Act"; Diabo "Reconciliation Is Re-Colonization."
105. Opaskwayak Cree Nation, "Opaskwayak Cree Nation," 4.
106. COTTFFN, "Indigenous Law Making," 129.
107. COTTFFN, "Indigenous Law Making," 128.
108. See Opaskwayak Cree Nation, "Opaskwayak Cree Nation."
109. Canada, Department of Finance, "Engagement."
110. Madawaska Maliseet First Nation, "Madawaska Maliseet," 18.
111. Makovicky and Smith, "Tax," 5.
112. Sheild Johansson, "Taxes for Independence"; Willmott, "Taxes."
113. Deer in KahnawakeTV, "Kahnawake Clarifies."
114. Sheild Johansson, "Taxes for Independence," 22.
115. Canada, Department of Finance, "Budget 2023."
116. Atleo and Boron, "Land Is Life," 10; Simpson, *Mohawk Interruptus*, 128.
117. Canada, Crown-Indigenous Relations and Northern Affairs Canada. "Government of Canada's Approach."
118. S. 35, Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.
119. Bruyneel, *Third Space of Sovereignty*.
120. See Coulthard, *Red Skin, White Masks*.
121. Povinelli, *Economies of Abandonment*, 109.

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