

NEW RELATIONSHIPS ON THE NORTHWEST FRONTIER:
EPISODES IN THE GITXSAN AND WITSUWIT'EN ENCOUNTER WITH
COLONIAL POWER

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Abstract

This dissertation examines relationships between colonialism and Indigenous peoples that shape the development of extractive resources in Gitksan and Witsuwit'en territories in Northwest British Columbia, Canada. I argue colonialism and Indigeneity are co-constituted. Theoretically, this dissertation brings an analysis of colonialism into conversation with Foucauldian understandings of sovereign, disciplinary, and governmental power. I begin by situating the relationship between colonialism and the Gitksan and Witsuwit'en people historically, then transition to examine in greater detail the contemporary relations unfolding through the courts, traditional knowledge studies, resource governance, and education. I argue the Gitksan and Witsuwit'en assertions of territory and jurisdiction in the *Delgamuukw* litigation exposed Indigenous traditions to new forms of colonial discipline and debasement but also induced new regimes of recognition and doctrines of reconciliation. Subsequently, Aboriginal traditional knowledge studies integrated recognition of Indigeneity within the governmental regulation of resource development. However, such recognition has been constrained. Witsuwit'en resistance to the Enbridge Northern Gateway Project highlights the ongoing emergence of Indigenous politics in excess of regulatory integration as traditional. This excess is continually reincorporated into colonial governance processes to resecure development, through not only techniques aimed at protecting Indigenous traditions but also training regimes designed to incorporate Indigenous labour within the industrial economy. Through the dissertation, I demonstrate the entanglement of resource development with a continuous cycle moving through moments of Indigenous contestation, colonial response, and subsequent Indigenous challenges. This cycle has relied on the exercise of sovereignty, disciplinarity, and governmentality as distinct yet interpenetrated modalities of colonial power. Colonial sovereignty operates to suspend the political excess of Indigenous political claims, discipline works to enframe Indigeneity, and government minimally regulates to

protect and foster Indigenous being. However, on the basis that Indigenous forms of territory and subjectivity remain unreconciled with colonial regimes of discipline and governmentality, Indigenous authorities perpetually advance new jurisdictional claims that problematize those of the colonial sovereign, and reopen spaces of negotiation. I suggest the movement between moments of resistance and reconciliation remains necessarily open and indeterminate. These multiple trajectories of the encounter between Indigenous peoples and colonialism, I argue, continually unfold to constitute the colonial present.

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Note on Terminology

The orthography of Indigenous languages in the Northwest Interior of British Columbia remains a matter of contention. The Gitksan belong to the Tsimshianic language family and the spelling of Gitksan has been subject to a series of revisions as linguistic work has developed. Lonnie Hindle and Bruce Rigsby's (1973) *Short Practical Dictionary of the Gitksan Language* was an early standard. When the Gitksan and Witsuwit'en hereditary chiefs sued the British Columbia government in the *Delgamuukw* case for recognition of their Indigenous territorial ownership and jurisdiction, they hired Rigsby as a linguistic expert and used a version of his orthography (which used the spelling Gitksan to refer to the Gitksan people).¹ As this case has been the subject of numerous commentaries, its orthography has wide circulation. However, linguistic work has further modified the orthography of the Gitksan language. There are two distinct dialects spoken by the Gitksan people. Gitsenim̓x is spoken in the contemporary western villages, which call themselves Gitksen; the eastern communities pronounce their language Gitsanim̓x, and call themselves Gitksan (Johnson 2010, 219). The Gitksan Treaty Society, the contemporary office representing the Gitksan hereditary chiefs, now uses a Gitsanim̓x spelling in their title. Echoing this revision, I use the term Gitksan to refer to the political community of the Gitksan people (deferring to the historic names of organizations as they appeared). But while I use a Gitsanim̓x orthography of the term Gitksan, for other Gitksan terms I use an orthography associated with the western dialect of Gitsenim̓x, for which linguistic resources are most readily available.²

The orthography of Witsuwit'en has also shifted over the years. According to Sharon Hargus (2007), Witsuwit'en and Ne'dut'en (Babine) people speak closely related dialects of the same language. In an unpublished work from 1974, Hank Hildebrandt and Gillian Story first codified the Nedut'en dialect. Building upon this work, James Kari collaborated with Rigsby to prepare linguistic evidence on the Witsuwit'en dialect for the *Delgamuukw* case (Rigsby and Kari 1987).³ At trial, the spelling Wet'suwet'en was used to refer to the Witsuwit'en people, although Rigsby and Kari actually used the spelling Wetsoo Wet'een in

the body of their report. As they continue to advance claims associated the *Delgamuukw* case, the Office of the Wet'suwet'en has chosen to maintain a version of the orthography from the court case. Additionally, one of the local Witsuwit'en bands constituted under the *Indian Act* has renamed itself Wet'suwet'en First Nation as an alternative to their earlier designation as the Broman Lake Indian Band. Thus, the court orthography of the Witsuwit'en-Nedut'en language continues to be disseminated through the actions of Witsuwit'en organizations, as well as commentary on the *Delgamuukw* case.

However, since the late 1980s, Hargus has engaged in sustained study of the Witsuwit'en dialect of the Witsuwit'en-Nedut'en language.⁴ Hargus (2007) has published the only systematic account of Witsuwit'en grammar. Her research emphasized that certain sounds within the Witsuwit'en language were not captured in the earlier orthographies. In the Hargus orthography, the spelling of Wet'suwet'en was changed to Witsuwit'en. The Witsuwit'en hereditary chiefs decided in August 1995 meeting at Old Moricetown Hall to adopt the Hargus orthography as the definitive codification of their language (Naziél 2007). While the Hargus orthography has had uneven usage within Witsuwit'en communities, it has been adopted in educational work and language revitalization projects, and linguistic resources using its orthography are increasingly available.⁵ As the Hargus orthography is based on the most systematic study of the Witsuwit'en dialect of the Witsuwit'en-Nedut'en language, and has been endorsed by the Witsuwit'en hereditary chiefs, I use it for Witsuwit'en terms throughout this dissertation (while referring to organizations that continue to use older orthographies in their titles by their chosen names).

CHAPTER 1

Introduction

This dissertation is a study of the entanglement of Indigeneity with colonial power. In it, I focus on developments in the Northwest Interior, a region variously territorialized as the northwest periphery of the Canadian province of British Columbia and the traditional territories of the Gitksan (Gitksan) and Witsuwit'en (Wet'suwet'en) peoples. To many Canadians, the North exists only as blank, empty space upon which to project the imagined essence of Canadianness (Shields 1992; Grace 2002). But many different peoples live, work, or invest in the lands now referred to as the Canadian North (Hulan 2002). As Justice Thomas Berger noted in his 1977 report of the Mackenzie Pipeline Inquiry, titled *Northern Frontier, Northern Homeland*, the North is subject to a multiplicity of territorial imaginations. While industry looks north in search of new frontiers for development, the frontier is never empty, but always already populated by Indigenous communities. Thus, the story of expanding frontiers for resource development is not a simple account of discovery and exploitation, but one of transcultural encounters and protracted negotiations (often in a context of gross inequality and violence).⁶ In this dissertation, I argue the frontier is a terrain contoured by relations of power. It is shaped by colonial efforts to dispossess and exclude but also competing Indigenous claims to land and authority.

While various colonial initiatives aspire to a totalizing model of capitalist development, I argue actually colonial aspirations are continually entangled with, modified in relation to, and offset by local assemblages of Indigenous politics. My dissertation particularly situates the politics of the encounter between Indigenous peoples and colonialism in the Northwest Interior of British Columbia, examining the relations between Gitksan and Witsuwit'en people and settler colonialism. My argument uses the specificity of these relations to address how the processes of colonial and Indigenous becoming intersect and overlap, constituting a multiplicity of subjectivities, territories, and authorities. As

Michel Foucault (1984, 89) writes, the world we know “is a profusion of entangled events.” Rather than a single history of a colonial project to render Indigeneity governable or many histories of the ways Indigenous resistance have refused colonial impositions, I am interested in the performative relation through which colonial strategies and patterns of resistance encounter, define, and contaminate each other.

Colonialism remains a formation of remarkable puissance in the ongoing frontier politics of the Northwest Interior. The original frontier thesis, famously first articulated by Frederick Jackson Turner in 1893, held that the central narrative of American history was the closing of the frontier, as the process of westward expansion not only tamed a land but also reconstructed a people, forging American ideas of democracy and individualism (Turner 1921). Scholars such as Patricia Limerick (1987), Jean Barman (2007 [1991]), and Elizabeth Furniss (1999), however, challenged this frame. They insisted the making of the frontier involved not simply settling the land, but the violence and forcible reoccupation of lands other people already lived on and owned. Further, while dispossession accompanied the development of the frontier, these dispossessions were never complete. The making of the frontier thus was not a closed historic process yielding the territory of the settler colonial state; rather it established an interactional space that remains open, governed by the continuous negotiations, convergences and contests, between settlers and Indigenous peoples. Thus, the frontier can be conceptualized as a region that covers the entire territory claimed by settler colonial society.

Gitksan and Witsuwit'en peoples' continual contestation of title and jurisdiction in the province gives the relation between colonialism and Indigeneity in British Columbia particular visibility. An emphasis on the shared histories of Indigenous peoples and settlers within Canada has often obscured recognition of contemporary frontier dynamics in much of country. However, Indigenous contestation of colonial regimes continually exposes the still salient relation between colonial power and Indigenous peoples. This is the case particularly in British Columbia. Unlike the majority of Canada, in which colonial authorities used treaties with Indigenous peoples to secure a legal foundation for the

colonial state, the lands comprising the majority of British Columbia remain unceded by Indigenous peoples. The remarkable and vibrant lineage of Gitksan and Witsuwit'en resistance and resilience, asserting subaltern forms of subjectivity, territory, and authority, highlights the incredible import of analyses of not only the exercise of colonial power in relation to Indigenous peoples but also the unfolding politics of Indigenous response.

Examining moments of contestation as well as convergence, this dissertation outlines episodes in a history of the colonial present of the Northwest Interior. In this project, I draw inspiration first from Foucault, who sought not to write a history of the past in the terms of the present, but instead write “a history of the present” (Foucault 1977, 31). As Michael Roth (1981, 43) describes, through his work Foucault sought to historicize the present to render legible possibilities “to make that present into a past.” With an aim to exposing how individuals and populations were subjected to power, Foucault developed histories of modern disciplinary institutions and political discourses in Europe, and particularly France. Supplementing Foucault’s analytical foci, in this dissertation I diagnose colonialism as a condition of the present (Gregory 2004). I approach colonialism, in accordance with Daniel Clayton’s (2009, 94) depiction of it, as an “enduring relationship of domination and mode of dispossession” through which a power is exercised in relation to an Indigenous population “through a mixture of coercion, persuasion, conflict and collaboration.” The task of the critic of the colonial present, following Foucault’s example, is to conduct precise and discriminating analyses to demonstrate the effective exercise of colonial power in its specificity. While I present no simple answer to the old question of what is to be done, I write with the optimism that recognizing the relations of power today continues to offer multitudinous possibilities for future resistances, escapes, and modifications.

I particularly target my analysis of the relation between colonialism and Indigeneity on the question of resource extractive development. Examining colonial strategies, I study how colonial authorities aim to shape Indigenous peoples’ relations with not only each other and the settler polity but also with the land and their means of subsistence.

Approaching power as a relation rather than a possession, I seek to expose how colonialism functions through relations that do not simply work towards the elimination or domination of populations but rather aim to enhance and direct the capacity for action within a target population. I thus ask after how Indigenous peoples are subjected to colonial power and implicated in its workings. However, I do not limit my analysis to colonial strategies. I examine the ways in which Indigenous peoples strategically engage colonial power. I argue that Indigenous actions resist, suspend, and modify, as well as realize, consummate, and implement, the effective exercise of colonial power and work as part of the composite apparatus regulating resource extractive development.

This dissertation's theoretical frame thus relies upon developing a productive exchange between Foucauldian understandings of power and an analysis of colonialism, reconceptualizing both analytics by situating them in dialogue. As Ann Laura Stoler (1995) points out, the absence of an analysis of colonialism within Foucault's work is deeply problematic. With his vision focused narrowly on Europe, Foucault misses crucial connections between the emergence of the capitalist order and colonial relations. Applying a Foucauldian analytic to a settler colonial frontier, I do not simply apply theoretical frames diffusing from the centres of Western intellectual authority; rather I appropriate and reframe, locate and displace, Foucauldian thinking. Taking Foucault to the Northwestern frontier, I explore a triangle of sovereign, disciplinary, and governmental power relations. Counter to the prevalence of scholarship positioning Indigenous peoples as simply oppressed by colonial structures of power, I argue that Indigenous resistance is deeply interwoven with the modalities of colonial power, interrupting but also interlinking with it at various moments. Such contests and concatenations render the exercise of power on the settler colonial frontier distinct from the circumstances in metropolitan Europe. I analyze the strategies of colonialism and Indigeneity in terms of a complex of questions: what forms of authority do they invoke and produce; what territories and modes of territorialization do they constitute; what subjectivities and modes of subjectification do they engender.

On an empirical level, this dissertation tacks back and forth between the workings of colonial power and the significance of Indigenous resistance that dually inform the politics of development in British Columbia's colonial past and present. I particularly emphasize the political developments that have occurred through and in the wake of the *Delgamuukw* case, in which the Gitksan and Witsuwit'en hereditary chiefs sought recognition of their ownership and jurisdiction over their traditional territories through the Canadian court system. The theoretical contribution outlined above is demonstrated through charting the emergence of a doctrine of Aboriginal title in Canadian law, the employment of Indigenous traditional use and knowledge studies in resource management, the resurgence of Indigenous political action to refuse pipeline development, and the construction of a mining education program designed for Indigenous peoples. Diagramming these diverse trajectories, I argue that the politics of development are not reducible to simply a colonial will, but also must be understood in terms of the imbrication of colonial power with Indigenous strategies of resistance and self-determination that work both against and with colonialism.

To begin, in this opening chapter, I introduce my research project and its theoretical foundations. I start by approaching two of my keywords, Indigeneity and colonialism, and the relation between these terms. I then introduce the reader to Foucault's conceptualization of power, and review the relation between sovereignty, discipline, and government in his work. In order to demonstrate the productive dialogue that can be established between an analysis of colonialism and Foucauldian understandings of power, I subsequently review some of the pertinent literature on Indigeneity and colonialism in British Columbia. Having positioned my research in the context of British Columbia, I shift to position myself in the context of my research. I then turn to discuss the methodology I employ, and outline the empirics of my research. Finally, I close the chapter by laying out the organization of this dissertation and the specific arguments I will develop. Through this research, my theoretical and methodological contribution lies in a relational conception of colonial power and Indigeneity.

Keywords: Colonialism and Indigeneity⁷

My study focuses on a particular variant of colonialism, that of settler colonialism, and particularly the form of settler colonialism that emerged in British Columbia, Canada. Settler colonialism, like other forms of colonialism, has its origins in the imperial international order; indeed as Lorenzo Veracini (2010) points out there is an extended lineage of concomitance in practice between settler colonialism and other colonial regimes. The exclusion of non-state Indigenous polities and their relationships to their territories, as Antony Anghie (2004) describes, was constitutive to the formation of the international community of sovereign nation-states through imperialism. However, if imperial sovereignty relied on displacing Indigeneity, the development of colonial sovereignty reappropriated it, positioning the sovereignty of the colony as distinct from the imperial metropole through indigenizing its own position (Deloria 1999). To do so, colonial authorities had to overwrite the claims of the peoples who already existed as organized societies on the land before the arrival of Europeans or their assertion of effective control of colonized territory. The settler colonial nation-state presents its originary claim to sovereignty through the displacement of Indigeneity to an absolute past, a time outside history, while simultaneously appropriating the idea of nativeness for its own discursive purposes of national narration (Anderson 1991; Pratt 1992). Expressed within particularly Canadian national valences, this reflects the moment in which the nation makes its territory “our home and native land.”

Theorists of settler colonialism stress a number of factors that differentiate the settler colonial formation from other forms of colonialism. First, the central focus in settler colonialism is the appropriation of land not the exploitation of labour. As Patrick Wolfe (1999, 1) writes, “settler colonies were not primarily established to extract surplus value from indigenous labor,” instead “they are premised on displacing indigenes from (or replacing them on) the land.” Second, the whiteness of settler colonial societies differentiated them from colonies where racialized peoples were numerically predominant. Imperial authorities were more sympathetic to white movements for political

independence, and tended to accord more respect to the sovereignty of settler colonial states as they gained greater independence (Holt 1992, 233–249). Third, settler colonialism is not a temporally bounded historical phenomenon. There is no post-settler colonialism as settler colonialism remains as much a formation of the present as the past (Veracini 2010).⁸

Thus, although this research concerns development in the Northern Interior of the Canadian province of British Columbia, I do not treat either the Canadian nation-state or the province of British Columbia as an unproblematic site of analysis. As Joel Wainwright (2008) reminds us, if we begin by simply assuming the unproblematic presence of the nation-state, if we presume that the ontology of Canada is fixed in advance, we naturalize a crucial effect of colonial power. “Geography is about power,” Gearóid Ó Tuathail (1996,1) explains, “Although often assumed to be innocent, the geography of the world is not a product of nature but a product of histories of struggle between competing authorities over the power to organize, occupy and administer space.”

There are numerous conflicts over geography and authority in British Columbia. There are conflicts between the domains of federal and provincial jurisdiction, but also between the claimed territories associated with Indigenous hereditary and bands constituted under the *Indian Act*. However, in my dissertation I particularly focus on the intertwining and overlapping of Indigenous and colonial regimes, leaving the issues related to the division of powers within Canadian federalism and the overlapping claims of Indigenous polities in the background. Rather than tensions within either the settler or Indigenous community, I focus on relations between them. The iterative production of the settler colonial nation-state works through discourses and practices that remain thoroughly colonial. Canadian geography is produced through colonialism, and remains an ongoing effect of colonial power even as it becomes a crucial vehicle for the exercise of contemporary colonial power. The authority of the settler colonial nation-state is an ongoing performance that cannot be disconnected from continuing processes of accumulation by dispossession and the production of essentialized national and racial

forms of subjectivity (Kosek 2006). The very act of presenting Canada or British Columbia as an unproblematic geography or entity reiterates these colonial effects.

Conversely, the designation of particular people as Indigenous is also a product of colonialism. As Patricia Wood (2003, 372) notes, the nomenclature of Indigeneity “reveals the ways in which history is embedded in language.” Designations of Indigeneity in colonial discourse are coeval with the occasion of encounters between colonizing power and distant peoples. The colonial legacy of the nomenclature of Indigeneity is most apparent in the usage of the geographic malapropism Indian to refer to the Indigenous population of the Americas.⁹ As Robert F. Berkhofer (1979) argues, Indigenous peoples did not think of themselves as Indians, and the idea of Indian should be considered a white invention. But this point is similarly true for various other terms, such as Indigenous or Aboriginal, which colonial discourse used to construct a term for the collective population of peoples that preceded colonization. Prior to contact, Indigenous peoples identified with many distinct and often competing political, cultural, and linguistic communities, a diversity of identifications that Indigenous peoples continue to enact today. There has never been a singular collective of Indigenous peoples.

Discourses of exploration and colonization evoked notions of Indigeneity, Aboriginality, and Nativeness in contradistinction to the entitled figure of European authority. As Tzvetan Todorov (1984) established in his now classic study, *The Conquest of America*, colonization centrally involved the construction of knowledge of Indigenous Others. The first cited use of the term Indigene in the Oxford English Dictionary (2012 [1989]) occurs in Richard Hakluyt’s (2006 [1598], 222) treatise, *The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nation*, in which he delineates the Indigene as “people bred vpon that very soyle, that neuer changed their seate from one place to another, as most nations haue done.” Hakluyt’s localization of Indigeneity resonated with the frames that would come to define it through the further emergence and consolidation of colonial discourses. The construction of Indigeneity as belonging to a place found resonance in the concept of Aboriginality, a condition defined by being the earliest

inhabitants of a place. Where Indigeneity focused on the geographic and Aboriginality referenced the temporal, colonial discourse similarly framed the two terms in contrast to a progressive global mobility (Wood 2003). As the dynamics of mercantile exchange, and subsequently land dispossession and labour exploitation, brought Indigenous peoples into relationships with forms of colonial authority, the concepts of Indigeneity and Aboriginality within colonial discourse served to temporally demarcate the prior inhabitants of colonial territories as an ethnic anachronism whose territorial and political claims were superseded by those of colonial authorities. Colonial discourse thus represented Indigenous peoples as the peoples before history, a temporality only imagined to begin with the colonial encounter.

This construction of Indigeneity continues to circulate in the critical literature on colonialism and Indigeneity. In their introduction to a recent issue of *Geographical Research* devoted to the theme of Indigenous geography, Jay Johnson, Garth Cant, Richard Howitt, and Evelyn Peters (2007, 118) state “that, despite the difficulties inherent in creating an unambiguous definition, there are some common traits shared by the Indigenous peoples ... notably political, economic and cultural connections to lands held prior to colonisation by outside powers and the submersion of these connections to their lands within the states created by colonising powers.” As Linda Tuhiwai Smith (1999, 24) argues, Indigenous research draws upon two major strands of Indigenous experience. First, the reference to pre-colonial times draws upon an idea of authenticity, of sovereignty, independence, and self-knowledge. Second, the reference to colonization highlights the impact of the arrival of settlers, and its significance for the present and future. “The two strands intersect,” she writes, “but what is particularly significant in indigenous discourses is that the solutions are posed from a combination of the time before, *colonized* time, and the time before that, *pre-colonized* time” (Smith 1999, 24). Thus, Indigeneity is represented in an irresolvable relationship with modernity. By tying Indigeneity to a pre-colonial past, colonial and all too often critical discourse configure it as a static, authentic pre-contact tradition, whose cultural and political dynamism was terminated by the arrival of colonialism (King 1990;

Borrows 1997).

Such static approaches often juxtapose Indigeneity and colonialism, rather than understanding the two categories as mutually imbricated. Against the centring of Western frameworks and colonial institutions, scholars have emphasized the importance of recognizing traditional Indigenous forms of social organization and territoriality. This trajectory of scholarship is clearly evident in research on the Gitksan and Witsuwit'en people. Richard Overstall (2005) examines how relations of responsibility and reciprocity established through original encounters with the spirit of the land work to constitute distinct territorial claims for *wilp* (houses) within Gitksan legal orders. Richard Daly (2005) demonstrates how the complex and dynamic relationships centred in the reciprocal relationships embodied in the *yikw* (feast) characterize the social and ecological networks through which the Gitksan and Witsuwit'en exercise their title and jurisdiction over their territories. Dawn Mills (2008) highlights how land use is regulated through the web of relations within traditional kinship-based Gitksan society, while Val Napoleon (2004, 2009) has begun to explore traditional Gitksan processes of dispute resolution and reconciliation. Antonia Mills (1994b) attends to how Witsuwit'en performances of *kungax* (trails of song) in the *balhats* (feast) also serve as claims to their territories. Other researchers focus on the traditional land management practices, such as burning berry patches to enhance their productivity, and how these practices interlinked with a broader structure of resource governance and land tenure, in which usage rights to particular harvesting sites were delimited to particular kinship groups (Gottesfeld 1994a, 1994b; Deur and Turner 2005; Turner and Peacock 2005; Trusler and Johnson 2008).

