

Contesting Land and Power: Colonialism, Capitalism, and Resistance at Ada'itsx/Fairy Creek

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Abstract

Protests at Ada'itsx/Fairy Creek started with a small group of activists and quickly grew to become a large movement that included direct action at multiple sites on the West Coast of Vancouver Island as well as a large online following that spanned across the country and to other parts of the world. The actions taken to stop logging at Ada'itsx/Fairy Creek by protesters and the various responses to those actions have raised many questions about decision making in the face of climate change, biodiversity loss, and increasing numbers of old-growth-forest-dependent species at risk. It has also drawn attention to crown-industry-Indigenous relations and to questions about land including title rights, jurisdiction, and responsibilities to the land and to each other on both unceded and treaty land in British Columbia. Marxist state theories, theories of colonialism and racial capitalism help explain different facets of these interrelated questions, all of which can be tied to colonialism and the resulting ongoing quest for control over land, the goal of extinguishing Indigenous peoples either through assimilation or genocide, the expansion of colonial capitalist system, as well as the ongoing resistance to these systems and relations. Scholarship has noted that current realities cannot be isolated from their histories and that to both understand current events and enact change one must understand past actions and the traces these have left. Situating the Ada'itsx/Fairy Creek case in economic, social, and environmental context and in a British Columbia influenced by colonialism, capitalism, and climate change, this paper examines the historical preconditions for the controversy at Ada'itsx/Fairy Creek and how these conditions remain reflected in current events and conversations that have taken place during the protests.

Foreword

This paper is the final step in completing the Master of Environmental Studies program and the cumulation of my coursework and research in the Environmental Planning specialization of the Planning stream. My area of concentration is “planning for climate change” and the goal of this concentration is to understand the relationship between hierarchies of decisions making and policy, planning, and responses to climate change.

To accomplish this goal the three major components that were developed to contribute to this understanding are: urban planning, public policy, and understanding climate change. In the process of completing the course requirements for the program I found that my initial focus on cities, which was developed in my plan of study, shifted towards rural areas, the tension between conservation and natural resource planning (extraction), and the role of colonization.

This Major Paper contributes to learning strategies in all three components.

Dedication

For my son, Callen, never give up on your dreams – no matter how many obstacles you face, you're stronger than you know.

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I would like to thank my supervisor, Dr. Stefan Kipfer, for his feedback, edits, and unrelenting support and encouragement throughout this process. I would also like to thank Dr. Liette Gilbert and Ouma Jaipaul-Gill for their support in the final stages of this submission. Finally, I would like to thank my family and friends for their continued support and never-ending faith that this day would come. I could not have done this without any of you.

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List of Abbreviations

AAC: Allowable Annual Cut

AIP: Agreement in Principle

APTN: Aboriginal Peoples Television Network

B.C.: British Columbia

BC NDP: British Columbia New Democratic Party

BEC zone: Biogeoclimatic zone

C-IRG: Community-Industry Response Group

CMT: Culturally Modified Tree

CRU-BC: Critical Response Unit – British Columbia

FCRSA: Forest & Range Consultation and Revenue Sharing Agreement

FLNRORD: Ministry of Forests, Lands, Natural Resource Operations and Rural Development

HBC: Hudson's Bay Company

ITA: Incremental Treaty Agreement

OGMA: Old Growth Management Area

RFS: Rainforest Flying Squad

RCMP: Royal Canadian Mounted Police

TFL: Tree Farm License

UBCIC: Union of British Columbia Indian Chiefs

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples

1.0 Introduction

Protests at Ada'itsx/Fairy Creek started with a small group of activists and quickly grew to become a large movement that included direct action at multiple sites on the West Coast of Vancouver Island as well as a large online following that spanned across the country and to other parts of the world. The actions taken to stop logging at Ada'itsx/Fairy Creek by protesters and the various responses to those actions have raised many questions about decision making in the face of climate change, biodiversity loss, and increasing numbers of old-growth-forest-dependent species at risk. It has also drawn attention to crown-industry-Indigenous relations and to questions about land including title rights, jurisdiction, and responsibilities to the land and to each other on both unceded and treaty land in British Columbia (B.C.). Marxist state theories, theories of colonialism and racial capitalism help explain different facets of these interrelated questions, all of which can be tied to colonialism and the resulting ongoing quest for control over land, the goal of extinguishing Indigenous peoples either through assimilation or genocide, the expansion of colonial capitalist system, as well as the ongoing resistance to these systems and relations. Scholarship has noted that current realities cannot be isolated from their histories and that to both understand current events and enact change one must understand past actions and the traces these have left. Situating the Ada'itsx/Fairy Creek case in economic, social, and environmental context and in a British Columbia influenced by colonialism, capitalism, and climate change, this paper examines the historical preconditions for the controversy at Ada'itsx/Fairy Creek and how these conditions remain reflected in current events and conversations that have taken place during the protests.

Ada'itsx/Fairy Creek is a forested watershed located within unceded Pacheedaht territory on the southwestern edge of Vancouver Island, B.C. It is home to what has been claimed across the media to be one of the last intact old growth forests on Southern Vancouver Island (Simmons, 2021). It is also encompassed by Tree Farm License (TFL) 46, a form of forestry tenure on Crown land owned by Teal Jones Group. In August 2020 activists began gathering at Ada'itsx/Fairy Creek to protest old growth logging in the area. They set up blockades to prevent Teal Jones and related contractors from entering the site, creating further logging access roads, and logging the cut blocks (Rainforest Flying Squad, 2021). Actions and attempts to curtail

logging progressed over approximately three years, contravening a court injunction, resulting in over 1,100 arrests (the Narwhal, 2021), and fundraising more than 1.2 million dollars in financial support for legal costs, camp supplies, organizing and transportation costs and other expenses (Fundrazr, 2021; Go Fund Me, 2021). The initial group of organizers, the Rainforest Flying Squad, stated on their fundraising platforms that their demand is an “immediate moratorium on ALL destruction of old growth forests now and forever and for a viable transition to an ecologically and economically responsible forest economy” (Go Fund Me, 2021). While this was the core goal of the protests, in the early days demands also included the “release of the recommendations of B.C.’s Old Growth Strategic Review Panel [...]” (Guillen, 2020) a project that was commissioned by the Provincial government.

Not long after the protests began, the Old Growth Strategic review and its 14 recommendations were released. The announcement left protesters feeling hopeful, but they remained committed to the blockades, holding out to see what further steps would be taken. However, their direct action and cumulative demands didn’t produce the results that they had hoped for. Small incremental victories seemed to be gained throughout the course of the protest: after the Old Growth Strategic review recommendations were published, political parties continued to campaign on promises to save old growth, political announcements were made, and deferrals were made in areas where old growth was present. However, cut blocks containing critical old growth continue to be logged, logging roads are permitted to be constructed, Old Growth Management Areas (OGMAs) are amended to accommodate them, and business generally continues as usual. Leading many who opposed old growth logging to dub the rhetoric as ‘talk and log’ – and in the end, it also left protesters asking, ‘what was it all for?’ (Oudshoorn, 2023).

However, this was not the only battle that was being fought in relation to Ada’itsx/Fairy Creek and the land that surrounds it. Another was also taking place, one that has been underway officially for almost 3 decades, but in reality, has been fought since colonization, that is the battle for Indigenous self-determination and respect for the right to make decisions about the land. Over the course of the protests Pacheedaht, Ditidaht First, and Huu-ay-aht Nations issued statements asserting their connection to the land, governance, and right to economically

benefit from their traditional territories. In addition, these statements have noted the historical exclusions of Indigenous nations from decision making and the degradation of the land that has resulted. With these declarations, the nation's Hereditary Chiefs hope to build "[...] a future that is fair, just, and equitable" and "[...] based on respectful nation-to-nation relationships" (Huu-ay-aht First Nations, 2021), in collaboration with other governments, Indigenous, and non-Indigenous peoples. Remarking that "[w]e are in a place of reconciliation now and relationships have evolved to include First Nations. It is time for us to learn from the mistakes that have been made and take back our authority over our ḥahahuuḥi [traditional territory]" (Huu-ay-aht First Nations, 2021). While the concept of reconciliation applies to all aspects of Indigenous-Settler-colonial relations, within the context of forestry acts of reconciliation and inclusion of First Nations have taken the form of agreements and tenures like First Nations Woodlot Licenses, partnerships in TFLs, and Forest and Range Consultation and Revenue Sharing agreements.

The state also frames these acts as a form of reconciliation, heralding its willingness to work with Indigenous Nations to produce 'mutual benefits' and repeatedly acknowledging Nations as rights and title holders, just like they have in press conferences and news releases related to Ada'itsx/Fairy Creek (Ministry of Forests, 2023; Zussman,2021). But literature on the topic has a different perspective, one that explains how the Province walks a thin line between recognition/inclusion and exclusion/dispossession, using both for its own benefit. In addition to adapting policies and frameworks to maintain control over as much of the land as possible and continue to the process of capital accumulation as well as its own existence (Tully, 2000 cited in Barker, 2009, pp.326,333-334), Simpson, Atleo, and Braun (2024) point out, the inclusion of Indigenous nations in modern forestry through agreements and tenures has long been a tool used by the state "to 'fix' overlapping crises of diminishing supply, a degraded forest ecology, and Indigenous sovereignty" (p. 11). The authors identify that this happens in three ways. First, Indigenous partnerships and tenure are understood to reduce risks and increase certainty of access and supply by reducing chances of conflict over "unresolved land claims" (Simpson et al., 2024, pp. 12-13), partially alleviating the problem of diminishing supply. Second, to fix the crisis of Indigenous sovereignty, rather than adequately address 'unresolved land claims' and calls for

self-determination, the state diverts “transformative calls for decolonisation towards more narrowly circumscribed channels of self-determination and reconciliation contained by the settler state’s own legal and political apparatus” (p. 13).

Lastly, the inclusion “of First Nations into industrial forestry activities addresses the environmental crisis (and associated legitimacy crisis of the state)” (Simpson et al., 2024, p. 13) posed by protesters, many of whom are not Indigenous, by “undercutting the claims [...] that they are acting in solidarity with Indigenous communities against the colonial state and capital” (St-Laurent and Le Billon, 2015, cited in Simpson et al, 2024, p. 13). It also gives industry “a ‘more durable ‘social licence to operate’” (St-Laurent and Le Billon 2015, p. 591 cited in Simpson, et al., 2024, p. 13) and functions as “quieter registers of power” that “often prove to be less resource intensive approaches to accessing land than the use of state violence or coercion” (Frederiksen and Himley 2020, p. 58 cited in Simpson et al., 2024, p. 13). While the state did use this tactic to undermine the position of protesters, and did not employ sanctioned violence against the Pacheedaht Nation, the registers of power and resources to remove protesters from the land and protect industry’s ongoing access to timber was neither quiet nor less intensive. Millions of dollars were spent on police enforcement and multiple cases were brought before the courts including an injunction and charges against protesters in order to protect access to cut blocks. Additionally, as Simpson et al. acknowledge, the mechanisms by which Indigenous Nations are included in forestry are not without their coercive attributes or constraints on the benefits they offer.

One can see that what started as a protest to protect one of the last remaining intact stands of old growth forests on Vancouver Island quickly evolved to bring up questions of government inaction, transparency regarding industry-government and government-government relations, land title rights and responsibilities (both settler and Indigenous), police enforcement, and many others in addition to the ecological consequences that were first raised as a basis for the protests. However, this standoff over old growth logging and the ecological value of old and ancient forests is not the first, nor the last. Parallels and contrasts between previous large-scale protests and Ada’itsx/Fairy Creek are frequently made in the media. This points to the fact that these blockades were the most recent in a long line of protests and

actions seeking to transform the state. To wit, in 1998 Elizabeth May wrote a book examining the history and state of Canada's forests. In her chapter on British Columbia, she references B.C.'s long history of logging protests, highlighting that at that time the province had "[m]ore flashpoints per square kilometer than any other [...]" in the country. Additionally, of the seven major protests referenced in conjunction with this observation, three have occurred on the mid/south-west coast of Vancouver Island not far from Ada'itsx/Fairy Creek, and all but one resulted in some form of environmental protection. With this May juxtaposes sentiments from both industry and environmentalists. While environmentalists were left feeling as though they were winning battles through site specific gains, but losing a larger war for actual forest protections, industry was asking 'when will the environmentalist be given enough?'

As we will see in this paper, tensions between environmentalists and the logging industry still exist. They are both reinforced and complicated by the roles played by the state and by Indigenous nations. These tensions have manifested in wars and battles over land dispossession, land title, treaties, and forestry policy, among others. On the part of the state, they involve coercion and concession. On the part of Indigenous nations and environmentalists, they involve protest, compromise and debate over alternative futures for land and forest. Deep down, these tensions emanate from settler colonial history and the struggle for sovereignty by Indigenous peoples. In the words of Brandi Moran (2025), the story is not "just about trees.... It is about Indigenous sovereignty, the ongoing impacts of colonization, and whether our legal systems can recognize that some things — like thousand-year-old trees and the cultural and spiritual significance they hold — shouldn't be reduced to economic calculations."

1.1 Methodology

I employed a few research methods. First, I analyzed primary documents, particularly news articles, social media posts, press releases and other related media to establish what had taken place over the course of the protests and determine an approach that was suitable for examining these events further. Second, I drew from theoretical debates. Because there were many different facets to what was happening at Ada'itsx/Fairy Creek and to the discourse that was arising out of it, multiple theories presented as being beneficial in explaining the disparate

yet connected parts. It was determined that each of the theories included in this paper, Marxist state theory, racial capitalism, along with conceptions of the state offered valuable insights into explaining what was happening in this particular context. I reviewed relevant literature to capture key themes and ideas from the theories, including the role of the state in capitalist accumulation, the mutual dependence of capitalism and racism, the role of nature in both the formation and preservation of the state and capitalism. These theoretical insights informed the direction of this paper and each has been elaborated in the ensuing sections. It was through the creation of this theoretical framework that the importance of reviewing historical features of the area was provoked as an important feature of this investigation

Originally, I considered conducting interviews. However, when I started the project, protesters and nations were being inundated with requests from the media for interviews. Taking into account participation fatigue and redundant information collection, a preliminary survey of online resources was conducted. Through this initial survey of online media, it became clear that participants in the Ada'itsx/Fairy Creek Blockades and members of the Pacheedaht Nation had been interviewed extensively. Given the amount of information that has been available through these media outlets and on social media, it was possible to examine the discourse related to the research questions without conducting interviews. I thoroughly investigated online sources in an effort to provide a comprehensive review of the events.

1.1.1 Situating the author

It is important to situate myself. I am a descendent of a settler family that immigrated to Canada after the Second World War from England. I grew up on the West Coast of B.C. I have witnessed logging protests and wandered logging roads both active and long abandoned. I have seen how forestry activities can change the landscape and how they can support families and communities. My research is not an attempt to speak for the Pacheedaht Nation, for the participants at Ada'itsx/Fairy Creek, or to make any specific recommendations for the land that Ada'itsx/Fairy Creek inhabits. Rather, I intend to gain a better understanding of the situation as it has unfolded, in an effort to free myself of colonial ideology, to begin to untangle the complicated web of colonial power and the tools used to perpetuate its existence in the hope

of imagining ways they could be changed or replaced in hope of a more just and equitable future. Because this research was not done in conversation with Indigenous communities – particularly those directly affected by logging or participating in the blockades, no recommendations are made on how forestry planning should continue or how affected nations might proceed with or without logging.

2.0 Theoretical Framework

2.1 Defining the State

Before continuing to interrogate the events of Ada'itsx/Fairy Creek it is important to define what is being referenced with the term 'the state', partially because the term figures prominently into the theories and frameworks described below, but also because the building blocks of state formation can provide valuable insights into both the historical and contemporary context surrounding Ada'itsx/Fairy Creek. Literature on the state has identified that it can be particularly hard to define, not only because definitions remain contested (Hay and Lister, 2006, p. 1) but also because "one can legitimately define the state in various ways since it has no essential unity which establishes unambiguously institutional boundaries" (Jessop, 1991, p. 117). While challenging, framing a working definition of the state is also essential since many entities that are entwined in the concept have played an active role in foundations of this theoretical war, the grounds for preceding battles, and for Ada'itsx/Fairy Creek.

The state is often thought of as synonymous with government. However, while Dryzek, Downes, Hunold, Schlosberg, and Hernes (2003) have determined that "[t]he simplest definition of 'the state' is that it is composed of the set of individuals and organizations legally authorized to make binding decisions for a society within a particular territory" (p. 12), for the purpose of this paper a slightly more enriched description of the state and the relations that make these decisions possible is required. Drawing on the work of Colin Hay and Michael Lister (2006) this simplified definition can be broadened by identifying that "[t]he modern state is [...] an institutional complex claiming sovereignty for itself as the supreme political authority within a defined territory for those whose governance it is responsible" (p.5) and in some cases imposed upon. Some activities that have been attributed to the state include "mobiliz[ing] populations in defense of the realm; regulat[ing] monitor[ing] and polic[ing] conduct within civil society; interven[ing ...] in the economy; and regulat[ing] (and in some instances controls) the flow of information within the public sphere" (Hay and Lister, 2006, p. 1).

Taken together, these definitions and roles make the task of identifying institutions, actors, and apparatuses that make up the state easier – at Ada'itsx/Fairy Creek they include but

are not limited to elected officials, government employees, consultants such as the Old Growth Strategic Review panel, government institutions and legislative frameworks such as the Ministry of Forests (or Ministry of Forests, Lands, Natural Resource Operations and Rural Development aka FLNRORD) and the Forest and Range Practices Act, police and associated special task forces, and the courts. These two definitions also draw out actions accomplished by the state including: claims of sovereignty, establishment of political authority and governance systems, territorial boundary establishment and protection, as well as an institutional complex of individuals and organizations required for implementation. Many of the same actors and apparatuses are also fundamental to the establishment of colonial regimes of power, to the establishment (and evolution) of the Province of British Columbia from a colony to its inclusion in the Canadian state, and to the operation of the logging industry in the province. However, to fully understand how the institutions and apparatuses listed above became hallmarks of the state, tools for colonization, central to the maintenance of control over of large swaths of land that hold much of BC's forests, and pivotal in the many wars of the woods, a brief overview of the formation of the modern state is also useful.

Hay and Lister (2006) describe the process that led to the formation of the modern state as a transition from nomadic to agrarian societies, which resulted in a relatively geographically fixed population organized around agricultural production. This spatial fixity led to the enclosure of land, the creation of private property rights, and the transition to wage labour. Which necessitated both physical and legal infrastructure to preserve these new systems and relations, and to facilitate continued production and distribution of goods, giving rise to concepts of territoriality and the state simultaneously. Newly formed, "the state was largely despotic and coercive" and "rather more politically fragile when that coercion was challenged" when compared to kinship relations that existed previously (Hay and Lister, 2006, p. 5). To maintain its status, the state "[...] relies upon the monopolization of territory and force for legitimacy" (Barker, 2009, p. 327). This includes the construction and enforcement of territorial boundaries and the use of state institutions like the police, courts, and often religion and divine authority to legitimate "the organized and increasingly centralized use of coercive power" (Crone, 1989 cited in Hay and Lister, 2006, p. 5). Centralized power has also allowed for the

establishment of military forces that were aligned with the state and as a result "conquest rapidly became the primary mechanism through which the Institutional form of the state became diffused, since the organizational capacity which the state developed conferred upon it a competitive advantage when it confronted pre-state-like societies" (Hay and Lister, 2006, p.5). However, it has been acknowledged that Indigenous peoples in Canada were never conquered (Tully 1994; Coulthard, 2014; Simpson, 2017) and that resistance to colonial rule has also played a formative role in the evolution of colonial state policies (Barker, 2009; Coulthard, 2014; Pasternak & King, 2019).

