Aboriginal Land Title and Indigenous Nationalism

by

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Foreword

This paper responds to my experiences studying Urban Planning at the Faculty of Environmental Studies, which I entered with a view to understanding how political economy affects the way that a city develops and grows. I was especially interested in the critical perspective pertaining to this topic. During my journey through the program, I found that to comprehend this question, it was necessary to understand land as a basic unit of the economy and how it articulates within the capitalist economy. Initially turning my attention towards the Global South, I found that contemporary struggles around land and land rights were happening here in Canada. The struggle was happening between indigenous peoples and the Canadian state.

My research in the Masters in Environmental Studies program has focused on trying to understand how land is privatized within contemporary capitalism, and what effects this has on the people seeking other than exchange value from land. In my course work, I have focused on the role of capitalism within urban planning and the creation of space. My research has led me to understand how land is still a fundamental unit in the global, capitalist economy and how it is important to look at the broader political and economic context if we are to understand how various modern policies and ideas will develop when applied. I hope that this document will contribute to a critical understanding of indigenous land rights and chart out ideas for an effective path towards the restoration of rights and liberation of indigenous peoples in Canada.

Abstract

This paper overviews the question of aboriginal land title, positioning it in the context of the broader Canadian political economy. Aboriginal land title is an evolving legal concept which has carved out a unique social, legal and political space regarding the property rights in Canada. To analyze this evolution, the progress of aboriginal land title is analyzed from the standpoint of the province of British Columbia. In order to argue for the need to integrate aboriginal struggles around land within a broader socialist movement, I explore the following questions: What are the liberal capitalist epistemologies on land? What are the indigenous concepts of epistemologies of land? How are the indigenous concepts of land effected by capitalism? How are indigenous communities reviewing/maintaining/overhauling these epistemologies in light of the current political economy of neoliberal capitalism? This paper will use the works of Canadian indigenous scholar Howard Adams as a reference point through which to examine these questions.

Introduction

This paper overviews the question of aboriginal land title, positioning it in the context of the broader Canadian political economy. Aboriginal land title is an evolving legal concept which has carved out a unique social, legal and political space regarding the property rights in Canada. To analyze this evolution, the progress of aboriginal land title is analyzed from the standpoint of the province of British Columbia. In order to argue for the need to integrate aboriginal struggles around land within a broader socialist movement, I explore the following questions: What are the liberal capitalist epistemologies on land? What are the indigenous concepts of epistemologies of land? How are the indigenous concepts of land affected by capitalism? How are indigenous communities reviewing/maintaining/overhauling these epistemologies in light of the current political economy of neoliberal capitalism? This paper will use the works of Canadian indigenous scholar Howard Adams as a reference point through which to examine these questions.

This paper demonstrates that aboriginal land title now encompasses the many aspects of fee simple property rights while incorporating some unique, collective features. Many authors and contemporary Canadian indigenous intellectuals have voiced hope that this title will enable indigenous communities to further their political independence and protect the 'traditional' indigenous value on land. I argue that the latter is unlikely given the political and economic context in which aboriginal land title is emerging.

Instead, I see the shared consciousness emerging around land as an intrinsic value as an expression of an emerging indigenous nationalism, which can use the augmented property rights accorded through aboriginal title to create a national territory. If pursued collectively, the legal powers granted through the title can serve as the basis of a nationalist struggle which has the potential to improve living conditions and economic prospects for indigenous peoples. However, this struggle needs to become part of a socialist movement if the struggle is to have the long-term effects of improving livelihoods for indigenous peoples and protecting nature.

I feel that this paper contributes a novel way of looking at contemporary indigenous issues, which is through the lens of nationalism. After Howard Adams, few thinkers have sought to

understand indigenous struggles as a burgeoning nationalist movement. Instead, they have understood indigenous activism as one fought for the preservation of identity, an identity which is in large part based on the idea that indigenous cultures are intimately tied to the land. I see this activism around land as an expression of a shared consciousness tying all indigenous peoples in British Columbia. This could effectively evolve into a nationalist movement. Although speculative, I believe that the current articulation of aboriginal land title has the potential to enable indigenous movements to create a national base for themselves in the future.

Section 1: Liberal and Indigenous Views on Land and the Historical Materialist Critique

To begin to look at the aboriginal land title, I will first seek to understand the meaning of land within capitalism. Land is an essential commodity which centers at the genesis of capitalism. Thus, it is important in understanding what is land's position within the economic system today and how this position is understood in the minds of those that interact with it.
Indigenous peoples also had, and have always had, a unique relationship with land. As predominantly hunter-gatherer societies, indigenous peoples developed a certain relationship and epistemology of land in pre-colonial times. The economic base of indigenous peoples in Canada has shifted from community-based subsistence agriculture; it is important to understand how indigenous peoples now believe they relate to land. Finally, using the theoretical framing of historical materialism, this section will conclude with a critique of both of these outlooks and provide a look at what accepting a serious critique of the relationship between human and land may entail for indigenous land rights activism.

Liberal Views on Land

The United Nation's list of Human Rights features several expected items, including the right of religion, the right of movement within states, the right to life, liberty and security of person. One omission for those thinking about questions of land is the right to access to space. Instead, Article 17 upholds "the right to own property alone as well as in association with others" (UN General, 1948). Thus, the UN remakes the ability to own and hold property as a universal and trans-historical human right.

Property is a particular and unique right; it is one which necessarily gives the owner(s) the ability to exclude others from asserting a right over that same property simultaneously (Blomley, 2003). Unlike, say, Article 18 concerning the "right to freedom of thought" (UN General, 1948), the right of property is not freely accessible and automatically shared. Curiously, the UN declaration of rights asserts the right to adequate housing (Article 25) but not the right to access land. The result of framing access to land within the constraints of property rights has led to some holding

title enabling them to use land, whereas others can only have access to the use of land through payment or "illegally", as with informal settlements (Blomley, 2003; De Soto, 2000).

Yet, human beings must occupy space to survive. As such, questions of access to space (land) are fundamental to any reasonable conception of social justice (Harvey, 2009). Beyond providing necessary space for the existence of the human body, land provides for several essential biological needs, including plants to eat, trees to filter the air and a variety of psychological benefits provided by landscape and greenery (Large 1973:1040).

Land as property is a relatively new concept in human societies. It is one of the central pillars of liberal thought and the capitalist economic mode of production which arose alongside it. The justification of how land can be possessed by any one individual originates in John Locke's Second Treaties of Civil Government (1690). Locke begins by asserting that no one human being has an *a priori* right to own landing, saying "it is impossible that any man, but one universal monarch, should have any property upon a supposition, that God gave the world to Adam, and his heirs in succession, exclusive of all the rest of his posterity" (1690, p. 18).

As an Enlightenment thinker, John Locke then attempts to ground the emergence of property in reason and not theology. Locke's creation myth of property centres around the idea that nature becomes one's possession once one mixes her labour with nature. Locke says that the only *a priori* property right is to her own body: "no body has any right to but himself" (1690, p. 18). By extension, anything annexed from nature through one's own body becomes a part of that person, so long as "there is enough and as good, left in common for others" (1690, p. 18). The material object worked upon becomes part of the workers' identity. According to Locke, if one works an unused field, that field becomes by natural right (as natural as their own body belongs to themselves) their property, and the land is separated from the commons (Krueckeberg, 1995). As with other natural resources, as long as labour can be applied upon it to 'enhance' it, land becomes one's private property. Locke contends that property rights, as an extension of one's being, should be protected by the state, and property rights helps define limits to state intervention into citizen's affairs (Krueckeberg, 1995).

Canada's federal and provincial property regimes flow from these early Lockean understandings of land, as they are based on English common law (Vowel, 2016). The Crown is the ultimate owner of all lands in Canada and grants ownership rights. This means that absolute ownership does not belong to those with private property rights in Canada. What is commonly understood as private property rights in Canada is known as the "fee simple" bundle of rights, which means land becomes a privately held commodity in the hands of the owners (Borrows 2015, Vowel 2016). These owners can sell the land, divide the land and pass the land down to heirs as they see fit. These ownership rights generally extend to subsurface resources, such as oil and coal. As in most nation-states, the Crown has the ability to curb these private property rights with legislation and has the ultimate ability to expropriate land should the public-interest case be compelling enough (Borrows 2015, Vowel 2016).

Within modern capitalism, land has become a central and important commodity (De Soto, 2000). Municipalities across the world are using financialised land assets to fund development and service delivery (Harvey D. , 1989; Davidson & Ward, 2014). Private property and land is a core facet of what is still a raw-resource based economy in Canada. As such, the Crown's ownership of land, and its ability to develop it, is important in Canada's past and present economic development and the establishment and maintenance of capitalism (Watkins, 1997).

Indigenous Peoples and Land

While land is positioned primarily as a tradable commodity in modern capitalism, this is not the way that people living within the system view land and private property. Harris and Lehrer demonstrate that there are many situations where urban and suburban land are not used according to market principles (2018). Land property is not 'merely' a tradable commodity but can also be an important component of identity, although this link is weakened by the increasing commodification of land (Krueckeberg, 1995; Harris & Lehrer, 2018). Blomley demonstrates that, although demarcations between private and public space are clear in municipal by-laws, they are much subtler in the eyes of inhabitants of these spaces (2005).

However, the idea that land can be owned, transformed for private gain, traded and divided is an old idea in liberal capitalism and has a strong position in the cultural heritage of North America

(Krueckegberg 1995). How might the pre-colonial and post-colonial indigenous way of understanding differ from this?

There is a tendency in the literature covering indigenous understandings of land to romanticize pre-colonial indigenous land use and management. Much literature advances the idea that pre-colonial indigenous peoples in North America did not generally view land in terms of ownership at all. For example, Bedford & Irving claim that aboriginal economies "were based on the land and the free, unrestricted access of everyone to its resources" (2001, p. 13). Large outlines how indigenous peoples could not see how the sacred nature of land could be modified or possessed by a human being by virtue of a "piece of paper" (1973, p. 1042). He contrasts the "white man's" hunger for land with the indigenous person's "reverence" for land.