However, in scholarship focused on the recovery of Indigenous traditions, the reversal of the terms of colonial discourse, celebrating an image of Indigenous traditions debased as primitive in colonial discourse, often works to foreclose Indigenous peoples from Western history. The gesture towards cultural recovery temporally locates Indigenous traditions in the past. Furthermore, the focus on Indigeneity as local and traditional works to incarcerate Indigenous peoples within their traditional territories,

constructing their lands not as a space of exchange and encounter but as confined local places to which other people—missionaries, settlers, geographers—come (Appadurai 1988; Cameron 2012). While cultural reclamations contribute to revalorizing traditions denigrated through colonial discourses, the stress on cultural revitalization at times presents characteristics of a cultural fundamentalism that fails to attend to the history and present realities of colonialism (St. Denis 2004). Moreover, focusing on the recovery of an imagined authentic tradition works against the frameworks of the traditional stories themselves, which stress a dynamic engagement with a changing world (McGregor 2004, 2005).

Instead of defining Indigeneity in terms of its adherence to a static or timeless authenticity, researchers need to approach Indigeneity as a dynamic formation. Indigenous political and life projects are continually constituting contemporary subjectivities, territories, and authorities that are in dialogue with, rather than incarcerated by, tradition (Blaser, Feit, and McRae 2004). Moreover, Indigenous peoples rely on complex strategies in responding to colonial development projects on their traditional lands, including not only forms of localization but also forms of translocal and even global mobilization. Thus, mobility, translocality, and globality are part of the contemporary processes producing Indigenous spatialities and subjectivities, and a vital aspect of the movements of Indigenous response (Escobar 2001; Niezen 2003; Desbiens 2004; McCreary and Milligan Forthcoming). The challenge for academics remains in recognizing the ongoing processes of Indigenous political emergence without slipping into a kind of salvage ethnography that situates Indigenous authenticity in a disappearing past (Simpson 2007).

To recognize the contemporaneity of Indigeneity, I situate my research in an analysis of the interplay of colonialism and Indigeneity. It is necessary to read along and against the ordering of colonial knowledge to understand the unresolved play between colonialism and Indigeneity. Colonial discourse and practice works by bracketing off Indigeneity to a position lying outside or at the periphery of modernity, while simultaneously recapturing a domesticated and differentiated Indigenous subjectivity

within the domain of emerging colonial political economic formations. This complex double movement works to foreclose consideration of altern Indigenous life projects and enfold Indigenous peoples within the emergent territorial logic of the settler colonial nation-state and its project of capitalist development.

While the construction of an anachronistic and ahistoric Indigenous Other serves to construct and rationalize a capitalist project of development and the processes of dispossession upon which it relied, there is always a surfeit of Indigenous life that exceeds the techniques that aim to govern and administer it. As Robert C. Young (2004 [1990], 177) writes, “totalizations never succeed in producing a perfect structure of inclusions and exclusions, with the result that the unassimilable elements determine (and disallow) any totality which seeks to constitute itself as a totality by excluding them.” Indigenous resistance, working at the fractures and instabilities of colonial regimes, continues to open spaces of possibility, modifying, reforming, and even counterbalancing reigning colonial regimes (Morris and Fondahl 2002; Desbiens 2004; Blaser, Feit, and McRae 2004; Cameron, de Leeuw, and Desbiens Forthcoming; McCreary and Milligan Forthcoming). Yet the essential malleability of colonialism, as an inchoate, flexible regime of discourse and practice that never fixes final boundaries but rather works through constant slippages in the performance of colonial power, serves to bestow longevity to colonial regimes through their capacity for reinvention (Milligan and McCreary 2011). Understanding the intertwined histories and overlapping territories that constitute the extant multiplicity of the geographies of the colonial present requires registering the necessary imbrications, inequalities, and irresolutions of the catachresis intoned by Indigeneity and colonialism.

Foucault’s Triangle: Sovereignty-Discipline-Government

In this project, I construct a history of the colonial present through charting the multifarious workings of colonial power vis-à-vis Indigeneity in terms of the triangle of sovereignty-discipline-government. I borrow this triadic conceptualization of power from Foucault. Before launching into a discussion of the workings of colonial power, I want to

review how Foucault conceptualized power. Foucault (1978, 94) sought to challenge approaches focusing on power as a commodity that is possessed: "Power is not something that is acquired, seized, or shared, something that one holds to or allows to slip away; power is exercised from innumerable points, in the interplay of nonegalitarian and mobile relations." Against conventional accounts of power as a repressive or oppressive force used by particular people or groups, Foucault identified power as a relationship between individuals or groups that only exists through its exercise.

For Foucault, power was productive, intimately related to the creation of particular types of knowledge. Foucault used the hyphenated compound power-knowledge to conceptualize the wedding of the exercise of power with the constitution of knowledge through regimes of discourse and practice. Approaching the exercise of power and its complex relations to particular kinds of knowledge, discourse, and practice, Foucault honed in upon its strategies. For Foucault, power is calculated to satisfy a set of aims, to respond to a particular problematization. Strategies, as formulae for the exercise of power, work in relation to sets of rationalized interventions into a field of problematics. Thus, rather than a unitary definition of power, Foucault referred to types of power relations that relied upon distinct configurations of archives and forces for their characteristics.

Foucault delineated sovereign, disciplinary, and governmental power as each working through distinct modalities associated with different systems of practical rationality. In the broadest strokes, sovereign power prohibited and disciplinary power prescribed, whereas governmental power secured the well-being of the population. Foucault recognized sovereign, disciplinary, and governmental power as forming a series, emerging at different historical junctures; but he did not simply juxtapose different modalities of power or periodize their supersession. He wrote, "we should not see things as the replacement of a society of sovereignty by a society of discipline, and then of a society of discipline by a society, say, of government" (Foucault 2007, 143).¹⁰ Rather the emergence of a new technology of power, according to Foucault (2003, 242), "does not exclude the former, ... but it does dovetail into it, integrate it, modify it to some extent, and

above all, use it by sort of infiltrating it, embedding itself in existing ... techniques." Thus, the emergence of new technologies of power never simply supplanted what came before. Instead, Foucault argued the modern art of government reconstituted sovereignty and discipline in relation to emergent concerns constellated around the developing political economic order in liberalism.

Foucault outlined a preliminary schematic of sovereign, disciplinary, and governmental power in his late lectures, using the example of town planning to highlight distinctions but also interlinkages of the spatialities of these three technologies of power. Foucault (2007, 25) suggests, "sovereignty is exercised within the borders of a territory, discipline is exercised on the bodies of individuals, and [governmental] security is exercised over a whole population." His first example was the French juridical and administrative city of the seventeenth-century. Particularly focusing on the utopian text of Alexandre Le Maître, *La Métropolitée*, Foucault argued the sovereign authority within an administrative city was imagined to exist at the top of a metaphorical architectural hierarchy, segregated from other spaces. It was in the capital, the centre of political decision-making, that the sovereign sat. The capital functioned in geometric relation to the rest of the territory, enabling the effective diffusion of sovereign authority. Through the political relationship between the capital and the territory, "the decrees and laws must be implanted in the territory [in such a way] that no tiny corner of the realm escapes this general network of the sovereign's orders and laws" (Foucault 2007, 28). The sovereign decree worked to define what was prohibited throughout its domain.

But the relation between the capital and the territory was not simply political; it was also moral, intellectual, and economic. From the capital disseminated standards of moral conduct, diffused academic knowledge, and also circulated goods through the market. As Foucault (2007, 29) noted, through this period the "idea of the political effectiveness of sovereignty, is linked to the idea of an intensity of circulations: circulation of ideas, of wills, and of orders, and also commercial circulation." Thus, the concept of sovereignty interlinked with emerging ideas related to control over a territory and management of a

milieu of circulations. This reflected, for Foucault, a particularly modern reinvention of sovereignty in relation to the developing science of political economics. As Foucault describes, new forms of power, which he referred to as biopower, worked through developing an anatomo-politics of the human body in disciplinary institutions and mobilizing a biopolitics of the population through regulatory controls. With the development of biopower, the sovereign power over life in the decision “to take life or let live” was complemented by a new technologies designed “to make live and let die” (Foucault 2003, 241). New technologies of biopower aimed not at defining prohibited actions that would result in death but rather at determining or securing the conditions of normal life penetrated and permeated a redefinition of sovereign action.

To demonstrate discipline, Foucault selected the example of town planning in the creation of planned communities in Northern Europe based on the form of the military camp. Where sovereign spatiality for Foucault related to capitalizing a territory, approaching town planning as an instrument of discipline refocused attention to the internal structure of urban space. The architecture that mattered in this case was not figurative but literal as planners sought to construct architectural precision to control the multiplicity of bodies within the city. Clean perceptual grids worked to enable surveillance and the communication of relations of power that worked to configure the activities within the city. Disciplinary power relied upon the “constitution of an empty, closed space within which artificial multiplicities are to be constructed and organized according to the triple principle of hierarchy, precise communication of relations of power, and functional effects specific to this distribution” (Foucault 2007, 32).

As Foucault (1977) discussed in *Discipline and Punish*, modern disciplinary institutions worked to concentrate and enclose, segmenting space to isolate individual bodies. In contrast to the focus on instituting a ban or prohibition in the exercise of sovereign power, which punishes people for what they have done, disciplinary power relies upon a series of determinations regarding whether or not individuals have behaved in accordance with the norm, punishing people for what they have not done. This focus

reflects the primary aim of modern disciplinary power: to correct deviance. The goal is reform. A micro-apparatus of gratification-punishment punished slight departures from the norm through corrective exercises. The art of punishment relies upon differentiating individuals and placing them within a hierarchical system, rewarding and punishing individuals the award of rank. Normalization makes people homogenous, but also enables the measurement of differences between individuals, and between individuals and the norm. Through the calculated gaze of surveillance, subjects learn to internalize the norm and thereby disciplinary power works to define not when you die, as sovereign power had, but how to live.

Although the sovereign and disciplinary power operated in accordance with distinct modalities, the rationalities underlying their exercise imbricated and informed each other. As Foucault (2007, 94) notes, the emblematic form of disciplinary power, the panopticon in which no subject is unknown and none can escape the centralized gaze, reflected “the oldest dream of the oldest sovereign.” While distinguishing territorial sovereignty from the enclosure of discipline, Foucault (2007, 40) highlights how the “territorial sovereign became an architect of the disciplined space.” Similarly connecting disciplinary planning to strategies of government, Foucault highlighted how the architect was not simply concerned with containment, but also aimed to regulate and secure the development of a milieu for circulations.

However, as disciplinary enclosure and governmental circulation worked according to distinct rationalities, the different technologies of power remained in tension. While discipline worked through the circumscription of space, the art of government relied upon liberalizing spatial constraints to enable enhanced circulation and movement. To maximize economic activities, the liberal art of government perversely hinged on minimally regulating circulations to ensure the security of the market without impinging on market flows. Thus, in contrast to the centripetal pull of disciplinary regimes, working to enclose space and control every aspect of existence, modern governmental regimes aimed to govern the least necessary in order to ensure maximal distribution. Where discipline aimed

to isolate, government aimed to incorporate.

Foucault's analysis of government signals a significant refinement in his theorization of power. Addressing government, Foucault took up the diversity of meanings associated with the term in the eighteenth-century, bridging an interest in the processes of both state and personal management. Drawing in both discussions of political government and antiquated constructions of the problem of self-government—heading a family, raising children, guiding the soul, and playing a leadership role in the community or in business—Foucault used the term governmentality to account for both processes of subjectification and state formation. With this concept, Foucault began to examine relations of power-knowledge through an analysis of the “conduct of conduct” (quoted in Bröckling, Krasmann, and Lemke 2011, 2). As Foucault (2007, 144) describes, governmental power “has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument.” Through the techniques of security, governmental power targeted not the maintenance of individuals in accordance with the norm, as in discipline, but the efficient management of the well-being of a population. The art of government shared a focus on norms with discipline, but where discipline sought to ensure individual adherence to a norm, the techniques of security worked around managing a distribution within a population. Government inducements encourage individuals to improve themselves and enhance their well-being, typically through market participation. In contrast to the normalizing aim of discipline to effect a universal standard, governmental power worked to establish a normal distribution within a population that targeted a degree of variation in effect.

A particular novelty of the modern form of liberal government that Foucault studied is that rather than seeking to absolutize the power of the state, it instead established the limitations of state authority in the form of knowledge that it created. Describing what he claims to be one of the unique attributes of modern government, Foucault (2007, 143) states that liberal governmentality isolated “the economy as a specific domain of reality, with political economy as both a science and a technique of intervention in this field of

reality.” The depiction of the nature of society through political economy thus constructed a form of knowledge enabling governmental interventions. However, as it established the economy as a distinct domain with its own internal dynamics of production, the knowledge of political economy also limited governmental action on the basis of preserving the internal dynamics of production within the economy. Political economy rationalized particular interventions to ensure economic development but also set limits to intervention grounded in knowledge of the innate processes of economic activity. Inaugurating a new rationality of government, the emergence of liberalism marked a new art of governing. Rather than working to reify and extend its own power, the state sought instead to maximize the circulation of people and commodities through limiting the exercise of external regulations on the economy. Interventions were justified only in those cases where economic processes were not achieving their innate potential.

As an example of the art of government and its reliance on the techniques of security, Foucault examined eighteenth-century plans for urban management, particularly drawing on the work of Pierre Lelièvre. Foucault noted the centrality of circulation, and how various writers used biological metaphors of the urban circulatory system to highlight this problematic. In a preliminary analysis of what may be termed urban metabolism, Foucault described a range of interventions aimed at improving urban circulation, particularly widening streets to ensure routes through the town for vital functions.

First hygiene, ventilation, opening up all kinds of pockets where morbid miasmas accumulated in crowded quarters, where dwellings were too densely packed. So, there was a hygienic function. Second, ensuring trade within the town. Third, connecting up this network of streets to external roads in such a way that goods from outside can arrive or be dispatched, but without giving up the requirements of customs control. And finally, an important problem for towns in the eighteenth century was allowing for surveillance, since the suppression of city walls made necessary by economic development meant that one could no longer close towns in the evening or closely supervise daily comings and goings, so that the insecurity of

the towns was increased by the influx of the floating population of beggars, vagrants, delinquents, criminals, thieves, murderers. ... In other words, it was a matter of organizing circulation, eliminating its dangerous elements, making a division between good and bad circulation, and maximizing the good circulation by diminishing the bad (Foucault 2007, 33–34).

Thus, new forms of government emerged alongside capitalism to ensure the circulation of people and goods was maximized. Through ensuring efficient circulation, the art of liberal government aimed to secure the well-being of the population. Where discipline sought to prescribe particular behaviours on the individual, governmental regulation instead sought to establish a desirable range for innovation within a population.

However, Foucault's emphasis on the novel forms of biopower involved in discipline and governmental regulation resulted in a neglect of the role of sovereign power. Numerous readers of Foucault interpreted his ardent calls to turn from a traditional approach to power as an argument for the complete abandonment of an analysis of sovereign power in favour of an endless quest to chart the anonymous capillary networks of normalization (see, for instance, Thiele 1986; Smith 2000). Giorgio Agamben (1998, 2005) has interceded against such readings, taking up Foucault to reestablish the connection between modern forms of disciplinary and governmental biopower and sovereignty. For Agamben, the figure of the sovereign has always been concerned with the politics of life. Developing his case, Agamben draws the discussion back to classical antiquity, particularly focusing on the construction of *homo sacer* or bare life. Against Foucault's delineation of biopower as productive and sovereign power as prohibitive, Agamben argues the two forms are welded in the production of bare life as the original, if hidden, activity of the sovereign. In the production of bare life, the sovereign decides to suspend the legal rights of a subject, rendering him or her subject to killing without consequence. Paradoxically, bare life is included in the political realm through its exclusion, as an entity beyond the protection of the law of the sovereign and thus exposed to violence through the decision of the sovereign. Agamben argues this decision to let certain subjects

die, through rendering them bare life, works together with the modern governmental power to make life through establishing the power to produce and defend life among those who remain within the political community. Through this discussion, Agamben highlighted the relation between sovereign power and violence in processes of exclusion that serve to incorporate subjects more completely in a state of suspension.

Scholars have launched strong critiques of Agamben, particularly regarding the lack of geographic and historical context to his theorization of sovereignty. Thomas Lemke (2011, 59–64) raises three objections to Agamben’s work: its transhistorical framing of biopolitics, its fixation on law and prohibition, and its failure to register the capillary networks of the state.¹¹ Agamben evokes bare life, distinguished from the form of life, as a category belonging to the order of sovereignty. While this describes the action of sovereign power to determine whether to suspend rights to life, it does not accurately reflect the biopolitical notion of life as immanent to itself (Ojakangas 2005, 11–17). Agamben’s effort to pull Foucault’s concept of biopolitics back to antiquity nullifies several of Foucault’s keenest insights. For Foucault, biopower cannot be separated from the historical development of modern states, the sciences, and capitalist relations. Displaced from any historical or geographic context, the production of “‘bare life’ becomes an abstraction whose complex conditions of emergence must remain as obscure as its political implications” (Lemke 2011, 63). Indeed, the notion of a continuity between the operation of biopower in antiquity and modernity appears absurd, as the notion of life is a modern concept, emerging with the differentiation between organic and inorganic in the eighteenth-century (Lemke 2011, 62). Nonetheless, Agamben’s assertion of the continued centrality of the model of sovereign remains a key intervention.

A secondary challenge to Foucault’s triangle has come from geography. Through his studies of modern power, Foucault provides a provocative account of the connections between the constitution of forms of authority and subjectivity. However, as Stuart Elden (2007) notes, Foucault’s account of territory is comparatively thin. Although territory makes the title of one of his late lecture series, *Security, Territory, Population*, Foucault

(2007, 145) abandons the middle term of this triad, suggesting part way through the course that with the emergence of techniques for the management of population, the state is “no longer essentially defined by its territoriality” and that governmentality would have been a more befitting term for the title. In his discussion of territory as a feudal logic transformed by the emergence of the modern art of government, Foucault correctly identified a point in which spatial logics were remade. However, where Foucault suggested that the governmental state was no longer defined by its territoriality in terms of a divinely ordained jurisdiction, he failed to fully conceptualize how governmentality signaled not simply a shift to a focus on population and circulation but also the emergence of a related materialist conception of territory mapped for security. As Ó Tuathail (1996, 9) writes, “This changing vision of the territory of the state required permanent bureaucratic technologies of power that could map, describe, catalog, inventory, order, and arrange the ‘things’ of government.”

On the basis of the gaps in Foucault’s theorization of territory, Elden (2007, 2010a, 2010b) argues territory itself should be analyzed as a political technology. In approaching the apparatuses of territorial calculation, Elden assumes governmental practices simply render particular, presumably innate, qualities of territory legible for calculation and action. However, the ostensible object of territorial calculation, geography, is itself an effect of power, attaining stability within particular registers through the assemblage of particular relations between subjects, materialities, political and economic rationalities, and sets of socio-technical practices. Thus, territorization is necessarily a process involving the materialization of political subjects in conjunction with particular configurations of the political-economic and socio-technical. Through particular techniques, such as cartography, space is produced as an object of knowledge and action in association with the unfolding of particular political and economic rationalities. A constant traffic of people and texts, as well as capital and resources, link northern resource frontiers to centres of political authority. This traffic not only orders the symbolic constitution of mapped space *qua* territory, but the materialization of territory both in a series of paper

inscriptions and associated socio-spatial practices oriented by those inscriptions. The construction of political and economic rationalities in association with territorial knowledge serve to chart particular programs of conduct for subjects within territorialized spaces of assemblage, while the collection of information in these centres of calculation allows political and economic decision-makers to construct problematics and rationalize interventions, developing strategies to act at a distance through systemized and regulated forms of activating and managing populations and territories, and installing particular technologies to better enable these processes.

Elden uniquely links territory as a political technology to European techniques for appraising land and controlling terrain as technical and legal processes. Contra Elden, I do not imagine a single course to territorial logics. Attending to Indigenous traditions of claiming land, there are multiple contestant traditions of territorialization that overlap and intersect. There are multiple methods of making territorial claims and recording and disseminating territorial information, from paper documents to oral traditions. Thus, in addition to colonial government archives, Indigenous people maintain records of their counter-claims to space, through oral traditions but also their own maps, digital databases, and studies. Indigenous frameworks do not simply parallel state processes of territorialization, assigning a different name to the same geography. These counter-geographies represent neither a simple mimicry of colonial territorializations nor a bounded traditional locality to counter the globalizing impulse undergirding colonial formations. Rather, as Noel Castree (2004, 163) notes, Indigenous peoples construct bold efforts to control the traffic to and from geographies they seek to control on the foundation of both ancestral connections to particular lands and “an explicit and conscious engagement with extra-local forces.” Indigenous peoples constitute differential geographies on the basis of distinct traditional territorial relationships and political rationalities, but also a translocal awareness of the global flows of capital and colonial power. Recognizing this pluralism in the politics of territorialization, I treat territory not as a political technology like governmentality, but as a political category, analogous to

subjectivity, which is subject to multiple trajectories of formation.

Moving Theory to the Settler Colonial Frontier

Thirty years ago, Edward Said (1983) published an essay entitled “Travelling Theory,” highlighting how theory lost its explanatory power and required radical revision when transferred to other cultural contexts. Recognizing the importance Foucault’s writings had for his own work, Said nonetheless pilloried sycophantic theoretical specialists who consecrated theorists such as Foucault into dogma and ridiculously parroted ideas out of context. Returning to the question of how theory travels more than a decade later, Said (1994) argued that theory moves in multiple ways. While theory is often orthodoxically imposed as a rigid grid on other times and places, Said argued that a demystification of theory could highlight avenues for theoretical movement through a permanent state of dissonance. Decentering the hold of specific locales upon theory, enabled it “to move beyond its confinements, to emigrate, to remain in a sense of exile;” for Said (1994, 452), such “movement suggests the possibility of different locales, sites, situations for theory without facile universalism or over-general totalizing.” It is in this latter sense of theoretical movement that I aim to bring Foucault to the settler colonial frontier, not as an authority but more meagerly as an inspiration both to think through the workings of colonial power, and to rethink the conceptual artifice associated with his name.

There is now a rich literature on settler colonialism in North America, including in the Northwestern corner of the continent now known as British Columbia. Although the centrality of an engagement with Foucault varies between scholars, much of this work has employed Foucauldian frames. In this section, I explore how scholars have addressed the workings of power in settler colonialism. Organizing my review to loosely accord with Foucault’s triangle, I provide an overview of texts that both explicitly employ and provide analogue analysis to the frames of sovereign, disciplinary, or governmental power. Key studies have highlighted the workings of exclusion, enclosure, and regulation in settler colonialism. However, I argue, that the majority of this work continues to work through a

bifurcated notion of colonial power and Indigenous resistance that fails to fully conceive of the imbrication of colonial and Indigenous formations.