The colonization of Vancouver Island and the development of the forestry industry in BC follows a largely similar pattern to the establishment of the state including the use of forts, policies, and monopolization of territory to legitimize the establishment of colonial settlements. And subsequently the use of institutions, religion, and force, to establish control over the land, dispossess, assimilate, and eradicate Indigenous people, and exploit natural resources for the benefit of the colonizer. However, instead of moving from nomadic to agrarian, settlers were intent on resuming already established agrarian practices and attempting to assimilate Indigenous people into their way of life and relationships with the land. Glen S. Coulthard (2014) describes, drawing on the work of Marx, how the process of acquiring territory for colonial use and the development of capitalist modes of production and social relations in a specific place is accomplished through primitive accumulation or the violent dispossession and enclosure of land "through 'conquest, enslavement, robbery, murder'" (Marx, 1990, cited p. 7). While divine authority was often used as a rationalization during the formation of the state, it was also used for colonization and imperial expansions (Barker, 2009; Clayton, 2000). At the same time, "white supremacy is the [predominant] justification" for colonial actions (Toews, 2018, p. 21), including the violence that was perpetrated during the colonial enclosure of land (see Coulthard, 2014; Rossiter, 2007; Union of British Columbia Indian Chiefs, 2005; Toews, 2018; Clayton, 2000), "but access to territory [...] is settler colonialism's specific, irreducible element" (Wolfe, cited in Coulthard, p. 7)

Many of the tools and tactics used in the formation of the state are also used to maintain control once established, however they can be adapted to suit the context and

circumstances in which they are employed. The following chapters illustrate how the creation of the colony of Vancouver Island and what would become the Province of BC follow largely similar steps to what is laid out here. Also, how this process was the foundation for the wars for old growth preservation, land title, and the process of delivering forests into the realm of capital accumulation. Additionally, how the tools of state formation and their adaptive reuse in the more current histories of Vancouver Island and Ada'itsx/Fairy Creek, continue the project of retaining control over land in the hands of colonial governments and in the system of settler enclosure and use.

The following chapters show how this typical formation of the state is present in the establishment of the colony of Vancouver Island, later chapters show how following its incorporation as part of the Province of BC and subsequently the Canadian state how the tools and tactics used in the formation of the state are also used in its battle to maintain statehood through the use of coercion, force, monopolization of territory with the addition and adaptation of additional tools such as modern treaties, revenue sharing, and concessions for environmental protection.

2.2 Marxist State Theory

Since Ada'itsx/Fairy Creek started as protest about the environment and the destruction of old growth forests, it is logical to wonder why a theory of the capitalist state is relevant to the events that unfolded during and following the protests, why protesters feel they are losing a larger war of old growth protection, and what these things have to do with Indigenous land title. Colin Hay explains that the “[e]nvironmental crisis has its origins in an industrial growth imperative”. This “growth imperative that characterizes contemporary societies – and is thus responsible for the environmental degradation we witness – is a *capitalist* growth imperative, sustained and regulated by the capitalist state. Environmentalists then need not merely a theory of the state, but a theory of the capitalist state” (Hay, 2006, p. 77). This, combined with descriptions of the form and function of the state above illustrates how the state is central to both the relations and conditions that gave rise to the protests at Ada'itsx/Fairy Creek. Further, while Teal Jones Group's operations may have been interrupted and their economic gains temporarily slowed by the blockades (although this fact is a matter of debate), the disruption to

the company was a byproduct of the protests' primary goal: gaining some form of commitment to changing logging practices from the Provincial Government. After all, it is the Ministry of Forests that is responsible for forest health and access to timber. It determines the Allowable Annual Cut (AAC), defines Old Growth Management Areas (OGMAs), and owns Crown Land, which makes up 94% of the Province's land area (Ministry of Forests, 2025b; Ministry of Forests, 2024) and includes all of TFL 46, which also exists entirely on unceded Indigenous territories.

The role of the state in the enclosure of land, its control over access and tenure, extraction, disbursement of benefits and marketing resources all point to how the state is "implicated in the processes crucial to the [production and] reproduction of capitalist relations" (Hay, 2006, p. 63). Further, because capitalist relations are often (if not always) reproduced "by some institution, apparatus, or combination thereof" that is either state led or state regulated, Hay concludes that the state's role and prevalence in the reproduction of capitalist relations makes it "a nodal point in the network of power relations that characterizes contemporary capitalist societies" (2006, p. 63). Therefore, a theory (or collection of theories) that offers a way to understand the role of the state in capitalist relations is pertinent to an analysis of the events that have unfolded at Ada'itsx/Fairy Creek. However, as Hay also points out "Marxism [is] not content merely to interpret the world but motivated by an overriding ambition to change it" (Hay, 2006, p. 59), just as protesters and affected nations are also seeking change from the provincial government and society at large. A Marxist framework is thus an asset for a multi-dimensional analysis of the forces that converge at Ada'itsx/Fairy Creek.

There is no singular Marxist theory of the state, however. There are rather four distinct Marxist arguments about the state. United by a number of "family resemblances in the assumptions which inform Marxist conceptions of state", they have offered distinct conceptions of the state as: "the repressive arm of the bourgeoisie", "an instrument of the ruling class", "as ideal capitalist collective", and "as a factor of cohesion within the social formation" (Hay, 2006, pp. 60-62). This diversity of approaches, rather than negate Marxist state theory as a viable tool for analysis, "offer a series of powerful and probing insights into the complex and dynamic relationship between the state, economy and society in capitalist democracies" (Hay, 2006, p

59). Further, when this diversity of approaches is viewed in tandem with the number of actors and institutions that make up the state, it becomes clear how each conception could contribute to the understanding of the different forces and processes that are present at Ada'itsx/Fairy Creek.

When describing how the state is involved in the reproduction of capitalist social relations and how the state might assume the role of the 'ideal collective capitalist', Colin Hay draws on the work of Elmar Altvater (1973), and points out "that capital is fragmented into a large number of competitive units" which all rely "on certain generic conditions being satisfied if surplus value is to be extracted from labour and profit secured" (Hay, 2006, p. 64). Hay points out that since no individual capitalist is likely to compromise their profit-driven interests, their collective actions are a source of instability and crisis. To prevent such instability "the state must necessarily intervene within the capitalist economy to secure the conditions conducive to continuing capitalist accumulation" (Altvater, 1973 cited in Hay, 2006, p. 64). Further, because "capital is neither self-reproducing nor capable on its own of securing the conditions of its own reproductions", it requires a "relatively autonomous body" that can make "certain interventions" on its behalf to maintain "the very continuity of the capitalist social formation" (Hay, 2006, p. 62).

There are four ways the state can intervene to accomplish this "general maintenance function" for capitalist accumulation and social formation:

(i) the provision of general infrastructure [...] (Barrow, 1993: 80); (ii) the capacity to defend militarily a national economic space regulated by the state and to preserve an administrative boundary within which the state is sovereign; (iii) the provision of a legal system that establishes and enforces the right to possession of private property and which outlaws practices [...] potentially damaging to the accumulation of capital within the national economy; and (iv) intervention of the state to regulate and/or ameliorate class struggle and the inevitable conflict between capital and labour (Hay, 2006, p. 64)

These functions are not at all dissimilar to the functions of the state outlined in the section above, except for the conflict between capital and labour which in our case is more a conflict over extraction and preservation. They are also all clearly articulated in the struggle for Ada'itsx/Fairy Creek through either historical or contemporary events. These include the

creation of colony of British Columbia, the continued conflict over land title, the legal system that enforces both colonial claims to land and limits protester and Indigenous peoples rights/abilities to halt logging and propose alternative ways forward through court injunctions, police enforcement, and revenue sharing agreements.

Containing class struggle speaks to the role of the state “as a factor of cohesion within the social formation” (Poulantzas, 1978 & 1973 cited in Hay, 2006, p. 62). Where “the state [...] is defined in terms of its role in maintaining ‘the unity and cohesion of a social formation by concentrating and sanctioning class domination’” (Poulantzas, 1978, pp. 24-25, cited in Hay, 2006, p. 62). This role of the state is slightly more obscured in the actions of Ada’itsx/Fairy Creek, but with this lens certain actions can be interpreted as fulfilling this role. They range from behind-the-scenes emails to outright violence perpetrated against protesters. Each action that the state takes to remove protesters, or quiet Indigenous resistance is an action that aids in maintaining the current colonial capitalist system that has been implemented and evolved to maintain as much colonial control over land as possible and keep the capitalist formation as predictable as possible. Actions that might be considered attempts to maintain social cohesion include but are not limited to the non-interference clause in the revenue sharing agreement with the Pacheedaht Nation, the concessions that have been made to protesters in the past to quell their actions but also maintain the same conditions for logging and capital accumulation, the use of the legal system and police to restrict access to ‘publicly owned’ land and the institution of modern treaties to increase certainty for both industry and the Provincial government.

More recent works within Marxist State theory have grown beyond these conceptions of the state. This evolution is partially attributed to the Miliband/Poulantzas debate, the heart of which was “about the source of power within contemporary capitalist societies and the relationship between the ruling class and the state apparatus in the determination of the content of state policy” (Hay, 2006, p. 71). The result of this debate has led to the recognition that rather than taking an instrumentalist or structuralist approach, it is increasingly beneficial to “[move] towards more dialectical conceptions of the relationship between structure and agency [...] locating political actors as strategic subjects within complex and densely-structured

state apparatuses” (Hay, 2006, p. 73). It has been recognized that Poulantzas’ “major theoretical contribution was to develop a view of state power as social relation that is reproduced in and through the interplay between the state’s institutional form and the changing balance of political forces” (Jessop, 2017, p. 188). While Miliband draws a similar conclusion, when discussing the relative autonomy of the state he notes that it is important to consider “the character of [the state’s] leading personnel, the pressures exercised by the economically dominant class, *and* the structural constraints imposed by the mode of production” (1977, pp. 73-74; 1994, pp. 17-8, cited in Hay, 2006, p. 73). In other words, as Leo Panitch identifies, Miliband’s great contribution was that “he insisted that one needed to understand the various interests in terms of their location in a capitalist system” (in Doherty, 2019). Thinking about sources of power in decision making in this way highlights the many tensions at play in the struggle for Ada’itsx/Fairy Creek that are elaborated on in later sections and include the competing values placed on forests, contention over who has rights to the land and decisions about it, connections between decision makers and decision influencers, and the traces of past struggles and decisions in the state’s current form and function.

Fred Block and Bob Jessop continue the work of Miliband and Poulantzas. They have attempted to move beyond the structural and instrumentalist frameworks towards more dialectical approaches than were ultimately concluded in the debate. Block arrives at the conclusion that the state acts in the long-term collective interest of capital not only for capitalists’ sake but also because it is in the interest of the state to maintain steady economic activity, pointing out that the “performance of the capitalist economy” and the state are ultimately dependent on each other (Block, 1987a, p. 57 cited in Hay, 2006, p. 74). This dependency is further elaborated by recognizing that “economic activity produces state revenues and [...] public support for a regime will decline unless accumulation continues to take place.” Therefore, “[s]tate managers willingly do what they know they must to facilitate capital accumulation” (Carnoy, 1984, p. 218, cited in Hay, 2006, p. 74) to protect not only the interests of capital, but its own interests as well. The state then “becomes the custodian of the general interest of capital” (Hay, 2006, p. 74). One should add here that Fred Block’s structural explanation of the state’s revenue dependency doesn’t explain how ‘concessions’ granted in

response to protest might be considered as protecting capital accumulation in the long term by preventing further resistance and thus to maintain control over the bulk of the land and the continuity of logging operations.

Despite the 'relative autonomy' of the state in policy decisions or deciding how to intervene, its role as the custodian of capital, particularly in the case of Ada'itsx/Fairy Creek, in the maintenance of capitalist social relations and control over the basic means of production for logging operations (the land) also leaves it open to also fulfilling the role as the repressive arm of the bourgeoisie. The resulting use of force and coercion associated with this role has been accomplished using the legal system, courts, and police force, for Teal Jones to obtain an injunction against protesters and call on the Royal Canadian Mounted Police (RCMP) and the corresponding Community-Industry Response Group (C-IRG) to enforce the order. However, like previous criticisms of the concept have pointed out, this explanation is a "somewhat one-dimensional conception of state power" (Hay, 2006, p. 61). To better understand how this conception of the state can help to explain the multifaceted expressions of power at Ada'itsx/Fairy Creek, Antonio Gramsci's (1971) work offers a more encompassing alternative. He insisted "that the power of the capitalist class resides not so much in the repressive apparatus of the state as an instrument of the bourgeoisie [...] but in its ability to influence and shape the perceptions of the subordinate classes, convincing them either of the legitimacy of the system itself or of the futility of resistance" (cited in Hay, 2006, p. 70). Hay explains that Gramsci (1971) redefined the concept of hegemony and "demonstrated that a dominant class, in order to maintain its supremacy, must succeed in presenting its own moral, political, and cultural values as societal norms; thereby constructing an ideologically-engendered *common sense*" (Hay, 2006, p. 69). The type of 'common sense' and corresponding social formation that underpins the struggles at Ada'itsx/Fairy Creek and in much of BC has been developed since prior to the development of the colonies. The following chapters detail its colonial foundations, its evolution in response to previous struggles, and points to how the current system remains very much inscribed by its colonial capitalist beginnings.

At the outset of this section, it was noted that there is no singular Marxist state theory but a collection of conceptions of the state that offer valuable tools to analyze 'the complex and

dynamic relationship between the state, economy and society' at Ada'itsx/Fairy Creek. When working towards a dialectical conception of the agency of state actors and the structure of state apparatuses, Jessop determines that "there can be no general or fully determinate theory of the capitalist state, only theoretically informed accounts of capitalist states in their institutional, historical, and strategic specificity" (1982, pp. 211-213, pp. 258-259; 1990, p. 44; though cf. 2002 cited in Hay, 2006, p. 76). Jessop's (1990) strategic-relational approach which followed Poulantzas' later work, conceives "of the state as a strategic site traversed by class struggles [...] Its specific form at any given moment in time in a particular national setting represents a 'crystallization of past struggles' which privileges" or is 'strategically selective' of "certain strategies and actors over others" (cited in Hay, 2006, p. 75). This selectivity does not "guarantee that the state (and governments wielding state power) will act in the general interest of capital" (Hay, 2006, p. 76). At certain points in the state's history, the state will be presented with various political and economic crises that will challenge and/or "compromise [its] function [as the expanded reproduction of capital]" (Hay, 2006, p. 76) and force it to evolve as a response. Hay (2006) summarizes that "[t]he outcome of such crises cannot be predicted in advance" (p. 76) - just as the various outcomes of the protests and movements could not be predicted. Each result is "contingent up the balance of class (and other forces, the nature of the crisis itself, and [...] popular perceptions of the nature of the crisis (Hay, 1996b)" (Hay, 2006, p. 76). It also "offers no guarantees – either of the ongoing reproduction of the capitalist system or of its impending demise" (Jessop, 1990, pp. 12-13, cited in Hay, 2006, p. 76).

What is being developed here is what Jessop prescribes, a theoretically and historically informed account of the tensions between the colonial capitalist state, industry, society, and Indigenous nations at Ada'itsx/Fairy Creek and the corresponding historical and present struggles to maintain the status quo or illicit transformational change. Although the future is unpredictable, the questions that are central to this paper along with the aspirations of protesters and the goals of the Pacheedaht, Ditidaht, and Huu-ay-aht nations require not only an examination of the past and the present, but also the ability to look towards the future, and consider how these desired changes might become a reality. When discussing one of Gramsci's well known observations, Hay notes that "before the proletariat could challenge the state, it

would first have to wage a successful *war of position* – a ‘battle for the hearts and minds’ within civil society” and raise a kind of class consciousness that would give them the power to properly confront the state (Gramsci 1971, p. 238, cited in Hay, 2006, p. 70). The following chapters illustrate how some of the previous battles for the forests have made incremental gains for both old growth conservation and Indigenous land title and have been increasingly successful at raising collective consciousness from near and far. Despite these victories, it is possible that protesters feel as though they are losing the larger war for forests because these protests have not produced a political or economic crisis significant enough to dramatically transform the state or the logging industry. Drawing on the work of Jonathan Joseph (2003) and on the work of Karl Marx himself (1963, 1974), Whitehead, Jones, and Jones note that when Marx was theorizing how a socialist state could succeed a capitalist state, he realized that the form, function, and power of the state had evolved to support a capitalist society and that “[w]ith its role as guarantor of private property rights and the regulator of labour relations” it was not something that could be appropriated or converted “to serve the needs of the communist movement” (Joseph, 2003, cited in Whitehead, Jones, and Jones, 2007, p. 42). While protesters and Indigenous nations are not necessarily looking to transform or transcend the capitalist state to socialist or communist agendas, they are still looking to transform the state and may find that the current form and function of the state cannot ever accommodate a future that they envision.

2.3 Racial Capitalism

Racism and capitalism have shaped relationships and structures of capitalist accumulation during both historical and contemporary colonization. Continuing with the concept of primitive accumulation as an example, the relationship between them begins to be drawn out. As noted above, the process of primitive accumulation coincided with the formation of the state and the outset of colonization in BC (as well as across Canada and the world). It has been theorized as a necessary precondition for the establishment of capitalist relations and modes of production. Glen S. Coulthard notes that “it was this horrific process that established the necessary preconditions underwriting the capitalist relation itself: it forcefully opened up what were once collectively held territories and resources to privatization, which, overtime,

came to produce a 'class' of workers compelled to enter the exploitative realm of the labour market for their survival" (2014, pp. 7-8). However, through racial capitalism, it is explained that 'classes' of workers were created not solely by divisions of labour and socio-economic status but also through racial ordering. An ordering which initially began to proletarianize Indigenous peoples and later would totally dispossess them of their access and rights to land, subsistence, and governance. Apparatuses that enabled this dispossession were established through racist policies all founded on the same justifications. These would evolve over time but continue to serve the purpose of maintaining control in the hands of settlers and the colonial state (Toews, 2018, pp. 18-20; Kundnani, 2020).

These conclusions point to Arun Kundnani's observation when writing about racial capitalism that "[c]apitalism was not the solution to racism but the soil upon which it grew" (2020) and further points to the importance of a theory that examines the relationship between capitalism and racism. However, Kundnani (2020) also points out that there is currently no single definition of racial capitalism. The difficulty in creating a precise definition could arise from the fact that "racial capitalism in one place is never identical to racial capitalism elsewhere" (Toews, 2018, p. 19). Despite these differences scholars who incorporate racial capitalism in their work (including Walter Johnson, Peter Hudson, and Robin Kelley, all following Cedric Robinson) agree "that it refers to the mutual dependence of capitalism and racism" and "that the framework of racial capitalism is a challenge to the narrative that capitalism matured out of the racism and violent coercion of the slave plantations to a system based upon labor that is 'free', waged, and homogenous" (Kundnani, 2020). In other words, there are "no eternal or universal laws of racism or capitalism, only an interlocking array of racial capitalisms at specific times and places" (Robinson cited in Toews, 2018, p. 19). Instead of homogenizing social relations, capitalism made differences between people into racial ones then naturalized and normalized the resulting inequities to perpetuate capitalist accumulation (Hall, n.d & Robinson, 1983 cited in Toews, 2018, p. 18). However, it is also important to note that racism was not invented by capitalism, it "was a key aspect of European society before capitalism [...] it also has its own life apart from capitalism" and each has influenced the other (Melamed, 2015 & Robinson, 1983 cited in Toews, 2018 p. 19).