However, some scholars have documented socio-legal traditions which outline land ownership rules among pre-colonial indigenous communities, namely Borrows in his 2010 book *Canada's Indigenous Constitution.* For example, the Nisga'a people of British Columbia had laws which dictated which clan owned and possessed use rights over specific territories. The ownership of certain territories was in the hands of clans represented by a chieftain (e.g., the Killer Whale clan of the Nisga'a). Laws and rules surrounding who could use the land, trespassing prohibitions and inheritance was dictated in the Nisga'a constitution called the Ayuukhl Nisga'a (Borrows, 2010, p. 97). The Anishinabek of Ontario, on the other hand, did not have a concept of 'owning' the Earth, which they view as an independent entity towards which the Anishinabek have obligations. Instead, trustees can be accorded to pieces of land (Borrows, 2010, pp. 245-246). Although this differs from private ownership as understood in liberal laws, rules of exclusion and inclusion exist which are congruent to land ownership as understood in liberal laws (Asch, 1989). Native American communities had to come to overt agreements to mutual and shared use of land; mutual use was not the presumed or default state (Krueckeberg, 1995).

But the ownership systems which existed in pre-colonial indigenous cultures are not dichotomous to the system of land ownership which developed under liberal capitalism. Land as a commodity did not exist in pre-capitalist societies, which includes pre-colonial indigenous

peoples (Bedford & Irving, 2001, p. 13; Bourgeault, 1983). That is not to say that these land tenure systems were not valid and should be dismissed as was done by colonial European powers (Wilmsen, 1989).

Indigenous land tenure systems were dismissed by colonists due a drive to acquire land. The dominant colonial European attitude to all lands, whether inhabited or not, was of *terra nullius* or *vacuum domicilium*. This concept is rooted in The Doctrine of Occupation, which in turn stems from a papal bull called the *Romanus Pontifex* of 1455 (Vowel, 2016). *Romanus Pontifex* argued that lands were not put into optimal use by their indigenous inhabitants, thus Europeans had the right to take and put this land to better use (Dannenmaier, 2008; Vowel, 2016; Krueckeberg, 1995). This attitude of "better use" is in line with the Lockean idea of property, where property is created when labour is mixed into the raw resource. The expropriation of land by Europeans was initially made on the terms of use value, where the European 'use' was seen as "superior" to that of indigenous civilizations who tended to participate in little accumulation, and therefore, had no need to employ higher-yielding techniques and practices (Krueckeberg 1995:304).

This papal bull is not the only view which existed among colonial political theorists, and indeed, some asserted the prior rights of indigenous peoples and the requirement to negotiate treaty or gain land through formal conquest (Dannenmaier 2008:67). This is the view that the Crown adopted in the early days of the colonization of British Columbia, as will be discussed later in this paper. However, the inequalities of power, and the incongruity between indigenous property systems and colonial property systems, made the treaty process unfair (Dannenmaier 2008:69).

Today, the United Nations and many individual nations have developed a framework for indigenous land rights that seeks to rectify past injustice. However, the UN is not able to pass these rights on the historical ownership of land by indigenous groups since this would open the possibility that many groups of people could claim land rights over various swaths of land, threatening the integrity of many nation-states. Instead, dominant definitions of indigenous rights are justified on the basis of a 'more' fundamental attachment to land (Dannenmaier, 2008). The land presented as a central feature of indigenous identity, without which they cannot continue

their ways of life, religion, languages (Asch, 1989, p. 122). Since all of these are human rights, the equivalence is made between aboriginal rights and human rights. Dannenmaier states:

> "that a unique relationship with the land is inherent in most of these understandings of what is indigenous. It is also a critical feature of many public statements by indigenous peoples and advocates. Thus, it should be seen not merely as a collateral feature of an indigenous lifestyle, but rather as a core element of indigenous identity." (2008, p. 63)

In other words, the emergence of indigenous peoples' land rights in international law has been closely tied to the recognition that indigenous peoples have a distinctive social, cultural and spiritual relationship with traditional lands and natural resources. This special connection between land and indigenous cultures permits indigenous peoples to make claims to land through the framework of international human rights (2008, p. 69). The UN asserts that indigenous peoples have rights to cultural, religious expression and economic freedom, which would be impossible for indigenous peoples should they be detached from the land (Dannenmaier, 2008). The unique relationship to land is inherent to what it is to be indigenous and a "core feature of indigenous identity" (2008, p. 65). Dannenmaier argues that the attachment of indigenous peoples to land is based on first, its deep spiritual value to indigenous groups, second, that living in harmony with land is highly significant to indigenous cultures and third, on ideas of how that natural elements have innate spiritual qualities (2008, p. 87). Thus, "the loss of land to the loss of cultural rights" and "land rights are not incidental to culture, but integral to identity" (2008, p. 87).

The close link between land and indigenous identity is highlighted by many indigenous writers. Alfred and Corntassel suggest that indigenous personhood is linked to four "core" factors: history, ceremony, language, kinship networks and land (2005:609). Alfred and Corntassel's first action item in the indigenous "freedom struggle" is to reconnect with the terrain and geography of their heritage (2005, p. 613). King (2017, p. 218) states that land has been at the core of conflict between whites and natives and is a central element in aboriginal identity. Leanne Betasamosake Simpson states that only by having a generation of indigenous peoples "fully

connected" to the land, language, Knowledge Holders and the oral/aural traditional can authentic indigenous identity and culture be preserved (2008, p. 83). Tuck and Yang contend that land is so important to indigenous identity that "disruption of indigenous relationships to land represents a profound epistemic, ontological, cosmological violence" (2012, p. 5). In his authoritative overview of aboriginal land politics in British Columbia, Paul Tennant explains that in the view of indigenous peoples in Canada, attachment to land is as fundamental to indigenous identity as it was in pre-colonial times. In other words, attachment to land and land's fundamental place in indigenous identity is a *trans-historical* part of indigenous peoples according to indigenous groups (Tennant, 2011).

The concept of private property and freehold individual title, as conceptualized by western capitalism, are absent from both past and present concepts of indigenous legal traditions, which emphasizes land sharing and use (Borrows, 2015, p. 102; Harris & Lehrer, 2018). In fact, Borrows (2015) contends that the value of land sharing is so strong that aboriginal title can overlap and coexist with private property rights comfortably. As Borrows states: "rights to use and occupy and benefit from land may reside in a particular clan, house group, family or individual. Indigenous law can also recognize and affirm many interests, including 'private' interests" (2015, p. 102). In addition to this, indigenous peoples today assert a strong spiritual and fundamental bond between their distinct identities and land.

If this is the basis that indigenous peoples and colonial states are dealing with each other on the question of land rights, how might an historical materialist critique be inserted and contribute to this discussion? As the next section of this paper will demonstrate, the commonly accepted understanding of indigenous land rights has contributed to some problematic analysis and conclusions that may be hurting the pursuit of indigenous liberation and rights. This is especially true when we attempt to think about liberation past the terms of a commodity economy into a socialist horizon, which as prominent Marxist indigenous scholar Howard Adams said is the only true basis for the liberation of indigenous peoples (1975, p. 204).

The Historical Materialist Critique of Liberal and Indigenous Understandings of Land

Marx saw the genesis of private property as a form of violent theft from pre-capitalist peasant societies who owned and used the land in common prior to a system of "enclosure" pursued by the feudal state apparatus (Marx, 1976). Marx contended that capitalism was premised on the dispossession of people from their means of production (e.g., land) which simultaneously created a class of people unable to survive except by selling their labour to the newly dominating capitalist class in exchange for a wage. Through this violent dispossession committed through "conquest, enslavement, robbery, murder" (1976, p. 874), this dispossession was at the genesis capitalism, its "original sin" (1976, p. 876). Most classical Marxian theorists understood primitive accumulation as an event which occurred in the past and had finished occurring in most places. Modern Marxian theorists contend that primitive accumulation is an ongoing process (Coulthard, 2014, p. 7), for example David Harvey (2003). Harvey theorized that primitive accumulation did not have a temporal endpoint. In Harvey's theory, Accumulation by Dispossession (ABD) is the ongoing process wherein capital constantly dispossesses the proletariat of individual or social goods to fix problems of overaccumulation inherent to the capitalist mode of production. In modern times, this dispossession indicates "a new wave of 'enclosing the commons'" (Harvey, p.148, 2003). ABD differentiates from primitive accumulation by its action through a variety of contemporary processes such as housing foreclosure and privatization of social services. While not solving capitalism's tendency towards overaccumulation, ABD does provide a short-term "spatial-temporal" fix. Harvey (2003) contends "what accumulation by dispossession does is to release a set of assets (including labour power) at very low (and in some instances zero) cost. Overaccumulated capital can seize hold of such assets and immediately turn them to profitable use." (p. 149). Private property, and therefore, fee simple rights, are seen as ultimately illegitimate in Marxist thought. In Canadian law, the Crown sees itself as the ultimate authority over all land and delegates rights. Marxists view this delegation of rights as undemocratic and based on a theft. Marxism as a political project seeks to abolish private property and sees private property as the root of oppression of the working class.

However, the view that indigenous peoples' attachment to land is fundamental to identity, and that that this identity is essentially unchanging and incommensurable with modernity (Tuck & Yang, 2012; Bedford & Irving, 2001; Simpson, 2008; King, 2017) is one which a historical

materialist analysis will find flawed. Yet, it is an idea used to build a politics on which indigenous struggles are fought. Bourgeault (1985) has rejected the feasibility of preserving or returning to a traditional society given the circumstances. He also casts doubt on the pursuit of aboriginal rights as having potential for alleviating the oppression of indigenous communities, instead suggesting that such a pursuit will likely lead to neocolonialism. Metis Marxist scholar Howard Adams says that by preventing indigenous cultures from "developing along with the nation's advancing technology and economy, emphasis was placed on its archaic features" which were "retained as long as they served to increase the colonizer's power over the native people" (1975, p. 33). Instead, Adams advances the revival of a dynamic indigenous society, which is evolving with the changing economic and political conditions. The changes must be controlled and directed by indigenous peoples themselves.