Demonstrating the continued importance of an analysis of colonial sovereign action in determining who lives and who dies, theorists have approached settler colonialism as a distinct and enduring formation focused on “the logic of elimination” (Wolfe 2006, 387). Wolfe (2006, 388) argues, settler colonialism has “both negative and positive dimensions,” working through a movement to destroy and also replace: “Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base.” Paul Muldoon (2008), Mark Rifkin (2009), and Scott Lauria Morgensen (2011a, 2011b) have extended Wolfe’s argument in dialogue with Agamben’s discussion of bare life. They argue that Indigenous people are incorporated into the body politic of settler colonialism through rites of inclusive exclusion, and that settler colonial law is established on the basis of suspending Indigenous peoples from the protection of law. Rendering Indigeneity a form of life deprived of legal rights and allowed to die, settler colonialism establishes the power to produce law and make the lives of (white) settler colonial subjects. These studies have highlighted the relevance of sovereignty to an understanding of colonial power.

While Agamben’s analysis has been subject to substantive challenges on the basis of its placeless abstraction, Muldoon (2008), Rifkin (2009), and Morgensen (2011a, 2011b) productively reread his work on the inclusive exclusion in the context of settler colonialism. Situating analysis in the dynamics of settler colonialism highlights the importance of holding sovereignty open to interrogation. Theorizing the constitutive and ongoing performative exclusions of colonial law, which continually circulated an axiomatic validation of colonial authority and the concomitant displacement of Indigenous forms of governance, provided a potent analytic within the particular relations of settler colonialism. Morgensen (2011b, 55), for instance, charges that colonialism is intrinsic to the processes of biopower and that “modern biopower is the product and process of a colonial world.” Settler colonialism consistently situates Indigenous peoples in a state of

exception, constituting settler colonial law through rendering Indigenous peoples an exception. The double gesture of inclusive exclusion incorporates Indigenous peoples into a legal apparatus founded on their elimination. Thus, the regimes that brought Indigenous peoples before the law did so through the exclusion of their rights, constituting Indigenous people at times as individuals who could be legally killed, but also constituting Indigenous peoples as political communities that could legally be subjected to genocide through destroying their means to know and maintain themselves as a distinct people. Analysis of the politics of genocide has been particularly important to developing a critical account of the relationship between settler colonialism and Indigeneity, as in order to amalgamate Indigenous political life into the body politic of the settler nation colonial regimes needed to act to suspend Indigenous sovereignty.

However, there remain substantial weaknesses to a theory that aims to reduce colonial sovereign to the action of homogenizing a political order. As Legg (2007, 5) writes, “While sovereignty exposes itself in violence and terror, it can also be productive and generous in multiple, provisional and always contested ways.” Sovereign power works to determine not simply when law should be suspended; sovereignty also defines a relation that determines the allocation of rights, the appointment of offices, the collection of taxes, and the validation of finances. Further, following Foucault in conceiving of power as a relation, the sovereign should not be understood as simply a unitary, coherent agent that possesses authority and renders decisions. Rather sovereignty emerges as an effect of the relations established through the actions initiated by state agents vis-à-vis subjects of the state (Mitchell 1991). Conversely, the efforts of subjects to resist, appeal to, or reckon with the exercise of sovereign authority are also productive of that authority. As Christian Lund (2011, 888) argues, struggles over “political subjectivity are as much about the scope and constitution of authority as about access to membership and resources.” Although the ability of the sovereign to wield violence still underwrites its exercise of authority, it is best understood as fractured and incomplete rather than total.

Moreover within settler colonial states, legal pluralism—the condition in which

different legal orders co-exist in indeterminate relations within a shared space—requires recognition that authority is not centred within a singular capitalized state system but has multiple sources.¹² The self-regulatory activities of various social fields are productive of different sources of authority and distinct legal orders. As Lund (2011, 887) suggests, any time “an institutional actor is able to define and enforce collectively binding decisions on members of society, it has ... sovereignty.” Through the interactions between legal orders, the language and idioms of the state are appropriated in other fields, and conversely the frames of legal orders beyond the state are incorporated within state law. Neither of these operations, however, necessarily indicates a process of unification. In the transliteration of legal concepts to different registers, their meaning is reformed and contorted. Thus, a multiplicity of meanings is maintained as concepts and even the same words cross between diverse legal orders. In the midst of this fragmentation, the sovereignty of the state may be understood as “an aspiration that seeks to create itself in the face of internally fragmented, unevenly distributed and unpredictable configurations of political authority that exercise more or less legitimate violence in a territory” (Hansen and Stepputat quoted in Legg 2007, 6). In a sense, enactments of sovereign power reflect an aspiration to a universal that can never be fully realized. To understand the fragmentation and pluralization of sovereignty in practice, it must be investigated in specific historical and geographic circumstances. Further sovereignty must be understood as co-evolving with the technologies of colonial discipline and government.

As the political project of settler colonialism centred on the appropriation of land, there has been considerable discussion on the enclosure of Indigenous peoples to confined geographies—the modality of disciplinary power. Cole Harris (2002) in particular carefully documented the history of Indian land policy in British Columbia as a process of dispossession that facilitated the emergence of the settler economy. According to Harris, the construction of reserves deterritorialized Indigenous space, reterritorializing the landscape as available for settlement and industrial development. In discussing the particular modalities of capitalist dispossession, Harris (2004) highlights how the material

infrastructure associated with colonial development—fences, roads, and railways—served as a disciplinary regime demobilizing traditional Indigenous regimes of seasonal land use and migration while mobilizing new geographies of resource extraction. Harris highlights how the condition of Indigenous underdevelopment on reserve, and indeed the construction of the space of reserves themselves, can be understood as the converse to the construction of a space available for colonial development.

This process of enclosure was similarly replicated in efforts to remake Indigeneity through projects of cultural assimilation and discipline, although these were rarely effective. Residential schools culturally dispossessed Indigenous people of knowledge of traditional ways of life without effectively installing the necessary skills to participate in the emergent economy of settler society (Barman 1986; Miller 1996; Milloy 1999; de Leeuw 2007, 2009). Similarly, the racialization of a diversity of Indigenous peoples as a uniform population of Indians subject to a governance structure installed through the *Indian Act* functioned to incorporate Indigenous peoples within Canadian law as institutionalized exceptions to the norm of it (Abele 2007; Cannon 2011; Palmater 2011, 2012). More recent studies have demonstrated how colonial regimes sought to spatially segregate populations to ensure that Indigenous populations did not intermix and contaminate other populations, such as poor white, Chinese, and mixed-race populations (Mawani 2009; Edmonds 2010). Penelope Edmonds, in particular, has argued that an analysis of settler colonialism highlights how sovereign violence remained deeply entwined with disciplinary strategies of enclosing Indigenous space and regulatory strategies associated with the introduction of sanitation regimes. Further, Edmonds argues that colonialism needs to be understood as operating in relation to processes of indigenization, as Indigenous strategies of resistance and survival continually rework colonial regimes.

A number of studies have highlighted how Canadian regulatory processes have sought to contain Indigenous activism and efforts to assert broader territorial claims. For instance, in the late-eighteenth and early-twentieth-centuries, the federal and provincial government established a series of joint commissions and committees to review the Indian

land question. These commissions and committees consistently responded to Indigenous demands for recognition of their land title with recommendations related to the demarcation of parsimonious reserves, effectively containing Indigenous geographies to a network of recognized sites of Indigenous traditional use (Foster 1988, 1995, 2007; Tennant 1982, 1990; Harris 2002; Harris 2008).

Contemporary juridical responses to Indigenous legal activism, articulating a delimited logic of Aboriginal rights in relation to Indigenous practices of traditional use echo these earlier policies of containment. Interrogating the judicial definition of Aboriginal rights, John Borrows (1996, 1997, 2002), James Youngblood Henderson (2006), and Alexandra Kent (2012) have argued the courts' reasoning works to freeze Indigenous tradition in the past. Particularly in their ruling on *R. v. Van der Peet*, the Supreme Court of Canada determined "in order to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right" (*R. v. Van der Peet* SCC 1996, para 46). A critical analysis of *Van der Peet* highlights how colonial strategies of improvement work not only through tactics that aim to disappear Indigenous traditional regimes but also through regulatory processes that contain Indigenous regimes as traditional and thus not modern. Borrows (2002, 60) poignantly encapsulates the gesture of misrecognition by the court as discerning "what was, 'once upon a time,' central to the survival of a community" rather than evaluating "what is central, significant, and distinctive to the survival of these communities today." As Elizabeth A. Povinelli (2002) describes in her book on Indigenous politics in Australia, contemporary settler colonial liberal regimes are patented on the production of difference, and particularly impossible standards of Indigenous cultural authenticity that restrict recognition of contemporary Indigenous subjects. Canadian jurisprudence has analogously configured Indigeneity as a residue of a pre-contact Indigenous culture that may be practiced in the interstitial spaces that remain undeveloped. The Canadian court has thus not recognized Indigenous traditions as a vital force shaping development, and they have not fully recognized Indigenous traditions as belonging to and indeed as constituting an

Indigenous legal order. Rather, when presented with Indigenous legal traditions, Canadian authorities have regularly minimized these legal presentations to cultural expressions.

In a sense, then, the constrained colonial encodings of Indigeneity served to rationalize the opening of Indigenous lands to development as part of settler colonial society. Scholars have offered a number of adroit readings that have highlighted the constitutive power of colonial regimes of power-knowledge in this regard. Bruce Braun's (1997, 2002) study of the discourses of forest development and protection highlighted the way the colonial separation of categories of culture from those of nature has worked to circumscribe the extent to which Indigenous peoples, constructed as a part of nature, could be recognized to possess a contemporary political voice. On this basis, Braun demonstrated the concordance of environmental and development discourse in normalizing colonial claims to represent the forest. Focusing on the early colonial period, Daniel Clayton (2000a) has similarly highlighted how early colonial representations of Vancouver Island shaped colonial interests and worked to silence recognition of Indigenous political claims. Building upon this work, David Rossiter (2005) highlighted the centrality of representations of the forest to the development of Canadian liberal society and its state apparatus. Through the development of the idea of the normal forest, governing regimes of knowledge remade Indigenous space to the calculated territory of British Columbia forest governance. Through constructing the environment as an object of knowledge absent recognition of Indigenous claims to otherwise know, use, or occupy that environment, colonial regimes facilitated the development of modern regimes of land and resource governance, both enabling resource extraction and environmental conservation without consideration of Indigenous peoples.

These critiques have been powerful in exposing the diverse colonial discourses and practices that render Indigenous peoples marginal. These studies demonstrate the extent to which Canadian society is established through the delimitation of Indigenous peoples and their claims to land and authority in the Canadian colonial present. Critics have challenged different operations of colonial power, including: the prohibitive action of the

colonial sovereign in suspending recognition of Indigenous peoples and consistently excluding Indigenous people to enable the betterment of the population of settler colonials; the prescriptive workings of colonial apparatuses of discipline that contain Indigenous people within reserves and residential schools; and the regulatory actions of government that determine the range of acceptable practices of Indigenous traditions. However, an analysis of colonialism as a project that disappears Indigenous peoples requires supplementation with an analysis of Indigenous peoples' imbrication with colonialism to adequately address the relation between colonial power and Indigeneity.

Critiques that centre only the aspect of Indigenous disappearance under colonialism often inadvertently inscribe a monolithic and totalized, if monstrous, character to colonialism. Interrogating colonial practices only to discover how development is constituted through the exclusion of Indigeneity, scholars often risk effecting a presumption of absolute Indigenous expulsion and voicelessness through their research. For example, Suzanne Mills (2003) has critiqued Braun for failing to give serious consideration to the people he aims to defend. She states, "The voice of Aboriginal people is not present in this text" (Mills 2003, 208). Similarly, Jonathan Luedee (2012) criticizes Edmonds' methodological reliance on the colonial archive as delimiting her explication of Indigenous understandings of space even as she claims theorizing indigenization is a vital piece of her theoretical paradigm. Rather than focusing on how Indigenous peoples and their life projects render colonial efforts to totalize social relations impossible, critics often focus on the fissures and contradictions of colonial discourse. Thus, colonial discourse is portrayed as both the villain and, via its flawed nature, the principal actor in creating change. As Thomas King (1990) argues, critics that centre colonialism inadvertently leave Indigeneity hostage. Centring the colonial in defining Indigenous life, works to deny the possibility of subaltern existences that continue to call into being forms of subjectivity, territory, authority that exceed colonial frames. Without engaging dynamic processes of Indigenous becoming in excess of colonial formulations, critics of colonial representations substitute themselves for the figure of the subaltern, not only constructing a portrait of the

systems oppressing Indigenous peoples but also constituting themselves as a proxy for Indigenous voice, speaking for the people who (they tell us) cannot speak.

Rather than presuming colonial power as a totalized relation of domination, I argue that it is necessary to recognize the ways in which Indigenous engagement with the forms of colonial power works to align and contest particular forms of subjectivity, territoriality, and authority. Thus, in this dissertation, I theorize the relation of Indigenous peoples to development through an examination of various regimes of recognition and reconciliation devices—rightly understood to also be colonial endeavours—that have developed as part of a movement to protect Indigenous interests and ensure Indigenous populations benefit from development. Further, I refuse a frame that simply encodes Indigenous peoples as oppressed victims or heroically resistant. Instead, I chart a complex set of trajectories, reflecting the diversity of the strategies that Indigenous peoples employ in negotiations with different forms of colonial power in different circumstance. Such a framework is necessary to develop an account that recognizes the imbrication of Indigeneity with colonial power in the materialization of particular projects of development.

Locating Myself

As Margaret Elizabeth Kovach (2009) writes, responsible scholarship on Indigenous peoples involves situating yourself and your understanding of the world. The process of self-location manifests itself in varied ways, reflecting the diverse positions peoples (collectively) and people (individually) occupy in the world. I am the descendant of white settlers, immigrants to the northwest of British Columbia. The town I grew up in, Smithers, began as a railway town, a frontier town (Shervill 1981; Kruisselbrink 2012). Set in a broad fertile valley, between majestic mountains and imposing coniferous forests, the area developed on the basis of its abundant mineral riches and forest resources. The town's broader region, the northern and interior frontier in BC remains now, as it has been for a hundred years, a site of contact and also contestation (Glavin 1990; Furniss 1999). The Gitksan and Witsuwit'en had long occupied and storied this landscape (Mills 1994; Daly

2005; Morin 2011). The northern frontier is a liminal space marked by negotiations and contests over land, identities, and power relationships. It is amongst such negotiations, through blockades and courtroom battles, resource governance processes and classroom dialogue, that I want to explore the relations that unfold between Natives and Newcomers in the region from which I originate. The Smithers environs is both the site of my childhood and the site of my research.

Growing up in the midst of a community struggling with the legacies of colonialism, these negotiations were a backdrop to my development, although often overshadowed by the upheavals of my turbulent personal life. The famous *Delgamuukw* case, in which Gitksan and Witsuwit'en hereditary chiefs challenged the presumption of settler colonial dominion by mobilizing Indigenous claims to title and jurisdiction, wound through the courts from my early childhood to late teens. However, other struggles consumed me. Adjusting poorly to my parents divorce, I developed extensive but often superficial relationships with an extended family network, floating as a “problem” child between many family and friends’ homes. At sixteen, I was out on my own. I developed relationships with other kids, white and Indigenous, based on shared feelings of marginalization. However, we lacked the language to name our condition and our alliances centred less on politics than the task of escape through drugs and alcohol.

After graduation, a summer of work in the bush, and a faulting attempt at tech school, I decided to go to university. University helped furnish me with the language I lacked in youth. I learned to name the world, and channeled the frustration of my experience of alienation into an earnest desire for social change. I became involved with Food Not Bombs, which ran an inner city soup kitchen, and started participating in campus campaigns for global justice. Under the banner Mobilization for Global Justice, we organized talks and film screenings. At one of these events, a film about Palestine, a Cree woman named Colleen Thomas asked the group why we cared so much about colonization a world away but paid so little heed to it in our backyard.

Responding to the question of colonization at home became increasingly central to my activism, and eventually grew to define my academic career. As an undergraduate, I studied with Patricia Monture, Paul Chartrand, and Martin Cannon. They taught me about the history of colonialism in Canada, and the necessity of revaluing Indigenous ways of knowing to recover an alternative framework for respectful relationships. I also began spending time with Colleen and her family, and began working to address the issues considered most important to Indigenous communities in Saskatchewan. In 2004, working with members of the Indigenous, racialized immigrant and refugee, and established white settler communities, we organized an event to discuss the importance of the treaty relationship in Saskatchewan. This event, a three-day Miyo-Wicehtowin Gathering brought together elders, academics, community activists and members, and the Treaty Commissioner of Saskatchewan in an inner city school to discuss the historical and contemporary significance of treaties as agreements among nations to build and maintain respectful relationships with one another. When I decided to go to graduate school, I continued to focus on the question of relations between Indigenous peoples and settler colonial institutions. In my Masters work, I charted a geography of ignorance, examining how predominantly white teachers in urban prairie schools studiously maintained a mythology of colourblindness in education and carefully sidestepped troubling questions regarding the racism experienced by Indigenous students, and the role that teachers themselves had in producing those experiences (McCreary 2007, 2011).

However, while my prairie education endowed me with an interest in Indigenous issues, I remained quite distant from my family history in Northwest British Columbia. As I was completing my Masters, I decided to return to my hometown. I began working at Northwest Community College, teaching classes of settlers, racialized immigrants and refugees, and Indigenous students. From 2006 until 2008, I taught at the college in the university transfer and adult basic education programs. Returning to Smithers and the college allowed me to begin to reinhabit my home in new ways. Northwest Community College had been the backdrop of much of my life. I cannot remember a time in my life

before my mother started working at the college. In high school, I went to the college to get tutoring in math. But now I approached the college as an opportunity to begin to help students to understand their home community in a different light, to begin to build a critical understanding of where they came from. Simultaneously, I began to engage in the community in a way I never had as a youth. I began to get involved in work around resource development, through both contract work related to producing technical reports on the cultural heritage impacts of proposed development projects and volunteer work on environmental campaigns to protect the local watersheds and salmon runs.

Through both the two years prior to my PhD and two and half years of fieldwork as part of my PhD I have built relations with members of the Gitksan and Witsuwit'en communities. As a youth, I regularly confused the geography of the reserves, as they all seemed to intermingle in my mind. But having spent extensive time in the local Indigenous communities, particularly with the members of the Moricetown, Hagwilget, Gitanmaax, and Kispiox bands, I have gained a far greater understanding of Gitksan and Witsuwit'en community life. I have spent hours sitting in the feast (often confused by proceedings in Indigenous languages). I have listened to elders share their memories of their childhood and how their grandparents taught them their traditions, and I have sat with youth as they learn to make their first drum. I have camped on the territories with Witsuwit'en activists, cleaned fish, washed dishes, visited blockades, and hiked miles through the bush. I also spent hours huddled before the television with a collection of Gitksan and Witsuwit'en friends dearly hoping the Vancouver Canucks would win the Stanley Cup. I participated in the parades of people from the reserve after each and every playoff win in the epic but incomplete 2011 playoff run.

I have also worked closely with people working to bring attention to Indigenous issues in the Northwest Interior. I worked on a number of cultural heritage and traditional use studies, both before and during my PhD work.¹³ I facilitated numerous community discussions on how to address issues in the region and build relationships between the settler and Indigenous communities. I worked on elections to support candidates favouring

greater political collaboration between Indigenous and settler communities. I helped develop education resources to help the public learn about Witsuwit'en culture and traditions. And I have insistently spoken to people about the need to address the history of colonialism in British Columbia and Canada more generally. This combination of careful listening and committed engagement is a necessary component to responsible, reciprocal scholarship, and to research that recognizes the need to give back to the communities with which we engage (Wilson 2008; Kovach 2009).

A component of this returning is ensuring that research remains accessible to the communities that have been studied. To this end, I have made arrangements to return to the north subsequent to the completion of my research and present the results to the community in Smithers. Similarly, I have made arrangements to have a copy of my dissertation available at the Bulkley Valley Research Centre. This creates opportunities for ongoing dialogue and debate, and ensures that communities have the research products available for their reappropriation for whatever uses they choose.

Methodological Entanglements

My methodology draws upon both post-foundational critiques of knowledge and Indigenous theories of research. Thus, my approach incorporates a critique of the buried epistemologies underlying Western modes of research and recognizes the positional nature of knowledge. It remains necessary to recognize the ways in which the subjective embodiment of Otherness is constricted by the terms of colonial discourse. But further, in recognizing the partial, political nature of colonial discourse, it is necessary to register those Indigenous processes of becoming that are silenced by colonial discourse. This is not to authorize the pursuit of an authentic Other; rather it is to recognize the entwining of colonialism and Indigeneity through the overlapping of territories and histories. Rather than closure, it is necessary to recognize the unequal relationships that continue to link peoples across differences.

I have thus sought to develop an immanent critique that attends to the conditions of being without recourse to a transcendental position. I remain skeptical of analysis that relies upon a theoretical move to a transcendental plane, employing a purported objective cause distinguishable as a determinative in a projected last instance. Conversely, I am critical of how studies buried in an idiographic account of the local fail to register the global connections that permeate the local and also the local relations that extend to the global. I refuse the juxtaposition of the nomothetic and idiographic in conventional Kantian terms, in which specification is contrasted with generalization, instead developing an analysis of the entanglement of ostensibly global forces, such as colonialism and capitalism, with ostensibly local formations, such as Indigeneity. I targeted my analysis to an elucidation of how universals can be observed within a plane of immanence, always and irreducibly mobilized through the particular (Deleuze and Guattari 1987).

On one hand, the basic issue rests in the fact that colonial structures of meaning constrained the subjectivity, territoriality, and authority of the colonized. As Gyan Prakash (2000, 124) writes of the search for a popular oppressed consciousness beyond the terms of the colonizer and national elite, “the search for a humanist subject-agent frequently ended up with the discovery of the failure of subaltern agency. ... The desire to recover the subaltern's autonomy was repeatedly frustrated because subalternity, by definition, signified the impossibility of autonomy: subaltern rebellions only offered fleeting moments of defiance.” Colonial authorities work to police the performance of difference, enframing the display of difference within the bureaucratized and commodified abstract space of the capitalist nation-state (Mitchell 1988; Sparke 1998). Thus, methodologically it is necessary to interrogate colonial texts not to discover the trace of Indigenous agency but rather to examine how colonial discourses and practices work to constrain Indigeneity.

On the other hand, it is necessary to acknowledge that the traces of history are recorded in more than one register. Against the prevalent silencing of Indigenous epistememes, Indigenous theorists have pressed the necessity of centring Indigenous ways of knowing as alternative frameworks for research that do not reproduce the silences of

colonial discourse. As Rauna Kuokkanen (2007, 139) argues, Indigenous epistemes are not “archaic, premodern objects for study or ... supplements or commodities,” but “indispensible tools for the pursuit of knowledge.” Similarly, Eva Marie Garrouette (2003, 107) argues that researchers need to enter Indigenous philosophies and relations, recognizing that Indigenous “cultures contain the tools of inquiry to create knowledge.” While European concepts may have been introduced through colonialism, Craig Womack (1999, 12) stresses that he believes “it is just as likely that things European are Indianized rather than the anthropological assumption that things Indian are always swallowed up by European culture.” Thus, Indigenous methodologies require recognition of the robust, dynamic traditions of Indigenous becoming, and the systems of relation that govern its emergence.

