

LAND TO LEVY: TAXATION AS A TOOL OF SETTLER COLONIALISM

ISABELLE MEGOSH

ABSTRACT

In both the United States and Canada, the taxation of Indigenous people is often viewed as an innocent tool for financing government operations. In the settler colonial context, however, taxation is not strictly a tool for financing the government – it is a powerful instrument for racial domination and forced assimilation of Indigenous people. This paper examines how colonial legal systems have utilized taxation not purely as a method of revenue collection but as a means to both secure white settler possession and to force assimilation on Indigenous people in order to delegitimize Indigenous sovereignty and enforce the Eurocentric definition of economic productivity and citizenship. Additionally, these taxations cause disproportionate financial effects on Indigenous communities and limit their economic opportunities. Drawing on the works of scholars Brenna Bhandar and Cheryl Harris, this analysis will reveal how taxation serves not solely as a method of revenue collection, but as an apparatus for upholding settler colonialism. From historical policies that explicitly categorized Indigenous people as “civilized” or “uncivilized” based on their tax status to contemporary rhetoric that frames Indigenous communities as economic burdens, taxation’s purpose is to maintain racial and economic inequities and reinforce the legitimacy of the settler colonial project.

I. Introduction

While Americans and Canadians may claim that Indigenous people do not pay any taxes, the response from Dakotah Lane, member of the Lummi Nation, is, “False and false... we do pay taxes.”¹ Indigenous people, despite their legal status as “domestic dependent nations,” are subjected to various forms of taxes, including federal income taxes.² The historical and contemporary rhetoric portraying Indigenous people as “non-taxpayers,” is far from true and perpetuates the myth of Indigenous economic irresponsibility. In this way, taxation is a colonial tool for the white settler to reaffirm their sense of authority and dominance over Indigenous people. The framing of Indigenous people as economic liabilities functions as a rationale for the continual colonial control and exploitation of Indigenous people, hidden under the guise of taxation. Building on Brenna Bhandar and Cheryl Harris’s work, the taxation of Indigenous people in North America can be understood as a continuation of the settler colonial project in two ways: first, by securing white settler possession, and second, by serving as both a tool of control and assimilation to further the legitimacy of the settlement.

In Brenna Bhandar’s book *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*, Bhandar analyzes how colonial legal systems reframed land ownership to fit European agrarian and capitalist standards to justify the dispossession of indigenous peoples’ land. Central to her analysis is the concept of “proper-use,” which functions as a colonial tool to create racial hierarchies of ownership, framing non-European land users as incapable of progress or productivity.³ At the root, the basic role of these legal frameworks is to establish, secure, and protect white possession of land. As summarized: the “legal systems in almost all settler colonial

¹ Samantha Schmidt, "Native American Heritage Month: 'We're Still Here,'" *The Washington Post*, November 16, 2021, <https://www.washingtonpost.com/nation/interactive/2021/native-american-heritage-month-were-still-here/>.

² “American Indian Law,” *Legal Information Institute*, Cornell Law School, accessed December 19, 2024, https://www.law.cornell.edu/wex/american_indian_law.

³ Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham, NC: Duke University Press, 2018).

societies, attempts two things: to mark Indigenous territory as empty and thusly as non-property and then to enroll that dispossession into a legal regime that empower[s] white settlers to value possession.”⁴ The taxation of Indigenous people not only extends this process; taxation allows white possession to be secured.

Cheryl Harris similarly discusses the idea of racialized conception of property in her article, “Whiteness as Property.” She writes, “Only particular forms of possession – those that were characteristic of white settlement – would be recognized and legitimated. Indian forms of possession were perceived to be too ambiguous and unclear.”⁵ By legitimizing only white settlement property, whiteness itself is equated to property and claims to Indigenous land become entirely illegitimate. The dispossession of Indigenous land, Harris argues, “laid the foundation for the idea that whiteness – that which whites alone possess – is valuable and is property.”⁶ Whiteness as property was secured through law and taxation and continues to be upheld by the colonial state. Just as land is white property, tax, too, is white property and becomes a weapon used against Indigenous people.