In addition to challenging the idea that labour was homogenized during the transition to capitalism, racial capitalism challenges the tendency to understand events in a linear historical progression. Owen Toews (2018) points out that “it is never useful to understand something as purely an extension of the past” (p.19). Instead, the context of each place, the organization for capitalist accumulation, local motivations, relationships, and structures are key to the reproduction of racial capitalism. Indicating that even if each instance of racism and capitalism retains traces of the past (Hall, n.d. cited in Kundnani, 2020), they are also substantially influenced by their own time and place. Despite these historical and comparative differences, racial capitalism in settler colonial contexts is also characterized by continuities. A persistent imperative of such racialized societies is to maintain power in the hands of settlers. Coulthard (2014) criticizes those who consider the process of primitive accumulation as a historical process that ceases to occur when “the violent transition of noncapitalist forms of life into capitalist ones” is complete. Coulthard and others, including Arun Kundnani (2020) see primitive accumulation as an ongoing process that continues with contemporary colonialism. Further, drawing on a range of scholarly work, Coulthard points out “the escalating onslaught of violent, state-orchestrated enclosure following neoliberalism’s ascent to hegemony has unmistakably demonstrated the *persistent* role that unconcealed, violent dispossession continues to play in the reproduction of colonial and capitalist social relations in both domestic and global context” (2014, p. 9). Examples of this ongoing process in the context of Ada’itsx/Fairy Creek include the land claims process, modern treaties, and the use of police in the ongoing protection of unceded private property and ‘crown’ lands.

The privatization and enclosure of property and resources through the ongoing process of primitive accumulation and the struggle against colonialism points to the significant insight that “the role of regional blocs demonstrates that urban and regional planning is not merely a technical matter of improving places or maximizing profits; it is also a political strategy to preserve domination and subordination, re-entrench inequality, and silence alternative visions” (Toews, 2018 p. 20). Toews (2018) also points out that thinking about the relationship between planning, racial capitalism, and its ability to either support or suppress alternatives to dominant narratives is “crucial [...]” because as pointed out previously “it reveals that capitalists [...] are

forever dependent on the state” (p. 20). Bringing together these theorists helps us understand both current and past colonial and racial capitalist forces that shape political action - protest and state intervention - at Ada’itsx/Fairy Creek.

Using Coulthard (2014), Owen Toews (2018), and Kundnani’s (2020) observations, the concept of racial capitalism can further be connected to theories of the capitalist state through the work of Nicos Poulantzas. Poulantzas recognized that “[t]he theory of the capitalist State cannot be isolated from the history of its constitution and reproduction’ (1978a: 25). Hence as capitalism continues to change, the theory of the capitalist state must be revised to reflect those changes” (cited in Jessop, 2017, p. 188). This recognition of historical change and complexity allows us to connect theories of racial capitalism and Marxist theories of state. Additionally, the insights provided by these scholars illustrates how reviewing the history of a certain place, in this case Ada’itsx/Fairy Creek and Vancouver Island, and the struggles that have taken place there can show how racism and capitalism are continually reproduced, how traces of the past are recast and developed in new forms. This is crucial for as Arun Kundnani (2020) points out “without an explanation of racial capitalism’s reproduction today, our political strategies to abolish it will be ineffective”. It is also, by extension, crucial to finding a way for the demands of protesters and Indigenous nations to be met.

In the foundations section, we will unpack the particular form of racial capitalism that is articulated in BC and how the state is integral to this form. In subsequent chapters, we will see how the colonial foundations of racial capitalist relations remain intact despite historical shifts.

3.0 Foundations of the war

There are a handful of specific events and prevailing influences that have become the underpinning for the losses at Ada'itsx/Fairy Creek and the question of land. I will not be comprehensive but focus on significant decisions that are sometimes overlooked in everyday discussions about the colonial past and present of British Columbia and of logging, particularly on crown land. I will begin by illustrating how land was expropriated for the benefit of colonization and appropriated privately by corporations through the creation and lease of Crown land.

3.1 Tools of Appropriation

Vancouver Island's colonial history markedly begins with Captain James Cook who was in search of the Northwest Passage when he moored his ships at Bligh Island, near Yuquot, in the Nootka Sound in 1778, a few years after Spanish explorers had also been present in the area (Mowachaht/Muchalaht First Nation, 2019a; Clayton, 2000, p. 333). This stop over would produce one of the first accounts of the colonial use of timber from British Columbia's West Coast. It would also eventually lead to the conditions that prompted the protests at Ada'itsx/Fairy Creek, the subsequent political, economic, social, and enforcement reactions to those protests, and to the overarching questions of land title and stewardship these protests raise. Timber harvesting was neither the primary focus of these initial expeditions nor the cause of the Nootka Crisis that ensued between European nations shortly after. However, the recognition of the value of the timber along the shores and across Vancouver Island and beyond would soon develop with an increasing European presence. David A. Rossiter (2007) drawing on the work of W.K. Lamb (1938) writes that "[a]lthough the first European crews drew on the timber for immediate needs and not for sale, a supplementary trade quickly developed within the larger fur-trade, as merchants attempted, with varying degrees of success, to capture a portion of the demand for mast spars in Europe and China" (p. 783). The timber trade wouldn't develop much further beyond a secondary market until colonial times when the fur trade diminished after sea otters were virtually extinguished from the coast of Vancouver Island (Clayton, 2000a, p. 71; Issawi, 2020). In the meantime, the tools, information, and commodities

that were produced as a result of the fur trade and the race to assert European control over the region bolstered British colonial desires for expansion in the west, despite existing Indigenous occupation, governance systems, and trade networks. It also laid the groundwork for colonial expansion, the establishment of private property regimes, and many forms of natural resource extraction which became the foundation of the forestry economy.

As trade ramped up and contact between Indigenous peoples and European traders became more frequent, the search for wealth and imperial expansion brought about disputes over who had a 'right' to claim the land. By the time "the sea otter trade reached its height in the early 1790's" one such dispute arose "between Britain and Spain over the rights of trade and settlement in the Pacific [...]" (Clayton, 2000, p. xii). Spain attempted to claim sovereignty and took possession of a British ship in the waters near Nootka Sound, sparking the Nootka Crisis. Daniel Clayton, in *The creation of imperial space in the Pacific Northwest* (2000a), draws on an array of literature to highlight that as much as law and politics influenced Britain's response at Nootka Sound, so too did the relationship between these elements and commerce and trade. Highlighting the link between international trade and national identity, Clayton notes that as much as Britain's response to Spain's claims over the Nootka Sound was about diplomacy, law, and military strength, it was also about merchants' expectations of "the state to regulate and safeguard their commercial environment" (Wilson, 1995, cited in Clayton, 2000a, p. 335; Clayton, 2000a, pp. 335-337). Further, Clayton (2000a, pp. 331-335) discusses how this conflict and its resolution led to British colonial establishment in the Pacific Northwest and on Vancouver Island. Additionally, he describes how the information that was gathered, created, and used during this time, particularly maps and plans, were foundational tools in the dispossession of Indigenous people.

Captain Cook and the crew of the HMS Resolution documented their interactions with Indigenous people in the accounts of their expeditions but left out the locations of Indigenous settlements on the maps they created, essentially erasing Indigenous people from the conceptual landscape. Moreover, "this rarefied, cartographic way of seeing and dealing with distant lands" as unoccupied would persist, despite that traders and explorers who followed between 1778 and 1790 would begin to fill in the blanks from Cook's expeditions (Williams in

Fisher and Johnston, 1993 cited in Clayton, 2000a, p.332). This practice was perpetuated by George Vancouver, who charted a complete map of what would become known as Vancouver's Island in 1793 and would "barely [acknowledge] a[n Indigenous] presence or the contact process going on along the coast" (Clayton, 2000a, p. 342). These maps not only continued to erase Indigenous people, their networks, and connections to the land from a particular set of cartographic records but would also contribute to the formal establishment of the colonies of Vancouver's Island and British Columbia in the mid nineteenth century. Maps and plans served to deliver the land into a realm of international (European) abstraction, calculation, and territorial enclosure, while also operating within an established realm of European international laws, religious doctrines, rapidly expanding capitalist states, and evolving constructions of race, class, and gender. While describing how "[e]xplorers, traders, writers, politicians and other agents of empire variously represented alien lands as empty, accessible, commercially enticing, rightfully Western, or amenable to colonial settlement; [...]" (Clayton, 2000a, pp. 328-329) Clayton (2000a) also points out that during all these discussions about land, neither colonial power involved in the Nootka Crisis "questioned Europe's underlying right to sovereignty over Native land" (p. 334).

It has been argued that presumptions about rights to sovereignty and economic benefit, vacant land, and the disregard for Indigenous life and settlement at the time of contact and during colonization are underpinned by theories of politics and property from the 17th century and by two important changes to perceptions of Indigenous peoples (Clayton, 2000a; see also Coulthard, 2014 and Tully, 1994). These theories and changes resulted in a shift from the formative colonial document - the Royal Proclamation of 1763. The purpose of the Proclamation was to "[establish] a new administrative structure for the recently acquired territories [on the East Coast of] North America [and] new rules and protocols for future relations with First Nations people" (Government of Canada; Crown- Indigenous Relations and Northern Affairs Canada, 2024). It was meant to accommodate both settler and Indigenous forms of occupation and property (Tully, 1994, p. 170). The Proclamation was developed on the concept of "recognizing the [Indigenous] Nations as a mirror image of [the Crown] itself: as equal in status to European nations and to be dealt with on a nation-to-nation basis" (Pocock in

Kennedy ed., 1918 cited in Tully, 1994, p. 170). While the Proclamation's principles were articulated on paper rather than in practice, a different version of colonial policy emerged. The principles underlying this policy shift laid the foundation for the Indigenous land question and later the establishment of crown land that would be leased out through TFLs like the one surrounding Ada'itsx/Fairy Creek and throughout much of BC.

3.2 Lockean justifications for settlement

The first change in perception of Indigenous peoples that altered the course of the implementation of the Royal Proclamation of 1763 is best summed up in an observation made by Clayton. He notes that "legal historian Leslie Green has argued that eighteenth-century international law 'did not recognise the [Indigenous] inhabitants of. . . newly discovered territory as having any legal rights that were good as against those who 'discovered' and settled in their territories'" (1989 cited in Clayton, 2000a, p. 334). Clayton recognizes "[t]his [as] a controversial claim [...]" (2000a, p. 334) and points to James Tully (1994) for further reading. Tully, in *Aboriginal Property and Western Theory: Recovering a Middle Ground* [sic] points out that when discussing the interpretation of the Royal Proclamation of 1763 as it applies to North America in the United States, Chief Justice Marshall found that:

when the Crown discovered and occupied territory in America, it gained a right to continue to occupy this territory, on the internationally recognized title of use and occupation, but only with respect to the exclusion of all other European nations. The title of long use and occupation did not, however, confer on the Crown any right with respect to the Aboriginal peoples, since, from their perspective, they held the superior title of long use and occupation. Discovery and occupation confer sovereignty only if the land is "vacant" (terra nullius), and, contrary to Locke, this was not the case in North America.⁶⁹ Therefore, the second and crucial step in establishing the Crown in America was to establish a juridical relationship with the Aboriginal peoples. This could be done by conquest or consent. [sic] (Marshall, 1987 cited in Tully, 1994, p. 172)

There are many things of note in this finding. It continues to acknowledge that Indigenous people hold title over their traditional territories (Tully, 1994; BC Treaty Commission, 1999). Second, this interpretation of international law calls Indigenous land title superior to settler

land claims because of its longevity and consistency. Third, it observes that settler colonial law only applies to the exclusion of other settler nations, not to existing inhabitants. Lastly, and particularly important for Ada'itsx/Fairy Creek, Tully references John Locke's theories on politics and property, which held significant influence over perceptions of people, land, and more than human nature in the process of colonization.

Tully highlights that the "four sets of argument presented by Locke were widely used throughout the eighteenth and nineteenth centuries to simultaneously dispossess Aboriginal peoples of their nationhood and property and justify European settlement and expansion in America" (Tully, p. 165) even though none of them reflected the initial conditions for property at the time. Moreover, Lockean perspectives have permeated more recent theories of politics and property and remained influential, even if theorists don't agree with everything that Locke sets out. When laying out Locke's four sets of arguments, Tully describes the process of how this set of theories contributes to the disregard and dispossession of Indigenous peoples existing ways of life, authoritative traditions, and claims to land, in addition to how these theories engender a particular perception of the land and by extension natural resources that focuses on 'improvement' and yield. The four sets of arguments are briefly described here because they show how colonial concepts of land use and land title are deeply connected even today, as we will see in subsequent chapters.

Locke's first argument is that Indigenous peoples are in a 'state of nature' with "no established system of property or government and economic activity consists of subsistence hunting and gathering" (Locke, in Laslett ed., 1979, cited in Tully, 1994, p. 159). This is the foundation for the "'stages view' of historical development" where the 'state of nature' is the first in history of development that results in a more "advanced or civilized age" represented by European societies (Locke, in Laslett ed., 1979, cited in Tully, 1994, p. 159). The second, which builds on the first, is "the 'agricultural' or 'cultivation' justification for settlement, which was widely used in the eighteenth and nineteenth centuries" until it was rejected in 1832 (Tully, 1994, pp. 160, 175). This argument concludes that "the title to property in land is 'labor' and labor is defined in terms of European agriculture and industry: cultivating, subduing, tilling, and improving" (Locke, in Laslett ed., 1979, cited in Tully, 1994, p. 160). In this view, land that is not

cultivated or developed is considered vacant. This applies to land used by Indigenous peoples, who have no system of property or government: “anyone in a state of nature is free to appropriate land without the consent of others, as long as the land is uncultivated and ‘there is enough, and as good left in common for others’” (Laslett ed., 1979, cited in Tully, 1994, p. 159). This leads to Locke’s “immensely influential conclusion that Europeans are free to settle and acquire property rights to vacant land in America by agricultural cultivation without the consent of the [Indigenous] people” (Tully, 1994, p. 159).

The third set of arguments “justifies appropriation by claiming that the [Indigenous] peoples are better off as a result of the establishment of the commercial system of private property in land” (Tully, 1994, pp. 160-161). There are three ‘benefits’ of the private property system: “it uses the land more productively; it produces a greater quantity of conveniences; and it produces far greater opportunities to work and labor by expanding the division of labor” (Laslett ed., 1979, cited in Tully, 1994, p. 161). Finally, the last set of arguments furthers the first, and determines that Indigenous peoples have no recognizable systems of property, law, or government because those that do exist for Indigenous people are not the same as “institutions of early modern European state formation” (Tully, 1994, p. 162). Additionally, Indigenous people have no need for these systems because they have no system of money or markets and produce for subsistence rather than surplus. They thus cannot be considered “political societies” and “Europeans can deal with the [Indigenous] peoples not on a nation-to-nation basis but as individuals under natural law” (Laslett ed. 1979, cited in Tully, 1994, p. 162). The growing and evolving sense of racial superiority and the idea that uncultivated land can justifiably be colonized would eventually lead to the complete disregard for the Royal Proclamation of 1763 in the establishment of the colonies of Vancouver’s Island and British Columbia (Clayton, 2000a, p. 329; Tully, 2016, p. 160; Union of British Columbia Indian Chiefs, 2005, p.16; Venne, 2017, pp. 14- 17).

Clayton (2000a) describes the changing perception of Indigenous People among the agents of empire who represented the land as vacant and available for appropriation “[...] and they deemed alien peoples to be culturally backward, morally degraded, or in need of improvement and rule” (Spurr cited in Clayton, 2000a, p.334). Drawing on the work of Frantz

Fanon, Glen S. Coulthard (2014) illustrates how this shift in perception represents a shift in the development of racism, from “a systematized form of oppression oriented around crude assumptions of biological inferiority to a more subtle form grounded on notions of cultural inferiority” (p. 146). This form of racism has been termed “cultural racism” or “culturalization of racism” (Fanon, 1967, pp.31-44; Razack, 2006, p. 60; Essed, 1991, p. 14 cited in Coulthard, 2014, p. 146). Further, Coulthard (2014) goes on to point out that “[i]n colonial situations, this cultural variant of racism is what historically served to rationalize the host of repressive colonial practices associated with policies of forced assimilation” (p. 146): creating residential schools, removing Indigenous peoples from their traditional territories, placing restrictions on traditional forms of subsistence, banning cultural practices, and replacing Indigenous systems of governance. Because the perceived inferiority of a group of people is cultural rather than biological, those that are perceived as inferior can be lifted into the “‘civilized’ states of their European colonizers” (Coulthard, 2014, p. 146). Rossiter sums up these perceptions: “the non-Native peoples who came to trade and, later, build a society in Native space had at their disposal several centuries worth of ideas regarding different cultures, property rights, and the place of Europe in the world: the peoples of the region were savages; the landscape was a wilderness; Europeans would bring civilization to Native peoples and tame wild nature [sic]” (2007, p.773). The next section details how these perceptions were translated into political, geographical, and social realities through specific events in the history of Vancouver Island that established regimes of property and forestry tenure rooted in capitalist social relations. These persist today and are being debated at Ada’itsx/Fairy Creek.

3.3 Colonization

Maps, plans, and the influence of theoretical constructs contributed to the false premise that land was vacant and open for the taking. As a result, colonial agents saw themselves as justified in dispossessing Indigenous peoples of their lands and authoritative traditions. The following section examines this dispossession in practice and how dispossession became the foundation of forestry tenure and governance. The creation of a defensible colonial territory, the parceling out of land, and increasing extraction of timber did not commence in earnest until after the fur trade diminished in the early nineteenth century. It began when the Hudson’s Bay

company merged with the Northwest Trading Company and “[t]he British Crown grant[ed them] exclusive trading privileges with Indigenous people in the areas of North America claimed by the British” (Union of BC Indian Chiefs, 2005, p.15). Until Vancouver Island was named a British colony, British colonial governments and its agents would begin to act to solidify their manufactured claims to the territory in which they had developed significant interests. They established forts, negotiated treaties with other settler and Indigenous governments, drew territorial boundaries, and promoted colonial settlement (Legislative Assembly of British Columbia, n.d.-a,b,c, & d; Union of BC Indian Chiefs, 2005, pp. 15-16; Clayton, 2000a; Rossiter, 2007).

Formal colonial establishment and settlement of British Columbia began in 1849 when Vancouver’s Island was established as a separate colony under the British empire. For the first ten years, administrative power was vested in the Hudson’s Bay Company (HBC). Private administration was chosen because colonization was expensive and the Colonial Office faced significant political and popular opposition to taking on the endeavor themselves. A Royal Charter of Grant was issued and gave the HBC propriety rights over the island as long as they “promote[d] colonization, and accept[ed] the appointment of a royal governor” (Legislative Assembly of British Columbia, n.d.-c). After Richard Blanshard, James Douglas was appointed Governor. Previously chief factor of the HBC, which had established Fort Victoria a few years earlier, Douglas remained in both positions until assuming governorship of both the colony of Vancouver Island and the colony of British Columbia when it was created in 1858 (Legislative Assembly of British Columbia, n.d.-c&d; Musset, n.d; Union of BC Indian Chiefs, 2005, pp. 15-16). A “conflict of interest between his corporate and public responsibilities” which has been noted to have “raised concerns within the new colony and in the parliamentary halls of London” (Musset, n.d), although this seems to have had little bearing on the outcome.