Developing a geographical account of encounters between Indigenous peoples and colonialism, my inquiry is framed by an analysis of the productive interactions of a coexistent plurality and heterogeneity of colonial and Indigenous formations. Much of my dissertation deals with issues of law. In concurrence with Nicholas Blomley and his various collaborators, I believe there is a fruitful dialogue that can be established between the literature on legal pluralism, post-structural legal studies, and an analysis of the geography of law (Blomley 1989; Blomley and Clark 1990; Blomley and Bakan 1992; Blomley, Delaney, and Ford 2001). Challenging conventional conceptions that assume an internally coherent structure of law and a state monopoly on the classification of law in its territory, the literature on legal pluralism has highlighted the multiplicity of legal ordering strategies that interpenetrate, superimpose, and mix in constituting the fabric of legal life (Galanter 1981; Griffiths 1986; Santos 1987). Legal pluralism enabled scholars to discuss the complex relationships between traditional modes of ordering life within Indigenous societies and the legal regimes imposed through colonization. Post-structural approaches to law have further emphasized the need to challenge an essentialist politics that presumes the coherence of legal authorities and subjects as already constituted prior to legal action, suggesting instead the constitution of authorities and regulation of subjectivities

themselves to be central political questions to interrogate in an analysis of law (Hunt and Wickham 1994; Mawani 2009; Gómez 2010; Hunt 2012). Extending this discussion to engage the materialization of law, I examine the constitution of authorities and subjectivities, as well as territorialities, as not simply abstract discursive accomplishments but ontological performances that work to construct, disrupt, and reconfigure particular worldings. Recognizing the existence of a simultaneity of overlapping and intersecting legal orders opens analysis to the possibilities inherent in the spaces of their interaction.

In recognizing the dynamic and contemporary nature of Indigenous traditions, it is necessary to register the ways in which traditions are not restricted to a frozen authentic past but represent an active lineage through which Indigenous peoples continue to contest relationships between the colonizer and the colonized. Recognition of this entanglement places injunctions upon the genealogical interrogation of representational practices, as the quest for the authentic Native informant is impossible. Thus, it remains necessary to critique colonial reason, and read it through its relationship to its Other, an alterity which can neither be totally assimilated nor excluded. Conversely, Indigeneity cannot be apprehended in isolation but necessitates a contextual reading.

I thus examine the emergent politics of Indigenous subjectivity and territoriality alongside, within, and against a colonial modernity, itself born through encounters with Indigeneity and continuing to bear the trace of its entanglements with its Other. As Anna Lowenhaupt Tsing (2005) describes, aspirations to ideals such as development are necessarily articulated as contingent events within the local contexts. Such events are shaped by what Tsing (2005, 1) refers to as the “grip of the worldly encounter,” a friction that both mobilizes and modifies global connections as aspirations to the universal are reworked and reproduced within locally specific assemblages. Conversely, ostensibly local resistances are themselves always already entangled within global networks. Approaching such assemblages, I interrogate the conditions of possibility ordering the emergence of the present conjuncture, examining how the emergence of particular authorities, territories, and subjects can be traced in association to the production of particular practical

rationalities (Crampton and Elden 2007; Elden 2007, 2010a, 2010b). I thus make use of a full range of techniques that inform a history of ideas, but link these tools with an interrogation of the embodied practices and workings of power. Rather than assuming a transcendental, timeless, or linear form to the production of society and space, I focus on the heterogenous plurality that produces people as subjects, geographies as territories, and institutions as authorities. I particularly look to interrogate fragments of the encounter between development and Indigeneity in the Northwest Interior to highlight elements of the enduring legacy of colonialism in British Columbia, but also of the lineage of Indigenous complicity and resistance to this legacy, and the complex relationship that continues to be articulated between the two.

In this dissertation, I want to suggest that the relation between the geography of Indigeneity and colonialism can be understood as intertwined, such that the process of asserting Indigenous claims works in various ways to emplace development. In my analysis, I approach subjectivity, territoriality, and authority as enactments that are performed through both established and innovative repertoires. Thus, rather than defined and bounded objects that form the basis of interactions in the world, I follow Doreen Massey (2005) in suggesting the ontological production of the world involves the continual unfolding of entities and identities not as pre-given categories of being but performative relations. Drawing inspiration from Henri Lefebvre (1991), I approach the socio-spatialities of bodies, territories, and institutions as processual, relational accomplishments, rather than bounded, coherent, autonomous geographies. Thus, I envision space as not simply defined by sets of boundaries but also as produced through the relationships that work across these boundaries (Massey 1991, 1993). Finally, I insist that none of these terms should be considered a singularity.

Subjectivities, territorialities, and authorities are part of an interactive multiplicity. On this basis, I seek to advance an alternative framing of the relation between Indigeneity and development, refusing to simply romanticize Indigeneity as local and celebrate its position as a militant particularism contesting global forces of development. It is my

contention that colonial programs of development are only constituted through the assemblage of a series of local negotiations, and conversely that the contemporary relationships of Indigenous peoples to their territories are configured by confrontations and collaborations with colonial authorities, often in conditions of radical inequality. The multiplicity of the Northwest Interior is produced through various political and economic strategies to institute authority to govern the region, to territorialize portions or the entirety of it, and to install regimes of subjectification for the people living within it.

Increasingly researchers have begun to ask after the ontological politics that shape the relation between Indigeneity and colonialism, examining the politics that contour the conditions of possibility of Indigenous life (Blaser 2009b, Forthcoming; Desbiens and Rivard Forthcoming). An ontology relies upon particular constructions of the relationships and boundaries operating between humans and non-humans, representation and materiality, as well as politics and knowledge. These boundaries are not given but relationally produced—emergent rather than intrinsic. Establishing and operating in association with a number of binaries between culture and nature, as well as modernity and tradition, settler colonialism emerges in relation to a particular ontology of development, shaping conditions of possibility for Indigenous being within the becoming space of a capitalist state (Bryan 2000; Howitt and Suchet-Pearson 2006; Wainwright 2008; McCreary and Milligan Forthcoming). However, Indigenous processes of political becoming nonetheless continually escape this incarceration and place new injunctions on colonial resource development strategies. As Mario Blaser (Forthcoming, 3) writes, “the heterogeneity of always emerging assemblages troubles the political” and begs the question “What kinds of politics and what kinds of knowledges does this troubling demand?” An account of the politics contouring resource development in the Northwest Interior must account for how Indigenous life projects and political processes of becoming entangle with colonialism in a transcultural production of knowledge and exercise of power.

To examine the articulation of forms of competing and convergent authority,

territory, and subjectivity, I have sought to engage some of the most public processes of resistance and reconciliation. I have deliberately avoided the type of ethnography that seeks to expose either the depth of internal conflict within Indigenous communities, or the secret strategies of subversion used by Indigenous peoples. I have done so, first, because I think that, from a critical perspective, it is more useful to problematize the relations between colonialism and Indigenous peoples rather than problematizing Indigenous communities. But, I also avoid the quest to unveil the so-called “weapons of the weak” because I think certain subaltern knowledges and practices work particularly because they are unseen by the state, and are thus best left unexposed.¹⁴ My analysis focuses on how we can reread processes of public convergence and contestation, and how we can benefit from recognition of their performative multiplicity.

I used a range of sources in this research. I centre analysis on four different instances: the *Delgamuukw* court case, Indigenous traditional use and occupancy studies, the contestation of decision-making authority in relation to the Enbridge Northern Gateway pipeline, and a minerals industry program targeting Indigenous peoples. Through these studies, I trace the multiple overlapping, interconnected, globally-infused and traditionally-inflected strands of authority, territory, and subjectivity. My sources have varied with each case.

For the *Delgamuukw* litigation, I have primarily relied on textual sources. I examined various court decisions as well as court transcripts and the extensive secondary literature on the case. To garner background information on the case, I also interviewed a number of key figures who were involved in the case, including Indigenous community organizers, researchers who worked on the case, Gitksan and Witsuwit'en hereditary chiefs who provided testimony to the court, and British Columbia politicians.

Approaching Indigenous traditional use studies, I again primarily focus on an analysis of the completed reports. I particularly focus on the example of studies related to the proposed Enbridge Northern Gateway Project, a proposed diluted bitumen pipeline connecting the Alberta tar sands to the British Columbian coast. I also did contract work on

studies related to other development proposals, and had extensive informal conversations on traditional use mapping with consulting anthropologists working in the Northwest Interior.

I use a mix of ethnographic observation and textual analysis to examine the contested decision-making process related to the Enbridge Northern Gateway Project. Over two and a half years, I attended numerous Enbridge community information sessions, Joint Review Panel procedural direction sessions, community oral evidentiary hearings, and community oral statement hearings, as well as numerous events organized in opposition to the pipelines, including, community meetings, rallies, film screenings, theatre performances, and feasts. I also followed coverage of the pipeline through national, British Columbian, Albertan, and local print and broadcast media.

Finally, studying the School of Exploration and Mining at Northwest Community College, I use a range of sources. My principal source of information is interviews with past and present college staff. I also employ information from various college documents, including college reports, press materials, and promotional videos. I also draw upon background knowledge based on working at the college for two years, attending college conferences, and local minerals association events. I visited the Ganokwa field camp, where much of the school programming is delivered, and attended two pole raising ceremonies at the college.

Dissertation Outline

In this dissertation, I analyze the interface of Indigeneity and colonialism through different instances in which a relation between them has been put forward in the articulation of regimes of authorization, territorialization, and subjectification. The stories at the centre of this dissertation chart different avenues through which the relationship between Indigeneity and colonialism is being negotiated and contested with the constantly unfolding political economy of the settler colonial nation-state. Capturing aspects of the dynamic interaction between Indigeneity and colonialism, I look at different instances in

which a relation between them has been articulated through claims before the Canadian courts, through studies that map Indigenous traditions as constraints on development, through devices that integrate Indigenous peoples as development beneficiaries, and through formal resource governance processes. Through these studies, I analyze the ways in which different groups articulate their distinct territorial claims, the ways in which territorialities are linked to particular subjectivities, and the ways in which these territorialities work in relationship to other places and peoples. I am interested in the multiplicity of territorial claims, systems of rationality that govern how a territory is conceived and used, and subjectivities associated with the unfolding of territorial logics. Through these examples, I will unravel different aspects of the interface of Indigeneity and development.

In chapter two, I outline the historical imbrication of Gitxsan and Witsuwit'en forms of authority, territoriality, and subjectivity with those of colonial power. First, I outline Indigenous conceptions of territoriality and subjectivity that precede claims to colonial sovereignty. Second, I introduce the encounter. In the contact zone, I demonstrate how early colonial agents relied upon relationships to Indigenous peoples to construct early knowledge of the frontier, and how the accumulation of early colonial forms of power-knowledge enabled the establishment of regimes which began to reorganize Gitxsan and Witsuwit'en life. Third, I explore how the establishment of the colonial sovereign worked to suspend Indigenous claims, installing disciplinary regimes to control Indigenous spatialities, deterritorializing broader Indigenous claims to enable the emergence of British Columbia as the becoming-space for the settler colonial economy. Here I examine how regimes of governance focused on securing the well-being of settler populations, as well as on maximizing the economic potential of the territory, worked through the elision of Indigenous territorial and jurisdictional claims, relying on the constant deployment of regimes of sovereign prohibition to stymie Indigenous claims. I end with the federal government's 1969 White Paper, which signaled a reorientation of the workings of colonial power towards new techniques of governmental inclusion. However, while the White

Paper sought to include Indigenous peoples as simply-culturally distinct modern citizens, Indigenous resistance signaled the emergence of politically-distinct Indigenous subjects aiming to reorganize the workings of disciplinary, governmental, and ultimately sovereign power.

The third chapter examines the reworking of Aboriginal law in Canada through the *Delgamuukw* case. Through an examination of courtroom proceedings, I first study how disciplinary apparatuses worked to contain Indigenous knowledge as beyond the norm, and how through appeal the Gitksan and Witsuwit'en people actually successfully challenged and reworked the norm. In coming before the court, I argue the Gitksan and Witsuwit'en hereditary chiefs subjected themselves to the authority of the colonial sovereign as a strategy to challenge colonial authority. Responding to a context of colonial non-recognition, the Gitksan and Witsuwit'en went before the colonial court to assert their Indigenous legal authorities. The Gitksan and Witsuwit'en made situational concessions to the authority of the courts to decide their case (at least within the courtroom), but they sought to use appeal to the judiciary to pressure colonial governments to negotiate with the hereditary chiefs. While appeal to the court risked further reifying the authority of the state to determine the content of Indigenous rights, ultimately the court did not decide Gitksan and Witsuwit'en rights; rather it deferred judgment, signaling a shift from processes of colonial prohibition towards governmental techniques of reconciliation through processes of consultation and accommodation.

In the fourth chapter, I focus on the development of new forms of expert knowledge in relation to Indigenous traditions. I examine how land use and occupancy studies worked to enable consideration of Indigenous traditions within the governmental regulation of economy. However, I argue that these codified studies of tradition also constituted new forms of power-knowledge that enframed Indigenous life as itself traditional. Thus, knowledge that was initially created with the aim of emancipating Indigenous peoples was reconstructed within colonial apparatuses of power-knowledge, working to incarcerate Indigeneity within a notion of tradition that continually inscribes Indigenous practices as a

residue of an authentic past to be preserved in interstitial spaces of development. I particularly explore how the energy transportation company Enbridge worked with the Witsuwit'en band of Skin Tyee to catalogue information for Aboriginal Traditional Knowledge Submissions to federal regulators in relation to the proposed Northern Gateway Project. In this example, I demonstrate how the recognition of a contained Indigeneity continues to construct a terrain available for developments aimed at extracting resources from and through Indigenous territories. However, I note that Indigenous peoples continue to strategically employ traditional use and occupancy studies as wedges to open consideration of broader territorial claims.

In chapter five, I turn directly to the question of competing territorial and jurisdictional claims in the resource governance process determining the fate of the Enbridge Northern Gateway Project. I examine the return of the sovereign authority to decide, to prohibit, to expel, arguing that the emergence of new governmental regimes that include Indigenous peoples never finally suspends discussion of who has the authority to decide. Focusing on the Northern Gateway Project, I examine how Witsuwit'en hereditary chiefs participate in governmental processes without accepting their limitations. I suggest that Witsuwit'en hereditary chiefs resist incarceration within delimited notions of tradition and overload the governmental processes regulating development with assertions of Indigenous sovereignty and a right to decide what happens on Witsuwit'en territories. In this, they fragment sovereignty, pluralizing enactments of who has jurisdiction, and asserting their own right to fight to determine what forms of development are prohibited from their lands.

The sixth chapter uses a study of the School of Mining at Northwest Community College to interrogate questions about how new regimes of governmental and disciplinary power are aiming to secure Indigenous well-being through training them to work in the industrial economy. In this, I argue there has been a convergence of Indigenous goals of secure livelihoods with corporate aims to secure developments from Indigenous protest. This partially resonates with long-standing colonial designs to achieve to the industrial

assimilation of Indigenous peoples into the colonial labour force. However, the disciplinary apparatuses of the mining program do not focus on the erasure of Indigeneity, but rather the training of Indigenous workers *qua* Indigenous workers. Through the provision of jobs, the school works as part of a broader governmental apparatus that aims to secure a place for Indigenous peoples in development.

I close the dissertation by returning to the question of the relation between Indigeneity and colonialism that originally motivated this study. Rather than simply juxtaposing colonial and Indigenous regimes of authority, territoriality, and subjectification, I argue that it is necessary to theorize their imbrication. However, in registering the relation between colonial and Indigenous regimes, it is also necessary to theorize their resilient multiplicity, overlapping and entwining without ever becoming reducible to a singularity. There are moments in which Indigenous assertions contest colonial regimes, but also moments of collaboration and convergence. Through the ongoing re-articulation of relationships between Indigenous and colonial actors, new configurations and possibilities continue to emerge. Ultimately, I argue, it is the heterogeneous assemblage of Indigenous and colonial politics that shapes the course of development on territories in which claims to jurisdiction remain unsettled.

CHAPTER 2

Indigeneity and Colonialism: A Northwest Interior History

In this chapter, I historically situate the dynamic encounter between colonialism and Indigeneity in the Northwest Interior. There has been substantial work on the historical geographies of colonialism in British Columbia, and specifically how the colonial project of opening frontiers for development linked to particular relations to Indigenous peoples (see, for instance, Harris 1997b, 2002, 2004; Furniss 1999; Harris 2001; Barman 2007 [1991]; Turkel 2007). In this chapter, I want to tell a story about the multiplicity of regimes of power-knowledge ordering Indigenous life. I historically situate the interface of colonial

power with Gitksan and Witsuwit'en peoples in British Columbia, highlighting the ways that colonial power is always already entangled with Indigenous regimes of power-knowledge. I address colonization in terms of the establishment and entrenchment of a political order that inscribes new concepts of territory, configures new forms of authority, and conditions the emergence of different articulations of Indigenous subjectivity. But I argue that colonialism is always preceded by and entangled with Indigenous forms of territoriality, authority, and subjectivity. Developing a history of the Gitksan and Witsuwit'en encounter with colonial power, I trace multiple entwined lines of political becoming.

Conventional historical accounts have typically portrayed a series of distinct phases in the relationship between Indigenous peoples and colonial power. For instance, in setting a context for their report, the Royal Commission on Aboriginal Peoples (1996) described a four-stage account of the history of relations between Indigenous and colonial societies in the territory that would become Canada. The four stages consisted of: first, separate worlds; second, contact and co-operation; third, displacement and assimilation; and, fourth, negotiation and renewal. The points that delineate these periods in British Columbia begin with contact in the late-eighteenth century, and transition with each succeeding century.

The first explorer to cross the interior plateau between the Rocky and Coastal mountain ranges was Alexander Mackenzie in 1793 (Mackenzie 1902 [1801]). These early trade relations yielded to regimes governed by the dynamics of dispossession in the mid- to late-nineteenth century. Through the next century, colonial authorities increasingly sought not only to enframe Indigenous geographies in a system of illiberally allocated reserves, but also to control all aspects of Indigenous life in an effort to reconstruct Indigenous subjects to fit within the emerging white settler society. However, as the project of assimilation reached its zenith with the Canadian government proposing the annulment of the status of Indian people, intensifying strategies of Indigenous activism marked the beginning of the contemporary Indigenous resurgence and the inauguration of a new phase of negotiation between Indigenous peoples and colonial authorities.

While the basic outline of these stages is not a matter of great contention, how one represents them is a vital debate. Principally it is a debate burdened with different teleological and political investments in history. Classic works, such as Hubert Howe Bancroft's (1887) *History of British Columbia* and A. G. Morice's (1978 [1904]) *The History of the Northern Interior of British Columbia*, present history as a linear progression steadily unfolding into the future.¹⁵ The teleological presentation of colonial history as simply the unfolding of progress served to mask the incredible violence of colonialism in an air of triumphalism. However, a series of important criticisms have begun to tear at the underlying assumptions about history, insisting upon analysis of historical multiplicities, discontinuities, and incongruences (see, for instance, Limerick 1987; Sandwell 1999; Perry 2001; Barman 2007 [1991]; Mawani 2009). Against the progress narrative presented in colonial histories, revisionist and Indigenous historians sought to capture other dynamics in the ebb and flow of time.

One of the currents of Indigenous scholarship has particularly sought to emphasize the possibilities inherent to approaching research through Indigenous frameworks, employing Indigenous knowledge not simply as an object of study but an intellectual framework through which to approach the world (Smith 1999; Battiste 2000; Garrouette 2003; Wilson 2008). Thomas King (1990) has argued that both critical and colonial discourse centre colonialism, constructing it as the pivot around which Indigenous life is oriented. Rather than simply charting the unfolding of colonial history, Neil Sterritt (1989, 267), the president of the Gitksan and Wet'suwet'en Tribal Council from 1981 to 1987, argued that an analysis of Gitksan and Witsuwit'en present should recognize that "Incidents from the past and from the future inform decisions made today." Echoing Sterritt's emphasis on the multiple flows of history, in this chapter, I examine the continuities and discontinuities of a history of the Northwest Interior. Rather than stressing the rupture of Indigenous traditions with the emergence of colonial relations in the region, I demonstrate the lines of continuity through which Gitksan and Witsuwit'en political formations continue to condition colonial politics. Similarly, rather than focusing

solely on the rupture of the mutualities of the fur trade with the violent impositions of settler colonial rule, I stress the continuities in colonial power relations that flow through the transition between these periods and continue to inform the present.

Focusing on the interaction between Indigeneity and colonialism, I highlight the imbrication of Gitxsan and Witsuwit'en political formations with those of colonial power. I begin this chapter with a discussion of the Gitxsan and Witsuwit'en systems of subjectivity, territory, and authority that precede and entangle with subsequent colonial articulations. I subsequently demonstrate how colonial claims to territory and authority interweave with relations to Indigenous peoples through the fur trade. I argue that the establishment of Indigeneity as a domain of knowledge through early colonial encounters, rendering visible particular sets of relations, was vital to the development of techniques designed to mobilize and modify Indigenous practices. I then examine the development of colonial initiatives to delimit Indigeneity. I argue colonial programs intervening into Indigenous lives and remaking Indigenous space relied upon regimes of power-knowledge that enabled authorities to develop colonial strategies of control. Finally, I close the chapter by outlining the beginnings of a contemporary Indigenous political resurgence, and the ways in which Indigenous peoples continue to mobilize not only traditional subjectivities but also strategically appropriate and repurpose colonial institutions and technologies of rule.

Political Traditions of the Gitxsan and Witsuwit'en Peoples

Prior to contact, house groups were the primary identifiers within the Northwest Interior and the broader region of the Northwest Coast (on Gitxsan traditions, see, Cove 1982; Daly 2005; Mills 2008; on the closely related Tsimshian traditions, see, Roth 2001, 2008; on Witsuwit'en traditions, see, Jenness 1943; Mills 1994b; Morin 2011; on closely related Nedut'en traditions, see, Fiske and Patrick 2000).¹⁶ The Gitxsan and Witsuwit'en respectively referred to houses groups as *wilp* and *yikh*. There was an intimate connection between house groups and particular territories. Gitxsan *wilp* relied upon and regulated

use of particular territorial holdings, referred to as *lax'yip*. Similarly, each Witsuwit'en *yikh* was associated with particular *yin tah* (territories).

A house represented a matrilineal kinship group of approximately thirty families or around one-hundred-fifty people who share a common ancestry (Overstall 2005, 32–33). Political authority within a house group was associated with a network of hereditary titles, particularly centring on the figure of a hereditary chief. The hereditary leadership of a house, and its authority over its territories, was validated through public performances before the community of other houses in a feast. The number of house groups varied historically. When a house had too few members it would either amalgamate with a related house group, adopt adult members into the house group, or induct an adult from another house capable of directing the house and fulfilling its obligations (Overstall 2005, 33; Napoleon 2009, 131–136). Conversely, excessively large houses would subdivide.