II. Taxation to Secure White Settler Possession

Taxation serves as a tool to reinforce and protect white settler dominance by framing Indigenous sovereignty and tribal tax-exempt status as an economic burden. By embedding dispossession within the framework of taxation, the white settler – positioned here as the “taxpayer” – is granted a sense of authority to intervene in Indigenous issues under the guise of “taxpayer concerns” as opposed to settler politics.⁷ This phenomenon aligns with what Aileen Moreton-Robinson defines as white possessive logic, in which white settlers view themselves as

⁴ Kyle Willmott, “Taxes, Taxpayers, and Settler Colonialism: Toward a Critical Fiscal Sociology of Tax as White Property,” *Law & Society Review* 56, no. 1 (2022): 6–27, <https://doi.org/10.1111/lasr.12587>.

⁵ Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106, no. 8 (1993): 1707–91.

⁶ *Ibid.*

⁷ Kyle Willmott, “Taxes, Taxpayers, and Settler Colonialism: Toward a Critical Fiscal Sociology of Tax as White Property,” *Law & Society Review* 56, no. 1 (2022): 6–27, <https://doi.org/10.1111/lasr.12587>.

entitled to govern, manage, and make decisions about Indigenous rights.⁸ Through their role as the taxpayer, the white settlers reaffirm their perceived dominance and superiority over Indigenous people to frame Indigenous sovereignty and land claims as matters of economic accountability and “taxpayer concerns” rather than issues of settler colonialism.⁹

By portraying Indigenous land claims as taxpayer concerns, the role of the white settler/tax-payer is conflated with economic productivity and responsibility while casting Indigenous people as burdens that are paid for by taxpayers’ dollars. Settlers’ claims to legitimacy are couched in the language of fiscal responsibility, the same pattern seen in Bhandar’s writing describing the legal framework masking the dispossession of Indigenous land by language of “proper-use.”¹⁰ This particular dynamic is evident in the rhetoric in an editorial from the provincial directors of the Canadian Taxpayers Federation in reference to the First Nations Financial Transparency Act: “Hopefully, aboriginal bands [sic] see this new law as an opportunity to grow their accountability to their members and to taxpayers.”¹¹ Note the distinct separation between “their members” and “taxpayers.” As evident in the distinction, taxation has created “racial imaginaries of taxpayers versus ‘taxeaters.’”¹² In letters written to former Canadian Senator Jean Bayek, constituents wrote sentiments such as: “I resent having to pay taxes that are used in part to subsidize first nation programs,” and “The endless funding pit of reserves has to stop.”¹³

⁸ Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (Minneapolis: University of Minnesota Press, 2015).

⁹ Kyle Willmott, “Taxes, Taxpayers, and Settler Colonialism: Toward a Critical Fiscal Sociology of Tax as White Property,” *Law & Society Review* 56, no. 1 (2022): 6–27, <https://doi.org/10.1111/lasr.12587>.

¹⁰ Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham, NC: Duke University Press, 2018).

¹¹ Kyle Willmott, “Taxes, Taxpayers, and Settler Colonialism: Toward a Critical Fiscal Sociology of Tax as White Property,” *Law & Society Review* 56, no. 1 (2022): 6–27, <https://doi.org/10.1111/lasr.12587>.