It is helpful to approach the issues through a critique of the indigenous attachment to land by looking at the work of Naomi Klein. Naomi Klein is a prominent figure in the Canadian left, having written a number of investigative journalism books and pieces. Her book, *This Changes Everything: Capitalism vs. the Climate* (2014), was an international bestseller and provoked a flurry of activism around climate change. It described and elevated a contemporary form of political activism called "Blockadia", a type of grassroots, community-based, decentralized and locally-based activism. She devotes a chapter of the book to figuring out solutions to the interlinked problems of destructive capitalism and climate. Klein hopes to stall destructive capitalist-driven development through indigenous land rights. She says:

> "in perhaps the most politically significant development of the rise of Blockadia-style resistance, this dynamic is changing rapidly—and an army of sorts is beginning to coalesce around the fight to turn indigenous land rights into hard economic realities that neither government nor industry can ignore" (2014, pp. 6913-6915).

She outlines how much land in Canada was never heeded to the Crown. She asserts that any land that has been ceded amounts, at best, a "sharing" arrangement, which would permit both nations to use the land in non-mutually exclusive way. Until land rights are extinguished through sale or

treaty, indigenous peoples can still lay claim to these lands. Klein contends that indigenous peoples will exercise these claims and battle for legal ownership of land in order to protect it from development. She argues that indigenous peoples can use their legal advantage to convince global finance that Canada has significant uncertainty regarding land title and is, therefore, an unsuitable environment for business, thus stalling development (2014, p. 6875).

Klein lauds the indigenous special connection and commitment to the land. Contrasting the flip-flopping on fracking legislation by a premier in New Brunswick, Klein says "indigenous rights, in contrast, are not dependent on the whims of politicians" (2014, pp. 6995-6996). Klein says that "no one" has more legal power to halt the destructive expansion of extractive industries. However, Klein provides a dose of pessimism by pointing out that there are fundamental power and economic disadvantages that may not only prevent indigenous communities from protecting land using their title rights, but may push them to use these rights to develop land through extractive industry. She says: "isolated, often impoverished indigenous peoples generally lack the monetary resources and social clout to enforce their rights, and anyway, the police are controlled by the state" (Klein, 2014, pp. 7063-7064). She explains that the power and economic imbalance between indigenous communities and the Crown plus multi-national corporations create a dynamic which places indigenous peoples at a disadvantage. This disadvantage prevents communities from asserting themselves in legal land challenges as well as protecting land that they currently have control over (2014, p. 7192).

Instead of emphasizing the economic pressures as the determining factor in the indigenous community's decisions to protect or develop land, she points to two issues. The first is that climate change is removing indigenous people's abilities to perform subsistence activities. Although these activities certainly hold an important place in indigenous culture, especially those in the North, it is not true that subsistence activities are at the core of most modern indigenous economic activity. Most indigenous peoples rely on wage labour as the primary source of livelihood (Canada, 2017; Roine, 1996). The second is the lack of adequate social services, such as health care and education, and non-extractive economic opportunities (Klein, 2014, pp. 7235-7236). This is certainly a major challenge in indigenous communities and obligations that the Crown has failed to fulfill. But hypothetically, should those two conditions be fulfilled, would

indigenous people overcome the capitalist drive towards development? A historical materialist analysis would suggest otherwise.

Klein develops an overly romantic and idealistic image of indigenous peoples. She says: "non-Natives are also beginning to see that the ways of life that indigenous groups are protecting have a great deal to teach about how to relate to the land in ways that are not purely extractive" (2014, pp. 6924-6926). She speaks on how "ferocious love" (2014, p. 6386) for one's land will be the ultimate barrier against extractive industries and governments who seek to promote them.

First of all, it's helpful to point out that this "ferocious love" argument carries problematic political implications. According to Klein, this ferocious love does not occur in all peoples equally–instead, it occurs most strongly in indigenous peoples, due to their longer, historical connection to the land. The claim that some people's bond or love of land is more or less strong than others' is often employed within racist or fascist political rhetoric (Dean, 2015).

Some communities and peoples, such as indigenous peoples, may have a closer connection to land. To assume that this is an unchanging aspect of indigenous culture is deterministic and untenable. Indigenous peoples are different today than what they were: many are wage labourers and all utilize modern technologies (Bourgeault, 2003). There can be no return or preservation of a "traditional" way of life, cultures will transform as a result of changing circumstances (Bourgeault, 1983, p. 47). Yet, it is this essentialist attachment of indigenous identity and land which permeates the literature on this topic and centers in international and national legal understandings and justifications of indigenous land rights (Dannenmaier, 2008).

Under capitalism, most people, including indigenous peoples, do not have the choice as to how to shape and exercise their relationship to land and nature. Most cannot care about much else beyond their immediate needs and marketable skill acquisition. As social ecologist and historical materialist Murray Bookchin says "economic needs may compel people to act against their best impulses, even strongly felt natural values. Lumberjacks who are employed to clear-cut a magnificent forest normally have no 'hatred' of trees. They have little or no choice but to cut trees just as stockyard workers have little or no choice but to slaughter domestic animals." Work

that is available for most people is as a result of a set of social arrangement which is outside of their control, including that of indigenous peoples.

Furthermore, there is evidence that even prior to colonial intervention, this "ferocious love" that Klein speaks of was more nuanced. Despite colonial myths that land was empty, barren and unused upon the arrival of Europeans to North America, indigenous peoples in North America had devised sophisticated road systems, animal husbandry systems, cleared land for agriculture and created pastures for livestock (Dunbar-Ortiz, 2014, p. 17). Thanks to productive agriculture, some regions of the Americas were densely populated (Dunbar-Ortiz, 2014, p. 17). Although not comparable to the destruction beset by colonial capitalism, this economic activity was not all performed in harmony with the land or with a deep, mystical respect for nature.

Bookchin points out that prior to colonial intervention, indigenous peoples altered and sometimes permanently damaged their lands and the natural environment. For example, the prairies of the American Midwest were created by fire being used on forest to create grassland for herbivores (Bookchin, 1999, p. 68). There seems as if there are numerous cases of species being driven to extinction through overhunting by indigenous peoples (Biehl, 1999, p. 60) with research pointing to human hunters having been responsible for the extinction of some great Pleistocene and Paleolithic mammals (Bookchin, 1999, p. 68). The mercantile fur trade is an early post-colonial example of how indigenous peoples abandoned their "ferocious love" of land to obtain (albeit on highly unequal and unfair trading terms) New World commodities. These new world commodities, such as axes and guns, displaced the community's internal production of equivalent tools. As such, the internally created tools lost the use value to indigenous peoples, who redirected efforts into producing exchange values (fur) to acquire European tools (Bourgeault 1983, p. 51). There is no reason, except for the as of yet unproven and mystical 'attachment to the land', that today's indigenous peoples, who live within capitalism and would acquire their land rights within a liberal context, wouldn't pursue the same course of action as their ancestors did.

Bookchin asks us to abandon this romantic notion of indigenous people's attachment to land and instead view their connection to land in terms of a dialectic. The basis of historical materialism is

the idea that non-economic spheres such as culture and ideology are shaped dialectically by historically specific economic conditions (Bourgeault, 2003). Thus, indigenous peoples' relationship with land and nature, then and now, is shaped by contradictory impulses, which are in turn shaped by changing technological, historical and economic realities. It is wrong to say, as Klein (2014) and Bedford & Irving (2001) (among many others) claim, that "critical features" of aboriginal culture, including "spiritual respect for the land and living creatures" (Bedford & Irving, 2001, p. 51), have been, and will be, untouched by time. The historical materialist analysis also disagrees with writers such as Leanne Betasamosake Simpson who rejects digital technologies and even written language in favor of oral/aural knowledge transmission and other aspects of "Western" modernity (2008, pp. 76-78). Instead, indigenous cultures and interactions with the world have always been shaped, and will always be shaped, by their economic base, which has drastically shifted since pre-colonial times (Bourgeault, 2003). The key is not to erase indigenous cultures, but as Howard Adams suggests, to "usher in a new humanism and harmony that will set native culture in motion once again and open the doors to new cultural developments" (1975, p. 195). The idea, I think, is to take the best of each in a "sensitive integration of both cultures" an opportunity that was "lost in an orgy of bloodletting and plunder by European settlers" (Bookchin, 1999, p. 69).

As Jodi Dean puts it:

> "we have to treat the world itself as a commons and build institutions adequate to the task of managing it. I don't have a clear idea as to what these institutions would look like. But the idea that no one is entitled to any place seems better to me as an ethos for a red-green coalition. It requires us to be accountable to every place" (2015).

This critique does not mean that struggles for land rights by indigenous peoples is illegitimate or should not be supported by historical materialists or Marxists. Within a liberal framework, these struggles may return a measure of equality between aboriginal peoples and the settler colonial state (Borrows 2015:126). It is also not to say that there is no such thing as indigenous culture or ethnicity, or that these don't matter. These outlooks are bred out of economic over-determination

and are not in line with historical materialist dialectics (Bourgeault, 2003). By deploying this historical materialist critique, insight into the possible effects and conclusions of such a land struggle can be gleaned instead of biasing one to a certain set of results, as Klein's analysis. We must view the struggle for land by indigenous peoples in Canada in its historical and political context. There is no predetermined aspect of this struggle. This critique also serves as an indictment against tying indigenous rights to "land-connectedness", and instead asserting these as basic human rights (Dannenmaier, 2008).

Indigenous culture is in the midst of a reinvigoration and intellectual resurgence that Howard Adams called for in *Prison of Grass* (1975). It is clear, as I will demonstrate in the next section, that indigenous activism is increasing integrating many different nations and has always had the settlement of land claims as a central element of this increasingly communal activism. In the section after that, I will try to understand what this increasing collective consciousness and the land activism, around which so much of it revolves, might mean.

Section 2: The History of Land Title Development in British Columbia

This section will outline the historical development of aboriginal land title by focusing on its evolution in British Columbia. I hope to demonstrate in this section how the question of land has always been central to indigenous activism since contact with the Crown. Furthermore, I wish to demonstrate how, through the passage of time, a shared consciousness was developed by the indigenous peoples of British Columbia, where they increasingly came to understand their extremely varied cultures and tribes as part of one group struggling around similar issues.