There were numerous distinct cultural, linguistic, or political communities in the region of the Pacific Northwest (a sense of the diversity of the region can be gathered by a current-day map the Indigenous peoples of British Columbia, Fig 1).¹⁷ House groups maintained a horizontal network of relationships throughout the region based on clan affiliations (Table 1). Each Gitxsan house, referred to singularly as a *wilp*, is a member of one of the four larger *p'teex* or clans—Ganeda or Lax Seel (Frog), Lax gibuu (Wolf), Gisgahast (Fireweed), and Lax skiik (Eagle)—which share elements within a broader history (Mills 2008). Along lines of clan identity, Gitxsan *wilp* histories interlaced with those identified with the Tsimshian and Nisga'a (Barbeau and Beynon 1987a, 1987b). Similarly, there are strong linkages between the Witsuwit'en clans and those associated with the Gitxsan. In fact, of the five Witsuwit'en clans—C'ilhts'ëkhyu (Big frog), Likhsilyu (Little frog/caribou), Gidimt'enyu (Bear), Likhts'amisyu (Fireweed), and Tsayu (Beaver)—all but the Tsayu (which was adopted from the Haisla) have direct linkages to the Gitxsan (Mills 1994b). The majority of Witsuwit'en hereditary titles are linguistic borrowings from the Gitxsan. However, the names spread in all directions. Neighbouring communities to the

Witsuwit'en, such as the Nedut'en (Babine) and the Nadleh Whut'en (a Dakelh community adjacent to Fraser Lake), maintained close analogues to Witsuwit'en clan identities.

Figure 1: Indigenous Peoples of British Columbia

From BC Ministry of Education, *First Nations Peoples of British Columbia Map*, (n.d.)

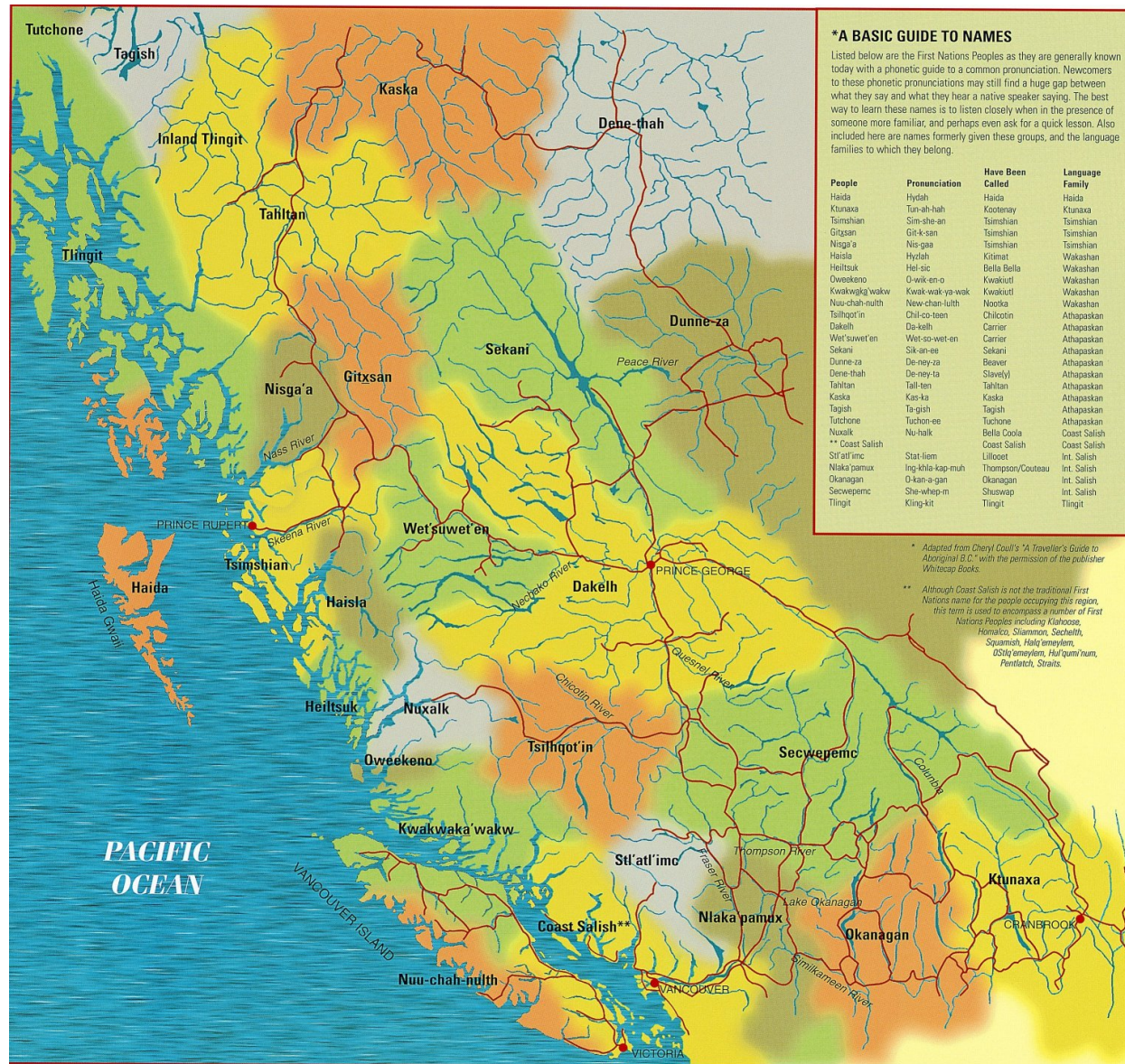


Table 1: Indigenous Clans in the Northwest

Tsimshian	Nisga'a	Gitxsan	Witsuwit'en	Nedut'en	Nadleh Whut'en
Ganhada (Raven)	Ganada (Raven)	Ganeda (Frog)	C'ilhts'ekhyu (Frog)	Jilhtsehyu (Frog)	Ultseh yoo (Frog)
--	--	Lax Seel (Frog)	Likhsilyu (Frog/Caribou)	Gilanten (Caribou)	Luk sil yoo (Cariboo)
Laxgibuu (Wolf)	Laxgibuu (Wolf)	Lax gibuu (Wolf)	Gidimt'enyu (Bear)	Likhc'ibu (Bear)	Dumdemn yoo (Bear)
Gispwudwada (Killer Whale)	Gisk'aast (Killer Whale)	Gisgahast (Fireweed)	Likhts'amisyu (Fireweed)	Likhtsemisyu (Beaver)	Ulstah mus yoo (Owl/Grouse)
Laxsgiik (Eagle)	Laxsgiik (Eagle)	Lax skiik (Eagle)	Tsayu (Beaver)	--	Tsah yoo (Beaver)

As the central form of political organization was the house group and clan rather than the nation or linguistic affiliation, there was a degree of fluidity in the alignment of houses. Languages were not standardized and linguistic communities remained a network of dialects.¹⁸ For instance, linguists recognize close relations between the language spoken by the Gitxsan, and that of the Tsimshian and Nisga'a (Nishga), suggesting in particular that Nisga'a and Gitxsan people may speak dialects of a common Gitxsan-Nisga'a language (Halpin and Seguin 1990).¹⁹ Furthermore, the population now identified as Gitxsan spoke at least two distinct regional dialects. Gitsenimx̄ is spoken in the contemporary western villages of Gitsegukla, Gitwangak (Kitwanga), and Gitanyow (Kitwancool). The contemporary eastern communities of Kispiox (Ans'pa yaxw), Sik-e-dakh (Glen Vowell), and Gitanmaax, and the population associated with the historic villages of Kisegas and Kuldo, call their language Gitsanimx̄. Thus, to speak of the Gitxsan as a historically unified and distinct cultural or political category necessarily masks the historical fluidity of the diverse identities that would congeal as, for instance, the national communities of the Gitxsan and Nisga'a people in subsequent years.

Similarly, to speak of the Witsuwit'en as a historically unified and culturally distinct group masks their historic connections to their neighbours. The Witsuwit'en historically maintained particularly close ties with their Nedut'en (Babine) neighbours. The Witsuwit'en and Nedut'en speak dialects of the same language, differentiated from the related Athabaskan language spoken by the Dakelh people to the south (Hargus 2007).²⁰ Witsuwit'en and Nedut'en *yikh* regularly participated in the validation of each other's governance activities. However, this is not to suggest that the Witsuwit'en and Nedut'en formed a unified community. There is no term within the language for the broader linguistic or cultural collectivity of the Witsuwit'en-Nedut'en (Poser 2006). Instead, the Witsuwit'en and Nedut'en spoke of each other as distinct people. The name Witsuwit'en, referring to "the people of the lower drainage," is based on a contrast with the Nedut'en according to Antonia Mills (1994b, 37). Both the Nedut'en and the Witsuwit'en people lived on tributaries of the Skeena River, with the Nedut'en occupying Babine watershed and the Witsuwit'en occupying the Bulkley-Morice watershed.

Even between the Gitksan and the Witsuwit'en, the delineation of a clear historic boundary is fraught exercise. Despite clearly constituting distinct linguistic communities—the Gitksan speaking a language belonging to the Tsimshian family of languages, the Witsuwit'en speaking a language belonging to the Athabaskan family—, Gitksan *wilp* and Witsuwit'en *yikh* were closely related. The Gitksan and Witsuwit'en people lived in close proximity, intermarried, and readily participated in each other's traditional governance activities. Furthermore, many Indigenous peoples were multilingual. The primary networks of linguistic affiliation associated with a particular house group could thus shift on occasion.

Thus, there was not a transhistorical, transcendent Gitksan or Witsuwit'en identity that defines a diversity of house groups across a broad geography and number of permanent villages sites as essentially unified. However, using the terms Gitksan and Witsuwit'en, I denote the collective identities that have been performed through numerous local events that articulate belonging and association with a broader imagined community.

These performances draw upon shared cultural resources—for instance, Gitxsan people generally shared the *antamahaswx* or common stories.²¹ Moreover, the connections of kinship and the dense web of interrelationships within the Gitxsan community as people from different houses and clans intermarried, helped build a broader sense of common identity. Similarly, shared history and the dense weave of interrelationships between Witsuwit'en *yikh* worked to hold them together.

However, in recognizing Indigenous processes of constituting political becoming, it is necessary to register that the effectiveness of these processes of identity formation should not imply a romantic celebration of an imagined pre-contact innocence. Indeed, as Linda Colley (1992) argues in relation to the formation of British identity, Gitxsan and Witsuwit'en identity was too formed on the basis of popular violence and nationalist fervor. Gitxsan *wilp* and Witsuwit'en *yikh* would often work collectively to protect their lands from invasions, for instance from raiding Tsimshian chiefs to the west, Nisga'a chiefs to the northwest, or Ts'ets'aut people to the north (see, for example, Barbeau and Beynon 1987a; Duff 1989 [1959]). Gitxsan *wilp* and Witsuwit'en *yikh* also forged common bonds and a shared sense of identity through banding together to attack their neighbours. The common struggles to adapt to major environmental events and migrations had a similar effect. Through these actions, Gitxsan *wilp* and Witsuwit'en *yikh* forged broader collective identities that worked in contradistinction to those of the would-be interlopers that were their neighbours.

Gitxsan *wilp* and Witsuwit'en *yikh* maintained and defended their territorial relationships through a network of relations that included not only related house groups but also the land itself. In a much quoted passage, Delgamuukw (Muldoe 1992, 7) advances the territorial claim of Gitxsan *wilp* to its *lax'yip* on the basis of “a marriage of the chief and the land” that has developed and been maintained since an original encounter in which an ancient ancestor to the hereditary chief “acknowledged the life of the land” and gained authority with relation to it. Aiming to translate this claim into terms cognizable within Canadian law, researchers have been keen to emphasize how the *dax gyet*, the authority of

a Gitxsan *wilp* with respect to its *lax'yip*, parallels the relation cognized as ownership of property within Canadian law.

Within the recent anthropological literature, the territories of Gitxsan and Witsuwit'en house groups have regularly been presented in terms of their resonance with the territorial or proprietary logics of British systems of land holding. For instance, Patricia Dawn Mills (2008, 90) writes, "Gitxsan property, like common law property, has to do with the rights of persons to access resources for food, ceremony, and economic pursuits." Repeated studies have emphasized how Indigenous peoples in the Northwest constructed distinct bounded territories with particular political entities possessing clear authority or jurisdiction over their unique territorial holdings (see, for instance, Cove 1982; Mills 1994b; Daly 2005; Mills 2008). Thus, researchers present the Gitxsan *lax'yip* and Witsuwit'en *yin tah* as a seemingly analogous structure of territoriality to those cognized within the British common law. Presenting this system of territorial logic as analogous to forms recognized by the colonial legal regime has political utility in the present, as the Gitxsan *wilp* and Witsuwit'en *yikh* struggle to achieve contemporary recognition of their relationships to their territories in the Canadian legal system. However, the particular ways that Gitxsan *wilp* and Witsuwit'en *yikh* interacted with their respective *lax'yip* and *yin tah* remained distinct from concepts of property articulated in the tradition of British common law in numerous ways. As Bradley Bryan (2000) points out, Indigenous relationships to their territories are distinct from the ontological relations implied in the concept of property, associated with different regimes cognizing Indigenous authority, validating territorial claims, and framing cultural-natural relations.

Within both Gitxsan *wilp* and Witsuwit'en *yikh*, the authority of the house to determine how to use its lands was embodied within the figure of the hereditary chief. Among the Gitxsan and Witsuwit'en either a man or a woman could become a hereditary chief, although there were different terms for a male name heading a house and a female name heading a house.²² The Gitxsan referred to a man who led a *wilp* as *simoogit*, and a woman who led a *wilp* as *sigidim haanak'a*. The Witsuwit'en referred to a man who led a

yikh as *dinī ze'*, and a woman who led a *yikh* as *ts'akē ze'*. However, both Gitxsan *wilp* and Witsuwit'en *yikh* possessed complex structures of leadership. While a Gitxsan *wilp* was typically represented by a single *simoogit* or *sigidim haanak'a*, each *wilp* contained a broad set of ranked names each with authority corresponding to the relative level of esteem associated with the name. Referred to as *hla ga kaaxhl simoogit*, individuals holding ranked names played a key internal role in *wilp* governance, including at times responsibility for stewarding particular sections of the house territory.²³ Similarly, each Witsuwit'en *yikh* was led by a *dinī ze'* or *ts'akē ze'*, but also had leadership roles for a broader collective of people, the *hibi nidiztic*, who held lesser names. Members of the *hibi nidiztic* among the Witsuwit'en played an important role in *yikh* governance, and at times also held responsibility for particular territories. The term wing chief is often used as a gloss or translation of Gitxsan *hla ga kaaxhl simoogit* or Witsuwit'en *hibi nidiztic*. Within the structure of Gitxsan and Witsuwit'en governance, the remainder of the membership of a house possessed the status of children, people who could potentially graduate to hold a ranked name and formal position within the house but had not yet.²⁴

The Gitxsan and Witsuwit'en transferred and validated the transfer of names through the institution of the feast, which they respectively referred to as the *yukw* or *bahlats*. Gitxsan and Witsuwit'en hereditary names were constantly revitalized through the *yukw* and *bahlats*, as subsequent generations put on the names of their predecessors. Through feasting, house members publicly performed their identity, and signaled their possession of their titles and demonstrated their fulfillment of their obligations. Among the Gitxsan, an individual *wilp* would host a *yukw*, where *simoogit*, *sigidim haanak'a*, and *hla ga kaaxhl simoogit* would publicly demonstrate their possession of house history and territories through performance of the *adaawk*. Translating as true history, the *adaawk* served as the record of the history of a *wilp*, including the account of the original encounter between the founder of the *wilp* and the spirit of the land, typically embodied in the form of a supernatural being. As Richard Overstall (2005, 31) describes, rather than individual rights, the Gitxsan concept of law centered “the power created by fusing the spirit of a

reincarnating human line with the spirit of a specific area of land—a partnership in which both the human and the non-human parties have reciprocal obligations and privileges.” The *adaawk* included prominent events in the history of a *wilp*. The *adaawk* were recorded not only as a narrative of oral history but also in the crests and songs of *wilp*. At the *yukw*, a *wilp* put on display its possession of its *adaawk*, as well as the bountiful resources it had collected through the management of its territories to publicly demonstrate the identity and authority, the *dax gyet*, of its *simoogit*, *sigidim haanak’a*, and *hla ga kaaxhl simoogit*. Other *wilp* would witness and validate proceedings, and the host *wilp* would provide gifts to its guests in recognition of their work as witnesses.

Similarly, Witsuwit’en people traditionally relied on decentralized arrangement of governance through the *balhats*, although there were significant differences between the Witsuwit’en and Gitksan feast complex. Traditionally a Witsuwit’en *yikh* would work together with related houses to host a *balhats* to ensure the maintenance of territorial relationships and the resolution of disputes within the community. A Witsuwit’en *yikh* would conduct business at the *bahlats* in coordination with other houses within a clan. The *yikh* within the host clan would serve food, repay debts, perform unique songs and dances, and announce successors to the names of deceased chiefs within a family, as well as births, marriages, and adoptions. The Witsuwit’en did not possess a direct analogy to the *adaawk*. Rather than displaying the oral history of their *yikh*, the Witsuwit’en performed the *kungax*. Translating to English as the trail of song, the *kungax* centred on the performance of particular crests which demonstrated the connection of a *yikh* with the spirit of its distinct identity and territories. The practices of feasting and the performances at the *balhats* served as property markers that defined and affirmed the jurisdiction of host *yikh* over their distinct *yin tah*. The host *dinī ze’*, *ts’akē ze’*, and *hibi nidīztic* distributed gifts to other clans witnessing the proceedings of the *balhats*, who validated the declarations of the hosts and their legitimate authority with respect to their *yin tah* through acceptance of these gifts.

Gitxsan and Witsuwit'en political traditions were dynamic, as were the qualities of the lands with which their territorializations interfaced. As discussed above, Gitxsan *wilp* and Witsuwit'en *yikh* would amalgamate and subdivide in relation to population pressures, bringing together or separating territorial units. However, this was only one source of dynamism within Indigenous society in the Northwest Interior. As Matthew Sparke (1998) notes, the Gitxsan and Witsuwit'en system of territoriality presented a series of liminalities that challenge a purely Cartesian imagination of territory. Indigenous house groups most clearly defined structures of ownership around vital sites, such as hunting areas, berry patches, fishing holes, mountain passes, and camp sites. But it was not a system free of conflict or overlapping claims. House groups would dispute boundaries, and often presented competing claims to territories. Territories could be transferred as payment for a debt, or captured through raids. Further, *lax'yip* and *yin tah* boundaries were often associated with geographical features such as creeks, rivers, lakes, ridges, or gullies. Thus, as water and rock move so did Gitxsan *lax'yip* and Witsuwit'en *yin tah* boundaries. Extreme weather or geologic events, as well as slow processes of geomorphologic change, remade the landscapes and the political geography associated with the landscape, as was recorded in Indigenous oral history (Gottesfeld, Mathewes, and Johnson Gottesfeld 1991).

The authority associated with particular names within a *wilp* or *yikh* was also dynamic. The Gitxsan and Witsuwit'en ranked names possessed a vital, ongoing lineage. The fortunes and status of a name would rise and fall with the actions of the people that held it. Conventionally, name holders are expected to maintain the honour of their names through acting appropriately at all times and upholding the duties of the *wilp* or *yikh*. However, in various instances, hereditary or wing chiefs would bring dishonour to the *wilp* or *yikh*. In such instances, a shame feast would be required to cleanse the dishonour from the name and the *wilp* or *yikh* (Napoleon 2009; Morin 2011, 27–29). The means of regulating and restoring honour was complex. One of the primary types of shame feasts addressed when an individual brought shame upon his or her name and house. This type of feast was referred to as *guks yi 'ooksxw* by the Gitxsan and *kaneyedli'* by the Witsuwit'en. A

second major type of shame feast related to a conflict or dispute in which another party was believed to be at fault for the shame brought upon the *wilp* or *yikh*. In these instances, the competing parties would both host feasts to save face. The Gitksan called these feasts *guks heldim guutxws* and the Witsuwit'en called them *lhooniltsas*. If a hereditary chief brought shame to their name and died without cleansing that shame, the name would be considered tarnished (Napoleon 2009, 96). The burden of cleansing the name would fall to the inheritor of that name.

Through the maintenance of the standing of the names within a *wilp* or *yikh*, and renewal of connections between the genealogies of *wilp* or *yikh* and their territories through feast performances, Gitksan and Witsuwit'en peoples maintained their traditional governance over their territories. As Neil Sterritt (1989, 277) described, "The Gitksan and Wet'suwet'en express their ownership and jurisdiction in many ways, but the most formal forum is the feast." In the *yukw* or *balhats*, hereditary chiefs announced how their lands would be used. The hereditary chief possessed responsibility to ensure that the *lax'yip* or *yin tah* of his or her house remained fertile, and that the well-being of his or her *wilp* or *yikh* members was secured.

Further, the hereditary chief could grant members of other *wilp* or *yikh* permission to use the *wilp* or *yikh* hunting territories and fishing holes. Typically usage rights were extended on the basis of the network of family relationships between *wilp* and *yikh*. In Gitksan and Witsuwit'en society, marriages were exogamous, with clan members marrying members of other clans. The children of male members of a *wilp* or *yikh* are permitted, while the father is alive, to access the territories of their father's *wilp* or *yikh*, through rights referred to *amnigwootx* and *nec'idilt'ës* by the Gitksan and Witsuwit'en respectively. Access and use rights, referred to respectively by the Gitksan and Witsuwit'en as *yuugwilatxw* and *bi kyi ya ggi at'en*, are also regularly extended to the spouses of *wilp* or *yikh* members. Other people could seek permission to use *lax'yip* or *yin tah*, typically offering the hereditary chief responsible for those lands a form of payment. This payment could occur either at the time or at a subsequent *yukw* or *balhats*. The hereditary chief of

the *wilp* or *yikh* receiving payment was responsible for acknowledging this payment and clarifying at a *yukw* or *balhats* which usage rights he or she had allocated to whom.

Prior to contact, the Gitxsan and Witsuwit'en people followed seasonal rounds and typically relied upon on resources derived from the land. Richard Daly (2005, 132–155) presents archetypes of the rhythms of Gitxsan and Witsuwit'en seasonal movements. In this, he suggests, the Witsuwit'en would gather in village sites in the summer, where they would harvest salmon and hold *bahlats*, before returning to the particular *yin tah* associated with their *yikh* (or the *yikh* of their father or spouse in accordance with the privileges of *nec'idilt'ës* and *bi kyi ya ggi at'en*) for the fall, winter, and spring months. On the *yin tah*, Witsuwit'en peoples would live with their extended family and hunt and trap animals, as well as gather berries and medicines. While the Gitxsan also relied heavily on salmon fishing in the summers, Daly suggests the archetypical Gitxsan seasonal round contrasts with the Witsuwit'en on the basis that the Gitxsan would hunt in the fall and then gather in the villages to feast through the winter. However, the two cultures were not neatly distinguished. For instance, in Daly's (2005, 152) account of Gitxsan winter *yukw* activities, he quotes the remembrances of a informant, Margaret Austin, who belonged to the Witsuwit'en community. Daly also describes the winter performances of members of the *ggilulhëm*, a Witsuwit'en secret society.