¹² *Ibid.*

¹³ *Ibid.*

This dynamic extends beyond Indigenous communities to include all communities of color, who are frequently framed within settler colonial states as economic dependents draining public resources without contributing tax dollars, reinforcing whiteness as the standard of economic accountability. Not only are Indigenous people portrayed as “freeloaders and parasites who feed off the labor of hardworking (white) taxpayers.”¹⁴ A stark example of this is former U.S. President Ronald Reagan’s perpetuation of the “welfare queen” stereotype that portrayed Black women as fraudulent and thus undeserving of public assistance.¹⁵ This stigmatization upholds the racial hierarchies created through colonization, as discussed by Bhandar, and reinforces how whiteness becomes property, as defined by Harris, by allowing white people to be immune from these stereotypes of “freeloaders.” The continual positioning of racialized groups as economic burdens serves as a logic to justify ongoing colonial domination and exploitation of communities of color under the guise of fiscal accountability.

Historically, taxation of the public has been viewed as a social contract between a government and its citizens. But the purpose of taxation has extended beyond the matter of a social contract or a singular relationship with the individual and the state.¹⁶ Taxation reveals more about the nature of citizenship and personal freedom in that “rather than a singular kind of payment establishing their relationship with the state, citizens appear to see taxes as one of several types of payment that lead to communality and interdependence with social, religious, and state institutions.”¹⁷ In this way, taxpayers view the lack of taxation of Indigenous people as

¹⁴ Daniel Martinez HoSang and Joseph E. Lowndes, *Producers, Parasites, Patriots: Race and the New Right-Wing Politics of Precarity* (Minneapolis: University of Minnesota Press, 2019)

¹⁵ Eric Zorn, “Reagan Used Her. The Country Hated Her. Decades Later, the ‘Welfare Queen’ of Chicago Refuses to Go Away,” *Chicago Tribune*, June 10, 2019, <https://www.chicagotribune.com/2019/06/10/reagan-used-her-the-country-hated-her-decades-later-the-welfare-queen-of-chicago-refuses-to-go-away/>.

¹⁶ Nicolette Makovicky and Robin Smith, “Introduction,” in *Tax Beyond the Social Contract: An Anthropology of Economic Citizenship*, ed. Nicolette Makovicky and Robin Smith (New York: Berghahn Books, 2020).

¹⁷ *Ibid.*

unfair since Indigenous people are viewed as benefitting from “civilization” at the expense of taxpayers.¹⁸

To clarify, in both the United States and Canada, Indigenous and First Nations people do, in fact, despite public misconceptions on the contrary, pay various taxes. Tribal governments are not taxed, but individual Indigenous people are.¹⁹ While some individual tax exemptions do exist, such as those tied to land or treaty rights, these exemptions are far rarer than settler rhetoric suggests. In the United States, for example, “every individual” is required to be taxed on “all income from whatever source derived,” which includes any income earned by an Indigenous person.²⁰ Yet, settlers capitalize on this perceived differentiation to construct a bifurcation between the taxpayer and the Indigenous person. This falsely perceived difference creates a distinction in the mind of the white settler between those “who cost and those who pay.”²¹ The resulting divide allows the white settler to feel entitled to participate in the governance of Indigenous people, authorizing the white settler to retain control over property.

A historical example of this bifurcation can be found in Canada, where in 1855, “a Member of Parliament suggested that Native people were nominally causing white men’s taxes to be higher than they would be, ‘owing to the very Indian reserves’ that were exempted from tax.”²² In a more recent context, a 2015 study analyzing settler-colonial racial structures in Canadian small towns revealed that white residents “claimed that Indigenous peoples were

¹⁸ Kyle Willmott, “Taxes, Taxpayers, and Settler Colonialism: Toward a Critical Fiscal Sociology of Tax as White Property,” *Law & Society Review* 56, no. 1 (2022): 6–27, <https://doi.org/10.1111/lasr.12587>.

¹⁹ Internal Revenue Service, *Publication 5424: Income Tax Guide for Native American Individuals and Sole Proprietors* (Washington, DC: Department of the Treasury, September 2020), <https://www.irs.gov/pub/irs-pdf/p5424.pdf>.

²⁰ “Taxes on Native Americans,” *Project Finance* (August 2020), <https://www.projectfinance.law/publications/2020/august/taxes-on-native-americans/>.