British Columbia is home to the second largest population of aboriginal peoples in Canada. British Columbia has 232,290 peoples identifying as aboriginal, which is 16.6% of the entire Canadian aboriginal population (Statistics Canada, 2016). The history of contact between British Columbia and Europeans is unique to Canada, and the colonial relationship continues to be highly interesting and different than other provinces. British Columbia was selected as the case study for this paper as it remains the only province with a significant proportion of land unceded by formal treaty to the Crown. British Columbia recognizes 200 First Nation groups who, due to the overlapping nature of the aboriginal title claims, are making claims for an area which is larger than the entire land mass of the province (Newman, 2017). Other than treaties covering most of the area on Vancouver Island and some areas in the northeastern portion of the province, treaties were not negotiated with original inhabitants. Further, the contact history in British Columbia dates from the mid-1800s, making it more recent than almost any other contact history in North America (Tennant, 2011, p. 3). Currently, there are 2300 Indian reserves in Canada, nearly half of which are in British Columbia (Vowel, 2016, p. 29).What this has meant is a rich history of legal battles, indigenous activism and cornerstone court cases. The history of the battle is a fertile ground for extracting insights that might inform the status of aboriginal title in today's context.

Paul Tennant's book, *Aboriginal Peoples and Politics*, was used heavily for this section. His book was the first to outline the land rights conflicts in British Columbia in detail. As Tennant is a political scientist, political analysis is offered in addition to detailed historical facts, which was

helpful for understanding the consequences of events. To date, there is no other book which comprehensively outlines indigenous struggles around land in British Columbia.

Pre-Colonial Times and Early Land Treaties

The original indigenous population in British Columbia (BC) is estimated at being between 300,000 to 400,000 thousand people. This means that only as much as 40% of the indigenous population now still exists (Tennant, 2011). It is complicated to estimate the rate of decrease of the aboriginal population since, until recently, with the amendment of the Indian Act in 1985, aboriginal status could be lost due to a variety of actions such as joining the army, gaining access to fee simple land, and a status aboriginal woman marrying a non-Indian status person. Recent amendments in the 2010s have done much to correct this inequalities (Vowel, 2016, p. 35).

Europeans arrived in greater numbers during the 1850s, and colonial control was not effectively extended throughout the entire province until the 1890s. Contact with the aboriginal peoples in BC was relatively peaceful, with no armed conflict, little forced displacement and minimal forced mixing of tribes. However, the social change (e.g., the introduction of new commodities) and disease against which BC indigenous populations held no immunity caused a sharp decline in the population. The communities that survived these disruptions have persisted into the present day (Tennant, 2011, p. 3). Currently, there are 199 bands in the province, averaging 417 members (p. 5).

By the time the colonialists arrived in British Columbia, the prevailing legal atmosphere towards native peoples had shifted. BC colonialists were ostensibly guided by the Royal Proclamation of 1793. Furthermore, the British had an economic interest in maintaining non-detrimental relationships with the native population (Tennant, 2011, p. 10). The indigenous lifestyle, mode of production and social relations were the basis of the mercantile fur trade (Bourgeault, 1983). The maintenance of workers and the creation of new workers for the new mercantile capitalist order still occurred within the context of primitive communism within indigenous communities. As such, it was within the mercantile order's interest to maintain some form of "traditional society". However, the introduction of personal and private property did serve to modify and breakdown

previously existing social arrangements to some extent, such as creating inequalities between men and women in Indian bands (Bourgeault, 1983).

The Royal Proclamation of 1763 was created thanks the realization that value could be extracted through the maintenance of traditional social forms (Borrows, 1994, p. 11). The Proclamation asserted the following (Tennant, 2011, p. 10):

- British protection and sovereignty over indigenous "Nations or Tribes"
- Protection against British interference into Frist Nation affairs, or self-governance for indigenous communities
- Acknowledgement that aboriginals have continued right to use and occupy the lands they were currently occupying

Borrows asserts that the First Nation way of understanding the agreement was as a guarantee of aboriginal independence, sovereignty and peaceful co-existence with the Crown (1994, pp. 15-24) and to ensure that the Crown protected these interests (p. 30). The proclamation does provide the legal language necessary to ensure that indigenous land ownership is compatible with British sovereignty (Tennant, 2011, p. 11).

The Proclamation outlined that unceded lands could not be surveyed and expropriated, could not be settled on by British subjects or bought by private individuals and created an official system through which public purchase of land could be conducted between First Nations and the Crown (Borrows, 1994, p. 18). The Proclamation at once asserted aboriginal rights to land while creating a system through which to extinguish these rights (Borrows, 1994). This may seem contradictory, but this arrangement as a continuation of the previously existing relationship between First Nations and the Crown. Unlike the fee simple rights available to settlers, Indian Title was being *recognized* rather than *created* by the Crown (Tennant, 2011, p. 11). The land boundaries laid out by the Proclamation followed pre-existing lines, and following the Proclamation, the British redirected settlers to within boundaries which had already been ceded by First Nations (Borrows, 1994, p. 18). Both the Crown and aboriginal communities asserted their interests in being able to voluntarily cede land and create military and economic advantages

(Borrows, 1994, p. 19). In time, the Proclamation came to be seen as the Charter for many First Nations (Borrows, 1994, p. 30; Tennant, 2011, p. 11).

Following the Royal Proclamation, between 1774 to 1849, colonists were fewer in number than indigenous communities in the province. Their presence did not intrude into aboriginal life. Even with the fur trade in place, the traditional lifestyles, politics and most territories of the indigenous peoples were conserved in important ways. The main settler colony was that of the Hudson Bay Company (HBC) on Vancouver Island, but occupied the space informally. The start of the gold rush in the 1850s pushed the British to formalize its land holdings on the island and mainland of what is now BC (Tennant, 2011).

HBC's chief official in the colony was James Douglas. His father was Scottish, and his mother was an indigenous woman. The first set of treaties that Douglas finalized were a set of numbered treaties which covered most of the land on Vancouver Island. By 1854, fourteen treaties had been made: eleven with the Coast Salish peoples of southern Vancouver Island, two with the Wakashan peoples at the northeastern end of the Island, and one with the Coast Salish at Nanaimo. The terms of equality of this exchange is debated due to language differences and culturally different understandings of exchanging land as a commodity and the payment made in blankets (Foster & Grove, 2012). It is plain from the text of the agreement that the tribes which were being dealt with had at least some understanding that ownership was being transferred to the "white man forever". For example, the treaty upheld the rights of the original inhabitants to "hunt over the unoccupied lands, and to carry on our fisheries as formerly" (Tennant, 2011, p. 19). In all, 14 treaties were made with various tribes on Vancouver Island, and these are known as either the Vancouver Island treaties, the Fort Victoria treaties, or the Douglas Treaties (Tennant, 2011, p. 19).

Douglas further sought to establish treaties with indigenous peoples inhabiting the south of BC, including the south of Vancouver (Cowichan area). In 1858, as the governor of BC and Vancouver Island, Douglas set out to purchase aboriginal title from areas while acting as though the purchase was imminent, and opening up areas for settlement while blocking off some portions, which Douglas assumed would become the reserves for the indigenous population.

Douglas never proceeded to complete the treaties. Despite this, he continued to recognize the preeminence of aboriginal title, and white public opinion and elected officials accepted the preexistence of aboriginal title and favored purchase (Tennant, 2011; Foster & Grove, 2012). However, the treaty with Nainamo on Vancouver Island was the last aboriginal land right to be brought under treaty until 2000 when BC formalized the Nisga'a Treaty.

It seems that Douglas was moved by humanist considerations for the well-being of indigenous peoples (Tennant, 2011; Foster & Grove, 2012). Contrary to the dominant ideas of the day, Douglas believed that there was no essential difference between indigenous and non-indigenous peoples. He believed that indigenous peoples "should in all respects be treated as rational beings capable of thinking and acting for themselves" (Tennant, 2011, p. 29). He envisioned that arrangements should be made for the indigenous people's education and that they should support themselves off the land. It seems that ensuring adequate reserve room and equal political rights for aboriginals was more important to Douglas, who may not even have considered treaties legally necessary or practical (Foster & Grove, 2012, p. 93). Douglas was witness to the social breakdown which had occurred and continued to occur in indigenous communities and understood that this was not due to some moral or racial weakness on the part of indigenous peoples: rather, it was due to the impact of whites. However, his solution was integrationist, and he believed that traditional society could not survive (Tennant, 2011, p. 29). Douglas' position was radical for a colonial official, as "in no other new world colony was the quality of aboriginal and immigrant persons seriously accepted by senior officials and made the basis of actual policy at the start of colonial administration" (Tennant, 2011, p. 30).

Douglas reserved 10 acres per aboriginal family, which was much smaller than what was given to aboriginals in other parts of Canada. For example, aboriginals in northern Ontario received 80 acres per family (Tennant, 2011). However, BC aboriginals were granted rights which surpassed those granted to others in the rest of Canada, namely the right (equal to other settlers) to pre-empt non-reserve land. Although exceptional, this pre-emption would mean that aboriginals would have to give up traditional ways of life, family structures and political norms to become farmers, as well as give up aboriginal title (Tennant, 2011).

In the end, it seems like Douglas could primarily be characterized as a practical bureaucrat. He made treaties when possible and expedient. However, when he considered the effort and cost to go through a treaty process too large, this was abandoned. As a result, only a small fraction of Vancouver Island was covered by treaties and had its aboriginal title extinguished. Whatever the intention, aboriginals in BC found themselves with fewer rights and less land than even other aboriginals in other parts of Canada (Tennant, 2011). The results of his actions have ramifications for questions of land and title until the present day.

The Indian Act and Effects on Land Rights and Title

Up until the point where the Indian Act was established, aboriginals across Canada were de facto self-governing; they dealt with the Crown directly on a nation-to-nation basis and had full control of their territories, populations and finances. Even though the British empire did deploy certain tactics for assimilation, such as building schools, offering training programs in European skills and funding missionary work, tribal councils still had authority to reject these efforts and decide the rate and amplitude of cultural change (Milloy, 1983). During the Canadian Confederacy, The Indian Act was instituted in 1867 to streamline the legislative vehicle through which aboriginals in Canada were managed. It was primarily a tool for assimilation of the indigenous population into the white population (Tennant, 2011, p. 45; Tobias, 1983). It neglected to provide indigenous peoples with a large host of civil rights, including the right to vote in federal or provincial elections.