In this first ten years, the effort of “installing colonial society on the island [...] was deemed to have failed miserably” (Barman, 1996, cited in Rossiter, 2007, p. 776). The process of making land available for settlement had been initiated. However, it was policy that “before any settlers could be given title to lands, it was . . . necessary to conform with the usual British practice of first extinguishing the proprietary rights of the native people” (Duff 1969: 6)” (cited

in Crocker, 2002, p. 8). This practice of extinguishing rights was traditionally accomplished through treaties, a process that started on Vancouver Island in 1850 but remained far from complete. Apart from the Douglas Treaties (which apply to areas around Victoria, Saanich, Sooke, Nanaimo, and Port Hardy on Vancouver Island) and Treaty 8 (which covers the Northeastern part of the British Columbian mainland), most of BC rests on unceded Indigenous territories (Legislative Assembly of British Columbia, n.d.-d).

The majority of land in B.C. remains unceded because “[i]nstead of signing treaties with Indigenous peoples, BC governor James Douglas issued a proclamation in 1859 claiming all land and resources in BC as the property of the Crown” (Waite, 2019; see also UBCIC, 2005, p. 17; Rossiter, 2007, p. 776). For James Tully, this act constitutes “appropriation without consent [which...] bypasses one of the basic principles of Western law, the principle of consent, or *quod omnes tangit ab omnibus tractari et approbari debet* (‘what touches all must be agreed to by all’) [...]” and is a principle that “[...] constrained most earlier theorists of European settlement to insist on deeds or treaties as a sign of consent and a condition of legitimate property acquisition” (Tully, 1994, p. 160). The reasons for dispensing with this ‘usual practice’ have been a topic of scholarly debate. As Rossiter summarizes, “[...] a combination of high costs, racism, and the pragmatics of colonial resettlement led to a disinterest in the extinguishment of Native title on the part of both the Governor and the Colonial Office in London” (Fisher, 1977; Tenant, 1990; Harris, 2002 cited in Rossiter, 2007, p. 776). As a result, more than 150 years later, the colonial project remains incomplete. In this long period, continual contestation of colonial legitimacy, control, and its relationship to industry made it necessary to continuously reconstitute colonial ways of exercising control over the land and the people.

Plotting out Indigenous and settler spaces was a slow process that would take place over decades. In fact, while the boundaries of these spaces were being drawn and redrawn (and always in the favor of settler populations (Union of BC Indian Chiefs, 2005)), a third type of space was also being created: crown land. Rossiter recognizes that while boundaries for settlement and for reserves were being established and reconsidered, “[...] the Crown claimed the vast majority of land not occupied by settlements (Native or non) or industries and held them in trust for the colony” (Rossiter, 2007, p. 777). Holding large swaths of land, the colony

began to employ a system of pre-emption in colonial establishment which began in 1860, directly after the proclamation for land and resources was made but prior to the adoption of the Torrens' system of title registration, a method of acquisition which opened up the land to speculation and "an influx of capital and capitalists" (Rossiter, 2007, p. 777). Rossiter contends that this process truly brought the land into a form of European/British space because it allowed settlers to "stake out and purchase claims of up to 160 acres" with the right to purchase more prior to the land having been surveyed (Rossiter, 2007, p. 777). While much of the demarcation of space was still conceptual, foundations were being laid for physical implementation and settlement. The whole process was "underpinned by a certain type of violence that served to facilitate colonialism", a violence founded on racial ordering, an increasing sense of European superiority and Lockean distinctions between the 'civilized' and the 'savage' (Blomley, 2003, cited in Rossiter, 2007, p. 777-778).

The use of pre-emption would lead to the establishment of the first commercial mill on Vancouver Island's west coast in 1860 and to the development of timber leases and stumpage fees in the newly established colony. After the HBC lease expired and the Colonial Office took on promoting colonization and development, colonial agents tasked with promoting settlement within particular districts would identify areas suitable for settlement, industry, or areas rich in resources. Details of such areas were communicated to the Colonial Office in Victoria and dispersed from there (Rossiter, 2007, p. 775-781). In the case of the southern west coast of Vancouver Island, the "message to the authorities was clear:" high value timber was accessible and abundant and its "export would be the key to British resettlement of the region" (Colonial Correspondence, cited in Rossiter, 2007, p. 779). Drawing on colonial correspondence, Rossiter describes how the negotiation of the terms of this first commercial mill created the contours of British Columbia's forestry policies and how following endeavors would continue to shape the foundations of the political and legislative frameworks that exist today.

The process of establishing this first commercial mill, the settlement site and the land available for timber extraction has been described first as a "messy, ill-defined possession" that was based on a set of agreements between the Governor and a representative of a consortium of British investors. The result was an interim timber and land policy. The deal was struck based

on a set of vaguely drawn maps, payments whose purpose was poorly documented, requests for more land, and ambiguity about the precise nature of the company's land title (Rossiter, 2007, p. 785). It took five years for questions that arose around the deal to be answered and for a timberland policy to be created. During these years, the mill and associated settlement were completed, and timber was being harvested and exported without full compensation for either land or timber being paid to the state. The beginnings of the timberland policy that resulted in 1865, "[...] protected the state's interest in creating a flow of forest revenues while retaining control and ownership of forested lands" (Rossiter, 2007, p. 789). The state also discovered through this process that to maintain their own terms of possession and avoid having their power over territory even partially usurped by capitalists, forestry specific maps were required.

With this evolution of policy and the details required to achieve it, came the realization that "[r]ather than an alienation scheme centred solely on private property, a geography was adopted wherein private timber claims could be mapped onto vast swaths of Crown land" (Rossiter, 2007, p.786). With this, Rossiter points out that "abstract claims of sovereignty over vast stretches of territory would be made durable" and "the state gained confidence and started to see itself as a partner in the harvesting of the forest resource, not merely a beneficiary of economic spin-offs" (2007, pp. 787 & 789). This series of events illustrates how the state made land and timber available to industry, benefited from this arrangement in the process, and thus helped form the capitalist mode of production. It also shows how industry strengthened illegitimate colonial claims to land, requiring the state to hold on to large tracts of land for private timber extraction but abdicating responsibility for the land once timber 'resources' were exhausted. Thus, a distinct Crown-industry relation was born in BC. Teal-Jones' got into the logging business at the same time. According to the company website, the "family's involvement in the British Columbia (BC) Forest Industry traces back from the present owners to their great-great-grandfather, who, in the 1860s, pursued a logging career on BC's West Coast" (Teal Jones Group, 2018).

The particular type of violence that underpinned the establishment of the colonial state and its territorialization of land was not only grounded in cultural racism but also furthered by assimilationist policies and genocidal practices. During the time that the colonial state was

executing its control over land, delivering BCs forests to capital, and preparing to become a province in newly formed Canada, other immensely racist policies were developed to dispossess Indigenous peoples of their land, cultural and authoritative traditions. They aimed at either eliminating Indigenous peoples or assimilating them into the developing Canadian society. In 1857 and 1869 the foundations of the Indian Act were developed and then consolidated into one act in 1876 (Hanson, 2009). The authority of the Indian Act

has ranged from overarching political control, such as imposing governing structures on [Indigenous] communities in the form of band councils, to control over the rights of [Indigenous peoples] to practice their culture and traditions. The Indian Act has also enabled the government to determine the land base of these groups in the form of reserves, and even to define who qualifies as Indian in the form of Indian status (Hanson, 2009)

Although the Indian Act gave the federal government power over reserves, reserves had been created, and boundaries drawn and redrawn since the inception of the colonies. The reserve pass system was added in 1885 and only formally removed in 1951 – along with the same amendments to the Indian Act that allowed Indigenous people to own property. The first residential school in BC opened in 1863, the first on Vancouver Island in 1892. Residential schools were made compulsory for children under the age of 16 in 1894 (Indian Residential School History and Dialogue Centre, n.d.). Despite these and other acts of coercion to assimilate and eliminate Indigenous people (including the deployment of ‘Indian Agents’ and the RCMP), Indigenous people have persisted and are continuing to find ways to reassert their claims to traditional territories and maintain or revive cultural practices and traditions (Coulthard and Alfred, 2014; Dorries, 2022; Simpson, 2017). The next chapter discusses how two large scale movements which opposed the conditions set out here culminated in the same period and although they were separate from each other would create the circumstances for which the war of the woods would develop, the battles preceding Ada’itsx/Fairy Creek would take place, and assimilationist policies would continue to evolve to maintain significant control of the land in colonial hands.

3.4 Conclusion

In this chapter we have seen that between European contact and when British Columbia became the western most province of Canada the land has transitioned through different phases of colonial appropriation and settlement which produced the foundations for the colonial capitalist society that exists today. When these historical events are considered in terms of the theories that are presented above, the formation, structure, and roles of the state, the evolving capitalist social relations, and the growing sense of racial superiority become defined and the foundations for the subsequent battles for forestry and Indigenous title and rights are established.

To create the state the land needed to be enclosed, maps and plans were created which produced one version of understanding that the land was vacant, and boundaries with which it could be territorialized. The state also required a fixed population that was slowly resettled through various modes of arrival, and although not every settler relocated to BC without questioning colonial narratives or justifications, the result of the conceptual and physical occupation of the land was still a form of 'monopolization of territory'. Through the process of enclosing the land ideas about who should be able to access and benefit from it, along with how it should be used, were simultaneously expressed. Racism normalized the differences between people, justified European appropriation of the land, and the implementation of various forms of force to maintain the manufactured legitimacy of its control (repressive arm of the state – for the bourgeoisie but also for the continued existence of the state itself).

The state also had close relationships with industry (in the HBC and the unnamed timber mill) which served to create mutually beneficial geographies. These geographies were also co-produced with prevailing ideas about who should access, own, and benefit from the land, and how the land should be improved and used productively to derive the most economic benefit. Illustrating how land is the foundation for the state, the state's role in delivering that land into the circuits of capital through valorization of both the land itself and the nature that exists upon it. Further, see the states role in creating and protecting the conditions for capital accumulation as the 'ideal collective capitalist' (see how logging produced mutually beneficial geographies for the state and industry but not for the environment or for Indigenous peoples).

Understanding the events that have taken place in this particular way illuminates how questions central questions of this paper, (what is underpinning the war for forests in BC, why does the question of land title often arise in tandem with this war, and if Indigenous rights and title are acknowledge by the colonial state why or how does it maintain control over the land and the people) have arisen together. These questions when looked at separately do not ask the same thing, however the conditions that made these questions possible were produced at the same time. The land question, chronologically, came first through the claims to the colonies and the establishment of territorial boundaries, but was also re-established with each new form of enclosure; crown land and private property, establishment of reserves, leases to timber mills and so on.

4.0 Battles Waged in War

Relations to land, systems of property, ownership, and governance that are described above have not changed significantly today. They have, however, been altered in response to different forms of resistance that have been waged against them. Here a brief discussion of how some past forms of resistance have impacted aspects of land title and logging is offered before beginning to detail events specific to Ada'itsx/Fairy Creek. (goal here is to show how some battles have been won and some changes have happened but that control ultimately still rests in colonial hands)

The foundations of the war that encompasses the battle for Ada'itsx/Fairy Creek and the corresponding assertions for sovereignty that have arisen in response to the protests remain today. And while the approaches have seemingly changed, the apparatuses used to continue the settler colonial project also remain – for as we have seen they are fundamental in delivering both the land and the forest into the mode of capitalist production. As mentioned at the outset of this paper, Ada'itsx/Fairy Creek is not the first battle of its kind, between the establishment of the colony of BC and the current events that have taken place, assertions of Indigenous sovereignty, challenges to title rights, and concerns over the environment have continued to raise various forms of public action and civil disobedience in tandem.

From large scale movements such as the resistance to the 1969 federal white paper and the rise of the environmental movement that stretched across the country to more localized movements, like Meares Island and Clayoquot Sound, some of which have garnered national and international attention. BC's more modern history continues to show how battles to protect forests and to assert sovereignty are intertwined. This chapter provides a brief overview of some of the events that precipitated Ada'itsx/Fairy Creek. It illustrates the grounds for battle, offers an overview of the protests and shows how current events continue the long cycle of struggle underway since early colonial times.

4.1 Grounds for battle

Protests over logging in BC have been around almost as long as the practice itself (Brownstein, 2022a,b). However, after the rise of the environmental movement over the past

half a century, conflicts over environmentally sensitive areas, culturally significant environments, and the preservation of biodiversity have been on the rise. Perceptions of the forests' (in)exhaustibility, technological advances, and conflicts over uses, values and rights to govern/steward the land, have all influenced forms and scales of uprising and laid the grounds for the protests at Fairy Creek. In the lead up to and following the establishment of commercial logging in the late nineteenth century, the concept of the 'inexhaustible forest' was developed, particularly within the forestry industry. The endless expanse of forest that drew in sailors during European contact and instigated investment during early colonization appeared to license this type of mythology in B.C. but the "formidable task of felling a seemingly endless forest" (Museum at Campbell River, 2020) continued it. This formidable task of logging primary forests full of monumental trees selectively and by hand, "cutting [...] in areas where timber could be manufactured close-by or economically moved by water" (Gorley, & Merkel, 2020, p.37), and limited transportation options initially curbed the visibility and widespread consequences of the industry's impact. Despite the seeming encumbrances of early felling, that first commercial mill managed to cut "14,000 feet of timber per day for export to Australia and England" in 1861 (Hak, 2000, cited in Rossiter, p. 783), and it has only continued from there.

As the forestry industry expanded, so did the infrastructure and tools to support it. Fallen trees were removed from the land using oxen and horses, then with steam donkeys and yarding units, and finally by logging trucks. Logs were transported by water, by train, and finally by road (Museum at Campbell River, 2020; Rajala, 1997). As a result, there are more unpaved roads than paved ones in the province (Environmental Reporting BC, 2018). Hand saws were replaced by chainsaws, and then eventually by heavy machinery like yarding cranes and feller bunchers, which helped to harvest trees more efficiently but have contributed significantly to environmental degradation. By the mid-twentieth century clearing cutting had started, the practice "went from a small portion of total logging prior to 1940, to about 70 percent in 1970, to over 90 percent in the 1980s" (Environment Canada, cited in May, 1998, p.28). The mechanization of logging was drastically altering the landscape at an accelerated rate and people were starting to take notice in different ways.

In forestry a “policy of sustainable yield” was implemented in the 1940’s to create “an even, perpetual supply of timber” (Gorley, & Merkel, 2020, p.37) by clearcutting primary forests and planting stands of trees that were all the same age on rotation. “In other words BC’s first growth forests were to be replaced by managed timber crops” (Clogg, 1999, p. 6) or “fiber farms”(May, 1998, p.8). The goal was to provide stability to communities, and employment, as well as certainty and efficiency to industry (Clogg, 1999, p. 6; Gorley, & Merkel, 2020, p.37; May, 1998, p. 38). To accomplish this, the province implemented a long-term lease tenure system of “Forest Management Licences” (Clogg, 1999, p. 6) that would later become Tree Farm Licenses (TFLs) (Clogg, 1999, p. 6; May, 1998, p. 187). However, the literature differs on the prime cause of deforestation, whether “investment by large integrated companies (i.e., companies controlling many phases of production, manufacturing and sales)” was encouraged (Clogg, 1999, p. 6) or if “the opportunity to gain perpetual access [...] over huge areas of the province was seized by the companies with the political and financial wherewithal to make a killing” (May, 1998, p. 187). In the context of BC, where government-industry relationships have been subject to accusations of bribery (May, 1998, p. 188; Williams, 2018, p.13), insider trading, and other backroom deals (Williams, 2018) it is not hard to believe that both claims are true.

Here, Lockean justifications for settlement that were imparted through colonization can also be seen in their renewed form. They were advanced as though they were a form of common sense: that nature is something to be tamed or dominated, that enclosing the land, cultivating and ‘increasing’ its productivity are essential to future success. However, as Elizabeth May pointed out in 1998 “[t]here is no track record of ecologically healthy second- and third-growth forests regenerating after heavily mechanized clear-cutting” (p.8). She contends that “Canada is conducting a vast, reckless experiment” (May, 1998, p. 8) that has been criticized, questioned (May, 1998, M’Gonigle and Parfitt, 1994, p. 32; Williams, 2018) and accelerated by external factors like the mountain pine beetle (Gorley, & Merkel, 2020, p.37) and wildfires. Yet citizens, scientists, foresters, and politicians alike have also recognized the alarming rate of harvesting and the need for more transparent and accountable logging policy and practices. Only now is BC reaching a point in history where second-growth stands have begun to reach a mature enough age to be harvested. The true implications of the policies and

practices that have been developed to support this kind of 'forest management' are about to be discovered (M'Gonigle and Parfitt, 1994; May, 1998; Williams, 2018; Gorley, & Merkel, 2020, p.37).

Following this shift in forestry policy and the corresponding changes in logging practices was the rise of the environmental movement in the 1960s and 70s, which raised collective consciousness about conservation, the health and quality of the environment, and those that depend on it (Hummel & James-Abra, 2022). This movement coincided with "the tumultuous political climate of Red Power activism in the 1960s and 70s [when] policies geared toward the recognition and so-called 'reconciliation' of Native land and political grievances with state sovereignty began to appear" (Coulthard, 2014, p.4). This movement for Indigenous self-determination and recognition as distinct peoples was triggered by "the release of the [...] *Statement of the Government of Canada on Indian Policy* (also known as the 'White Paper') in 1969" (Coulthard, 2014, p.4). The unprecedented "expression of Indigenous anticolonial nationalism that emerged" in response to this and other significant events in the history of government-Indigenous relations in the 1970s forced the state to adapt from its formerly "unapologetically assimilationist" federal policy regime based on the cultural racism that was outlined in the previous chapter to a seemingly more benevolent form of racism one that "is couched in the vernacular of 'mutual recognition'" (Coulthard, 2014, p. 3). This second form represents a 'politics of recognition' based on an "expansive range of recognition-based models of liberal pluralism that seek to 'reconcile' Indigenous assertions of nationhood with settler state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian State" (Day, 2000, cited in Coulthard, 2014, p. 3).

While battles to get to this point have been significant and their outcomes are a form of progress, Coulthard argues that the politics of recognition have not and cannot adequately transform the state. Instead, such a politics serves "to reproduce the very configurations of colonialist, racist, patriarchal state power, that Indigenous peoples' demands for recognition have historically sought to transcend" (Coulthard, 2014, p. 3). Both the politics of recognition and the reproduction of colonial relations are visible at Fairy Creek. On the one hand, the state

continually acknowledges unceded territory and the rights and continued stewardship of the Pacheedaht and Ditidaht nations. On the other hand, it also requires Indigenous nations to prove occupation within a colonial legal framework, enclosure of land is reiterated with each signed or renewed TFL, and the modern treaty process and corresponding Forest & Range Consultation and Revenue sharing agreements are considered a form of reconciliation while denying the existence of and attempting to extinguish Indigenous title. These actions do little to change the structure of existing political, economic, and social relations. Instead each decision forces an outcome that fits into the current colonial capitalist framework.