The *ggilulhëm* was a secret society of spirit healers. In the early-twentieth-century, the anthropologists Marius Barbeau (1958) and Diamond Jenness (1943) collected information regarding the existence of a secret society of medicine men. In describing the history of the *ggilulhëm*, Jenness positioned its origins among coastal Indigenous peoples, whose spiritual practices diffused first to the Gitxsan, and through the Gitxsan to the Witsuwit'en. Jenness suggested the emergence of the *ggilulhëm* and other related secret societies among the Gitxsan and Witsuwit'en was a recent development, dating to the late-nineteenth-century. But if the *ggilulhëm* were a relatively recent invention, the belief in particular kinds of spiritual power was long-standing among the Gitxsan and Witsuwit'en. The importance of spiritual connections was enacted in the *yukw* or *balhats*. In the *yukw*,

Gitksan people recited the ancient stories of encounters between members of their lineage and the spirit of the land in their *adaawk*. Similarly in the *balhats*, Witsuwit'en people evoked this spiritual connection in the performance of their crests and the singing of their *sinelh* or spirit song (Morin 2011, 50).

Among the Gitksan and Witsuwit'en, people with access to spirit power were both respected and also feared. The Gitksan used the terms *halayt* and *haldawgit* to refer to people able to access or channel spirit power, while the Witsuwit'en referred to them as *diyini* or members of the *ggiluhēm*. People with spirit power were believed to possess the capacity to use spirit power to hurt as well as heal. The Gitksan term *haldawgit* referred to a person with access to spirit power who exercised this power in an evil or menacing way. Among the Witsuwit'en, *ggiluhēm* members were feared and children "discouraged from looking at them directly to avoid the risk of becoming ill" (Morin 2011, 145). The modalities of spirit power, referred to as *naxnox* among the Gitksan, were diverse. Some people acquired particular spiritual abilities enabling them to travel to the spirit world and granting them access to foresight.

Some medicine people had experienced sickness and through their healing were taught to harness the animal's spirit power that have overtaken them. Others, after travelling to the spirit world, had acquired a song, which could cause their sickness or death if not released (Morin 2011, 145).

However, beyond its seemingly incorporeal aspect, spirit power was also believed to have physical manifestations. *Halayt*, *haldawgit*, and *diyini* often possessed particular objects, such as masks, that served as the embodiment of their spirit power or served to connect them to a particular form of spirit power.

Thus, there were elaborate systems ordering Gitksan and Witsuwit'en life prior to the arrival of colonial agents. Gitksan *wilp* and Witsuwit'en *yikh* exercised authority over particular lands. Further, the hereditary leadership of a house publicly demonstrated its authority and enacted its jurisdiction over its territories through performances in the feast hall. Further, through the feast a horizontal network of relations between houses was also

enacted, conditioning the rights and responsibilities of individual Gitxsan and Witsuwit'en people. Although displaying aspects of sovereign decision-making and regulatory governance, these systems did not strictly parallel the technologies of power delineated by Foucault with reference to Europe. Rather they presented a supplement to European modalities of power—Indigenous structures which would imbricate with colonial regimes, remaking both colonial power and Indigenous traditions.

Indigeneity and Colonialism in the Fur Trade

The arrival of newcomers to the territories of the Gitxsan *wilp* and Witsuwit'en *yikh* beginning in the early-nineteenth-century produced new relationships. The Gitxsan called the newcomers *umshewa*, describing their skin pigment as bleached like driftwood. The term was an effective descriptor, and one that carried a poignant double entendre evoking the uprooted nature of existence as a white European agent sent to far-flung-lands already occupied by the Indigenous population.

Colonial agents found themselves having to negotiate with Indigenous forms of authority, territory, and subjectivity. But through these negotiations, colonial agents began to accumulate the knowledge necessary to enact new forms of colonial authority, develop new territorial rationalities, and begin to cultivate new forms of Indigenous subjectivity. Thus, rather than a co-operative counterpoint to later forms of direct colonialism, the fur trade and early missionary activity constructed nascent regimes of power-knowledge that served as the foundation for subsequent colonial regimes. Thus, the period of the fur trade presents an emerging geography of proto-colonial power imbricated with Indigeneity. The knowledge constructed through this period, both of the land and Indigenous peoples themselves, functioned to legitimize colonial claims to authority. But more than this, it constructed the knowledge necessary to subsequently implement programs designed to reconstruct Indigenous territories as resource frontiers and remake Indigenous peoples into wards of the state.

The earliest known colonial encounter between Indigenous peoples and Europeans of the Northern Interior occurred when Alexander Mackenzie crossed the Rocky Mountains in 1793 in search of new fur trading territories and a route to the Pacific. A trader with the North West Company, Mackenzie's (1902 [1801]) travelogue provided the earliest traces surveying the territories west of the Rockies and rendering that space legible within colonial registers. He appraised the lands he encountered in terms of their commercial value, and although recording his difficulties travelling through a hostile landscape, Mackenzie's narrative continued to serve as an advertisement to the potential of the Northwest. His journals not only conducted preliminary surveillance of the region for the fur trade, but simultaneously regularized white domination and dominion in these new contact zones through the descriptive techniques of a racist ethnography that rendered only a constrained view of Indigeneity legible.

Mackenzie (1902 [1801], vol 2., 322) described the Indigenous people of the Northwest Interior as possessing "no regular government among them" and defined by ceaseless struggle for survival. "They catch the larger animals in snares; but though their country abounds in them, and the rivers and lakes produce plenty of fish, they find a difficulty in supporting themselves, and are never to be seen but in small bands of two or three families" (Mackenzie 1902 [1801], vol. 2, 322). Presenting Indigenous peoples as primitive, and denying the existence of complex practices and knowledges ordering Indigenous life, Mackenzie's racist calumny provided a fountainhead for a discourse legitimating ensuing colonial dispossessions.

Subsequent to Mackenzie's explorations, in the first decade of the nineteenth-century, the land-based fur trade crossed the continental divide. Simon Fraser established four trading posts for the North West Company on Dakelh and Tsek'ehne territory: Fort McLeod in 1805, Fort St. James and Fort Fraser in 1806, and Fort George in 1807 (Morice 1978 [1904], 544). These forts would be transferred to Hudson's Bay Company control when it merged with the North West Company in 1821. Subsequently the Hudson's Bay Company established Fort Kilmars on Babine Lake among the Nedut'en in 1822 and on Fort

Connelly on Bear Lake among the Gitksan in 1826 (Morice 1978 [1904], 125, 133–136). In 1836, the Hudson's Bay company moved its fort on Babine Lake to be closer to the salmon runs (Morice 1978 [1904], 195). Fort Kilmars would become known as Old Fort Babine.

The initial Indigenous encounters with European goods in the Northern Cordillera developed through and were mediated by pre-existing political and economic networks between Indigenous peoples and their neighbours. Indigenous houses and clans maintained extensive relationships throughout the region based both on ties of kinship and connections through trade. A network of grease trails, used to transport oolichan grease and other trade goods throughout the region connected interior Indigenous peoples to Indigenous villages on the coast to the west. Thus, as the maritime fur trade developed in the eighteenth-century, followed by the land-based trade in the nineteenth-century, newcomers and their new trade goods entered into the geopolitics of existing Indigenous relations (Grumet 1975; Fisher 1992 [1977], 1–48; Marsden and Galois 1995). While the fur trade installed a discourse of commercial capital in the region, particularly following the introduction of forts to Indigenous lands, the relocation of mercantile activities into Indigenous territories necessitated their adaptation to the particular exigencies of a trade that operated amidst otherwise organized Indigenous lands.

Robin Fisher (1992a [1977]) in particular has argued that Indigenous peoples retained agency through the trade and often benefited from these early exchanges with newcomers to their territories. Rather than simply colonized by processes of the exploitative dynamics of mercantile exchange, Fisher argues that Indigenous peoples manipulated trading relationships for their own political and economic gain. In congruence with this position, Arthur Ray (1990, 15–16) has noted that the fur trade journals of William Brown, a chief trader of the Hudson's Bay company who established Fort Kilmars on Babine Lake in 1822, pay considerable attention to the aspects of Indigenous culture that impacted the fur trade.

Central among these was the traditional land tenure system. Brown described the Indigenous peoples of the Northwest Interior as “men of property” who possessed lands

and regulated access to their territories through a kinship structure (quoted in Ray 1991, 303). In the early nineteenth-century fur traders frequently complained about the impact of territorial restrictions and feast obligations on pelt yields. Hereditary chiefs closely regulated trapping on their territories, limiting hunting and trapping rights to a few of their house members. For instance, in 1826 while Brown estimated there were 70 capable hunters among the Nedut'en people, only half this number had access to trapping territories (Ray 1991, 303). Furthermore, Ray (1991, 303–304) indicates fur trade records reveal that the majority of beaver pelts came from hereditary chiefs themselves, who controlled the trade but in many instances were not themselves the one who collected the furs. These chiefs balanced participation with the fur trading economy and obligations to maintain relationships through the feast system. As Ray (1991, 305) documents, in 1824, the clerk at Fort St. James reported that the Nak'azdli, a Dakelh Band adjacent to Stuart Lake, withheld beaver from the trading company to use in exchange with the Nedut'en.

The ability of fur traders to reorient traditional networks of Indigenous exchange was undercut by the traders' dependence on Indigenous support. Chiefs such as Kwah from Nak'azdli were indispensable to the fur trade, particularly in providing the thousands of salmon annually needed to feed the traders throughout the Northwest. As evidence of this dependence, Jean Barman (2007 [1991], 47–48) quotes one of the traders' remarks that Kwah "is the only Indian who can and Will give fish, and on whom we Must depend in great Measure. It behooves us to endeavour to Keep friends with him." Fur traders regularly married into Indigenous communities as a method of integrating themselves into established networks of Indigenous kinship and garner social capital to aid in negotiating trading relationships (Harris 1995, 136). Thus, the contingencies of the encounter, far from centres of European authority, necessitated that fur traders reconcile their practice with existing Indigenous political regimes.

However, while Indigenous peoples certainly had agency in these early encounters, the fur trade introduced major changes to Indigenous society. The development of the fur trade coincided with the introduction of European diseases that decimated Indigenous

populations. Smallpox epidemics along the Pacific Northwest are recorded beginning in the 1770s (Boyd 1994a; Harris 1997a, 51–52). A smallpox outbreak in 1836 swept through the region causing massive depopulation and altering traditional intergroup relationships (Gibson 1982). Tracing the course of the 1847-1850 measles epidemic, Robert Galois (1996) argued that diseases followed the geographies of trading relationships (see also, Boyd 1994b). In 1862, a smallpox outbreak in Victoria spread rapidly as authorities forced the exposed Aboriginal people out of town, who subsequently carried the disease to their home communities, killing an estimated third of the Indigenous population (Duff 1997 [1965], 58–59). Although the scale of devastation associated with these initial outbreaks was not replicated, diseases continued to be a serious concern, exemplified by another measles outbreak among the Gitksan that occurred in 1888 (Galois 2007, 231). These diseases affected the organization of Indigenous communities: for instance, following the disease outbreaks in the 1860s, two the Witsuwit'en clans, the Likhts'amisyu (Fireweed) and Tsayu (Beaver), began to operate as a unit for the purposes of feasting as a result of their depleted population (Mills 1994b, 102).

Further, as the decades passed, commercial capital established a colonial presence west of the Rockies and increasingly reoriented Indigenous geographies. While forts were regularly established at pre-existing Indigenous gathering points or villages, Indigenous activity intensified around many fur trading posts. As Cole Harris (1995) makes clear, the increasing dependence of Indigenous peoples on imported goods, such as firearms, created asymmetries of power. This was particularly the case where the Hudson's Bay Company achieved a monopoly on the distribution of goods. These asymmetries were further aggravated by the undercurrent of violence beneath the emergence of colonial forms of economic authority. Colonial agents installed through the fur trade were not simply a benign presence but one that achieved security through an undercurrent of terror based on the threat of violence. In 1811, when Kwah pressed Fort St. James trader Daniel Harmon to provide a poor Dakelh man with credit and displayed what the trader considered to be impudence, Harmon beat him extensively (Harmon 1820, 208–210). Later in 1828, when a

Dakelh man killed a Hudson's Bay Company clerk at Fort St. James, James Douglas executed him (Barman 2007 [1991], 48). By the 1840s, white people were able to move along a network of corridors established through the fur trade in relative safety. While Indigenous peoples still controlled the majority of the territory beyond the forts, and acted in accordance with their own agendas, their independence was now qualified because of the emergence of a minimal colonial geography (Harris 1995, 138).

Prefiguring later governmental apparatuses, Indigenous subjectivities and traditions were further reshaped by the intrusion of new religious orders into Indigenous lands. Demonstrating the kinds of transculturation that would become increasingly common in the post-contact period of Gitksan and Witsuwit'en society, a great Witsuwit'en *dini ze'* foretold the arrival of the white people and their religion to the Pacific Northwest. Witsuwit'en oral history recounts how Kw'is, one of the hereditary chiefs within the Tsayu, travelled to the sky world and returned to foretell the great changes that would come to the Indigenous peoples of the Northwest (Jenness 1943; Mulhall 1986, 39–41; Morin 2011, 203–206). The timing of his prophecy is disputed, with Witsuwit'en oral history placing Bini's prophecy before the arrival of the fur traders or missionaries. Diamond Jenness (1943) situated the prophecy in the mid-nineteenth-century, after the first visit of missionaries to the area in the 1840s. Bini claimed to have died and travelled to the sky world only to return to earth to instruct his followers on the appropriate course of action. He taught people to pray and make the sign of the cross. He is also remembered as distributing small crosses to his followers and touring the country to garner converts to his pseudo-Christianity. After a devastating smallpox epidemic in 1862, Indigenous people in the region desperately sought new frameworks to explain the vast tragedies destroying their communities, and Bini's revival movement grew establishing the foundation for cultivating new relationships with newcomers to the territory.

As Michel Foucault (2007) argues, the historical foundations of the present art of governing men have their origins in the governance of souls through the model and organization of pastoral power. Foucault described three elements that characterized

pastoral power. First, it was exercised over a mobile flock of people rather than a static territory. Second, pastoral power was oriented to the improvement—indeed salvation—of the flock. Third, pastoral power had a double impulse, to care simultaneously for the multiplicity of the congregation as the whole and the particularity of each individual singly. Foucault's genealogical linkage of technologies of political governance to earlier missionary techniques resonated with Carl Schmitt's (2005, 36) famous, or alternately infamous, dictum that "All significant concepts of the modern theory of the state are secularized theological concepts." Foucault represents the historical pastorate as a technology of power from which Western modernity emerged. This thesis can be modified in the colonial context to highlight how the colonial mission functioned as a technology of power from which colonial modernity emerged (Venn 2000). Through the colonial enterprise, theology was reconciled with secular political doctrines so that the Christian mission underwriting the early colonial project vis-à-vis the Indigenous Other was aligned with the civilizing mission.

The exercise of pastoral power was marked by various continuities and discontinuities amongst and between different historical forms of the pastorate. In the colonial context, the missionary impulse did not accord with a simple dichotomy between techniques aimed at fostering spiritual development of a congregation and the violent exercise of political domination. Rather these techniques were combined. The missionary project was governed by a will to improve. Describing the operationalization of the will to improve in Indonesia, Tania Murray Li (2007, 6) argues there are two key practices "required to translate the will to improve into explicit programs." The first is problematization, identifying a lack or deficiency that requires rectification. The second is what Li refers to as rendering the problem technical, employing a broad set of practices to make legible a domain to be governed in terms of specified limits and defined characteristics, and devising techniques to mobilize the entities and forces thereby revealed. The techniques adopted for colonial conversions included public displays of violence, surveillance and the installation of disciplinary regimes aimed to punish the

smallest violations, and finally the development of a series of practices to reconstruct and morally uplift the Indigenous subject.

Approaching the problematic of conversion, missionaries sought to negotiate complex relations to Indigenous traditions. A full history of early missionary activity is beyond the scope of this historical survey, and I will focus on one example here, that of the Catholic Oblates. The Oblates were particularly active among the Witsuwit'en. While the first missionaries visited the Northern Interior in the 1840s, the first permanent mission was not established until 1873 at Fort St. James. Father Blanchet and Father Lejacq ministered throughout Dakelh, Nedut'en, and Witsuwit'en territories. While there were tensions between fur traders and missionaries, particularly over missionary concerns about the distribution of alcohol, there were also convergences. Father Lejacq, for instance, refused to baptize Indigenous people who had debts to the traders (Morin 2011, 236). However, the missionaries also sought to separate Indigenous converts from negative influences, both of Indigenous traditionalists and colonial traders. Using a conversion methodology referred to as the Durieu system, missionaries sought to first compel conversion through threats of violence, death, and damnation, and then remake Indigenous subjects, often separating them into new villages, cultivating the practices of Christian subjectivity (Mulhall 1986). Under the Durieu system, the missionaries appointed a Indigenous watchman as a Christian lay leader in each community.

As the missionaries travelled throughout the region and had limited time in any one community, the watchman would be responsible for shepherding his people to the path of Christian moral uplift. The missionaries also surreptitiously appointed informants within the community to surveil the actions of the watchmen and converts. Missionaries publicly beat traditionalists who breached Christian norms such as marriage, they ridiculed traditional practices, and they burned traditional regalia. To protect converts, they often relocated communities. For instance, Father Morice relocated Witsuwit'en converts, primarily from Hagwilget or Tsë Cakh, to the community of Moricetown, located to a flats on the river three miles downstream from the abandoned village Witset (Morin 2011, 246).

Thus, conversion efforts aimed both to destroy and recreate, contrasting with Wolfe's (1999, 2006) claims that the settler colonial impulse was to destroy and replace. In this creative destruction, missionaries aimed to repress the old ways and cultivate the emergence of new forms of Indigenous subjectivity.

Through their interventions, the missionaries and fur traders introduced new economic and cultural influences on Indigenous life. Indigenous traditions of governance continued to imbricate with emerging colonial political formations. Church-appointed watchmen tended to hold hereditary titles, and hereditary chiefs served as key authorities within the developing political economy of the fur trade. Further, the extension of colonial regimes worked to reterritorialize space. The Northern Interior fur trade became the New Caledonia fur-trading district of the Hudson's Bay Company. The boundaries of the department extended as new trading posts were established and the economic relationships associated with the fur trading network extended, eventually claiming nascent form of colonial authority over the region from the Rockies to the Coast north of the Thompson River drainage. The centre of departmental authority operated out of Fort St. James on Dakelh territory. Though not formally a British colony, the district of New Caledonia was a germinal territorialization of the British claim to the region. Similarly, the regions of missionary activity rationalized the exercise of colonial dominion over Indigenous peoples and their lands.

Increasingly engagements with colonial authorities served to bolster the authority of particular hereditary chiefs and reshape dynamics within the Indigenous community. Fur traders and missionaries assiduously documented their exchanges with the Indigenous population, and through this documentation helped construct an archive of knowledge which both served to legitimate colonial rule and also to crucially construct the regimes of knowledge necessary to render Indigenous peoples and their territorial claims a technical problem subject to forms of government intervention. Thus, the power-knowledge of the fur trade was vital to establishing the colonial order of things. As new centres of colonial power and apparatuses of rule emerged with the establishment of first the colony of British

Columbia, and subsequently its confederation with the dominion of Canada, the knowledge accumulated through the fur trade and missionary activity was repurposed as part of an emerging colonial governmental regime.

The Colonial Displacement of Indigenous Orders

Colonial sovereignty over British Columbia was first declared in 1858, although the declaration had limited direct effect over Gitxsan and Witsuwit'en territories. However, in subsequent years as minerals prospectors and settlers arrived on Gitxsan *lax'yip* and Witsuwit'en *yin tah*, conflicts began to proliferate. The Gitxsan and Witsuwit'en hereditary chiefs continued to govern their lands through their legal orders. However, the constitution of a new colonial regime sought to reterritorialize Gitxsan and Witsuwit'en lands as part of the emerging geography of British Columbia. In 1888, the conflict of laws between the Gitxsan and state legal orders came to a head. The Skeena River Rebellion highlighted the festering Indigenous resentment of the imposition of colonial law. The government, however, responded by extending the apparatuses of control over Indigenous life through the administration of the federal Department of Indian Affairs. Government land policy consistently transmuted Gitxsan and Witsuwit'en claims to unceded title into issues associated with reserve allocation. Increasingly colonial policy delimited Indigenous resource use, restricted participation in the emerging colonial economy, and criminalized Gitxsan and Witsuwit'en efforts to affect their traditional jurisdiction over the *lax'yip* and *yin tah*. While Indigenous peoples continued to feast, the *yukw* and *balhats* were forced underground. Rather than the hereditary chiefs, the state interfaced with elected band governance institutions created through the *Indian Act*.

The fur trade and missionary work created a regime of knowledge and practice on which future colonial administrators could draw. The maps and journals of the traders and missionaries served to bolster the British claim to the space. This was significant as there was growing intercolonial contest between the British and Americans over the Pacific Northwest. Signing the *Convention of Commerce between Great Britain and The United*

States of America (1818), the two colonial regimes agreed to coexist in the region, allowing citizens and subjects of the two colonial powers to operate in the region (Reimer 2009, 15). Article III of the Convention of 1818 declared:

It is agreed, that any Country that may be claimed by either Party on the North West Coast of America, Westward of the Stony [Rocky] Mountains, shall, together with its Harbours, Bays, and Creeks, and the Navigation of all Rivers within the same, be free and open, for the term of ten Years from the date of the Signature of the present Convention, to the Vessels, Citizens, and Subjects of the 2 Powers.

This agreement deferred the resolution of the competing assertions of colonial sovereignty in the area, a deferral that was prolonged with the extension of the agreement in 1827 (*Convention between Great Britain and the United States of America, relative to the Territory on the North-West Coast of America* 1827). While there was substantial debate through this period surrounding the assertion of a British jurisdiction over the region of the Pacific Northwest, this contest centred not on the pre-existing Indigenous societies already present in the area but rather negotiating between the competing claims to colonial sovereignty over the territory (Clayton 2000b). Within the domain of international legal discourse, the dispute was finally resolved in 1846 with the signing of the Oregon Treaty (*Treaty between Great Britain and the United States of American, for the Settlement of the Oregon Boundary* 1846). This agreement set the boundary between American and British domains at the 49th parallel, although the region was not territorialized into the respective colonial legal domains until the American reorganization of the Oregon territory in 1848 and the British establishment of the colony of British Columbia in 1858.²⁵

Indigenous peoples, who constituted the majority of the regional population throughout this period, continued to live under their own laws. Neither the formation of British Columbia in 1858 nor its entry into Canadian Confederation in 1871 occurred with the consent of the Gitxsan or Witsuwit'en hereditary chiefs. Counter the dictates of the *Royal Proclamation of 1763*, the mainland colony of British Columbia had not entered treaties with Indigenous peoples (Tennant 1990, 10–16). Gitxsan *wilp* witnessed

prospectors' incursions into their territories without regard to their jurisdiction over their respective *lax'yip* and *yin tah*. The nascent minerals industry incited the materialization of regimes of colonial authority. In 1858, the massive influx of people with the Fraser River gold rush prompted the creation of the colony of British Columbia to protect British claims to the territory from American expansionist pressures. Hazelton, the first non-Indigenous settlement in Gitxsan territory, developed as a provisioning point for prospectors heading to the interior Omineca Gold Rush in the early 1870s (Large 1958, 44–45).