The Indian Act of 1876 did not acknowledge any aboriginal title explicitly. Instead, it defined limitations on how reserve lands could be managed. The act provided for varying inroads to "enfranchisement", which was an essentially a road towards assimilation into the colonial society through the access of private land and civic rights, such as the right to vote. Enfranchisement would also cause a loss of Indian status (Milloy, 1983). At the core of the enfranchisement, status was the idea that aboriginals could only integrate through access to private property. Since tribes had all rejected the idea of subdividing reserves and granting individual members fee simple lots, Indians had to be brought "into the colonial environment where freehold tenure was

available" (Milloy, 1983, p. 58). This was to be encouraged and facilitated through education, religious conversion and skills training. Tribal leaders strongly objected to the Indian Act, seeing it for the attempt at forced integration that it was (Milloy, p. 59).

In the decade following the Indian Act, reserves were reduced in BC. The federal government initially pressured the province to expand reserves and settle outstanding land claim but relented pressure due to the cost of extinguishing title and the difficulty the federal government faced in pulling BC into the confederation (Tennant, 2011).

However, Indian tribes continued to pressure the provincial government to settle land claims and increase reserve sizes. This was an ongoing concern among aboriginal groups throughout the 1880s to 1900. As a response, political oppression started being deployed by the federal and provincial government. In 1884, the Indian Act was amended by John A. Macdonald to outlaw potlatches, which was a key form of political organization for indigenous tribes in BC. The Act eventually led to the outlawing of all gathering of indigenous peoples beyond church ceremonies, signaling the cooperation between church and state for the political repression of indigenous cultures.

Despite extremely difficult odds, aboriginal peoples managed to continue organizing politically, albeit not collectively. In 1887, North Coast indigenous peoples sent a first delegation to Ottawa to meet John A. Macdonald to discuss the land issue (Tennant, 2011). Self-government was a demand and seen as compatible with British sovereignty from the point of view of the tribal chiefs. All major Indian spokespeople made clear their willingness to share land and resources with whites and to accept white governmental authority. Despite these generous terms, the federal government members present at the meeting rebuffed the delegation of indigenous chiefs.

The result was that the question of aboriginal title stalled for years. Indigenous peoples living in the south of the BC saw their reserves reduced due to pressures from farmers, ranchers, land developers and municipal politicians. Access to fishing rights enabled indigenous peoples living on the West, Central and North Coast to find a high degree of success through the fishing

industry. Many were better paid than whites and respected as equals by the surrounding white communities (Tennant, 2011, pp. 53-68).

Land Activism in the Early 1900s.

Prior to the 1900s, activism around land was primarily done on a tribe by tribe basis, or at best, through loose organization of neighbouring tribes who shared similar languages. Individual chiefs would sign petitions cooperatively, for example, around demands for self-government and to settle land issues. There was no common culture, langue or political unity amongst the indigenous peoples of British Columbia (Tennant, 2011, p. 68). As the 20th century began, several changes to indigenous society and beyond occurred which would enable broader political organization and the creation of a joint identity as "British Columbian" indigenous peoples. First was the acquisition of a shared language, English, and second wad increased access to effective transportation, which would streamline communication between distantly located tribes (Usher, Tough, & Galois, 1992). Modernization of steamship transportation along the coast of BC enabled this mobility for indigenous peoples living along the coast; the completion of feeder lines into the Canadian Pacific Railway enabled communication between tribes of the interior. It is during the turn of the 20th century that interior organizing took place for indigenous peoples at mutually convenient railway junctions. The availability of the automobile in the 1950s did grassroots organizing start to take place among interior indigenous peoples of BC (Tennant, 2011).

In 1909, the Indian Rights Association was the first political organization to unite North and South Coast tribal groups in intertribal action. In 1916, Andrew Paull (Squamish chief) and Reverend Peter Kelly (Haida nation) created the first organized political organization called the Allied Tribes. Although the Allied Tribes brought together 16 different tribes, what was notable about this organization is that it included tribes from all parts of British Columbia, including from the mainland and coast (Tennant, 2011, p. 94). It supplanted the Indian Rights Association and became the major vehicle through which province-wide political action around land would occur.

In 1921, in a land dispute case arising in colonial Southern Nigeria, Viscount Haldane affirmed on behalf of British judicial committee of the Privy Council that aboriginal title was a pre-existing right that "must be presumed to have continued unless the contrary is established by the context or the circumstance" (Tennant, 2011, p. 101). Presenting the case of British Columbian indigenous land rights to the Privy Council became a goal of the Allied Tribes. The ruling scared the British Columbia government–it showed them that should indigenous activism succeed in getting their BC land claims get to the Judicial Committee, there was a substantial possibility that the committee would rule that Indian title had not been extinguished. As a result of this ruling, and pressure from the Allied Tribes, a special joint Senate-House committee gave Paull and Kelly the chance to present their case for land rights and reserve size to the federal government. However, since the committee was in part created to maintain white British Columbian interests and prevent the Allied Tribes from bringing their case to the Privy Council in England.

In 1927, an amendment to the Indian Act saw the prohibition of all land claim activities, including hiring a lawyer for the purpose of fighting for land claims. This led to the collapse of the Allied Tribes, an important political organization of the era. Over the next few decades, land claims activities were severely curtailed by this prohibition. However, aboriginals were given the right to vote in BC's municipal and provincial elections in 1947. In 1949, the first indigenous person to be elected to any legislature in Canada, Frank Calder, became the representative of the Atlin riding in the BC provincial government. Finally, in 1951, the Canadian Parliament amended the Indian Act in to remove the prohibitions against the potlatch, an important form of political alliance-building and cooperation for tribes in British Columbia and all land claims-related activities. This was due to a liberal post-war international climate of racial tolerance, and the perception that after several decades of repression, aboriginals would no longer pursue land claim actions (Tennant, 2011).

However, by the late 1950s, Frank Calder turned to uniting the Nisga'a and settling land claims for this tribe. Another indigenous activist also came on the scene in the late 1950s, George Manual, and reunited the tribes of the interior of BC. A major 1959 convention united almost all of the tribes in the province and advanced demands towards the federal government. Subsequently, the federal government announced that it was in the process of creating a

mechanism to deal with aboriginal land claims. In 1965, the federal government introduced Bill C-123 to establish the Indian Claims Commission and provide financial assistance to Indian groups preparing and presenting their claims (Tennant, 2011). The Indian Claims Commission, although successful in settling certain land disputes, has been decried by indigenous scholars as assimilatory (Manuel & Derrickson, 2015; Vowel, 2016; Pasternak, 2013).

The Indian Affairs Minister, Jean Chretien, set out to consult indigenous peoples about possible amendments to the Indian Act. This tactic was in line with the "participatory democracy" then in favor with the Liberal Party and the Prime Minister Pierre-Elliot Trudeau. Then, in 1968, the Department of Indian affairs mailed a booklet entitled "Choosing a Path" to every status Indian household, every band council and to every Indian organization in the country. The booklet presented the main provisions of the Indian Act, posed a series of questions about how the act could be amended and provided alternate possible amendments. By June 1969, the Chretien had taken and processed the feedback and create what was to be known as "The White Paper", but formally called the "Statement of the Government of Canada on Indian Policy". The White Paper contended that aboriginals had already been integrated into broader society and that the real issue standing in the way of ameliorating their social and economic conditions was Indian rights. To rectify this, the Paper proposed sweeping changes: the abolition of Indian status, elimination of Department of Indian Affairs within five years, ending of the special responsibility of the federal government for provision of services to Indians (they would receive the same services from the provinces, as other Canadians), and the elimination of Indian status as a legal concept. Reserves would transformed into private land holdings (Diabo, 2017).

Most aboriginal leaders were astounded by the paper, as it did not reflect any of the views collected during the consultation process. The outcry caused the government to withdraw the Paper and galvanized political organizing of aboriginals in BC. Status Indians created a new province-wide organization to resume pursuit of land claims that had been interrupted by the collapse of the Allied Tribes and the outlawing of claims activities in 1927 (Tennant, 2011).

The Kamploops Conference of 17-22 November 1969 was more broadly representative than any previous Indian assembly held in British Columbia. With 140 bands represented, it contained

85% of status Indian population. The Conference agreed unanimously to form a new organization called Union of BC Indian Chiefs which would focus exclusively on land claims. Even though this organization would be dedicated to attaining land claims settlement, it was still financed generously by the provincial government of BC (Tennant, 2011). The White Paper and subsequent events represented a substantial movement in the creation of a collective consciousness among all tribes in British Columbia. Now that this conscious had been catalyzed by a threat to indigenous identity as such, a series of court challenges would cement the legal tools through which a land base for a blossoming nation could be fought, a point I will return too following a discussion on the development of Aboriginal Title.

The Development of Aboriginal Title

Momentum in the legal sphere continued to build and refine aboriginal title. In 1963, two members of the Nanaimo band, Clifford White and David Bob, were arrested and charged for possession of game without a permit after killing six deer on the unoccupied land which James Douglas had purchased from the band in 1854. This extinguished the title but made provisions for continued traditional hunting and fishing rights "as before". White and Bob, on the basis of this 1854 Treaty, were acquitted of the crime. This emboldened the rest of the indigenous population to seek legal mediation for their land title issues (Tennant, 2011, pp. 213-227). The prominent judge who was pivotal in the decision stated that the question was not whether whites and aboriginals should have the "same" rights; instead, it was whether the law could remove rights which indigenous peoples had prior to white arrival. The judgment showed that the British Columbia Court of Appeals was willing to uphold these rights until extinguished through negotiation between aboriginals and the federal government (Harris D. C., 2009, p. 141).