The growing consciousness about the environment and Indigenous rights have highlighted the continuation of densely structured relationships and apparatuses of power, oppression, dispossession, and exploitation that have been co-produced through colonial establishment, enclosure, and its continual reproduction through activities like natural resource extraction. Then came the forestry activism of the 80's and 90's. As a result, "and following global trends, the public became more aware of the importance of forests for a wide range of ecological values" (Gorley, & Merkel, 2020, p.38). This rise in collective consciousness of the forests and of the impacts of logging specifically, led to an increasing number of forestry-related protests, for example at Meares Island, the Great Bear Rainforest, Haida Gwaii, Carmanah Walbran, and Clayoquot Sound, to name a few. The numerous protests earned BC the title of having "more flashpoints per square kilometer than any other Canadian province" (May, 1998, p. 184).

These examples make up the 'wars of the woods' that peaked in the 1990s and thus preceded the recent protests at Fairy Creek. These battles saw victories like the creation of parks, management plans, and policy reviews and changes. The first fight for Carmanah Walbran resulted in an area being carved out of TFL 46 to create a Provincial Park (Teal Jones, 2022). The Great Bear Rainforest protest resulted in a collaborative effort between environmentalist, Indigenous nations, forestry companies, and the provincial government to produce the Great Bear Rainforest Agreements that direct land use planning and conservation (Smith, Sterritt, and Armstrong, 2016). Meares Island is now a Tribal Park, established through protest that started with the "declaration of Tla-o-qui-aht rights and title" read in a standoff

with loggers by Chief Moses Martin on the shores of the island in 1984 (Renner, 2020). Protestors fended off logging advances until “March 27, 1985, when the B.C. Court of Appeal ruled that no logging could take place on Meares Island until Indigenous land claims had been settled. It was the first court injunction preventing logging in B.C. history” (Renner, 2020). The injunction remained in effect until 2024 when further successes were won (Canadian Associated press, 2024). On Haida Gwaii, nation members initiated a protest in 1985 that “led to the first of many agreements between the Haida Nation, B.C. and Canada to protect Haida Gwaii’s forests in 1988” including the establishment of Gwaii Haanas Haida Heritage Site (1993) (Richard, 2025). Later, following further public protests in 2005, “Haida and B.C. worked together to create the Haida Gwaii Land Use Objectives Order in 2010” (Richard, 2025). They established the Haida Gwaii Management Council in 2011 to implement its objectives “including protecting cultural features, ecosystem-based management, sustainable harvesting practices, watershed and riparian protections and much more” (Richard, 2025).

These are gains and partial victories from struggles and campaigns. So why do many protesters still feel like they are losing the larger war? The New Future for Old Forests, also known as the Old Growth Strategic Review, published in 2020, acknowledges that the previous old growth strategy has been part of the problem. Developed in 1992, the strategy was not fully implemented and “many critical aspects of the strategy [...] were either discarded or only partly implemented” (Gorley, & Merkel, 2020, p.6) leading to many of the challenges BC is facing today. Further, the authors found that in the management of forests with old trees, recent initiatives and special projects have not been given enough priority or enough resources to make an intended impact on old growth forests (Gorley, & Merkel, 2020, p.34). However, the insights gathered from our discussion of theoretical frameworks and the longer-term historical developments, we know that the foundation of the conflict over old growth and the corresponding questions of land title is much deeper and firmly rooted than Gorley and Merkel suggest.

History shows that nature continues to be interpreted as something to be managed or dominated, which has been reflected in the approaches to forestry that have been taken thus far, despite criticisms and mounting evidence. It also shows that in addition to the long-

standing connections between the state and industry which have produced mutually beneficial structures, apparatuses, and revenues, both the state and capital ultimately rely on illegitimate claims to land for their continued existence. Since the 1960s, not only has the legitimacy of the state been questioned by assertions of Indigenous self-determination and land claims but so has their effectiveness at managing the land for the benefit of everyone in the province. Therefore, these challenges threaten more than just industry or elected government competency – they threaten the very existence of the structures that maintain them.

4.2 The Protest at Fairy Creek (the battle in question)

Organizing and protesting at Fairy Creek and nearby sites began in August 2020 and continued through various forms of direct and indirect action for almost three years. During that time and particularly at its height, Fairy Creek was considered a proxy or flash point for logging conflicts that were happening across the province. Over the course of the protest demands were made to affect change for old growth in British Columbia as a whole. Many struggles and developments occurred to realize them. Demands from protesters included: the release of the Old Growth Strategic Review (that was completed and submitted to the provincial government in April 2020 (Guillen, 2020)), an “immediate moratorium on all old-growth logging, [...] the delivery of a comprehensive old-growth policy, [...implementation of] the 14 recommendations of the Old-Growth Strategic Review, and an immediate shift of all forestry operations to sustainable management of the silvicultural land-base as a source of long-term employment in local and First Nations communities” (Gordon, 2021). The ultimate goal contained in all these demands was “to force the industry to fully transition to second-growth harvest” (Gordon, 2021).

In the first week of September 2020, a month after the protests began, “Pacheedaht Elder Bill Jones release[d] an official letter of invitation to Indigenous and non-Indigenous forest defenders to unite on the Territory as his guests to defend the old-growth rainforests on his ancestral lands” (Go Fund Me, 2021). On September 11, 2020, within a week of that letter being made public and in the lead-up to the fall provincial election, the NDP government at the time released the *New Future for Old Forests* (or Old Growth Strategic Review), announced their first attempt at old growth deferrals, and campaigned on a promise to protect old growth forests

(Broadland, 2020; Waters, 2024). These actions appeared to meet some of the protesters' demands, but later in the year, after deferral mapping was released, it revealed that much of the deferral areas were already protected or had been previously clear cut (Broadland, 2020). Now, five years later, old growth activists are still calling attention to how little has changed despite their efforts, promises made by various levels of government, deferral announcements, research and consultation, and agreements made with Indigenous nations.

Originating as a small group of protesters blocking the construction of a new logging road into the Fairy Creek headwaters, the protests expanded over time to include at least eight blockades and represent other surrounding areas subject to old growth logging and clearcut like Central Walbran, Caycuse, and Edinburgh Mountain (Go Fund Me, 2021; Lo, 2021). They also evolved into the largest act of civil disobedience in Canada's history, with a total of 1,188 arrests between May and December 2021 (Osborne & Cecco, 2021; Marlow, 2022). The movements' growth can be attributed to various factors including protesters' use of social media, media coverage, the proximity of the sites to urban centers including Victoria and Nanaimo, BC, and the increasing public awareness of the importance of biodiversity and intact ecosystems (Lo, 2021; Osborne & Cecco 2021; Cox, 2021b). Support for the blockades and their goals came from across Vancouver Island and beyond. It took various forms: participation, financial and material contributions, and letters or calls to political officials. It also came from the Union of British Columbia Indian Chiefs (UBCIC), which signed a resolution on September 29, 2020 to "fully support the First Nations and allies who are protesting the negligent logging and clear-cutting practices enabled by the BC government that have undermined First Nations Title and Rights and pushed Vancouver Island's old-growth forests to the brink of collapse", (UBCIC, 2020, p. 4) among other calls to action.

However, the vision and demands from protesters didn't resonate with everyone. The increased presence and persistence of the blockades attracted various forms of criticism from politicians and industrial interests as well as Pacheedaht and Ditidaht nation members (particularly elected leadership) who did not welcome the presence of protesters. Continual blockades and confrontations with contractors eventually provoked Teal Jones/Teal Cedar to file for an injunction against protesters in February 2021 (Youds, 2021). On February 18th, 2021

the British Columbia Supreme Court Registry received Teal Cedar's application for an injunction (Teal Cedar Products Ltd., 2021). The application contained requests for the blockades to be removed and for "the court to authorize the RCMP to arrest and remove anyone contravening a potential order" (Kolster, 2021a). Perhaps coincidentally, on February 17th, 2021, Pacheedaht elected leadership had also renewed a Forest & Range Consultation and Revenue Sharing Agreement (FCRSA) with the Government of British Columbia that outlined the conditions for the nation to receive a portion of the revenue generated from logging within their traditional territories, including TFL 46 (Olsen, 2021). This agreement also included a non-interference clause which restricted Nation members from protesting or interfering with provincially approved logging activities under threat of losing some or all the revenues (Government of British Columbia, 2021).

Protesters were not the only ones facing criticism. Adam Olsen, former Green Party MLA, strongly criticized the provincial government and the FCRSA after the announcement of a forestry reform intentions paper in June 2021. He called the agreement a type of "transactional" and "take it or leave it" agreement that is about ensuring and protecting the Crown's benefits and undertakings, "not about [Indigenous] self-determination" (Olsen, 2021). He also argued that FCRSAs "[...] provide limited benefits, do not affirm the human rights of Indigenous peoples, or recognize their rights is a continuing expression of the legacy of colonialism" (Olsen, 2021). Following in lockstep with the definition of the politics of recognition offered above (in section 4.1), Olsen points out that current forestry reforms and the use of FCRSAs do not offer a different relationship between the Crown and Indigenous peoples. Rather, they "place Indigenous people at the centre of protests and further entrench an economic reliance on old growth logging in these communities" (Olsen, 2021) while using "the language of reconciliation to cover for their inaction" (Olsen, 2021).

On April 1st, 2021, the injunction that Teal Jones sought was granted, along with an accompanying enforcement order giving the RCMP the ability to maintain a presence at the protests and carry out enforcement. Almost two weeks later, on April 12th, 2021, the Pacheedaht Nation's elected leadership, which had remained relatively quiet in the media about the protests, released the *Forestry Stewardship in Pacheedaht Territory* statement

asserting their rights and connection within their traditional territory and asking protesters not to interfere. Later it was reported that “[t]he Pacheedaht First Nation’s elected leadership — and Frank Queesto Jones, the Hereditary Chief recognized by the Nation — [had] asked, several times, for the protesters to leave, saying the nation does not welcome or support unsolicited involvement or interference by others” (Cox, 2021b). Not only was Teal Jones’ injunction a disappointment to protesters, but this statement and the associated comments from the nation’s leadership “was seen as a major blow to the largely non-Indigenous protesters’ moral authority, and sparked questions about the protesters’ right to be there” (Thomson, 2021). It also left some wondering if they should join or continue supporting the movement (Thomson, 2023).

This contrasting stance from the nation left blockade organizers with difficult choices. It confused those concerned with old growth protection and made it appear as if the province had the moral high ground. Even though the provincial government was facing criticism of its own, Simpson, Atleo, and Braun (2024) point out that the dynamic that formed at Fairy Creek between protesters, affected nations, and the state, “enabled the Premier of British Columbia to position himself as a champion of reconciliation in contrast to the frontline blockaders who were presented as ‘individuals who continue to squat in Pacheedaht territory’ and who ‘do not want to listen to the rights and title holders, the Pacheedaht people’” (p. 13). This was difficult to refute given that the only member of the Pacheedaht nation who was candidly and continually supportive of the protests was Elder Bill Jones. His support was often minimized in the media, which noted that he could only speak for himself and not the nation. The Rainforest Flying Squad had noted early on that their presence and direct action on Pacheedaht territory continued under invitation from Pacheedaht Elder Bill Jones and Hereditary Chief Victor Peter. In more recent publications, the Hereditary Chiefs’ name has been used less and less frequently, and Elder Bill Jones became the prominent figure of support. The non-interference clause in the Pacheedaht FCRSA may also have deterred others from giving their support to the movement.

Despite what was conveyed in the *Forestry Stewardship in Pacheedaht Territory* statement, Elder Bill Jones remained openly supportive of the protests and collaborated with

his niece, x^w is x^w čaa (Kati George-Jim), and RFS to produce a response. In *Why We Stand With Pacheedaht Elder Bill Jones*, the group detailed what Jones and George-Jim had shared with them about the history and legacies of colonialism, the continual separation of Indigenous peoples from the land, and the Crown's failures to consult, underlining that "consultation alone is not consent". The text also took issue with the coercive nature of tools like revenue sharing agreements, and the fact that natural resource projects are treated as inevitable despite 'consultation' and the adoption of policies like UNDRIP and DRIPA (Rainforest Flying Squad, 2021). Bill Jones criticized the selective approach to recognition that is offered to "Indigenous leaders when it benefits industry, under the guise of reconciliation" (quoted in Rainforest Flying Squad, 2021). For these reasons as well as the imperative to defend the irreplaceable old growth forests, the Rainforest Flying Squad renewed their commitment to the protests and called again for others to join them (Rainforest Flying Squad, 2021).

The tensions between the four groups of actors associated with the Fairy Creek protests, the affected Indigenous nations, the protesters, the state, and industry was a large source of tension throughout the Fairy Creek blockades and protests. A broad range of public opinions were produced as a result. There was no clear answer as to who or what was 'right', and which values should take priority, making it difficult for a singular collective consciousness to develop.

Following the debates about the injunction, support for the blockades kept increasing. Industry frustration mounted, police enforcement began, and the complexity of the protests also increased. Throughout the course of the blockades, protest tactics moved from simply blocking the logging road, to mounting check points and releasing media statements. Various 'camps' were organized throughout the watershed and beyond. Vehicles were used to block sections of road. Various devices like tree sits, tri-pods, and 'sleeping dragons' (pvc pipes and concrete buried in the ground which protesters chained their arms into) were used and built to stop protesters from being displaced and extracted from blockades while preventing heavy equipment from passing (Osborne, 2022; D'Souza et al., 2023).

Police enforcement began in May 2021 and was reported to be forceful, creating controversy in some instances (Ministry of Public Safety and Solicitor General, 2021a; Teal Cedar Products Ltd. v Rainforest Flying Squad, 2021 BCSC 1903; Forester, 2022a; Osborne &

Baker, 2022). Within weeks of enforcement the Canadian Association of Journalists and a collection of media outlets and journalists filed a legal challenge to the injunction and the RCMP's enforcement for "denying journalists the 'substantive access' they need[ed] to report" (Williams, 2021; CBC News, 2021). The RCMP had set up media exclusion zones, threatened journalists with arrest, corralled them at a distance from where arrests and enforcement took place, and required the media to have police escort. These and other actions obstructed journalists from being able to see and document events as they unfolded (Arnold, 2021; Eastmond, 2021; Williams, 2021).

In a legal deposition, one journalist compared his experience at Fairy Creek to previous "work in China where he was accompanied by police who decided what he was allowed to see." He noted that "in every other democratic society this journalist has worked in, he has been allowed to do his job without police escorts and exclusion zones" (cited in *Teal Cedar Products Ltd. v Rainforest Flying Squad*, 2021 BCSC 1903). Even after the BC Supreme Court ruled that the media should be granted access, restrictions on journalists and their movements continued. They were still supervised within exclusion zones, threatened with arrest (Eastmond, 2021); one member of the media was detained (Arnold, 2021). These actions left journalists and the public questioning the role of the RCMP and the C-IRG.

In June 2021, at the height of the protests, arrests continued to proliferate. Yet there were an average of 50-200 protesters at the blockades (Ministry of Public Safety and Solicitor General, 2021b; Gordon, 2021), with as many as 300 new protesters joining the cause in one instance (Rothbauer, 2021). Throughout the summer, arrests continued and around the one-year mark approximately 500 arrests had been made (Yunker, 2021). Some protesters were arrested multiple times; some were detained, removed from the protest, and then released away from the protests in what we could call human "catch and release" operations (Osborne & Baker, 2022; *Teal Cedar Products Ltd. v Rainforest Flying Squad*, 2021 BCSC 1903). As the number of arrests continued to rise, so did the accusations of excessive force. For example, in August 2021, the police used pepper spray on approximately 60 activists in an effort to break up a group "who had locked arms and refused orders to disperse at an industry gate" (Kolster, 2021b).

In June 2021, the Pacheedaht, Ditidaht, and Huu-ay-aht released the Hišuk ma cáwak Declaration and requested a two-year deferral of logging in particular areas of their traditional territory (including Fairy Creek and Central Walbran) “while the nations prepare resource management plans” (Cox, 2021b; MacLeod, 2021). In an interview, Huu-ay-aht elected Chief Coun. Robert J. Dennis Sr. said [...]

‘We did agree that we would see all logging operations cease in the Fairy Creek area, except for second growth, [...] The logging in that area where they’re protesting about the old growth, that would cease. There would be no logging done. Everything would stop. The whole nine yards of road building and everything related to old-growth logging (quoted in MacLeod, 2021)

When the province granted the deferral, Premier John Horgan announced that “he was hopeful that the deferral decision will end the protests at Fairy Creek” (cited in The Narwhal, 2024). However, the Nations still “want[ed] people to allow forestry operations in other parts of their territories that they and the province have approved to proceed without disruption” (MacLeod, 2021). This stipulation meant that deferrals were only a partial relief to protesters, given that their goal was a moratorium on all old growth logging, especially in the absence of a comprehensive province wide strategy. While conflicting values and goals for old growth forests were a constant source of debate and contention amongst everyone invested in old growth forests, perhaps more interesting is the language used by the Premiere in the announcement of the Fairy Creek deferrals. This case along with the efficacy and accuracy of multiple deferral announcements is explored further in section 5.1 of the following chapter.

By September 2021, the Teal Jones injunction reached its expiration date as blockades and direct action from protesters continued. Teal Jones, applied to have the injunction renewed. The RCMP “fully supported by Teal Cedar” requested additional enforcement powers (Teal Cedar Products Ltd. v Rainforest Flying Squad, 2021 BCSC 1903). While these requests were considered, Justice Douglas Thompson refused to renew the injunction. He based his decision on the enforcement tactics and the RCMP policy breaches, unlawful exclusion zones and checkpoints, unjustified infringements on civil liberties, and the effects that these actions had on the court’s reputation (Teal Cedar Products Ltd. v Rainforest Flying Squad, 2021 BCSC

1903). However, this didn't deter Teal Jones/Teal Cedar, which immediately appealed the decision. In January 2022, the BC Court of Appeal overturned the decision, and the injunction was renewed until September of the same year (CBC News, 2022).

In November 2021, the Province made another, larger deferral announcement which has been met with much scrutiny and criticism (Wood, 2021; Rudisuela, 2022; Ancient Forest Alliance, 2022; Stand.Earth, 2025). The scant details that were provided along with the announcement didn't give protesters any reason to retreat. Even though blockades and camps dispersed through the winter and organizers closed their camps to the public, a small number of protesters remained (CBC News, 2022; Lindsay, 2021). On Dec 2, 2021, the last arrest was made at Fairy Creek, bringing the total to 1,188 arrests. This number surpassed the number of arrests at Clayoquot Sound and made the Fairy Creek protest the most importance case of civil disobedience in Canadian history (Marlow, 2022). The intensity of the years protests, police enforcement, and the resulting legal consequences left a lot to process, a spokesperson for the Rainforest Flying Squad noted in an interview that the group would be consulting with their lawyers over the winter to determine their next steps (Kathleen Code cited in CBC News, 2022).