There are complex histories of Indigenous engagement in minerals industry work that bely simple claims that position Indigenous peoples as inherently in opposition to or outside of labour regimes in resource extraction. As Keith Thor Carlson (2010) points out, Indigenous people actively participated in the earliest mining ventures in what would become British Columbia in the Fraser Canyon. Subsequent expansion of early resource extractive activities into resource peripheries relied on Indigenous labour, as the population of settlers remained clustered in the southwest corner of British Columbia and Indigenous people made up a significant portion of the population in the more remote regions (Knight 1978; Lutz 2008). But while Gitxsan people were involved in the developing transport economy, which depended on human labour before the introduction of railways and highways, they also continued to defend their territories. Gitxsan people exacted levies from miners for the privilege of crossing their lands (Galois 1993, 120–121).

Tensions developed between traditional Gitxsan territoriality and emerging British Columbian laws, which viewed Gitxsan tolls as a form of harassment (Mills 2008, 35–36). When a fire set by prospectors in 1872 burned a dozen long houses and crest poles in Gitsegukla, Gitxsan and British Columbian legal orders began to clash (Galois 1992). Gitxsan law required compensation to restore order (Daly 2005, 268–270; Sterritt et al. 1998, 294; Napoleon 2009, 107–123, 156–159). Seeking compensation, hereditary chiefs blockaded Skeena river traffic. Lieutenant Governor Joseph Trutch, backed by two gun boats, offered \$600 to restore relations and promised to protect the people of Gitsegukla if they ceased taking the law into their own hands. However, as Galois (1992) documents,

there were different understandings of this exchange. Government records suggested the money was simply a gift representing the Crown's charity, and the underlying threat of gunboat diplomacy demonstrated the authority of provincial law. For the chiefs, however, the authority of provincial law did not supersede that of Gitxsan traditions, as Trutch's gift fulfilled the requirements for compensation under Gitxsan law. This encounter highlighted the emerging legal pluralism in Gitxsan and Witsuwit'en territories.

The relationship between Canadian and Gitxsan legal orders remained fraught with conflict. In 1884, a local freighter, A.C. Youmans, failed to notify and compensate a Gitsegukla family for the drowning of their son as required by Gitxsan law. The father, Haatq, responded by killing Youmans, a retribution justified as among the Gitxsan but considered criminal under Canadian law (Galois 1993, 133–135; Mills 2008, 36–37). Haatq was prosecuted and died in a New Westminster jail in 1887. The following year, Kamalmuk (Kitwancool Jim) was shot by a constable seeking to arrest him. In both cases, the government withheld compensation to the deceased person's *wilp*, escalating tensions in the region (Galois 1993, 135–139). Instead, the government sought to first awe the Gitxsan with a demonstration of military power, and then subsequently assert their administrative authority through the Babine Indian Agency, which was created in 1889 (Galois 2007, 236–237). The government sought to secure its jurisdiction through the imposition of regulatory regimes, such as fisheries, over Aboriginal practices and laws (Harris 2001, 14–78, 186–216).

Gitxsan and Witsuwit'en people were increasingly made the subject of colonial legal orders. In 1876, the Canadian government consolidated its laws related to Indigenous peoples into the *Indian Act*, racializing diverse Indigenous communities as subjects of a common regime of state management (Cannon 2011). In 1884, the government amended the *Indian Act*, banning traditional Indigenous feast governance systems such as the *yukw* or *balhats* (Bracken 1997). In 1878, the government began surveilling Indigenous fisheries in British Columbia, and by 1881 government officials began to close Indigenous fisheries that were selling fish commercially (Harris 2001, 55–58). A federal fishing permit system

introduced in 1888 institutionalized a licensing requirement for any Indigenous commercial fisheries (Harris 2001, 66). However, an exemption for Indigenous food fisheries recognized the importance of these resources to Indigenous communities. In 1906, the Barricade Treaty with the Babine people required salmon fishermen to abandon traditional weir systems for gillnets, foreshadowing similar changes subsequently imposed on Gitksan and Witsuwit'en (Harris 2001, 79–126).

Land policy in British Columbia explicitly served to open the province to settlement, offering free land to newcomers while banning Indigenous land preemptions (Tennant 1990, 41). Through the reserve system, the government imposed a system of band governance to replace the traditional system of governance by hereditary chiefs. Bureaucrats on the provincial mainland generally ignored broader Indigenous territorial claims, containing Indigenous space within the confines of illiberally allocated reserves (Tennant 1990, 39–65; Harris 2002, 73–261), although reserve allocations still regularly reflected the geography of established Indigenous food fisheries and village sites (Harris 2008, 34–105). In 1891, the Indian Reserve Commissioner, Peter O'Reilly first arrived in the region to begin laying out reserves. O'Reilly (quoted in Morin 2011, 272) suggested that the reserve system only “protects the land from trespass from others” and assured the assembled Witsuwit'en that the “government did not wish to confine” Indigenous people to reserves. But while Indigenous life was never fully contained, the reserve system imposed a new geography on Indigenous peoples.

Native life came to be lived in, around, and well beyond these reserves, but wherever one went, if one were a Native person, the reserves bore on what one could and could not do. They were fixed geographical points of reference, surrounded by clusters of permissions and inhibitions that affected most Native opportunities and movements (Harris 2002, xxi).

The reserve and band system reorganized the geography of Indigenous life.

Rather than identifying Indigenous identity on the basis of matrilineal house groups with particular rights to distinct territories, the band system defined identities on the basis

of a connection to a particular band and its associated reserve lands. While historically within a village there would be many chiefs with their own distinct territories, Indigenous geography was reimagined as synonymous with the spatiality of the reserves. Further band governance agglomerated different reserves into one collectivity. For instance, the Nedut'en and Witsuwit'en were originally lumped into a single band.²⁶ As Gitxsan and Witsuwit'en people made various appeals to revise the reserve system there has been a substantial reorganization of the bands, subdividing bands and their reserve lands. There are currently five Witsuwit'en bands, with each band exercising administrative authority over numerous reserve lands (Table 2). There are also six Gitxsan bands, the majority of which exercise administrative authority over multiple allocated reserve lands (Table 3). These lands can be quite diffuse, as demonstrated by the map of reserves associated with Wet'suwet'en First Nation (formerly Broman Lake Indian Band) (Figure 2); however, for the majority of Gitxsan and Witsuwit'en bands, population tends to concentrate in a central community or region of the band's reserve geography to enable bands to more effectively deliver services and conversely to enable member to more effectively access services.²⁷

Table 2: Witsuwit'en Bands and their Surveyed Reserve Lands

Moricetown	Hagwilget	Wet'suwet'en First Nation	Skin Tyee	Nee-Tahi-Buhn
Babine 17	Bulkley 1	Duncan Lake 2	Skins Lake 15	Easter Island 13
Babine 18	Hagwilget 1	Felix George 7	Skins Lake 16A	Francois Lake 7
Bulkley River 19		Gaichbin 8	Skins Lake 16B	Isaac 8
Coryatsaqua 2		Klagookchew 9	Tat'at East 2	Omineca 1
Jean Baptiste 28		Maxan Creek 5	Uncha Lake 13A	Uncha Lake 13A ²⁸
Moricetown 1		Maxan Lake 3	Western Island 14	
Oschawwinna 3		Maxan Lake 4		
		Palling 1		
		Tatla West 11		
		Tsichgass		

Table 3: Gitxsan Bands and their Surveyed Reserve Lands

Kispiox	Glen Vowell	Gitanmaax	Gitwangak	Gitsegukla	Gitanyow
Agwedín 3	Sik-e-dakh 2	Anlaw 4	Chig-in-Kaht 8	Andimaul 1	Gitanyow 1
Andak 9		Gitanmaax 1	Gitwangak 1	Gitsegukla 1	Gitanyow 2
Gul-mak 8		Kisgegas	Gitwangak 2	Gitsegukla Logging 3	Gitanyow 3A
Gun-a-chal 5		Ksoo-gun-ya 2A	Kits-ka-haws 6	New Gitsegukla	
Kis-an-usko 7		Tsitsk 3	Koonwats 7		
Kispiox 1			Kwa-tsa-lix 4		
Kuldoe 1			Squin-lix-stat 3		
Quan-skum- ksin-mich- mich 4					
Sidina 6					
Waulp 10					

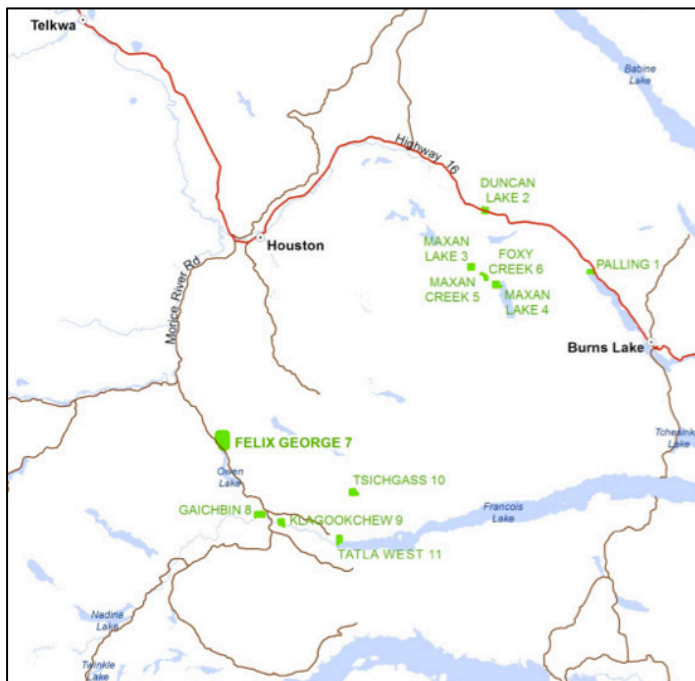


Figure 2: Reserves Associated with Wet'suwet'en First Nation (Formerly Broman Lake Indian Band)

From Wet'suwet'en First Nation, Location, (n.d.)

By allocating reserve lands, the government sought to ignore and silence Indigenous land tenure, narrowing discussions to focus on the issue of reserve allocations and attempting to channel Indigenous dissent into bureaucratic avenues (Galois 1993, 139-165; Tennant 1990, 26-52). However, Gitxsan resistance regularly exceeded the constraints of government channels. The reserve commissioner, Peter O'Reilly, met opposition to surveying reserves at Kispiox and Gitwangak in August 1891 (Galois 1993, 141; Mills 2008, 49). Another reserve commissioner, A.W. Vowell, was informed in 1897 by letter signed by the twelve *simoogit* and *sigidim haanak'a* in the community that he was unwelcome in Gitanyow (Kitwankool).

We the Chiefs of Kitwankool do not want you to come to Kitwankool to make a Reserve for us, because we continually remember the death of our Chief Jim [Kamalmuk], who was killed by the white man who was sent by the Government to kill him; therefore we do not want you to come here. ... I want you to ... not to come and Reserve our land. (Price et al. 1897)

When Vowell arrived the following year, the chiefs presented him with demands for compensation and a tombstone for Kamalmuk, and negotiations met an impasse (Galois 1993, 143). Over the course of the decade, the Indian Agent, R. E. Loring was only able to advance reserve allocation through allowing traditional governance in the *yuwk* to continue unmolested and promising the Gitxsan continued traditional use of their territories to hunt, fish, and gather berries (Galois 1993, 140). However, the question of title and jurisdiction remained unresolved.

In the early-twentieth-century, as more settlers arrived, the Gitxsan and Witsuwit'en continued to mobilize around their land claims. In 1908, Gitxsan and other Aboriginal chiefs visited Prime Minister Laurier with a land rights petition, and Gitxsan people in Gitwangak blocked surveyors, demanding a meeting over land issues (Galois 1993, 145). The Indian agent promised another commission to diffuse mounting tension. The Stewart-Vowell commission visited the Gitxsan in 1909, but little was resolved (Mills 2008, 51). In June of 1909 at Kispiox, the chiefs had posted notices forbidding whites from

crossing the river, and in November, Kispiox chiefs blocked a road construction crew at gunpoint, and seized their equipment after the crew foreman assaulted two Gitksan people (Galois 1993, 149). Seven Gitksan men were arrested in a subsequent raid of the community. Nevertheless, the Gitksan continued to press their case and sent another petition to Laurier. The McKenna-McBride Commission eventually reviewed the Indian land question from 1913 to 1916; however, provincial opposition to addressing title issues continued to limit discussions (Galois 1993, 152–153; Harris 2002, 228–248; Mills 2008, 52–54; Tennant 1990, 96–98).

Through the early twentieth-century, white settlers and land speculators began to move into Gitksan and Witsuwit'en territories initially following rumours of a proposed railroad from Winnipeg to Prince Rupert, and subsequently following the railroad. Settlers established farms and fences, and built the first sawmills in the region, protected by the veil of colonial law. As Cole Harris (2004, 179) notes, this new geography of fences, roads, and railways, of farms and sawmills, of industrial camps and towns, installed the most pervasive disciplinary technology. Superimposed on Indigenous territories, this new geography of settlement and development worked to redefine the space. It established areas still available for Indigenous use and those appropriated for the project of settlement and development. Furthermore, as John Sutton Lutz (2008) charts, Indigenous labour market participation was increasingly suppressed by increased labour market competition from the influx of additional settlers, in combination with technological changes that curtailed the demand for labour in canning, fishing, agriculture, and logging.

In the 1920s, the government also moved to more directly suppress Aboriginal organizing. A 1927 *Indian Act* amendment made it illegal to organize around Aboriginal land claims, and banned lawyers from working on such a case. Gitanyow chiefs were sent to prison that year for resisting government attempts to survey their reserve boundaries (McDonald and Joseph 2000, 208). Police attempted to enforce a potlatch ban outlawing the *yuwk* in 1927; however, the *yukw* continued and the government abandoned enforcing the ban after 1931 (McDonald and Joseph 2000, 208–209). A concerted attack on Gitksan

traditions continued through the residential schools, as between 1940 and 1980 an estimated 1,560 to 2,600 Gitksan children were taken from their communities, disrupting the intergenerational transmission of *wilp* knowledge (Skalan 2009). However, despite their persecution, chiefs continued to pass on names and negotiate land use agreements in the *yukw*, maintaining their authority over their territories.

With the preclusion of Indigenous title claims in the courts, Gitksan *wilp* and Witsuwit'en *yikh* pursued other means to enshrine protection of their territorial claims. In 1926, the British Columbian government introduced a trapline registry (Newby 1969). While the legal category of traplines in British Columbian law encoded only a very delimited sense of the territorial relationship Gitksan *wilp* and Witsuwit'en *yikh* maintained with their territories, Gitksan and Witsuwit'en people employed the trapline registry as a mechanism to achieve a degree of recognition of their relationships to their land. In registering their *lax'yip* and *yin tah* as traplines, Gitksan *wilp* and Witsuwit'en *yikh* did not abandon their own systems of understanding their relationships to their territories, but rather layered their traditional understandings of territorial rights and responsibilities onto the registered traplines. Complicated relationships developed between the trapline system and the traditional system of territorial holdings as the trapline registry did not exactly overlap with the *lax'yip* and *yin tah*. The traplines often failed to follow the boundaries of the Gitksan *lax'yip* and Witsuwit'en *yin tah*. Moreover, as the trapline registry problematically operated on the basis of patrilineal inheritance rather than the matrilineality of the Gitksan and Witsuwit'en, the trapline system had a disruptive effect on how Gitksan *wilp* and Witsuwit'en *yikh* transferred their territories to future generations.

Thus, through decades of colonial policy, the conflict of laws between Indigenous and colonial legal orders had been sublated into new registers.²⁹ While initially the Gitksan sought to resist the imposition of a new geography on their *lax'yip*, the unequal relations of force developing between colonial authorities and the Gitksan and Witsuwit'en people increasingly rendered direct resistance futile, as evidenced by the repeated incarcerations of Gitksan *hla ga kaaxhl simoogit* who sought to defend their lands. Colonial authorities

used information on Gitksan and Witsuwit'en and other Indigenous traditions to target disciplinary programs aimed at the elimination of Indigenous political formations. The Gitksan and Witsuwit'en people, however, did not meekly disappear. Rather they adopted new strategies to negotiate the continuation of their traditions through the gaps in the net of colonial discipline.

A New Colonial Governmentality and the Rebirth of Indigenous Politics

The first century of colonial policy had brutally advanced a campaign dispossessing Indigenous peoples of their lands to serve the interests of settlement and development. Through this period, Indigenous people were included in Canadian law as subjects under suspension, people unable to access rights. However, in the 1950s, government policy began to shift, moving toward increased integration of Indigenous people as rights-bearing subjects in Canadian society. Prescriptive disciplinary controls, which centripetally pulled Indigenous people within the sway of regimes of micro-management, were deemed inefficient and increasingly the government aimed now to open Indigenous life to the centrifugal pulls of fuller participation in society. In 1969, the federal government boldly proposed the abolishment of any recognition of a distinct Indigenous political status in Canada. However, in the tumultuous political climate of the 1970s, Indigenous people did not simply integrate into new regimes of power-knowledge governing Indigenous subjects as equivalent to white colonial subjects. Rather through political struggle they asserted their political position as different, and in so doing used the extension of political rights to Indigenous people as members of the Canadian body politic to contest the configuration of Canadian politics. Interjecting Indigenous political projects into the assemblage of Canadian politics, Indigenous peoples began to radically reorient the regimes governing political life in Canada.

Beginning in the 1950s, the Canadian state shifted its legal orientation from constituting Indigeneity as an exception suspended from participation in the sphere of Canadian political and economic life towards the integration Indigenous people as

Canadian citizens. This reorientation, while offering to ameliorate some of the grossest discriminations, sought to extend the suspension of Indigenous polities as distinct entities through normalizing the disavowal of Indigenous difference. In 1949, the possibility that Indigenous peoples could challenge Canadian law through appeal to the Judicial Committee in Britain ended as the Supreme Court of Canada formally became the court of last resort. In 1951, the Canadian government repealed the ban on the potlatch and the pursuit of Indigenous land claims. Historically, enfranchised Indigenous people were required to give up Indian status, and access to rights under the *Indian Act*, to be considered Canadian citizens under the law. However, in 1960 the government extended the franchise to Registered Indians (Cairns 2000, 20). These changes prefigured the 1969 White Paper, a policy proposal to eliminate the legal distinction between Indian peoples and other Canadians (Cairns 2000, 51–53). The assimilationist White Paper sought to instill a common citizenship based on an historical amnesia that foreclosed consideration of how Canadian sovereignty was founded upon the suppression of Indigenous polities. Prime Minister Pierre Elliott Trudeau (quoted in Cairns 2000, 52) argued, a people must forget many things, and “not try to undo ... the past.” Attempting to completely efface Indigenous polities and project Canada as a singular and unified people, Trudeau rejected the historical and contemporary relevance of treaties with Indigenous peoples. “It’s inconceivable,” Trudeau (quoted in Francis 1992, 217) stated, “that in a given society one section of the society have a treaty with the other section of the society.”

When the federal government introduced the White Paper in 1969, they intended to radically reform Canadian Indian policy. The document, officially titled *Statement of the Government of Canada on Indian Policy*, proposed the repeal of the *Indian Act*, the elimination of legal recognition of the category Indian, the dissolution of the Department of Indian Affairs, the transfer of responsibility for Indigenous peoples to the provincial government, and the termination of Indigenous treaty rights. Merging a long-standing official commitment to assimilation with the principles of de-segregation as a blueprint for

reform, the policy proposal aimed to terminate the federal regime of Indian tutelage and use economic development strategies to improve Indigenous well-being.

As Alan Cairns (2000, 51–61) documents, while it is now orthodox to view the White Paper as one of the more odious episodes in the history of Canadian Indian policy, the proposal resonated with progressive liberal thinking in that period. Indeed, the policy was set within the liberal vision of a just society that Prime Minister Pierre Trudeau had consistently evoked since the 1968 Liberal Party leadership contest. The White Paper explicitly framed the issue of the abolition of Indian status as an issue of justice: “Canada cannot seek the just society and keep discriminatory legislation on its statute books” (Canada 1969, 11). Particularly, the policy problematized how people racialized as Indians were rendered dependent wards of the state and restricted in terms of their participation in the economy. “To be an Indian is to lack power—the power to act as owner of your lands, the power to spend your own money and, too often, the power to change your own condition” (Canada 1969, 2).

The White Paper was undergirded by a dual impulse to improve the conditions of Indian life and simultaneously reduce the financial costs of administering the Indian Affairs system (Makka and Fleras 2005, 189). The policy itself constructed an assimilationist strategy through problematizing the poverty and segregation of the Indian population: “Many Indians, both in isolated communities and in cities, suffer from poverty. The discrimination which affects the poor, Indian and non-Indian alike, when compounded with a legal status that sets the Indian apart, provides dangerously fertile ground for social and cultural discrimination” (Canada 1969, 4). Indigenous geographies, both on reserve and in urban inner cities, were defined by their conditions of deprivation, and the maintenance of a system of racial segregation was an increasing embarrassment to the Canadian government as black civil right struggles in the United States disrupted the normative acceptability of explicitly legislated systems of racial inequality.

However, the federal government also had concerns about the costs associated with administrative structure of Indian Affairs. Recognizing the “rapid increase in the Indian

population,” heightened expectations for services as “health and education levels have improved,” and emergence of a “forceful and articulate Indian leadership ... express[ing] the aspirations and needs of the Indian community,” the government argued that “the structure of separate treatment” could not accommodate Indian demands (Canada 1969, 4). Faced with these serious challenges to the penurious funding to Indian bands, the federal government suggested that it was time to provide Indian people with the opportunity to “realize an immense human and cultural potential that will enhance their own wellbeing” (Canada 1969, 4).

Through the White Paper, the government proposed six principal changes. The government aimed to: first, remove “the legislative and constitutional bases of discrimination,” repealing the *Indian Act*; second, integrate Indigenous people into the multicultural fabric of the Canadian nation through recognition “of the unique contribution of Indian culture to Canadian life;” third, transfer administration of services to Indians to the provinces, so “that services come through the same channels and from the same government agencies for all Canadians;” fourth, target the problem of inequity, making “substantial funds available for Indian economic development as an interim measure” and ensuring “that those who are furthest behind be helped most;” fifth, uphold legal obligations to Indigenous peoples, appointing a Commissioner “to consult with the Indians and to study and recommend acceptable procedures for the adjudication of claims;” and sixth, to transfer to Indian people control of Indian lands, culminating in their integration into the system of fee simple land holdings (Canada 1969, 7–8).