Following the White and Bob case, the Nisga'a Nation went to court to fight for the confirmation of their existing aboriginal title. In other words, the Nisga'a did not seek to confirm the boundaries for the title, nor the definition of what land rights aboriginal title would entail. Instead, they sought simply to confirm that the title had not be extinguished by the province or the federal government. In line with long-standing province policy, the trial judge ruled that whatever the legal status of aboriginal title, it had been extinguished at this point, and that the

Royal Proclamation did not appeal to BC because it had been created to deal with aboriginal peoples east of the Rockies only (Harris D. C., 2009). The case was appealed at the British Columbia Court of Appeal, where the original decision was upheld. However, when the case was appealed at the Supreme Court of Canada in 1973, six of the seven justices ruled in favor of the Nisga'a and against the province. The justices affirmed the existence of Nisga'a title prior to when colonial government came into existence in 1858. This dismissed the first part of the province's argument, that aboriginals did not have land ownership prior to colonial intervention. On the question of title extinguishment, the court was spilt, with one judge abstaining. Half the justices felt that the title had not been extinguished, and therefore, needed to be extinguished; the other half declared that extinguishment had occurred. Although this was not a definite win for the Nisga'a nation, it was a huge blow to the province (Tennant, 2011). This judgment asserted that the province had lost its legal argument of the absence of pre-existing title and had nearly lost on the question of extinguishment of the title. BC had grounds to expect that future court decisions would not be in their favor. The court recognized that title rights were inherent and did not depend on following contemporary property regimes for legitimization (Borrows & Rotman, 1997, p. 19).

Another case which grew to have relevance to the question of aboriginal title was instigated in the late 1950s when the Musqueam band agreed to the lease of 162 acres of its main reserve to the Shaughnessy Gold Club. The lease was negotiated and handled by federal officials at the Department of Indian Affairs. The band was involved at various stages of the decision-making process and to procure the band's agreement with the lease deal. However, an actual copy of the lease was only delivered to the band and its Chief Delbert Guerin 12 years after it had been signed by the Department of Indian Affairs. Further, the final terms of the lease were different than the information disclosed to the band. In actuality, the terms of the lease were highly beneficial towards the club (Tennant, 2011, pp. 221-223; Borrows & Rotman, 1997). They had secured a 75-year lease at almost less than 50% of the appraised land rental value for the first ten years, after which an increase could only be of 15% (King, 2017, p. 242). In 1975, the band sued the federal government for breach of trust at the Federal Court, which awarded the band with $10 million in damages. This ruling was appealed at the Federal Court of Appeal and overturned; however, the Supreme Court of Canada upheld the initial decision and ordered the government to

pay $10 million to the band (Tennant, 2011, p. 222). The judgment was in part based on a novel way of understanding aboriginal title. One justice on the case ruled that aboriginal title existed prior and independently to the Royal Proclamation and Crown sovereignty in North America. The court ruled that aboriginal land rights were inherent, regardless of whether they were recognized by colonial authority or matched contemporary understandings of property. This, in addition to the *Calder* case, showed that the court recognized that the aboriginal title did not match property law regimes and may need a category of its own, and that aboriginal title was a legal right exercisable on and outside reserves on traditional lands (Borrows & Rotman, 1997, pp. 20-21).

The establishment of the Canadian Constitution in 1982 further strengthened the evolving legitimacy of aboriginal land title. In section 35(1), the Constitution states that "the existing aboriginal and treaty rights of aboriginal peoples of Canada are hereby recognized and affirmed". This would mean that if aboriginal title was found to be an aboriginal right, then unextinguished title (which may cover large portions of BC) is a constitutional right of indigenous peoples that has yet to be dealt with. Provincial perspective remained that aboriginal title was not a right, it did not exist generally, and even for title that did exist, had been effectively or overtly extinguished (Tennant, 2011).

A few cases served to abolish the province's perspective. In 1984, the Nuu-Chah-nulth protested the forestry multinational corporation's planned clear-cut logging on their traditional territories. In cooperation with environmental groups, the Nuu-chah-nulth erected a blockade which prevented MacMillan Bloedel from logging on Meares Island, which the Nuu-chah-nulth considered their territory under aboriginal title not yet extinguished. The Nuu-Chah-nulth Nation, represented by Chiefs Moses Martin and Corbett George, put forward a land claim and demanded an injunction to halt MacMillan Bloedel's activities with the British Columbia Supreme Court (Tennant, 2011). The province deployed its usual arguments against the land claim and MacMillian Bloedel claimed severe economic hardship for the province should they be prohibited from logging. In a historic decision, the BCCA ruled for the Nuu-Chah-Nulth and granted the injunction until the question of aboriginal title could be settled. The Supreme Court of Canada refused to hear the appeal on behalf of MacMillan Bloedel and the province. This was

such a significant decision since it was the first time in British Columbia's history that the province had been overruled on a land claims issue.

Following this decision, various injunctions were delivered by the the Supreme Court of British Columbia against industries seeking to use or exploit lands which had unresolved claims (Tennant, 2011). An area claimed by the McLeod Lake Band saw all resource development stopped until its claim of the area as its reserve could be determined. Up until these cases, the province had expropriated land and used it as if title had been extinguished and settled; these court cases showed that this reasoning was incorrect. The delays and uncertainty caused by this new atmosphere pushed major resource development corporations to start considering whether their "interests would not be better served by the province's negotiating with the Indians" (Tennant, 2011, p. 225).

Aboriginal title, as a legal entity, continued to evolve into the late 1980s. In 1990, the courts first put section 35 (1) of the recent Constitution to the test with the case of *R v. Sparrow*. The British Columbia Court of Appeal ruled unanimously that section 35(1) was in favor of Ronald Sparrow, and by extension the Musqueam Nation, fishing according to rules derived from systems of self-government (Asch & Macklem, 1991). In other words, this ruling affirmed that aboriginal title were *sui generis* as well as flexible to be reinterpreted in the light of new situations The case of *Sparrow* involved Ronald Sparrow, a member of the Musqueam band, breaking a law by fishing with a longer net than was permitted by law (Borrows & Rotman, 1997). This case also marked another defeat of standard provincial BC policy of asserting that no aboriginal right still persisted in the present day (Tennant, 2011).

In 1989, the next major title case, that of *Delgamuukw v. Province of BC and the Attorney-General of Canada* commenced. This issue dealt with the Gitksan and Wet'suwet'en peoples' claim to aboriginal title and self-government over 58,000 square kilometers of land in northwestern British Columbia. This case furthered the *sui generis* character of aboriginal title. The Supreme Court ruled that aboriginal title existed and that it had characteristics similar to reserve lands in that it could not be alienated except to the Crown. Furthermore, aboriginal title gave its indigenous owners not only the ability to use lands in "traditional" ways, but that use

could be changed and adapted to modern usages as long as the use was within certain limits which were not yet specified but generalized as reconcilable with indigenous "attachment to land" (Slattery, 2006, pp. 278-279).

The most significant case following the Delgamuukw decision was that of the Supreme Courts decision regarding the Tsilhqot'in Nation. This case was triggered when the province of British Columbia issued forest licenses for exploitative development, wherein some members of the Tsilhqot'in Nation objected. This situation eventually led to the filed suit for aboriginal Title, lead by Roger William, Chief of the Xeni Gwet'in First Nation, which is a band part of the Tsilhqot'in Nation. In June 2014, the Supreme Court issued its first-ever aboriginal title to a specific portion of land (Newman, 2017). In previous major court decision in relation to title, the furthest the Supreme Court had gone was to grant aboriginal rights or refine what it meant by aboriginal title, as in the cases of *Calder* and *Delgamuukw* (Newman, 2017).

Furthermore, the land which the Supreme Court granted to the Tsilhqot'in Nation, had been nomadic and did not historically intensively occupy any one segment of land. Instead, the Supreme Court granted title based on a more indigenous understanding of land ownership (Borrows, 2015). This is an important step in aboriginal title and has stimulated hundreds of pending title claims over British Columbia (Newman, 2017).

Most significantly, the courts have moved to recognize aboriginal title as having more aspects similar to that of Canadian private land rights. Aboriginal title is analogous to fee simple rights with two exceptions: that the land cannot be alienated to any entity except for the Crown, and that the title is held collectively among the aboriginal community and cannot be subdivided among individuals of a community (Coates & Newman, 2014). In its economic aspects, it seems that aboriginal title is more or less the same as fee simple in that owners can develop the land as they see fit and benefit from the development. A difference is that courts have stipulated that the users of the land must maintain the lands for future generations, although this is a vague and subjective prescription (Coates & Newman, 2014).

Since much British Columbian land is under no treaty, the title poses a threat to some existing settlers' private property rights. In a recent case where this occurred, the British Columbian government opted to purchase the private title which sat on land claimed under aboriginal title, but this is too expensive a solution to cover all such future cases (Borrows, 2015). How to deal with existing private rights overlapping with aboriginal title rights is an objective courts will need to clarify (Borrows, 2015). What is significant about aboriginal rights, including aboriginal title, is that it holds constitutional protection. This means that the province cannot extinguish aboriginal title by private grant, so faulty grants of private property rights will need to be attenuated (Borrows, 2015, p. 111). Rights to the benefits of the land cannot be taken from aboriginal title holders without justifying the seizure under broader public interests which, nonetheless, fit into the Constitution Act, 1982 (McNeil, 2015).

Jurisdiction, Nationalism and Aboriginal Title

The central issue of land struggles is jurisdiction: who has ultimate rights over the land? Aboriginal title, as it is now understood, would solve the issue of indigenous people's full jurisdiction over land they have title over (Manuel & Derrickson, 2015). The ways that rights over the land and resources are granted should not be any different than it would be for private title. If provinces are able to override aboriginal title to allow resource extraction without content of title holders, this is similar to expropriation of private property, which requires special and stringent justification (McNeil, 2015). At least at the provincial level, jurisdiction of aboriginal title holders would preside over provincial jurisdiction (McNeil, 2015). This was asserted in *Delgamuukw*, where one of the justices (Lamer C.J.C.) expressed that title could not be extinguished by the province since this was *ultra vires* to their jurisdiction.

Private corporations seeking to benefit from unceded land will need to be deliberate in assessing risks of extraction over a certain area. As McNeil (2015) explains, where the basis for title is weak, corporations can opt to seek indemnity guarantees or purchase insurances. Where cases are strong, the province and/or corporations can seek consent with Nations laying claims over territory, as was done with some success in the case of Barriere Lake (Pasternak, 2013).