Direct and indirect actions continued in various ways in 2022 and 2023 at different camps in the areas surrounding Fairy Creek even after the deferrals were announced. In March 2022, @SaveFairyCreek announced on Twitter that protest camps were reopened, but that organizing groups would be "doing things differently" that year (@SaveFairyCreek quoted in Sidaway, 2022). From March to June 2022 protesters returned, camps were reoccupied, and some blockades were set up, although they were not as numerous or complex as the previous year. Direct action continued through the summer, focusing on other areas near the original protest where old growth logging proceeded. As a result, new arrests were made to enforce the extended injunction (Fraser, 2022; Sidaway, 2022; Simpson, 2022; Chan & Holliday, 2022). Protesters also came out of the woods and started staging protests on major roadways in and around urban centers including near the Swartz Bay ferry terminal on Vancouver Island, on the Ironworkers Memorial Bridge in Vancouver, and in front of the Massey Tunnel in Richmond, BC (Dickson, 2022).

Even though 2022 could be considered an uneventful year in comparison to the protests and blockades the year before, Teal Jones applied to have their injunction renewed for another year in September of that year. In opposition to the renewal protesters argued the legal merits of their case, suggesting “that there was no need for an extension because road blocking and other prohibited interference had ceased” (Fraser, 2022). However, the judge found that because “Fairy Creek protesters [were] deeply committed to their cause, highly intelligent, non-violent and principled by nature” and because the climate crisis was only intensifying, that protesters were likely to continue their activities and the injunction would still be required (Justice Douglas Thompson cited in Fraser, 2022). This resulted in the decision to renew the injunction for another year (Fraser, 2022).

The year closed out with a cross-section of a 750-year-old fir tree (also known as ‘the cookie’), being staged at the legislature buildings in Victoria, BC, and then being transported to Montreal, Quebec, for the UN Biodiversity Conference (COP 15[SK1]). This cross-section had been removed from the stump of an old-growth tree logged in the Caycuse Valley (near Fairy Creek) and used as a bridge blockade during the protests. It was accompanied by participants of the Fairy Creek blockades and members of the newly formed The Dzunuḱwa Society (*the Wild Women of the Woods Society*), whos’ goal was to draw international attention to what was happening around Fairy Creek, the impact that losing old growth has on biodiversity, ecosystem health, and the planet, the problems with economies based on natural resource extraction, importance of “Indigenous wisdom and natural law” (Dzunuk’wa Society, n.d.), and the level of inaction on the part of the provincial and federal governments.

In 2023 a smaller group of protesters that called themselves ‘savage patch’ took up the blockades “to highlight that old growth logging is continuing despite the provincial governments promises” (@fairycreekbloodades quoted in Lo, 2023). This group of protesters also faced arrests and had their camps dismantled by police (Fagan, 2023; Lo, 2023). In June, deferrals for Fairy Creek and Central Walbran were set to expire “but at the last moment was extended by the provincial government until February 2025” (Oudshoorn, 2023). However, it was clear to protesters that old growth logging was still happening in the area and, with the support of Elder Bill Jones, made further calls for protesters to join them on the ground

(@Fairycreekblockade quoted in Peace Brigades International, 2023). Currently, deferrals for Fairy Creek have been extended until September 30th, 2026 (The Canadian Press, 2025). The injunction on the other hand, “quietly expired” in September 2023 (Egan-Elliott, 2023) leaving in its wake a sea of legal battles, complaints against the RCMP, and with no permanent protections for old growth in place, a feeling of loss and leaving protesters asking, ‘what was it all for?’ (Civilian Review and Complaints Commission, 2024; Egan-Elliott, 2023; Oudshoorn, 2023).

Following these events, court proceedings continued, documentaries were made, follow-up articles were published in the media with photos showing the clearcut landscape that protesters were trying to protect, and social media posts of continued logging kept coming (Marlow, 2023; Dzunik’wa Society, n.d; Understory Films, 2025; Oudshoorn, 2023; Watt & Ancient Forest Alliance, 2024; Ada’itsx/Fairy Creek Blockade, n.d. a;b). Despite these efforts, none of the protesters’ demands were fully met. Even now, in 2025, the recommendations from the Old Growth Strategic Review haven’t been implemented and the battle for old growth continues in the Central Walbran Valley. As I write, a new blockade is forming. And new court challenges are being submitted (Pawson, 2025; Morin, 2025), including an injunction for the most recent blockades and “a federal court application for judicial review” filed by Bill Jones. Directed at his own Pacheedaht First Nation, this application challenges “approval of new forestry activities”; it cites that the council did not consult him or other members of the nation about planned activities or a new revenue sharing agreement signed in May, 2024 (Morin, 2025).

5.0 Fronts of the Battle

Since the protests began, and even before, reports have exposed a myriad of problems with the way forests are managed in BC. Some of these include the BC government providing logging companies with credits to their AAC for poor quality logs that are delivered to pulp and pellet mills (foundry, 2021), “that BCTS [BC Timber Sales] was violating old-growth management plans and protection rules, as well as Vancouver Island’s official Land Use Plan” (UBCIC, 2020; Lavoie, 2019), and that old growth logging has been undertaken within recent deferral areas (Lavoie, 2021; Stand.Earth, 2024). Despite these reports and protesters’ efforts to force a change, approaches to forest management appear to have changed very little. In an article published as the protests were winding down, one blockade participant summarized her feelings following the end of the blockades:

I felt like, why did we do this? We put everyone in danger and they just got beat up. And we actually didn’t even get any permanent protections put in on those forests. We spent a lot of money, we raised a lot of hell and I don’t know if we really accomplished what we intended to do (Shawna Knight quoted in Oudshoorn, 2023)

Conversely, a representative of Teal Jones noted “that government policy has shifted as the result of public pressure” and it wasn’t clear if the government understood the implications of “requir[ing] greater sign off and buy-in from local First Nations” as part of the deferrals (Conrad Browne quoted in Oudshoorn, 2023). Browne noted that “the lack of capacity within the vast majority of First Nations [...] is slowing things down” (quoted in Oudshoorn, 2023). It must be said that not everyone accepts that forestry operations have slowed down. There are still no permanent protections for old growth forests, the progress of implementing the 14 recommendations of the Old Growth Strategic Review has been slow, and giant ancient trees are still falling. In 2024 Gary Merkel, who co-authored the Old Growth Strategic Review, counselled patience stating that policy changes don’t happen overnight and that a lot of activity was taking place ‘behind the scenes’ (Waters, 2024). In 2025, however, activists and environmental groups expressed frustration, noting that the longer the process takes the more the environment and ecological integrity stand to lose (Pawson, 2025).

It thus seems as if we have come full circle. Industry maintains that activists ask for too much and constrain their ability to do business. Activists maintain that current actions are not enough, that government and industry oversight is severely lacking, and that the environment and health of the province are at risk. Indigenous Nations are often in the middle of these conflicts, expressing their sovereignty over the unceded lands of 'British Columbia', challenging colonial narratives, and navigating within colonial capitalist apparatuses and settler-Indigenous relations to gain incremental changes. In the following, I will look more closely at some of the specific events that took place over the course of the protests, examining their role in making Fairy Creek a loss to protesters, their contributions to ongoing concerns about Indigenous land title, and their pertinence for the theoretical issues introduced in earlier chapters.

5.1 Deferrals

In June 2021, amid the escalating protests, in an effort to subdue the increasing tension, the provincial government accepted a request from the Pacheedaht, Ditidaht, and Huu-ay-aht nations for a two-year deferral of old growth logging around Fairy Creek and the Central Walbran (Yunker, 2021; Cox, 2021). In the announcement to accept the nations' request, then Premier John Horgan is quoted to have said "[t]his is critically important [...because] we have allowed, as a province, the titleholders to make decisions on their land" (quoted in Yunker, 2021). All the while, the province still holds ownership of the land and the power to lease it through the colonial land title system. And Teal Jones retains the lease to the TFL that encompasses the areas of the requested deferrals.

In August 2021, it was noted that other nations too had requested deferrals, and that "[t]he Kwakiutl Nation has been asking for an end to old-growth logging for well over a decade" (Yunker, 2021). Some nations pointed out that deferrals are not only about the trees, but about the interconnected nature of the environment and the benefits that old growth provides. However, these nations were still waiting for a response. Union of BC Indian Chiefs Grand Chief Stewart Phillip "questions this delay" and points to the Provinces tendency to "talk and log [...where t]hey're willing to make grandiose public statements about deferrals, but the practice is that they are still out there actively logging old-growth forests" (quoted in Yunker, 2021).

Additional criticism at that point in the deferral process was the concept of ‘consent’ and the ability to ‘opt-in’ to old growth deferrals. Squamish Nation Councilor Khelsilem called it “ridiculous” and “an ‘offensive approach to Indigenous rights’” (quoted in Yunker, 2021). Since logging companies have never obtained the nations permission to log, Councilor Khelsilem describes how nations are in a position “where you have a government that is [...] attacking our territories. And you can never say, ‘I’m going to continue to attack you and assault you, but I need your consent for it to stop’” (quoted in Yunker, 2021). In other words, although consent was never given to start logging, logging will continue unless nations give permission for it to stop. Conversations about the proposed deferrals also bring up a larger overarching issue in BC, the provincial governments failure to implement its own 2019 *Declaration on the Rights of Indigenous Peoples Act*. This Act is meant “to bring its laws and policies in line with UNDRIP” (Yunker, 2021). However, as Grand Chief Phillip observes, “[t]he Trudeau [federal government] and the Horgan [provincial] government are long on rhetoric and short on substance when it comes to implementing the principles of UNDRIP when it comes to Indigenous jurisdiction over land, [...] [t]hat’s what the battle is about — jurisdiction” (quoted in Yunker, 2021).

Later, on November 2, 2021, the B.C. government “announced its intention to work in partnership with First Nations to defer harvest of ancient, rare and priority large stands of old growth within 2.6 million hectares of B.C.’s most at-risk old-growth forests” (Forests, Lands, Natural Resource Operations and Rural Development, 2021). As part of the deferrals, the province “[would] halt timber sales it had planned within the 2.6 million-hectare recommended deferral area” (Wood, 2021). Criticisms of this announcement were also quick to follow. They identified that there has been no clear action plan on how old growth will be protected. They noted that halting sales was a positive first step but did not account for any of the sales that had approved permits for logging in place at the time (Torrence Coste quoted in Wood, 2021). Additionally, the provincial government has been criticized for not adequately consulting Indigenous nations before making the decision to defer old growth logging and for the 30-day response period (Adam Olsen, quoted in Wood, 2021).

In this 30-day period, Indigenous Nations were supposed to decide “whether or not they support the deferrals, require further engagement to incorporate local and Indigenous

knowledge, or would prefer to discuss deferrals through existing treaties, agreements and other constructive arrangements” (Forests, Lands, Natural Resource Operations and Rural Development, 2021). Adam Olsen, former “MLA for Saanich North from the B.C. Green Party and a member of Tsartlip First Nation” had asserted that the timeline given “is limiting for First Nations that have already said they are not being adequately consulted on forestry issues” (Adam Olsen quoted in Wood, 2021). Moreover, it has been noted that while the announcement mentions a transition plan and funding to support Indigenous Nations in making their decision on whether to support the deferrals or not, there are no specific goals or budget attached to a transition plan (Wood, 2021) and the money allocated for “capacity funding [...] that will be split among several First Nations [...won’t] go far enough” (Grand Chief Stewart Phillip quoted in Wood, 2021).

While new announcements were made and scrutinized, environmental groups were also fact-checking the claims made to support government action. It has been noted in various articles that very little additional protection was being granted to forests through the provinces proposed deferrals and protected areas (Lavoie, 2021; Bounds and Watt, 2022; Stand.earth, 2024). In 2021 the provincial government was called out for allowing logging and road building in the 353,000 hectares of ‘old growth forest’ it vowed to protect in September 2020 (Lavoie, 2021; Ministry of Forests, 2020). Critics forced the province to clarify that 157,000 of those hectares were second growth and open to logging operations, which “rais[ed] new concerns that B.C.’s old-growth protections are actually doing very little to protect intact forests and the province’s remaining ancient trees” (Lavoie, 2021). Moreover, in 2024 it was found that instead of protecting critical old growth forests in high value ecosystems in each biogeoclimatic (BEC) zone as part of the Old Growth Strategic Review process in November 2021, the government shifted half of the 2.6 million hectares that were originally identified for deferral to newly selected ones. The result was “shifting supported deferrals to less commercially viable forests, while also counting more land that was already protected” as the original proposed deferrals also counted areas that were already under some form of protection (Stand.earth, 2024).

The provincial government doesn’t have a great track record when it comes to maintaining public confidence. The Old Growth Strategic Review (2020) found through public

consultation that “local communities do not have confidence that the government or large corporations will manage their forests properly” and that “very few people [...] trust information regarding the condition of BC’s forests” (Gorley and Merkel, 2020, pp. 53&54). The aforementioned details did not help the government. ‘Talk and log’ became widespread formula to capture the state’s duplicity. It also directly illustrates how the government has acted to protect industry’s access to timber and conditions for capital accumulation. In turn, the politics of recognition are on full display in the Premier’s statement about ‘allowing’ Indigenous nations to make decisions regarding deferrals. When considered in the context of previous struggles, these examples demonstrate how traces of the past remain in policies and responses in the present. Criticisms also highlight both the difficulty of implementing change and the role of government action in managing opposition, in giving an impression of looking out for a broad range of interests to quiet public discontent or cultivate passive acquiescence.

5.2 Declarations and Revenue Sharing

In 2021 the Pacheedaht Nation issued two formal statements amidst the Fairy Creek protests. They asserted their rights within their traditional territories, as a reminder of what it means to live and work on unceded land. The first statement was Forestry Stewardship in Pacheedaht Territory which was released to the public in April. This statement asserted Pacheedaht’s connection with the land, their rights and responsibilities to the people and the territory, traditional resource management, as well as their ongoing planning and coordination with outside tenure holders and other levels of government in relation to forestry. However, the final paragraph of the document “appeared like an ideological bomb” to activists, one that would temporarily “take the wind out of the sails” (Thomson, 2023) of the protest. It read “We do not welcome or support unsolicited involvement or interference by others in our Territory, including third-party activism. Pacheedaht needs to be left in peace to engage in our community-led stewardship planning process so that we can determine our own way forward as a strong independent Nation” (Pacheedaht Chief & Council, 2021, emphasis added). This created a flurry of headlines about the Nation asking protestors to leave or stating that they were not welcome in the territory and left protestors feeling torn on whether to continue

supporting the movement or not (Thomson, 2023). The declaration from the nation, juxtaposed with Elder Bill Jones' continued support of the protests "meant that there were no longer any simple answers for the supporters or opponents of the protests" and it "complicated Fairy Creek's industry-versus-environment standoff and the tidy assumption that a First Nation would be against old-growth logging in its territory" (Thomson, 2023).

The following June, one day before Pacheedaht, Ditidaht, and Huu-ay-aht advised the province of their desires to defer old growth logging in particular sections of their territories, the three nations signed the Hišuk ma cáwak Declaration. The declaration

states that in accordance with the traditional laws and constitutionally protected Aboriginal Title, Aboriginal Rights, [sic] and Treaty Rights, the governance and stewardship responsibilities in the ḥahahuufi [traditional territory] of the three Nations must be acknowledged and respected. Third parties – whether they are companies, organizations, other governments, or individuals – have no right to speak on behalf of the Nations. Moreover, for third parties to be welcome in their ḥahahuufi, they must respect their governance and stewardship, sacred principles, and right to economically benefit from the resources within the ḥahahuufi (Huu-ay-aht First Nations, 2021)

It was an assertion of self-determination, "to take back their power over their ḥahahuufi" (Huu-ay-aht First Nations, 2021) or traditional territory, and a reaffirmation of their title rights, Indigenous rights, and treaty rights (modern treaties are complete for HUU-ay-aht and almost finalized for Pacheedaht and Ditidaht). Both statements reference Canada's history of colonialism, B.C.'s large areas of unceded territory, and exclusion of Indigenous People in decision making: in short, the history of racial capitalism that has shaped B.C.'s logging industry for over a century. Although, among their differences, the most notable is the Forestry Stewardship in Pacheedaht Territory's inclusion of the term interference.

In and of itself this is not something that would raise any questions given that the protest was on the doorstep of the nation at the time. However, the Pacheedaht Nation had also just renewed a Forest & Range Consultation and Revenue Sharing Agreement (FCRSA) two months earlier. The purpose of that agreement is "to assist in achieving stability and greater certainty for forest and range resource development on Crown lands within the Traditional Territory and to assist Pacheedaht First Nation in its pursuit of activities to enhance the

wellbeing of its members” (Government of British Columbia, 2021). It also outlines the conditions for the nation to receive a portion of the revenue generated from logging within their traditional territories, including TFL 46. The agreement also included a non-interference clause that restricts Nation members from protesting or interfering with provincially approved logging activities under threat of losing some or all the revenues (Government of British Columbia, 2021). This clause was only included in the 2021 version of the agreement but removed in the 2024 renewal (Government of British Columbia, 2021 & 2024) after the Fairy Creek blockades had been disbanded. This clause, its removal in the wake of the protests and ongoing logging deferrals, and the targeted reference of third-party activism in Forestry Stewardship in Pacheedaht Territory, appeared to be more than a coincidence. Additional research revealed further connections between the two statements, the non-interference clause, the protection of the interest of the province and industry and attempts to deflate support for the protests.

The first incidence of note preceded both statements. Roxy Jones, Pacheedaht Councillor and health care director, who was acting as a private citizen, spoke out at a rally in March 2021, adding her voice to that of Elder Bill Jones (Youds, 2021). She expressed her belief that “[t]he rush to extract remaining old growth forests comes as Pacheedaht reaches the last stages of treaty negotiation, [is] more than a coincidence” (cited in Youds, 2021). It was an intentional move, in other words. Additionally, “she [...] expressed concern for vanishing old growth forests on the Island” (cited in Youds, 2021) and demanded that “the government act [stating] ‘It’s time for the provincial government to start listening to people and give us full management of resources in our own territories’” (quoted in Youds, 2021). Further, she emphasized that “[i]t’s mainly in regard to the provincial government not respecting proper consultation [...] We have our own resources, we have our own economy. We should have a say in what happens to our forests” (quoted in Youds, 2021). These comments demonstrate that the government is not fulfilling its duty to consult which is laid out in multiple documents and agreements and establishes the necessity of statements reiterating Indigenous sovereignty. However, the recognition of the ‘rush to log’ prior to the finalization of the modern treaty (which at the time of writing has still not been finalized) also highlights that, in spite of the

growing concerns over old growth, there was incentive for the provincial government and industry to continue logging in and around the Fairy Creek watershed.

A month later, when the Pacheedaht Forestry Stewardship statement was released to the public, “many members of the media first saw [it] via Twitter, posted by BC MLA Nathan Cullen, then the provincial minister of state for lands and natural resource operations” (Thomson, 2023). This prompted a reporter from Capital Daily to ask the provincial government if they had anything to do with writing or distributing the statement (Thomson, 2023). The response was that “the government denied having had any involvement in distribution, it did not comment on authorship” (Thomson, 2023). This provoked further investigation in the form of a freedom of information request for all documents and emails related to the statement. What followed was a two-and-a-half-year battle to have a single completely redacted document released. This document turned out to be the draft of Forestry Stewardship in Pacheedaht Territory that was sent to the province prior to its release. Although some of the messaging is the same, the style, format, and emphasis are certainly different from what was published (Thomson, 2023; Pacheedaht Chief & Council, 2021a;2021b).