²¹ Kyle Willmott, “Taxes, Taxpayers, and Settler Colonialism: Toward a Critical Fiscal Sociology of Tax as White Property,” *Law & Society Review* 56, no. 1 (2022): 6–27, <https://doi.org/10.1111/lasr.12587>.

²² *Ibid.*

incapable of governing themselves, and accused them of living in the past and receiving undeserved handouts at taxpayers' expense."²³

III. Taxation as Control and Forced Assimilation

Paradoxically, while settlers portray Indigenous people as “non-taxpayers,” taxation on Indigenous people has long served as a method of colonial control. Taxation is employed as a tool to forcibly assimilate Indigenous people by conditioning citizenship on the ability to pay taxes. An Indigenous person who is not “civilized” is thus not “civilized” enough to be taxed. As Bhandar identified: settler colonialism requires not only the dispossession of land, but also the continual subjugation of Indigenous people. Taxation, in this context, emerges as one such mechanism that not only secures white settler possession, it delegitimizes Indigenous autonomy. In both historical and contemporary tax laws, taxation continues to be weaponized to marginalize and subjugate Indigenous people.

As Bhandar discusses, Indigenous land was considered “unproductive” as Indigenous people lacked the mental capacity to engage in economic action and were “beyond improvement.”²⁴ She argues that this labeling of Indigenous land use as unproductive was a deliberate strategy to justify dispossession, aligning with the broader capitalist impulse to extract economic value from land. This exact sentiment is later reflected in the United States' tax laws through phrases such as “non-competent Indian.”²⁵ Extending Bhandar's argument, the taxation of Indigenous people – paired with labels like “non-competent” – additionally serves as a

²³ Jeffrey S. Denis, “Contact Theory in a Small-Town Settler-Colonial Context: The Reproduction of Laissez-Faire Racism in Indigenous-White Canadian Relations,” *American Sociological Review* 80, no. 1 (2015): 218–42, <https://doi.org/10.1177/0003122414564998>.

²⁴ Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham, NC: Duke University Press, 2018).

²⁵ Internal Revenue Service, “What Is Meant by the Term ‘Non-Competent Indian?’” last modified February 14, 2023, <https://www.irs.gov/government-entities/indian-tribal-governments/itg-faq-2-answer-what-is-meant-by-the-term-non-competent-indian>.

discrete tool for this same colonial control as land dispossession. For note, the U.S. Internal Revenue Service clarifies that “non-competent” should “never be confused with ‘incompetent,’ which refers to one’s inadequacy for a particular purpose.”²⁶ Regardless of one’s stance on the use of “non-competent” to describe a person, the terminology reflects the broader colonial project’s intent of subjugating Indigenous people by determining an Indigenous person’s capability.

As Audra Simpson, a professor of anthropology at Columbia University, writes, “To be taxed is to be a citizen.”²⁷ The connection between taxation and citizenship is strikingly clear in the United States’ termination policies of the mid-20th century. In 1953, the United States terminated the legal status of over one hundred tribal nations, declaring their members U.S. citizens and forcing Indigenous people to be subject to taxes.²⁸ Taxation thus served as a mechanism for forced assimilation of the Indigenous people into the colony as taxpayers. But taxation does not equate to complete citizenship. It serves as an “antechamber” with one requirement: “civilized.”²⁹ In the same way that Bhandar identifies property laws as methods to “assess one’s degree of assimilation” to Eurocentric definitions, tax laws serve the same purpose.

A clear example of taxation as a tool as a measurement of one’s assimilation is evident in Alaska’s 1919 school tax. The tax was enacted to fund schools and explicitly subjected Indigenous people to taxation only if they were “leading [a] civilized life.”³⁰ The law separated Indigenous people into two tiers: “civilized” colonial subjects who were taxed and therefore

²⁶ Ibid.