Many indigenous intellectuals declaim the treaty process and the Crown's past decisions in relation to title as insufficient. They contend that indigenous peoples can negotiate fair settlements with the Crown only if they are able to meet the Crown on fair footing. However, as pointed out by multiple writers (e.g. Borrows, 1999; Pasternak, 2013; Alfred, 2001; Vowel, 2016), there is an essentially unequal relationship between aboriginal peoples and the Crown when it comes to questions of jurisdcition over land. For example, Borrows (1999) asserts that the *Delagamuukw* decision was unfair given that it imposed the Crown's ownership of *land a priori* on aboriginals. Further, the Crown is imposing a Western legal system through which aboriginal nations must adhere, and this creates an oppressive regime. The lack of recognition of differences in language and culture creates a situation where aboriginal facts are disregarded in benefit of the colonial narrative (Borrows, 1999, p. 554). This is a point also noted by (Alfred, 2001), who states that the *Delgamuukw* title decision is weak because it stops short of challenging the Crown's ultimate sovereignty over indigenous lands.

This is an inevitable conclusion: the Court cannot undermine the institution (the Crown) on which it depends on for its own existence (Pasternak, 2013). However, from these constraints, however unfair, I feel that an opportunity is presenting itself to indigenous peoples. What can be understood from the history of aboriginal title struggles in British Columbia is that indigenous peoples have long struggled around the question of land. Since the start of colonialism, the aboriginal nations of Canada have organized around questions of title and persisted in pushing for negotiations with the Crown on this matter. We see that over time, indigenous nations slowly started to make alliances with each other, despite their significant cultural, linguistic, historical and geographical differences.

As mentioned above, prior to the 1950s, the ability of indigenous peoples to organize politically and fight for land rights through courts was severely curtailed. Aboriginal title was undefined and completely denied existence by the official policy of British Columbia. Now, with new funding, as well as freedom to fight for land claims, activism around land rights exploded over the next few decades. This was accentuated by constitutional protections of aboriginal rights in the Canadian constitution of 1982, pushed through by massive grassroots activism of the early 1980s, especially by BC aboriginals (Manuel & Derrickson, 2015). Besides the tumultuous

development in land rights, most notable about the 1950s-1960s period was the development of a grassroots, province-wide political organization, in large part led by George Manuel (Manuel & Derrickson, 2015). Manuel attempted to pull together organizations representing different interior and coastal groupings into the largest political organization since the Allied Tribes collapsed in 1927. Due to disagreements supporting some coastal land claims, religious and cultural differences, the interior aboriginals (represented by the National American Indian Brotherhood) and coastal aboriginals (represented by the Native Brotherhood) and the Nisga'a Tribal Council. Attempts to unite the indigenous peoples across the province continued to fail up until 1968 after which the White Paper was released, an event that catalyzed a new indigenous nationalism. Indigenous nation solidarity in British Columbia has pivoted around the question of land title. The way that aboriginal title has evolved has significantly increased indigenous ownership and power over the land, while conserving some aspects of "traditional" indigenous governance. Aboriginal title now operates almost entirely as fee simple, except that it is collectively owned. By imposing this common legal framework through which indigenous nations need to confront and operate through, this can be seen as an avenue for a pan-indigenous nationalist movement in Canada. It offers a stable ground upon which all indigenous peoples in British Columbia could make a general claim for all indigenous peoples, as the Union of British Columbia Indian Chiefs initially intended to do. The Union of British Columbia Indian Chiefs had support to proceed in this way, except from the Nisga'a, who choose to proceed on their own. Although the Union collapsed in 1975, and thus the effort of one big claim never came into fruition, the potential is clearly there. The next section will discuss evidence of a rising indigenous nationalism, what this could mean and how land title fits into the discussion.

Section 3: Aboriginal Title, Resource Extraction and Indigenous Nationalism

Given the rising indigenous nationalism and the potential for creation of a land base over which a new British Columbian indigenous nation would preside, how would such a nation operate within the capitalist state of Canada? If the goal is to maintain indigenous values and traditional values, how likely is the current way that nationalism and the creation of a land base is evolving to yield such a result? I argue that pan-indigenous political organizing and empowerment through the jurisdiction given by Aboriginal Title is not sufficient to create an indigenous nation which is to remain true to traditional values or be free from colonialism. Instead, aboriginal title opens avenues towards a form of neo-colonialsim by multi-national corporations, as the subsequent paragraphs will demonstrate.

Indigenous peoples have the right to be consulted when it comes to projects which may affect their constitutionally-protected traditional activities. However, prior to the *Tsilhqot'in* decision, consent on resource development matters was not required from indigenous nations. Following this decision, it seems that consent is now *required* as well. As Grand Cheifs Stewart Phillip and Serge Simon worte for an article for *The Socialist Project* in April 2018:

> "Canadians are starting to grasp that there are governments and jurisdictions on this great land besides the provinces and the federal government. Indigenous peoples possess the inherent right to govern our territories. Pursuant to that inherent right, you need our free, prior and informed consent to develop our lands, especially when we are talking about a high-risk project such as Kinder Morgan that poses a real risk to those lands and waters and climate." (Phillip & Simon, 2018).

Philip & Simon's view that consent is now required is in line with the thinking of Borrows (2015) and McNeil (2015). Some deem that only constitutional duty remains to consult and accommodate when possible and not obtain consent (Newman, 2017; Coates & Newman, 2014). As with other proprety rights in Canada, the federal government can overule title without consent

of aboriginal holders if it can prove greater public interest. The question is, can consent be derived for projects on indigneous lands which violate indigenous principles, including that of "land connectedness"?

An interesting case of indigenous consent being derived for the use of corporate extraction is the case of the Kinder Morgan pipeline. The Kinder Morgan involved interlocking jurisdictions between British Columbia, Alberta, the federal government and multiple indigenous nations which are affected by the pipeline. For resource projects which cross provincial lines, the federal government has ultimate jurisdiction if it argues that a project is within "national interest" as Justin Trudeau has affirmed (Kung, 2018). However, there is a third jurisdictional consideration: indigneous nations.

The uncertainty posed by the unceded land and possible title cases against the Kinder Morgan pipeline is a significant source of volatility for the project. There are multiple indigenous groups who are standing against the pipeline. Tsleil-Waututh and Squamish Nations, major indigenous groups in terms of population in British Columbia, have voiced their opposition against the pipeline as well as having participated in direct actions to prevent work on the pipeline (Dyck, 2018).

On the other hand, several nations have affirmed their support for the proposed pipline (Hopper, 2018). Kinder Morgan Canada affirms that there are now 43 communities who have signed mutual benefit agreements valued at more than $400 million dollars, although this number has decreased from 51 a year ago and only represents one-third of communities affected by the Kinder Morgan Pipeline (Kung, 2018). However, this number includes *all* First Nations whose land the pipeline directly crosses, and 80% of First Nation communities in proximity to the pipeline (Quesnel & Green, 2018). Most of the opposition to the pipeline stems from nations who are further away from the pipeline and its potential risks. However, the agreement of some nations to the pipeline may have been as a result of the belief that the pipeline would be built regardless of indigenous perspectives and from a desire to benefit from this eventuality (Hopper, 2018).

This consent follows an earlier proposal for a pipeline called the Eagle Spirit which, like the Kinder Morgan pipeline, connects Alberta oil sands to the West Coast for exports to international markets (Jang, 2018). Led by aboriginal lawyer and businessman Calvin Helin, the project has gotten backing from the Aquilini Group, owners of the Vancouver Canucks NHL franchise (Morgan, 2015). According to a leading backer of the project, Mikisew Cree Dave Tuccaro, aboriginal communities would own up to 50% of the equity in the project, follow stricter environmental safeguards and seek consent from all communities affected (Morgan, 2015). The project has gotten backing from over 30 First Nations, including some Gitxan hereditary chiefs, who have even launched a GoFundMe campaign to fund a legal challenge against Bill C-48, the Oil Tanker Moratorium Act, which would make the project untenable (Cattaneo, 2018; Hoekstra, 2015). The GoFundMe campaign has raised over $46,000 dollars as of May 2018 (Cheifs Council, 2018). On the GoFundMe, written by the Chiefs Council for the Eagle Spirit pipeline, the Oil Tanker Moratorium Act is denounced as the result of lobbying efforts by "big American environmental NGO's (who make their money from opposing natural resource projects." It is debatable that any oil pipeline project can be considered environmentally benign.

Pasternak (2013) claims that: "indigenous resistance to capitalism emerges–not in the space between subsistence and proletarianization–but from the social and legal orders maintained through indigenous peoples' connection to the land and to their cultures" (p. 60). This is similar to Coulthard's argument that indigenous resistance to capitalism will come in the form of a return to "land-based practices" as well as applying "indigenous governance principles to nontraditional economic activities" (p. 172). Coulthard creates the concept of "grounded normativity" (p. 13) to explain why the indigenous struggle is around land and not around wages or social services. Like Pasternak, Coulthard believes that there is an essential connection to land that should not only guide indigenous activism but will also be the mode of resistance against capitalism for indigenous peoples.

It seems that for Pasternak and Coulthard, and many other writers and commenters on indigenous struggles against capitalism, the idea is that the struggle of indigenous peoples in Canada can be understood as resistance to primitive accumulation, akin to the peasant struggle against enclosure which was described by Marx (Kulchyski, 2016). However, I find this

argument unconvincing. We have compelling examples, as with the Kinder Morgan and Eagle Spirit Pipeline, where indigenous principles can be incorporated into environmentally destructive and fully capitalist enterprises. Lertzman & Vredenburg (2005) discuss how resource extraction companies can open avenues for resource development over lands contested by indigenous nations through culturally sensitive negotiations and integration of Traditional Ecological Knowledge and 'power sharing'. Their paper describes a process through which corporations can integrate and acknowledge cultural, spiritual and the economic concerns of the Nuu-Chah-Nulth into standardized operations of the resource extraction industry. Self-government and "traditional" indigenous values and politics need not preclude tying indigenous communities with global markets and multi-national corporations. I believe that this thesis is an incorrect way of viewing indigenous resistance and is not a valid premise on which to build indigenous resistance.