The draft that was uncovered emphasized the continuity of Pacheedaht culture, governance and stewardship from prior to European contact. It was also more critical of the nation’s relationship with the crown, highlighting that “no treaty has ever been concluded” between the two parties (Thomson, 2023; Pacheedaht Chief & Council, 2021a). Further, it outlines plans for how the nation intends “to fully restore the rightful ownership and management of forest resources within the territory” (Pacheedaht Chief & Council, 2021a). In contrast, the version that was released voices concern over “the increasing polarization over forestry in the territory” (Thomson, 2023; Pacheedaht Chief & Council, 2021b). It also uses phrases like “unceded Aboriginal title and rights”, the “constitutional right to make decisions [...] as a governing authority [...] must be respected” and “rightful ownership and management of forest resources [...] need to be acknowledged” (Pacheedaht Chief & Council, 2021b, emphasis added). Crucially, the published statement removes any mention of pre-contact Indigenous life and softens criticism of the Crown, noting ongoing treaty negotiations (Pacheedaht Chief & Council, 2021b; Thomson, 2023). While both statements use the word

interference, the draft makes no mention of ‘activists’ or ‘activism’ specifically (Thomson, 2023; Pacheedaht Chief & Council, 2021a;2021b). The freedom of information request produced emails that the draft was sent to the province, that request was made to print the draft for the Premier, and that there was further correspondence about the statement. Nothing indicated that any alternations were made by the provincial government (Thomson, 2023). However, the language of the published statement is reflective of the politics of recognition. The portion of the text that targets activists was delivered just in time to try and stifle additional support that was growing after the injunction against protestors was granted (Thomson, 2023).

The last notable connection between the term interference and the two statements, is in the Hišuk ma cáwak Declaration press release from Huu-ay-aht First Nations. The release was issued three days after the declaration was signed, and two days after the nations requested logging deferrals from the province, again at a time when efforts were being made to suppress tensions from the protest, as noted in the previous section. In the release, “[t]he Nations ask that while work is underway, everyone allow forestry operations in other parts of their Territories, approved by the Nations and the province, to continue without disruption. [...] That includes safe, peaceful, and lawful protest that does not interfere with legally authorized forestry operations” (Huu-ay-aht, 2021, emphasis added). The press release echoed article 11.1 non-interference of the Pacheedaht Revenue Sharing Agreement, which states “Pacheedaht First Nation agrees it will not support or participate in any acts that frustrate, delay, stop or otherwise physically impede or interfere with provincially authorized forest activities” (Government of British Columbia, 2021, p. 9, emphasis added).

At the same time, the Pacheedaht Nation seem to earnestly support ongoing logging in their traditional territories. In a little over a decade, the nation has positioned themselves to benefit economically from the industry. This effort started “[i]n 2010, as part of a province-wide effort to include First Nations in the forestry sector, the B.C. government awarded the Pacheedaht First Nation forestry rights to an annual cut of 1,500 cubic metres near the reserve, known as Woodlot Licence 1957” (Cox, 2021). Since then, acquisitions such as a co-purchase and management of TFL 61 near Jordan River, co-ownership and operation of a dry-land sorting facility and the purchase of a sawmill that the nation set up and operates near the reserve (Cox,

2021; Renner & Yunker, 2021) have made forestry a cornerstone of the Pacheedaht economy. In interviews, Pacheedaht members complained that for too long, logging trucks and associated resources left the nation with no benefit coming back (Cox, 2021). The nation's position on old growth logging is more nuanced, caught between the fact that the mill is set up to process old growth logs (Cox, 2021; Renner & Yunker, 2021), the Pacheedaht Cedar Conservation Strategy, which takes a 400 year view and identifies resources for traditional cultural uses (Cox, 2021), and the guiding principles of the Hišuk ma cáwak Declaration (Huu-ay-aht, 2021). Further, Indigenous leaders, nation members, and protestors alike have acknowledged the difficult position of the Pacheedaht hereditary and elected leadership. They try to make the best decisions for their people, economy, and environment while being “stuck between the logging booms of the past and a new generation with different prospects” (Arliss Jones former Chief of Pacheedaht First Nation, cited in Renner & Yunker, 2021; see also Cox, 2021;).

Indigenous anti-colonial scholarship shows how this difficult position has evolved over time as the result of continual efforts to maintain as well as resist the colonial-capitalist system. Glen S. Coulthard points out that Indigenous direct action has led to short term gains. It has repeatedly disrupted capital accumulation “in settler-political economies like Canadas” (2014, p.170) and affirmed Indigenous governance and connection to the land within some communities (2014, p.170). As the wars of the woods in the 80s and 90s described in the previous chapter demonstrated, such action has produced various victories in the battle for old growth, environmental protections, and Indigenous governance. Nevertheless, corporate and state powers have adapted to overcome losses incurred by such actions. They have tried to draw Indigenous “leaders off the land and into negotiations where terms are always set by and in the interest of settler capital” (Coulthard, 2014, p.170). The tools that emerged in relation to forestry were produced within the framework of recognition to minimize losses to conservation demands, suppress dissent, maintain control over the land and aid in the continual access to resources. Examples include issuing ‘direct award tenures’ to Indigenous Nations in the early 2000s (Government of British Columbia, 2016) and the introduction of FCRSAs in 2010 “to share economic benefits with First Nations based on harvest activities in their traditional territories” (Indigenous Relations and Reconciliation, 2017). These policies seek to include Indigenous

Peoples in an industry that has historically excluded and dispossessed them while re-asserting state control over the land.

These policies are part of a dialectic of Indigenous assertions of self-determination and state response that is also reflected in the published statements discussed above. As Coulthard argues, without systemic change, “resurgence of [land-based] Indigenous political thought”, “revitalization of sustainable local Indigenous economies” (Simpson, quoted in Klein, 2013, cited in Coulthard, 2014, p. 170), or attempts “to rebuild [Indigenous] nations” with state-sanctioned tools “will remain parasitic on capitalism, and thus on the perpetual exploitation of [Indigenous] lands and labor” (Coulthard, 2014, p. 171). This problem

informs self-determination efforts that seek to ameliorate our poverty and economic dependency through resource revenue sharing [...] negotiated through the state and with industries currently tearing up Indigenous territories. Even though the capital generated by such an approach could, in theory, be spent subsidizing the revitalization of certain cultural traditions and practices, in the end they would still remain dependent on a predatory economy that is entirely at odds with the deep reciprocity that forms the cultural core of many Indigenous peoples’ relationships with the land (Coulthard, 2014, p. 171)

In discussions about old growth logging deferrals and the New Vision for BC’s Forests announcement (Office of the Premier, 2021), UBCIC Grand Chief Phillips echoed some of these criticisms and highlighted the predatory nature of granting forest tenures to improve Indigenous economies without implementing any forms of ecosystem protection (Yunker, 2021). In an interview he said “‘It’s insidious, [... t]he province can hide behind First Nations logging operations by saying they have the right to do what they’re doing. It’s exploiting the poverty of First Nations because they know the socioeconomic conditions in our community are beyond dismal’” (quoted in Yunker, 2021).

Further, the predatory nature and extreme imbalances within the colonial-capitalist system become clear when we compare income from the Pacheedaht revenue sharing agreement with the overall stumpage revenue and market values of the timber removed from TFL 46 in 2020. In 2021 the nation was set to receive \$242,338 or 3% of the provincial revenues generated from stumpage from all tenures on their traditional territories, plus an additional

\$35,000 in capacity funding for consultations and engagement for anything forestry related (Government of British Columbia, 2021). Research conducted for Evergreen Alliance found that the “market value of the [...] raw logs removed from TFL 46 in 2020 was close to \$60 million” (Broadland, 2021). Moreover, “[a]ccording to the ministry of forests’ Harvest Billing System, Teal [Jones] paid \$10,580,295.06 in stumpage to the Province for those logs” (Broadland, 2021).

The events analyzed in this paper highlight the cyclical nature of the struggle over Indigenous land title and responsible forestry practices. They demonstrate how the politics of recognition “reproduces the very configurations of colonialist, racist, patriarchal state power, that Indigenous peoples’ demands for recognition have historically sought to transcend” (Coulthard, 2014, p. 3). Each assertion of self-determination, title rights and responsibilities is met with acknowledgement from both the state and industry, followed by strategies to include Indigenous nations within the existing forestry industry framework. These strategies are then used as tools to suppress further criticisms of forestry operations. The overall outcome remains the same: old growth logging continues, the state and industry disproportionately benefit, while Indigenous nations and society more broadly bear the costs. These cycles of struggle help us understand why the battle for Fairy Creek was lost and why the larger war for old growth preservation continues. These observations are not meant to undermine the Pacheedaht Nations capacity for decision making, or their commitment to doing what is best for their nation. They are only meant to illustrate that the development the colonial state has generated mechanisms that allow the system to change while staying the same.

5.3 Modern Treaties and Land Claims

One of the primary questions guiding this research is the question of underlying title. If Indigenous rights and title are continually acknowledged by members of the public, the state, and industry, in addition to being asserted by Indigenous nations themselves, how does power over land and resources remain in the hands of the state? As previously reported in this paper, the Fairy Creek watershed is located within the traditional territory of the Pacheedaht Nation and is currently considered Crown land, leased to Teal Jones Group through TFL 46. The economic benefits that both the state and industry have exploited, as well as the foundations of the Crown’s illegitimate title over the majority of what is considered British Columbia, have also

been established, illustrating the need for the modern state to continually pursue attempts to legitimize its control over the land to continue economic growth. Legitimacy of control is a particularly pressing matter for the state, given the ongoing challenges to colonial capitalist regimes by Settler and Indigenous activists and organizations. One way that the state has adapted to secure this 'legitimacy' is by establishing modern treaties. Modern treaties are intended to give all three governments (federal, provincial, and Indigenous) a voice in decision-making and to formally recognize Indigenous rights and self-governance within portions of their traditional territories.

However, there is still an understanding that changes that come with a modern treaty and with the federal and provincial duty to consult do not actually change anything for Indigenous peoples. Rather, with tools like these, "Indigenous peoples are forced into the extractivist economies because of the entrenchment of poverty, where the only way out of poverty is to surrender their inherent rights and responsibilities" (Kati George-Jim, quoted in Rainforest Flying Squad, 2021a). Critics from different forms of literature and media have drawn attention to how modern treaties and their associated agreements are considered economically coercive, divisive, and a renewed form of dispossession, indirectly supporting this view. A review of the state published purposes for the different agreements that make up the modern treaty process, the documents themselves, as well as their criticisms illustrates that 'concessions' made by the state in the form of land and capital transfers and other treaty benefits can be interpreted as functioning within the larger framework of the politics of recognition to secure control over territory and certainty over natural resource extraction and development. The elements that are analyzed here provide a perspective on how the state offers incentives, recognition, revenue sharing, and control in order to maintain its own goals of retaining control over large portions of Indigenous traditional territories and preserving its own territoriality and economic base.

Pacheedaht and Ditidaht First Nations are in the process of negotiating a joint modern treaty with the federal and provincial governments, an endeavor which has been underway since 1996 (BC Treaty Commission, 2023d). Following the initiation of the treaty process, Nation-specific Incremental Treaty Agreements (ITA) were signed in 2013, and the negotiation

of a joint Agreement in Principle (AIP) was completed in 2019. Currently, Pacheedaht and Ditidaht First Nations are in the second-to-last stage of establishing a modern treaty, finalizing their treaty prior to implementation (BC Treaty Commission, 2023d). Each agreement serves its own purpose within the framework of treaty negotiations. The ITA is meant to “[advance] treaty-related benefits for the First Nations and the Province prior to a Final Agreement” and to “build trust among the parties, create incentives to reach further milestones and provide increased predictability over land and resources” (Ministry of Indigenous Relations and Reconciliation, 2025).

The benefits, incentives, and predictability that are provided to Pacheedaht First Nations by the ITA include the incremental transfer of three parcels of land: one on the day the ITA was signed, the next when the AIP was signed, and the last on the signing of the final treaty agreement (Titian, 2013). Until the final treaty is signed, these lands will remain as fee simple title held by a ‘designated company’ owned by the nation’s Band Council. These lands will also continue to be subject to federal and provincial laws, including land use, property and development taxes. Once the final treaty is signed, these lands will become part of the treaty settlement lands. Additionally, the ITA indicates that the Province continues to have certain obligations to consult with the Nation within areas designated as traditional territory (Pacheedaht First Nation Incremental Treaty Agreement, 2013, p. 18). Traditional territories will not become treaty settlement lands but have been identified through the negotiation process as lands traditionally held by Pacheedaht and are primarily administered by the Province as Crown land.

Moreover, the areas are where logging protests and blockades have occurred over the past five years and where the Province seeks to maintain the most substantial benefits and predictability over forestry resources from the ITA. To ensure predictability over forest resources, the ITA includes a covenant that Pacheedaht First Nation “has entered into a Forest and Range Consultation and Revenue Sharing Agreement with the Province which sets out consultation arrangements and responsibilities regarding forest resources within the Traditional Territory” (Pacheedaht First Nation Incremental Treaty Agreement, 2013, p. 18). The FCRSA then takes the place of negotiating terms specific to the ITA and is implemented to fulfil one of

its main objectives: to achieve greater certainty and stability for resource development on Crown lands, as discussed in the previous section (5.2 Declarations and Revenue Sharing). Even though the AIP has been negotiated, signed, and references a future resource revenue sharing agreement specific to the treaty, the ITA and the associated FCRSA (which is renewed or updated approximately every 4 years) will remain in effect until the final treaty is implemented.

The AIP forms the foundation of the treaty and applies only to lands that are identified to become treaty settlement lands, which are composed of (to be former) reserve lands, small pieces of traditional territory, and potentially to fee-simple lands owned or purchased by the Nation (BC Treaty Commission, 2023a; Ditidaht & Pacheedaht First Nation Agreement in Principle, 2019, p. 24-25). Among the articles covered in the AIP, many include provisions indicating where federal or provincial laws will still prevail in the event of a conflict or will continue to apply after Pacheedaht and Ditidaht governance has been established through treaty implementation. There are also provisions for the Nations' rights to access and harvest resources including timber on Crown Lands, the establishment of a constitution, how government will be formed, length of terms between elections, and the expectation that certain institutions will be established "with standards comparable to those generally accepted for governments of similar size in Canada" or other institutions in BC (Ditidaht & Pacheedaht Agreement in Principle, 2019, p. 64;97-98;115). In addition to maps identifying treaty settlement lands (future Pacheedaht/Ditidaht lands) and traditional territories, capital transfers and their terms are also outlined. However, the sum of the capital transfers for the respective Nations defined in the AIP "[...] will be reduced by an amount equivalent to the net present value of [a] resource revenue sharing arrangement" (Ditidaht & Pacheedaht Agreement in Principle, 2019, p. 133) that will be negotiated before the final treaty is signed.

Even though AIPs form the basis of modern treaties, as noted, ITAs and FCRSAs are the functional agreements that remain in effect until the treaty is signed. As a result, it is these agreements and the treaty process itself that have been criticized in several ways, including as being economically coercive and divisive within Indigenous communities (Barker, 2009, p. 334-335). While the Pacheedaht ITA is perhaps not as blatantly economically coercive as some previous ITAs because it does not include an incremental transfer of funds (Barker, 2009, p.

334-335), the disbursement of land at each stage in the treaty negotiation process, which the state identifies as ‘incentive’ to continue, could be interpreted to serve the same purpose. As Ditidaht Chief Jack Thompson pointed out at the signing of the ITA, gaining access to these lands would help the Nation to get “a head start on [their] economic development strategy” (quoted in Titian, 2013).

Further, the requirement for the Pacheedaht Nation to have an FCRSA in place could be seen to serve the same purpose as an incremental transfer of funds, working as “an injection of badly needed cash” (Barker, 2009, p. 334) for the Nation to pursue various forms of capacity building and development opportunities. Nevertheless, the strings that remain attached to this form of revenue continue to undermine the sovereignty of Indigenous nations. Not only by requiring that the Nation abide by the FCRSA in order to see any revenue from their traditional territories that are now considered Crown land, but as Olsen (2021) identifies instead of providing any real choices to the Nation on how to produce revenue or manage the land, the FCRSA is a transactional agreement, that further entrenches the nation’s reliance on old growth logging, and does not recognize Indigenous rights or the directives of BC’s DRIPA. He points to particularly problematic portions of the 2021 agreement, noting that they directly contradict the concept of self-determination.

The first is Article 8: Community Priorities, Annual Reports and Records, which requires Pacheedaht First Nation to create an annual list of community priorities to be funded by the revenue from the agreement. Additionally, the Nation must report all expenditures and show how spending has supported the identified goals, publish this information not only to Nation members but to the public, and pay for any audits at the Provincial Government’s behest. The other is Article 11: Assistance, which encompasses the Non-interference clause (discussed previously in Section 5.2) and the Cooperation and Support clause which requires the Nation to cooperate and support the Province in resolving actions taken by Nation member(s) that are contrary to the FCRSA (Pacheedaht First Nation FCRSA, 2021, p. 8-9; Olsen, 2021). Olsen (2021) highlights that not only does Article 8 “[... play] on an old stereotype that Indigenous people cannot be trusted with land or money” but the entire agreement is “[...] not about self-

determination. These agreements compensate Indigenous Nations for activities that the province desires to undertake – not the other way around”.

Criticism of the economically coercive nature of the BC Treaty process has also included the requirement for Indigenous Nations to acquire loans from the federal government to take part in the treaty negotiation process, placing nations in debt and making them “beholden to the government” in order to gain measures of control over pieces of their traditional territories (Barker, 2009, p. 334; Venne, 2017, p.16). In 2018, the governments of Canada and British Columbia replaced these “negotiation support loans” with a “non-repayable contribution funding” model and forgave all outstanding loans in 2020 (BC Treaty Commission, 2023b). According to the BC Treaty Commission (2025b), loans that have already been repaid are also being reimbursed. However, the Ditidaht & Pacheedaht AIP still includes loan-repayment terms (Ditidaht & Pacheedaht First Nation Agreement in Principle, 2019, p. 133-134). It remains to be seen whether these terms will also be included in the final treaty or if a clause regarding loan forgiveness and/or reimbursement will be added.

Further criticism of the modern treaty process identifies that rather than being an apparatus that supports the coexistence of settler and Indigenous forms of governance and title, these agreements are seen as a way to continue to remove and restrict Indigenous peoples from their traditional territories for the continual benefit of the state and settler society (McIvor, 2014; Venne, 2017; Rainforest Flying Squad, 2021a). Bruce McIvor (2014), a Métis lawyer, historian, and adjunct professor at the University of British Columbia, explains that “Canada’s new land claims policy, like all the policies that have preceded it, is focused on the negotiation of treaties that extinguish Indigenous peoples’ interests in their lands in exchange for a lesser interest over a fraction of their territory”. This observation combined with the maps from the Pacheedaht & Ditidaht AIP illustrate the scale at which this occurs. For Pacheedaht, it shows small sections of land along the coast, a few small inland parcels, and existing reserve lands that will become treaty settlement lands, outsized by an expanse of traditional territory that will remain Crown or private land (Ditidaht & Pacheedaht First Nation Agreement in Principle, 2018, p. 217-227). These traditional territories are the same lands that

contain the ecologically and economically valuable stands of ancient and old growth forests at the center of the battle for Fairy Creek and now Central Walbran.