²⁷ Audra Simpson, “Subjects of Sovereignty: Indigeneity, The Revenue Rule, and Juridics of Failed Consent,” *Law and Contemporary Problems* 71 (Summer 2008): 191–216, <https://scholarship.law.duke.edu/lcp/vol71/iss3/10>.

²⁸ Glenn, Evelyn Nakano. “Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation.” *Sociology of Race and Ethnicity (Thousand Oaks, Calif.)* 1, no. 1 (2015): 52–72. <https://doi.org/10.1177/2332649214560440>.

²⁹ Maximilien Zahnd, “Not ‘Civilized’ Enough to Be Taxed: Indigeneity, Citizenship, and the 1919 Alaska School Tax,” *Law & Social Inquiry* 48, no. 3 (2023): 937–70, <https://doi.org/10.1017/lsi.2022.44>.

³⁰ Ibid.

partially assimilated and “uncivilized” Indigenous people who were excluded from the framework of citizenship. The taxation reinforced settler colonial power by forcing Indigenous people to fund segregated schools that Indigenous children could only attend if they were either “of mixed blood” or “le[d] a civilized life.”³¹ The purpose of the school tax, however, extended beyond the funding of schools. The tax gave settlers a legal structure for determining which Indigenous people were considered “civilized.” Lisa Phillips, a professor of taxation law and fiscal policy at Osgoode Hall Law School, argues that this tax, much like modern income tax, is a “potent site for identity production.”³² The taxation serves as a site of entry for an Indigenous person to be considered fully assimilated and “civilized” in the minds of the settlers. As Secwepemc leader George Manuel and journalist Michael Posluns write, “Authorities... have offered an open hand to an Indian who ‘becomes one of us’ – that is, an enfranchised, tax-paying Christian, who brings nothing from his past.”³³

Taxation has the power to function as a double-edged sword: it functions as a civilizing scheme while also inflicting economic harm on Indigenous people. For example, in 1921, Alaska enacted a “fur tax,” described as “strictly a revenue measure.”³⁴ In reality, the fur tax was far from a strictly revenue generating measure. Since most of the trappers in Alaska were Indigenous people, this tax de facto targeted them and caused extreme economic hardships. Like the school tax, this tax was part of broader efforts to force “uncivilized” Indigenous people who hunted nomadically, into “civilized” farmers. The tax reflects the overarching colonial goal of “manufactur[ing] Native subjects to its liking.”³⁵ As Elsbeth Heaman, a history professor at

³¹ Ibid.

³² Lisa Phillips, “Registered Savings Plans and the Making of Middle-Class Canada: Toward a Performative Theory of Tax Policy,” *Fordham Law Review* 84, no. 6 (2016): 2677–98.

³³ George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (Minneapolis: University of Minnesota Press, 2019 [1974]).

³⁴ Maximilien Zahnd, “Praise the Gardeners, Dun the Hunters: Alaska Natives, Taxation, and Settler Colonialism,” *Comparative Studies in Society and History* 65, no. 4 (2023): 932–59, <https://doi.org/10.1017/S0010417523000300>.

³⁵ Ibid.

McGill University, argues, politicians justified taxation on Indigenous people because “taxes could train Indigenous peoples to civic spiritedness.”³⁶ In the eyes of the colonizer, taxation is not merely an economic tool. Taxation is civilizing.

Tax policies have the power to not just create, but to entrench inequalities in institutions.³⁷ Sociologists have shown that American taxation has the ability to completely destroy the wealth of people of color while simultaneously “enforc[ing] white entitlement to the state and democracy.”³⁸ Taxation as a method of control has enduring effects on the economic opportunities now available to Indigenous people. The impact is particularly severe because tax policy tends to be “regressive,” meaning taxes take a larger percentage from low-income groups than high-income groups.³⁹ The resulting disparity is reflected in past statistics: in 2022, 23% of Indigenous people lived in poverty, compared to just 9% of white people.⁴⁰ The inequality is further compounded by housing tax policies. While homeownership tends to be the most valuable asset a family owns, the historical displacement of Indigenous people makes homeownership more difficult, with roughly 54% of Indigenous families owning homes compared to 72% of white families.⁴¹ Thus, tax subsidies for homeownership further worsen these racial inequities.