However, the struggle of indigenous peoples has always been highly land-centric. It has always been around the issue of land claims which indigenous peoples have been best able to organize. And, for the first time in Canadian colonial history, the prospect of indigenous jurisdiction over unceded, yet claimed, land is stronger than ever; indeed, it seems to have been strong enough to have contributed to Kinder Morgan halting its multi-billion dollar pipeline project (Ditchburn, 2018).

As we see from the examples of Kinder Morgan and Eagle Spirit, indeed, the jurisdictional power granted by *Tsilhqot'in* enables such partnerships. As with all publically funded organizations and services, indigenous peoples have seen a reduction in the meagure supports they have received from federal and provincial governments (Slowey, 2001). For decades the government of Canada has sought to reduce expenditures towards First Nations by devolving responsibilities onto these communities and dismantling federally-administered and financed projects in favor of self-governed programs. The federal and provincial governments have actively sought to settle land claims through treaties and negotations in order to quwell reaction by indigenous populations with financial compensation (Slowey, 2001). As municipalities have experienced, more and more service delivery is being devolved onto First Nations without additional funding or support (Slowey, 2001).

Subsumed under larger corporations in a global natural resource market, indigenous nations are finding that their dependence on government welfare is shifting towards a dependence on multi-national corporations (MacDonald, 2011; Slowey, 2001). The *Tsilhqot'in* decision provides a stable judicial base off of which these partnership can be made. Although it may be more cumbersome for multi-nationals to partner with multiple indigenous nations rather than simply obtain licenses from the federal or provincial governments, right-wing thinktanks like the Fraser Institute has praised the enhanced stability that the *Tsilhqot'in* has the potential to offer (e.g. Newman, 2017).

In the end, the conversion of indigenous rights over land into the legal system of Canada is, as Pastenak (2013) speaks of the Royal Proclamation, "a double move of jurisdictional recognition and subordination" under the current conditions of neoliberalism under which indigenous peoples live today. Pasternak (2013, p. 67) says that we should defend the terms which indigenous peoples set for themselves in terms of how they recognize Crown Title. Indigenous peoples' jurisdiction takes precedence over the Crown's preemption of rights over land. But given the context of neoliberalism, this call seems to be inadequate. The indigenous jurisdiction exists alongside a context of withdrawing state support and increased globalization. Simply obtaining consent from indigenous peoples for using their land does not equal liberation of indigenous peoples. In fact, it would seem that this perspective is leading to a type of neocolonialism (MacDonald, 2011; Slowey, 2001).

What is positive and genuinely has potential for liberation about the aboriginal title is the fact that land must be held in common for future generations. This helps ensure that the land base of an indigenous nation remains intact (Pasternak, 2013, p. 205). This is in contrast to the potential of the land claims process to break up reserves and traditional territory by converting these into fee simple holdings for individuals within a nation (Pasternak, 2013, pp. 202-206). Aboriginal title is a long and expensive process to prove, requiring millions of dollars and much research to collect cultural and historical evidence of past occupation (Pasternak, 2013, pp. 212-213). If the process of fighting for the aboriginal title can be conducted as one large claim instead of hundreds of smaller ones, I believe it would facilitate the process of acquiring title and holds promise in the building of an indigenous nationalism in Canada.

Conclusion: True Indigenous Independence

From the history of land claims as outlined in this paper, indigenous nations have always understood that aboriginal rights meant political jurisdiction that includes a land base (Asch M. , 1984, p. 30). But it was only slowly that they saw the struggle for land rights as something that was collective in nature. Only in recent times did individual aboriginal groups start to see themselves as part of a collective in British Columbia, a collective through which they can fight for land claims to be settled.

As I mentioned earlier, in the first section of this paper, it is not possible to return to an "earlier" state for indigenous peoples. Despite the claim from multiple writers that indigenous culture has stood up against the passage of time and development of technology and economy (Bedford & Irving, 2001), this is a myth. It is not feasible, nor necessarily desirable, that indigenous people re-adopt nomadic and/or agrarian modes of life (as promoted by writers such as Coulthard, 2014; Alfred & Corntassel, 2005; Tuck & Yang, 2012; Pasternak, 2013) within the context of advanced capitalism. Indigenous peoples are a key part within the functioning of Canadian capitalism. Over 50% of indigenous peoples are urbanized. Indigenous peoples' greatest barriers are lack of access to education, employment and decent living conditions (Adams, 1975; Bourgeault, 1983). As we have seen with the history of aboriginal title, a type of political decolonization has occurred (Bourgeault R. , 1992). The Canadian state, although not relinquishing ulimate control over the territory claimed by indigenous nations, is allowing an increasingly larger amount of political autonomy to indigenous nations. If an effective struggle is to be fought for *all* indigenous peoples, it needs to be done as a collective unit and needs to be fought over not just rights to land, but over demands made to the Canadian state.

The existence of economic oppression cannot be separated from the ethnic, cultural and lingustic oppression that indigenous peoples face in Canada. The fight against national oppression cannot be delinked from the fight against economic oppression (Bourgeault R. , 1992). The struggle of indigenous nations is as much a class struggle as it is one for identity. Class struggle in industrial societies arises through the form of nationalism (Bourgeault R. , 1992).

The creation of a shared indigenous culture and the raising of awareness of the source of a shared oppression is the stuff from which nations are built and oppressed people find energy and direction with which to fight their oppression (Bourgeault R. , 1992; Gellner, 1983; Adams H. , 1975). Indigenous peoples did not historically identify with each other as part of a shared nation; indeed, there is as much, or more, cultural and linguistic differentiation between indigenous tribes of BC than there were between French and English Canadians between whom there was a nationalist struggle (Bourgeault R. , 1992). But the call to create links of shared nationality is rising among the indigenous intellectuals. Indeed, Coulthard (2014) calls for them to arise between indigenous nations from different countries as well. The creation of an indigenous culture is occuring, wherein dead languages "are revived, traditions invented, quite fictitious pristine purities restored" (Gellner, 1983, p. 56). One such "pristine purity" which has been invented is that of an indigenous special and mystical connection to land. This myth has been extended by the indigenous intelligensia to include all indigenous peoples in Canada and the world, despite enormous differences. As Gellner describes, a core aspect of a nationalist movement is that it defends "cultures it claims to defend and revive are often its own inventions, or are modified out of all recognition" (1983, 56). As I hope I was able to demonstrate, the pervasive idea wherein indigenous peoples and their cultures have a spiritual or fundamental attachment to land is one such invention. It is a helpful myth that has made its way into international law as well as into the theorizations of indigenous intellectuals. This myth has been supremely useful in establishing links of recognition between a wide swath of indigenous victims of Canadian colonization, increasing the potential that a successful nation will be born (Gellner, 1983, p. 112).

Howard Adams and Ron Bourgeault, both indigenous Marxist thinkers, realized the power and necessity of a nationalist movement to push forward indigenous resistance. Nationalism emerges from class society (Bourgeault R. , 1992) and is a direct result of the material conditions brought on by industrailism (Gellner, 1983). The history of indigenous oppression is inextrisically linked to the creation of indigenous peoples as an oppressed Indigeneous class in capitalism (Bourgeault R. G., 1983; Bourgeault R. , 1992). As such, the future development of indigenous nations is linked to capitalist class relations and must grapple with class struggle directly in order to achieve liberation (Bourgeault R. , 1992, p. 175). Indigenous nationalism is the vehicle

through which common links of class oppression can be recognized between indigenous peoples and give “spirit and content to a community of people by bringing them together under a common histroy and state of mind” (Adams H. , 1975, p. 193).

Pasternak (2013) views the acheivement of “co-existing” economic orders–one indigenous and one capitalist–as the goal of indigenous resistance. She deems that the goal of allies should be to enable indigenous peoples to maintain traditional lifestyles and jurisdictions. This is also the opinion of Coulthard, who sees the resurgence of lost culture reinvigorated, tweaked to match undeniably different modern conditions. However, Adams would probably characterize such a project as “cultural nationalism”, an idea wherein indigenous peoples are encouraged to seek returning to traditional customs, worships and forms of life. He says that such a project is “a return to extreme separatism in the hope that colonial oppression will automatically go away” (Adams H. , 1975, p. 197). Indigenous resistance to capitalism must be invigorated through political awareness of the proletarianization and the political consciousness, and the vehicle through which solidarity can be built among indigenous people is through a modern, rejuvenated indigenous culture, not simply an extension of indigenous peoples’ “pre-conquest communal state” (Bourgeault R. , 1992, p. 174). To attempt to achieve liberation while denying this consciousness is to risk indigenous peoples falling back into a state of neocolonialism (Adams H. , 1995, pp. 53-55).

As is common in nationalist struggles, the ability to live one’s culture is presented as a paramount goal (Gellner, 1983). However, Marxist writers thinking on nationalism see culture as a transitional state. Coulthard (2014) thinks that Franz Fanon reached the limit of his analysis when he wrote that culture is but a step towards a raceless future (p. 153). However, I think that is one of Fanon’s greatest insights, especially when applied to the national question for indigenous peoples. Culture is is constantly changing according to changing material conditions (Gellner, 1983; Bourgeault R. G., 2003; Adams H. , 1975, p. 194). It always has been for every culture, including indigenous cultures. As oppressed peoples, indigenous peoples have the ability to create a culture of “radical nationalism”, one that is dynamic and developing according to the changing conditions of the peoples which it supports (Adams H. , 1975).

Nationalist movements need a state to support them, and in the modern day, this means a land base with boundaries in which the nation is able to self-govern (Gellner, 1983). The struggle of indigenous peoples being land-centric can be seen in the light of a nationalist movement seeking to create boundaries for a state which would support its development and the sustainment of the culture which emerges from such a movement. The direction in which aboriginal title is now interpreted provides legal and political tools to create such a base. As Howard Adams wrote, the nationalism pursued by indigenous nations is not a revolutionary nationalism wherein the indigenous peoples seek to overthrow and replace the existing government. Instead, it is a "radical nationalism" where an indigenous government will seek "economic, social and cultural autonomy" (1975, p. 193). As outlined with the cases of pipelines in Western Canada, indigenous nations have demonstrated the ability to have fundamental effects on development projects and the ability to insert themselves as financial beneficiaries on these projects. Aboriginal title is a viable tool through which indigenous nationalism can work towards defending a land base off of which autonomous economic development can occur.

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