While maps identify and acknowledge Pacheedaht traditional territories the ITA, FCRSA, and AIP each in their own way refuse to confirm the validity, scope, or existence of Indigenous title before the effective date and limitations of the treaty (Pacheedaht First Nation Incremental Treaty Agreement, 2013, p.21-22; Ditidaht & Pacheedaht First Nation Agreement in Principle, 2019, p. 7-8; Government of British Columbia. 2021, p. 13). Despite these refusals, the AIP also includes a full and final settlement clause also known as an extinguishment clause (McIvor, 2014; Venne, 2017, p. 16) which stipulates that “[t]he Treaty constitutes the full and final settlement in respect of any aboriginal rights, including aboriginal title, that Ditidaht / Pacheedaht may have in Canada” (Ditidaht & Pacheedaht First Nation Agreement in Principle, 2019, p. 7). This clause is a clear act of dispossession, but it has also been criticized as being contradictory to the Crown's fiduciary responsibility to Indigenous peoples. By restricting access to and ownership of complete traditional territories that support all kinds of self-sufficiency, prosperity, and well-being, the Crown is not acting within the best interest of Indigenous peoples (McIvor, 2014; Venne, 2017; Alfred, 2017). It is also destructive to the very foundation of Indigenous title, which “is a collectively held title for the benefit of present and future generations of Indigenous peoples” (McIvor, 2014).

Since the Ditidaht & Pacheedaht AIP was signed and these criticisms were published, there appears to have been a shift in the approach to treaty negotiations. The BC Treaty Commission (2023c) website asserts that “[t]reaties are grounded in the recognition of the Indigenous rights; reconcile pre-existing Indigenous sovereignty with assumed Crown sovereignty; do not extinguish the rights, including title, in form or result; and are able to evolve over time based on the co-existence of Crown and Indigenous governments [...]”. Treaties signed in 2025 are designated ‘living agreements’ and no longer include a final settlement clause (Kitsumkalum Treaty, 2025; Kitselas Treaty, 2025; K’ómoks First Nation Treaty, 2025), although it is still unclear whether or not any adjustments will be made to the Ditidaht & Pacheedaht treaty or if the extinguishment clause will remain as it is in the AIP.

Treaties, as noted previously, were intended to set terms that granted colonizers and settlers access to Indigenous lands and were required by the Royal Proclamation of 1763 on the basis that the occupants of the land 'so desired' them (Venne, 2017, p. 15). Making "treaties a prerequisite to the Crown's subjects legitimately moving into the territories of Indigenous Nations" (Venne, 2017, p. 15). However, through the deeply entrenched "legal lies" (Venne, 2017, p. 15) that were established and have continued throughout the colonial project that is BC and Canada, the "land claims policy of Canada works from the assumption that the title vests in the Crown and that the [Indigenous peoples] are making a 'claim' for [their] own lands and territories" (Venne, 2017, p. 15). The deep-rooted assumption that underlying title rests with the Crown has been reiterated within the modern treaty process and is illustrated by the BC treaty commission's 2008 definition of 'treaty'. The definition specifies that a treaty is

an agreement between government and a First Nation that defines *the rights of aboriginal peoples with respect to lands and resources over a specified area, and the self government authority of a First Nation*. Treaties are final agreements which have been ratified by all parties (BC Treaty Commission, 2008, p. 40, emphasis added)

This ongoing disregard for the intent of the Royal Proclamation of 1763 and the enduring illegitimacy of the land title created, then renewed with each iteration of Canadian law and policy, leads Sharon Venne (2017) to call the modern treaty process "a sham process" (p. 15). Emphasizing that "[i]t is not a treaty process" because "[i]t is not dealing with the real issues of underlying title" (Venne, 2017, p. 15). Instead, it is reconceptualizing how these lands fit within the colonial-capitalist framework. While the BC Treaty Commission has acknowledged the underlying assumption of Crown sovereignty, these criticisms remain essential because they apply to the current Ditidaht & Pacheedaht AIP. It also remains to be seen whether the changes to the treaty negotiation process noted above will be reflected in the final version of the Ditidaht and Pacheedaht treaty.

However, treaties were never just about title; they were and continue to be about certainty as well. Adam J. Barker (2009) notes that the absence of treaties in BC was influenced by the apparent threat of American expansion along the northwest coast in during the first half the 19th century, which was perceived to have "posed a far greater threat to Canadian

territorial integrity than the resistance of Indigenous peoples during the founding of the province” (p. 345). Leading him to conclude that “[c]ertainty of control, not ideals, motivated these decisions” to establish the Oregon Treaty and ‘sovereignty’ over the lands that make up British Columbia rather than establish treaties with Indigenous nations. Now, in the wake of multiple challenges to colonial legitimacy and government inaction on behalf of the environment, this quest for certainty continues.

At the provincial level, the language used to describe the purpose of treaty-related documents, including the ITA and FCRSA, expresses the Crown's desire for certainty regarding forestry resources and Crown land. While McIvor (2014), points out that that at the federal level, “the objective of its new land claims policy is to reconcile Indigenous peoples’ Aboriginal title and rights with the interests of non-Indigenous Canada” and “[f]rom the federal government’s perspective, reconciliation is about achieving ‘certainty’ for ‘economic and resource development’”. This certainty, as shown above, is achieved through the extinguishment of future claims, by controlling the terms of access and distribution, and by maintaining the colonial legal system's hold over the lands through title and treaty. As Barker (2009) describes, in the case of the Tla-o-qui-aht First Nation, the agreements and benefits associated with the modern treaty process result in “[...] doing business with the state on the state's terms and utilizing the standard logic of economic development” (p.335). Despite that the Tla-o-qui-aht Treaty and other modern treaty agreements have been celebrated “[...] the result is a familiar silencing of dissent internally in the Indigenous community and the furtherance of broad, slow assimilation into the method by which the state does its business” (Barker, 2009, p. 335).

None of this happens by accident, but by design: the foundation of the province and its economy relies on the land, and the state must maintain control over the land to both assure its own existence and the conditions for capitalist growth and accumulation. This section has shown that throughout the treaty negotiation process, the maps, ITA and FCRSA have worked together to enable the states’ continued access and control over large swaths of land. That land is then allocated to forestry through TFLs, while offering smaller parcels of land to the Nations who rightly hold title over these spaces in their place. These tools offer control while also acting

to dispossess Indigenous nations of their traditional territories. The outcome is a set of relationships between the state, industry, Indigenous nations, and broader provincial and national society that are almost the same as before the treaty. There has also been significant effort to change these dynamics and relationships, and its successes are reflected by the shift in both the description of modern treaties and the outcomes of treaties signed in 2025. However, these changes have not yet been applied to the Ditidaht and Pacheedaht treaty negotiations and there is no certainty that they will be. So, for now, the modern treaty process continues to contribute to the state's continued control over traditional Indigenous territories and the continued use of natural resources for its own benefit.

5.4 Injunction and enforcement

In February of 2021, after 6 months of blockades, Teal Jones filed for an injunction against protesters in an effort to continue logging operations that had been hindered by the protests (Youds, 2021; Broadland, 2021a). On April 1st, 2021, Justice Verhoeven granted the injunction and a corresponding enforcement order on the grounds that Teal Jones would suffer irreparable harm financially, that mill operations would suffer, layoffs would result from a drop in the supply of timber, and losses would be incurred from not being able to build new roads to access timber. Counsel for the protesters countered Teal Jones's claims, arguing that it was in the public interest to deny the injunction and allow protesters to continue protecting old growth forests for their ecological significance and the benefits they provide in the face of climate change. However, the judge found that "the public interest at stake in this case [was] upholding the rule of law and enjoining illegal behavior" (*Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 605*).

Pointing to legal precedent, Justice Verhoeven also noted that "all of the concerns raised by the respondents [protesters] are for the government to address, and not this Court. Forestry decisions are highly policy driven and require the government to coordinate, balance, and reconcile often competing values and interests" (*Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 605*). However, provincial data shows that amid the rising concern over old growth preservation, the state has done a poor job of balancing the interests of the

public and industry, particularly in regard to TFL 46 (Broadland, 2021a). Based on “[h]arvest volumes obtained from a publicly accessible database, maintained by the BC Ministry of Forests”, otherwise known as the Harvest Billing System, TFL 46 experienced a year-over-year increase in harvest, with the highest being in 2020, despite blockades beginning in August (Broadland, 2021a). Moreover, the same data shows that Teal Jones grossly misrepresented the facts of its argument for an injunction, including the effect that blockades had on its ability to harvest and, subsequently, on its financial outlook (Broadland, 2021a). These observations led reporter David Broadland to question the impact of the long-standing relationship between the state and the forestry industry on the state’s ability to balance the ‘competing values and interests’ of public good and private capital (Broadland, 2021a). They also raise the question: how valid is a judgment of irreparable harm based on misleading information?

In addition to the injunction, Justice Verhoeven concluded that “[p]olice enforcement terms [were] required in this case” because “[t]here appears to be little or no likelihood that the injunction order will be respected” (*Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 605*). He also noted that in communication between counsel for Teal Jones and counsel for the RCMP, the “RCMP [had] indicated a preference for police enforcement terms in circumstances such as” the one at Ada’itsx/Fairy Creek where there are a large number of protesters, some in remote locations, with numerous persistent blockades (*Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 605*). To further reinforce the reasoning for granting the enforcement order, Justice Verhoeven also drew on public comments made by participants of the Rainforest Flying Squad which made references to ‘war’ and ‘battles’, their willingness to engage in a “protracted civil disobedience struggle”, and acknowledgement that an injunction would be met with ongoing resistance, fearing that they all had the potential to “incite violence” (*Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 605*).

In 2023, it was reported that, as a result of the injunctions granted between 2021 and 2023, the RCMP/C-IRG spent \$18.7 million on enforcement at Ada’itsx/Fairy Creek, accounting for a large portion of the units’ almost \$50 million in spending since their inception in 2017 (Forester, 2023). In an interview with APTN’s Nation to Nation podcast, Chief Superintendent John Brewer noted that “C-IRG as a unit doesn’t have a set budget because [their] mandate is

so flexible” (quoted in Forester, 2022b). It was also noted that the unit “regularly receives approval to access emergency cash and relocate officers from other detachments” (cited in Forester, 2022b). Although opponents of C-IRG considered this unchecked spending “to be ‘unrestrained’ freedom granted to the unit to operate without oversight or accountability” (Forester, 2022b).

In a separate interview, Chief Superintendent Brewer also noted that the C-IRG “don’t have a choice” (quoted in Forester, 2023) over carrying out enforcement because of enforcement orders like the one in the Teal Jones injunction. However, there is evidence to suggest that Brewer’s claim is not entirely accurate. In an information briefing note from the Ministry of Public Safety and Solicitor General, Policing and Security Branch, regarding RCMP enforcement of the Teal Jones injunction, it is specified that the “RCMP are given discretion as to the timing and manner of enforcement” (Ministry of Public Safety and Solicitor General, 2021a) of the injunction. Speaking about enforcement orders of injunctions more broadly, Dr. Irina Ceric, assistant professor of law at the University of Windsor, challenges this idea further, noting that “[h]ow [the RCMP] enforce, and to what degree they enforce, is something that is very much within the discretion of the police[.] Particularly, when it comes to a \$50-million price tag, there’s a lot of discretionary decisions that go into getting to that level of enforcement” (quoted in Forester, 2023). However, Ceric contends that policing is not necessarily the problem, rather that “injunctions are also ‘problematic’ because they rope police, a public agency, into a private court proceeding ill suited to address conflicts involving the Crown, industry and Aboriginal title rights” (quoted in Forester, 2023). Although, historically the RCMP was not formed for that purpose either “their mandate has always been to protect the crown and its interests” (Wickham and Metheven, 2021).

The amount of spending and level of discretion have left critics of the unit skeptical of the unit’s purpose and whether there is any oversight of their actions. Wet’suwet’en hereditary chief Na’moks said of the spending, that it was all done “to suppress Indigenous and human rights. It was created just for that purpose: to protect industry, [i]t’s supposed to be monitored provincially and federally, yet they seem to get free rein and make up their own laws as they go along” (quoted in Forester, 2023). Aside from spending, the formation and implementation of

the C-IRG also has a controversial history. This special task force was formed “in 2017 to provide strategic oversight addressing energy industry incidents and related public order, national security and crime issues” (Government of Canada, 2020). In 2021, it was reported that the unit appeared to have been deployed only to Indigenous territories, including Wet’suwet’en territory, Secwepemc territory, and Pacheedaht and Ditidaht territories, in relation to Ada’itsx/Fairy Creek (Patterson, 2021). However, in 2024, following a rebranding of the unit, including changing its name to Critical Response Unit – British Columbia (CRU-BC), the official description of the unit and its tasks was expanded (Royal Canadian Mounted Police, 2024).

Some may argue that the presence of the C-IRG at natural resource extraction sites on traditional Indigenous territories may not be controversial in themselves, given that B.C. rests primarily on unceded land, that these sites are disproportionately impacted by industrial development and natural resource extraction, and that they are often the last site of resistance in the process of development. But accounts of activists at the Ada’itsx/Fairy Creek blockade and other sites have attested that the C-IRGs focus has been on the apprehension of indigenous people, people of colour, and LGBTQ2IA+, and that tactics used have been more violent and forceful (Turner and Cogan, 2021). Beyond these allegations, other actions and enforcement tactics employed by C-IRGs have been characterized as problematic throughout the course of the protests at Ada’itsx/Fairy Creek. As part of an investigation into C-IRG, Aboriginal Peoples Television Network (APTN) uncovered “allegations against the unit that include intimidation, torture, brutality, harassment, racism, theft, destruction of property, arbitrary detention, inhumanity, lying and deceit” (Forester, 2022a). They also “obtained evidence of vast spying — including casual surveillance of law-abiding groups engaged in the democratic process — collusion with private security, collaboration with industry lawyers and wilful violations of RCMP policy” (Forester, 2022a). While some of these allegations have made it through the courtroom, others are still being heard.

In July 2021, Justice Thompson condemned police for overstepping their responsibilities as prescribed in the injunction, following two complaints filed against the RCMP. The judge found that police infringed on the liberties of protesters and the media by restricting their

access to areas of the Ada'itsx/Fairy Creek watershed with the use of exclusion zones, designated protest zones, check points, and road gates (installed with the help of Teal Jones and approval from the Ministry of Forests) (*Teal Cedar Products Ltd. v Rainforest Flying Squad, 2021 BCSC 1903*). These actions infringed on the legal right to protest, prevented the public from using roads they had a right to access, and restricted the media from being able to do their jobs, all in the name of preventing potential contraventions of the Teal Jones injunction (Ball, 2021; *Teal Cedar Products Ltd. v Rainforest Flying Squad, 2021 BCSC 1554*). Although this review did not change the course of the injunction, at the time it was made, it would influence its renewal. As the injunction continued to be enforced, so did the stream of complaints against the RCMP and C-IRG. This time, they included excessive force, displaying 'thin blue line' patches on uniforms, removal of name tags or badge numbers, and wearing face coverings and sunglasses to be unidentifiable to protesters. It was later confirmed by APTN that Chief Superintendent "Brewer [...] overrode RCMP policy by ordering C-IRG officers to remove their name tags and permitting them to refuse to identify themselves" (Forester, 2022a).

In September 2021, when the injunction expired, and Teal Jones applied to have it extended, these actions, along with many other considerations, contributed to Justice Thompson's decision to deny the application (*Teal Cedar Products Ltd. v Rainforest Flying Squad, 2021 BCSC 1903*). However, his decision was overturned by the court of appeals, which found that the original arguments for issuing the injunction were still valid. Over the course of the blockades, police made almost 1,200 arrests, making the Ada'itsx/Fairy Creek blockades the largest act of civil disobedience in B.C. and Canada. Throughout the process of granting and enforcing Teal Jones' injunction, many of the challenges of seeking change within the colonial capitalist system have been highlighted. The courts were presented with an alternative public interest, one that was based on the preservation of the environment rather than on its extraction, and despite acknowledging that there were valid concerns, the decision was constrained within the bounds of the legal system's purpose. The courts approval of the injunction request to protect Teal Jones' interest in their forestry tenure, combined with the actions undertaken by the RCMP to enforce their interpretation of the injunction including the ongoing removal of protesters from Crown Land, the attempts to restrict public access to

certain areas, and the coordinated efforts between the RCMP, the Ministry of Forests, and Teal Jones to achieve those objectives, represents the continual enclosure of land by the state and the benefit of these actions for industry. It also highlights the ongoing role of the state in creating and maintaining the conditions for capital accumulation. The tactics allegedly employed by the RCMP represent the various forms of force and coercion that are available to suppress dissent and protect the interests of the state and industry. Finally, the connections drawn between the creation of the RCMP, the creation of C-IRG, and the long-standing relationship between the crown and industry expose the influence that history still has on current events.

6.0 Conclusion

At the outset of the paper, I pointed out that one of the protesters' demands was to have the recommendations of the old growth strategic review released. When this report and its recommendations were finally released to the public, it was noted that a paradigm shift in forestry would be required to achieve the goals it had set out and protect the areas that are representative of the different old growth ecosystems across the province. However, theories of state and political ecology caution that the current system is so deeply inscribed by capitalism that it cannot be coopted to meet other goals.

Throughout the battle for Ada'itsx/Fairy Creek assertions were made that the state was willing to meet resistance to corporate forestry practices and take steps to alter the way that forestry and relationships with Indigenous Nations are organized. Tools were identified to give Nations back more authority over their traditional territories. However, as Leanne Simpson has cautioned

Neoliberal states manipulate the processes that maintain settler colonialism to give the appearance that the structure is changing. [...] Colonialism as a structure is not changing. It is shifting to further consolidate power, to neutralize our resistance, to ultimately fuel extractivism. (2017, p.46)

Simpson's claims have been illustrated in the various parts of this paper, from those dealing with the colonial beginnings and the foundations of the current battles to those focused on recent events surrounding the Ada'itsx/Fairy Creek protests.

We have shown that the war over land, resources and sovereignty is a continual effort by state and industry to adapt in response to resistance. In each conjuncture of struggle, new policies and strategies are invented, new attempts are made to adapt the terrain of engagement upon which the longer war is fought. In the process, treaties are concluded, some concessions are made to environmentalists and Indigenous peoples but fundamental Indigenous rights are extinguished. The stock of old growth forest keeps shrinking, making the quest for conservation ever more difficult. Forests become more and more vulnerable to disease and devastating wildfires. In this light, the capacity of state and industry to fend off deeper challenges from a tension-filled combination of Indigenous nations and environmentalists (as explained by a

range of theories of state and ecology) is real enough and has the effect of wearing down the confidence and the abilities of oppositional forces. And yet, this capacity of state and capital resembles more and more a set of pyrrhic victories that undermine the very existence of the 'resource' base upon which colonial-capitalist extraction feeds and develops.

6.1 Towards alternative futures?

The contradictions of capital and political rule thus recreate the need – and the possibility - of thinking big, of imagining worlds beyond the next battle in a long war. Resistance is not futile. It is not only necessary but also inevitable as long as conditions remain as they are today. In this paper, I did not have time and space to explore debates about alternative futures for the island and other parts of the continent. However, both the demands put forth by protestors and the reflections made by key authors we have encountered give us ammunition to imagine alternative futures. These might be futures based on different regimes of property, informed by different relations to land and nature, and sustained by genuinely renewable ways of harvesting the forest. From these same sources, we can also glean essential insights about ways of getting there, of reaching these futures: building deeper alliances between Indigenous nations and environmentalists, challenging and transforming common sense, and, crucially, transforming colonial Crown-Indigenous relations into reciprocal relations between Indigenous peoples and guests, not settlers.

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