Individual state tax policies create significant economic constraints for Indigenous businesses through jurisdictional overlaps in taxation authority. While states are prohibited from

³⁶ Elsbeth Heaman, “‘The Whites Are Wild about It’: Taxation and Racialization in Mid-Victorian British Columbia,” *Journal of Policy History* 25, no. 3 (2013): 354–84, <https://doi.org/10.1017/S0898030613000158>.

³⁷ Kyle Willmott, “Taxes, Taxpayers, and Settler Colonialism: Toward a Critical Fiscal Sociology of Tax as White Property,” *Law & Society Review* 56, no. 1 (2022): 6–27, <https://doi.org/10.1111/lasr.12587>.

³⁸ *Ibid.*

³⁹ Debbie Becher, “Land Inequalities in the United States,” *Annual Review of Sociology* 49, no. 1 (2023): 421–41, <https://doi.org/10.1146/annurev-soc-030420-122704>.

⁴⁰ Adam Looney, “How the Federal Income Tax System Can Worsen Racial Disparities,” *Urban Institute*, August 18, 2020, <https://apps.urban.org/features/federal-income-tax-system-can-worsen-racial-disparities/>.

⁴¹ “National Native American Heritage Month: Key Insights on Population Demographics and Homeownership,” *National Association of Realtors*, November 2021, <https://www.nar.realtor/blogs/economists-outlook/national-native-american-heritage-month-key-insights-on-population-demographics-and-homeownership>.

taxing a transaction between two Indigenous parties, states can tax any transaction between an Indigenous party and a non-Indigenous party. This complex jurisdictional framework leaves Indigenous businesses non-incentivized to tax a business transaction out of fear that the non-Indigenous party will be deterred by the prospect of double taxation – facing both tribal and state taxes. Consequently, tribes are forced to choose between either exercising their sovereign right to tax, potentially deterring external investment and economic development, or forgoing tax revenue to maintain economic competitiveness.⁴² The resulting conundrum represents a de facto constraint on tribal sovereignty or self-governance, contradicting the federal policies that supposedly support tribal self determination.⁴³

IV. Conclusion

The taxation of Indigenous people is far from a neutral mechanism of revenue collection. Taxation functions as a deliberate tool for settler colonialism and racial domination. Upon analyzing the historical and contemporary experiences of Indigenous people in North America through the theoretical frameworks of Brenna Bhandar and Cheryl Harris, it is blatantly evident that taxation has been weaponized to secure white settler possession, delegitimize Indigenous sovereignty, and enforce Eurocentric definitions of citizenship and economic productivity. Settler states like the United States and Canada continue to deploy taxation strategically to create the racialized hierarchies described by Bhandar, positioning racialized groups as economic dependents who drain public resources. This framing allows taxation to successfully reinforce white possessive logic and whiteness as property while obscuring the violence of settler colonialism. Taxation is not purely economical. It is deeply intertwined with the regulation of identity and assimilation. The consequences of these practices are simply beyond evident in the

⁴² Pippa Browde, "Sacrificing Sovereignty: How Tribal-State Tax Compacts Impact Economic Development in Indian Country," *Hastings Law Journal* 74, no. 1 (December 2022).

⁴³ *Ibid.*

ever-present wealth disparities faced by not just Indigenous people, but all marginalized racialized groups. Taxation has entrenched systemic inequities by perpetuating economic marginalization of Indigenous people while simultaneously maintaining white entitlement to land and resources. From land to levy, settlers continue to use the strategies that enabled their genocide and displacement of Indigenous people through legal frameworks with yet another tool in their colonial arsenal: taxation.

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