In shifting away from administering the conditions of Indigenous life as distinct and overseeing services on reserve, and initiating a series of economic development programs designed to address Indian poverty through providing opportunities to enhance Indigenous people’s involvement in the economy, the government here indicated a broad orientation to reworking the apparatuses of colonial power. While Indian policy in Canada historically relied on the sovereign authority to limit Indigenous participation in the Canadian community and disciplinary apparatuses to try to remake Indigenous

subjectivities, the White Paper signaled a significant reorientation of colonial power. Officially, the rationale of the reserve system had been to establish a regime of tutelage to instill the norms of white society into people the government racialized as Indian; however, the government recognized that this system had been ineffective and was becoming increasingly expensive. Through the Department of Indian Affairs, Ottawa had sought to enclose Indigeneity within the space of reserves. But the administration of reserves was never adequately funded, and reserves in practice operated more as sites concentrating deprivation than geographies of improvement. Rather than trying to control every action within a micropolitics of disciplinary control, in the White Paper the government signaled its reorientation to addressing the Indian problem through rendering Indian people responsible for maintaining their own well-being. This shifting emphasis reflected a move from the model of power Foucault described working on the human body in disciplinary institutions towards governmental regimes targeting the population through regulatory controls.

The Government believes that its policies must lead to the full, free and nondiscriminatory participation of the Indian people in Canadian society. Such a goal requires a break with the past. It requires that the Indian people's role of dependence be replaced by a role of equal status, opportunity and responsibility, a role they can share with all other Canadians. (Canada 1969, 3)

The White Paper aimed to reorganize the spatiality of Indian reserves, lifting their legislative and administrative enclosure and opening them to greater economic circuits. This marked a significant shift from a policy and legislative framework that sought to contain and discipline Indigenous bodies, to a centrifugal orientation, enabling the development of ever-wider circuits of relation.

The White Paper badly miscalculated Indigenous aspirations. Indian leaders quickly denounced the proposal as a form of cultural genocide, as an abandonment of the responsibilities of the colonial sovereign vis-à-vis Indigenous peoples, and as a callous effort to cut costs. The Indian Chiefs of Alberta (2011 [1970]) particularly led the reaction,

issuing a blunt response to its assumptions and arguments. They challenged Trudeau's conception of Indigenous peoples as citizens, arguing that they were a distinct category of people within Canada with special rights: citizens plus. Another exemplary response came from Harold Cardinal, the Cree president of the Indian Chiefs of Alberta, who in his book, *The Unjust Society*, sarcastically dissected the White Paper and the framework of Indian policy that lay beneath it.

The new Indian policy promulgated by Prime Minister Pierre Elliott Trudeau's government ... is a thinly disguised program of extermination through assimilation. For the Indian to survive, says the government in effect, he must become a good little brown white man. The Americans to the south of us used to have a saying 'the only good Indian is a dead Indian.' The Canadian government says, 'The only good Indian is a non-Indian.' (Cardinal 1969, 1)

Rather than simply trusting government, Indigenous people asserted that government needed to listen to Indigenous people. Instead of government shaping the meaning of contemporary Indigenous subjectivity, contemporary Indigenous subjects intended on shaping the meaning of government.

In the process of fighting the White Paper, Indigenous peoples became increasingly politicized, working to effectively challenge the federal government (Weaver 1981). The White Paper was shelved and a national Indigenous movement was born of a shared struggle with colonial authority. This struggle, however, did not simply unify diverse Indigenous peoples into a singular collective. As Patricia Wood discusses in relation to Italian-Canadian identity, "nationalism's success is the ability to convince people to use the same word—for instance, 'American'—to describe widely different experiences and perspectives which are determined more locally than nationally" (Wood 2002, 10). Pan-Indigenism, as a multi-national Indigenous liberatory struggle against a colonial power, exemplified the dynamic which emerges through local performances in which people imagine themselves to be articulating elements of a shared struggles. Such imaginations necessarily imbricate with the production of particular texts and events, which continue to

be circulated and translated between localities as part of the process reproducing the dynamic imagination of a larger collective struggle. The White Paper provided stimulus to Indian politicization and organization. As Courtney Jung (2008) argues in relation to Indigenous politics in Mexico, Indigenous political identities develop not simply on the basis of an inherent condition of Nativeness; rather Indigenous movements represent an emergent political achievement unfolding through Indigenous challenges to the lineage of state exclusions and selective inclusions that historically configured the conditions of possibility for Indigenous existence.

Resistance to the White Paper not only caused the federal government to shelve the policy proposal, it reconfigured Indigenous politics (Dyck 1991, 108-118). Indian bands allied, consolidating the authority of both national and provincial/territorial Indian organizations to lobby on their behalf. These organizations subsequently pressed for the devolution of control over disciplinary institutions, particularly schools, to Indian bands, and Indian control of economic development dollars. This resulted in increasing administrative authority for band governments over the operation of institutions and services on reserve, creating opportunities for the interpellation of Indigenous projects of subjectification within disciplinary apparatuses originally established as colonial enterprises.

Simultaneously the strategy of the newly minted pan-Indigenous leadership made Indian bands and newly established Indian development corporations crucial vehicles for the imbrication of Indigenous political projects and subjectivities with developing capitalist relations on Indigenous territories. Thus, the Indigenous movement in Canada not only resisted the simple erasure of Indigeneity (or Indianness) but it also created space for resilient local demands. However, in so doing it also began to craft designs for the reconciliation of Indigenous polities with colonial capitalism as a strategy for improving Indigenous well-being.

Simultaneous to the growing pan-Indigenous political movement, there was also an expansion of local Indigenous politics. After the 1951 removal of the ban on Indian land

claims activity in the *Indian Act*, the Nishga Tribal Council was established to continue the work of the Nishga Land Committee, which had historically sought to advance the case for recognition of Nisga'a title to their traditional lands in the early-twentieth-century (Tennant 1983, 120). Frank Calder led the Nishga Tribal Council from its founding in 1955 until 1974, and when the Nisga'a took their title claim to court in 1967 it was his name on the case. In the *Calder* case, the Nisga'a sought a declaration that their Aboriginal title to the lands they historically occupied on the Northwest Coast of British Columbia had never been extinguished. Reviewing the case in 1973, the Supreme Court of Canada provided partial recognition of Nisga'a title. The majority of the court recognized the validity of the concept of Aboriginal title at common law. The six justices that rendered substantive decisions in *Calder* agreed the Nisga'a possessed the rights they claimed in court prior to contact. However, the court split on the question of whether colonial legislation had extinguished Nisga'a title. Three justices ruled that Nisga'a title had not been extinguished by statute or treaty, three justices ruled that it had, and one justice ruled against the Nisga'a on a procedural technicality. Subsequent to the *Calder* decision, the Department of Indian Affairs and Northern Development released a 1973 *Statement on Claims of Indian and Inuit People*, indicating a willingness to negotiate comprehensive land claims with Indigenous peoples in Canada to resolve the uncertainty created by Indigenous claims.

Though the Nisga'a lost their case, the Supreme Court's ruling in *Calder* created legal uncertainty regarding the status of Aboriginal title, and thus troubled the territorial claims of the colonial sovereign. While subsequent to the *Calder* decision the federal government began to negotiate comprehensive lands claims with Indigenous peoples in Canada to resolve the uncertainty, the provincial government of British Columbia remained steadfast in opposing Indigenous land claims and resolute in their conviction that no precedent had been established by the split decision in *Calder*. The provincial government resolutely maintained that British Columbian legislation of general application had demonstrated a clear and plain intent to extinguish Indigenous land claims and provide an unfettered land title to settlers.

Indigenous resistance to the White Paper and the *Calder* case are significant as metonyms for broader assemblages that served to reorder the workings of colonial technologies of disciplinary, sovereign, and governmental power. The White Paper, initially designed as a proposal to suspend the system of tutelage aimed at disciplining Indian subjects on reserve, served to reconfigure the workings of Indian politics, both unifying pan-Indian alliances and creating the momentum for increased devolution of administration of Indian programming and services to Indian bands. The *Calder* case, in contrast, focused on forwarding the distinct claim of the Nisga'a people. This case, while not a clear victory, raised the spectre of Indigenous territorial claims and unsettled the presumption of unfettered sovereign jurisdiction on unceded Indigenous lands. The induction of Indigenous peoples not simply as an object that government policy worked upon but more fundamentally as participants in the constitution of governmental processes served to reconstitute the regimes of colonial knowledge and fetter the exercise of colonial power. Through these changes, colonial power underwent a profound shift towards the articulation of new technologies of reconciliation. Increasingly development came to stand as reconciliation, and conversely reconciliation as development.

Conclusion

I began this chapter with a discussion of the Gitksan and Witsuwit'en systems of governance that existed prior to colonization in the Northwest Interior. Examining how the complex jurisdiction worked in relation to the house and clan system, I sought to demonstrate the Indigenous formations of authority, territory, and subjectivity that preceded colonialism, and how they continually entangled with the exercise of colonial power. Numerous critics of colonialism have established the ways in which Indigenous resistance works as a limit to colonial authority; however, the focus of critical scholarship on colonial structures of knowledge inhibits recognition of the ways in which Indigenous strategies of resistance and response continually reshape the workings of colonial power. To understand the multiple trajectories of Indigenous strategies of political becoming, it is

necessary to register the distinct Indigenous political formations that precede the colonial encounter and continue to evolve through it. Moreover, it is necessary to recognize the ways in which Indigenous peoples appropriate and innovate upon colonial impositions in developing strategies for political becoming. I thus position an understanding of Indigenous politics in a complex weave of strategies that continue to reinterpret traditions into the present and appropriate colonial forms.

Further, I argue that colonial power must be understood as always already entangled with Indigenous forms of authority, territoriality, and subjectivity. This is evident in the fur trade. However, the knowledge collected through the fur trade and subsequent missionary work created the foundation for regimes of colonial sovereign power. Further, nascent regimes of disciplining and governing Indigenous people through the fur trade and missionary activity prefigured subsequent colonial regimes. Thus, there is no simple rupture between the mutualities of the fur trade and the violence of colonial dispossession. Indeed the knowledge accumulated through the fur trade constituted the basis for subsequent colonial strategies of containing Indigeneity.

The period of direct colonial rule extended the subjection of Indigenous people, particularly working to install colonial legal regimes. The conflict of laws between Indigenous and colonial legal orders sparked a series of pronounced confrontations in the early decades of the twentieth-century. The 1888 Skeena River Rebellion in particular resulted in the creation of a local Indian Agency to control the conditions of Indigenous life. Subsequently the Canadian government steadily increased the subjection of Indigenous people to disciplinary forms of power, suspending the possibility of Indigenous political claims outside the restrictive frames of the colonial state. While the Gitksan and Witsuwit'en people continued to conduct feasts in secret through this period, colonial authorities introduced new forms of Indian governance associated with the band system and the administration of the federal Department of Indian Affairs and Northern Development.

Mid-century, the Canadian government began to shift towards new policy frameworks for assimilation. Traditional policy frameworks centred disciplinary technologies acting on Indigenous people individually, enclosing and controlling Indigeneity to remake it in accordance with the norms of settler colonial society. Colonial policies separated Indigenous peoples from the broader economy to inculcate new dispositions. However, increasingly governmental strategies sought to more efficiently work upon the Indigenous population—still with assimilationist goals—, now articulating a multivalent and transformable framework for fostering Indigenous participation in Canadian society and particularly the market.

Contemporary Indigenous resurgence developed as the centrifugal pull of integration enabled the emergence of a tangled skein of traditional Indigenous political formations, and appropriated disciplinary institutions. Indigenous resistance to the proposed suspension of the imposed band governance system in 1969 announced the beginnings of a contemporary Indigenous resurgence. However, Indigenous access to the courts, through the liberalization of regimes constricting Indigenous activism, had created the basis for new Indigenous strategies of asserting claims to traditional territories. Contemporary Indigenous resurgence, drawing upon tradition but also appropriating colonial institutions, constructed new spaces of negotiation, and began to imbricate new Indigenous designs within governing colonial rationalities, technologies of power, and normed market subjectivities. However, as colonialism initially based its authority on the appropriation of Indigenous knowledge, contemporary engagements between Indigenous peoples and colonial power may serve to revivify rather than vitiate colonialism, relegitimizing its practices through reinventing regimes of power-knowledge in relation to Indigenous peoples.

CHAPTER 3

Renunciation to Reconciliation: The *Delgamuukw* Case

On 11 May 1987, the historic trial *Delgamuukw v. the Queen* began in the Smithers courthouse.³⁰ In the case, the Gitksan and Witsuwit'en hereditary chiefs presented a case for Gitksan and Witsuwit'en ownership of and jurisdiction over their traditional territories to the British Columbia Supreme Court, calling into question colonial presumptions about jurisdiction and title in the Northwest Interior. Through the case, the Gitksan and Witsuwit'en hereditary chiefs provided evidence on their distinct system of laws and sought to force the provincial government to recognize Indigenous forms of authority and territoriality. The case would become one of the most monumental not only in Canadian history, but also in the history of efforts to litigate against colonial regimes. At trial, the *Delgamuukw* case required 318 days to introduce the evidence and 56 days to argue. The trial record includes 23,503 pages of transcribed evidence at trial, 5,898 pages of transcribed oral argument, 3,039 pages of commission evidence, 2,553 pages of cross examination on affidavits, and approximately 9,200 exhibits comprising 50,000 pages, making the case one of the most extensive tried (*Delgamuukw v. British Columbia BCSC Reasons for Judgment* 1991, 2). From the filing of writ in 1984, through trial and subsequent appeals, legal proceedings would last beyond a decade before the Supreme Court of Canada in 1997 would issue a decision on the case.

In the *Delgamuukw* case, the Gitksan and Witsuwit'en plaintiffs departed from conventional approaches to Aboriginal rights litigation, centring the case not on Canadian legal doctrines and expert anthropological evidence but rather the expertise of Gitksan and Witsuwit'en hereditary chiefs on their legal orders. Two hereditary chiefs, Delgamuukw, on behalf of the Gitksan, and Gisdewe, on behalf of the Witsuwit'en—titles then respectively held by Ken Muldoe and Alfred Joseph—, collaborated to make the opening statements.³¹ Delgamuukw explained, "For us, the ownership of the territory is a marriage of the Chief

and the land. Each chief has an ancestor who encountered and acknowledged the life of the land. From such encounters come power. ... This is the basis of our law" (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 2 1987, 65). Gisdewe elaborated:

The Chief is responsible for ensuring that all the people in his House respect the spirit in the land and in all living things. When a Chief directs his House properly and the laws are followed, then that original power can be recreated. That is the source of the Chief's authority. ... That authority is what makes the Chiefs the real experts in this case. (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 2 1987, 65–66)³²

Placing Gitxsan and Witsuwit'en forms of authority and territory before the judge, the hereditary chiefs sought to pluralize the legal traditions operant within the Canadian courts. Rather than appealing to the codified colonial frames of Aboriginal rights, the hereditary chiefs strategically exposed Indigenous law to the reckoning of the Canadian judiciary. In this, they subjected Gitxsan and Witsuwit'en traditions to the disciplinary procedures and authorities governing Canadian courtroom procedure. But in presenting the court with the breadth of Gitxsan and Witsuwit'en law, the hereditary chiefs sought to subvert the presumed universal application of colonial courtroom procedure, consistently performing an Indigenous alterity that exceeded colonial frames.

As part of a strategy to surmount the continual denial of Indigenous territoriality and authority by the provincial government, the Gitxsan and Witsuwit'en hereditary chiefs submitted their claims to the decision-making authority of the Canadian judiciary. The case followed years of provincial government obstruction of Gitxsan and Witsuwit'en efforts to formalize recognition of their territorial claims in British Columbia in a contemporary treaty with the Canadian state. Appealing to the courts, as Medig'm Gyamk (Sterritt 1989, 1992) recounts, represented only one of a series of tactics deployed by the Gitxsan and Witsuwit'en people, who intended to continue their resistance to colonial disregard and dispossessions, enacting the hereditary chiefs' authority and defending their territories regardless of whether they found a sympathetic hearing at the Supreme Court of British Columbia. However, the particular modality of the Gitxsan and Witsuwit'en litigation

situated their claims within the domain of juridical authority—attempting to press recognition of Indigenous legal orders through a seeming disjuncture between historical recognition of Indigenous peoples in the fur trade and contemporary British Columbian practice of colonial disregard. The Gitksan and Witsuwit'en hereditary chiefs aimed to establish a productive relationship between juridical and Indigenous authorities, in which court recognition would foster new spaces of engagement between provincial authorities and Indigenous peoples. However, the strategy of litigation subjected Gitksan and Witsuwit'en claims to the potential violence of a disavowal by the colonial judiciary.

On 8 March 1991, Justice Allan McEachern, who presided over *Delgamuukw*, issued a decision that can aptly be described as violent. McEachern released a decision replete with racist calumny, suggesting Gitksan and Witsuwit'en claims to ownership and jurisdiction were displaced by the emergence a superior colonial society. Leslie Hall Pinder (1991, 3), a member of the plaintiffs' legal team, described McEachern's decision as "a brutal judgement." After a preliminary review of the judgment, Pinder (1991, 3) reported an urge to advise her Indigenous clients to: "Hide. ... Protect yourself." Journalists wrote of the "shock and dismay" of Gitksan and Witsuwit'en hereditary chiefs, with "tears in their eyes, some of them shaking with anger" as they learned of McEachern's decision (Hume and Simpson 1991, A1). The Gitksan and Witsuwit'en hereditary chiefs vowed to fight the decision through appeal as well as protest. Gitksan community organizer, Don Ryan (quoted in Hume and Simpson 1991, A1), told the media, "We will do anything we need to do to protect ourselves." Appeal to the British Columbia Court of Appeal softened the trial decision but did not unsettle its racist fundamentals.

A decade after the trial began, the Supreme Court of Canada issued its decision on the *Delgamuukw* case on 11 December 1997. The majority of the court overturned the lower court decisions and ordered a retrial on the basis of the mishandling of evidence at trial. Although the Justices of the Supreme Court of Canada retained and entrenched substantial elements of colonial thought in their reasoning, they nonetheless established important precedent requiring the government to consider Indigenous knowledge and

negotiate with Indigenous peoples. Particularly the court clarified that Indigenous traditions, such as the forms of oral history the Gitksan and Witsuwit'en hereditary chiefs brought into court, were a valid form of evidence in establishing proof of Aboriginal title. Further, while the court did not decide on the particular Gitksan and Witsuwit'en claim at issue, the Justices did recognize the existence of the concept of Aboriginal title at common law, delineating its basic characteristics as well as the components of a proof of a claim to it. Explicitly the decision also urged the Canadian and provincial governments to negotiate with Indigenous peoples regarding the unresolved question of land title in British Columbia. While the Supreme Court of Canada decision on *Delgamuukw* offered the Gitksan and Witsuwit'en hereditary chiefs no immediate remedy, it significantly contributed to the emergence of new regimes of engagement and new devices to reconcile the exercise of colonial power with Indigenous peoples and their interests (see, for instance, British Columbia Treaty Commission 1999).

There is now a voluminous literature on the *Delgamuukw* case and a thorough review of its full breadth is beyond the scope of this chapter. I instead target my intervention to three key debates regarding questions of evidence, authority, and reconciliation raised by *Delgamuukw*. Numerous commentators have effectively interrogated the *Delgamuukw* case in relation to the nature of knowledge, law, power, and justice.³³ I enter this admittedly well-trodden intellectual terrain to extend the conversation between legal scholarship and the geographical literature. Following in the lineage of legal geographies research focusing analysis of what Nicholas Blomley (1989, 526) refers to as “the law-space nexus,” I examine the relationships established between Indigenous peoples and colonial regimes through the *Delgamuukw* case.

I focus on the *Delgamuukw* court action, and the complex ways this case interlinked with and contributed to rearticulations of colonial disciplinary, sovereign, and governmental power. I focus on three elements of the *Delgamuukw* case, involving: first, evidence and courtroom procedure; second, judicial decision-making; third, the emergence of new regimes of recognition. Regarding the disciplinary regimes ordering conduct in

court, I suggest a complex relation in which not only did court disciplinary regimes act on Indigenous witnesses but the interpolation of Gitksan and Witsuwit'en evidence into the court had the effect of reordering the colonial regimes disciplining courtroom procedure. A similar complexity emerged in relation to sovereign power. Initially, Gitksan and Witsuwit'en hereditary chiefs' appeal to the courts appeared to consolidate colonial authority as the judges at the trial and appellant courts disavowed the legitimacy of Gitksan and Witsuwit'en positions. However, the Supreme Court of Canada's judgment in the case worked to encumber the exercise of Canadian and British Columbian government authority with obligations to Indigenous peoples. On this basis, I argue for the significance of the *Delgamuukw* case in terms of its regulatory effects, ultimately deferring sovereign judgment and calling into being new governmental regimes of recognition, of consultation and accommodation. *Delgamuukw* incited the development of colonial techniques of reconciliation in resource governance, which, as I will discuss in subsequent chapters, include not only formal treaty talks but also a range of initiatives extending from resource governance to education.

My analysis aims to elucidate the productive interactions between colonial law and Indigenous peoples. Rather than simply critiquing colonial presumptions or celebrating Indigenous traditions, I intervene to bring attention to bear on the productivity of their relation. My argument in this chapter can be distilled to the following: while the interaction between colonial and Indigenous legal orders presents elements of displacement as colonial authorities impose themselves over Indigenous peoples, Indigenous interventions into colonial law also serve to work at its fractures, disrupting and reforming the dominant colonial paradigm. This analysis serves to highlight the productive as well as oppressive character of relationship established between Indigeneity and colonialism in the courts. While sympathetic to critiques of the colonizing logic of juridical authority, I argue that the action of the colonial sovereign as authority determining the status of Indigeneity is an effect of the Gitksan and Witsuwit'en decision to submit claims to jurisdiction and ownership over their traditional territories to the Canadian court system. As Amar Bhatia

(2012) describes, Indigenous peoples struggled to access mechanisms of redress in international law as they are not states and were not recognized as sovereigns within the international community. With international avenues foreclosed to them, Indigenous peoples turned to domestic remedy. Attempting to secure recognition of their relations to particular lands, the Gitksan and Witsuwit'en hereditary chiefs choose to strategically recognize the jurisdictional and territorial claims of the state as capable of determining those of Indigenous peoples.

The relations between Indigeneity and colonialism established through the *Delgamuukw* case do not reflect decolonized states of being. The jurisdictional and territorial claim of the colonial authorities is not, however, a pre-given that simply operates to determine the status and disposition of people and lands within its stated dominion. An analysis of the interpolation of Indigenous claims into colonial courts demonstrates how Indigenous resistance works to reconfigure the relationship between colonial regimes and Indigenous peoples, even as the reinvention of relations between Indigenous peoples and settler society continues to revitalize and extend colonial power.

Developing this argument, this chapter is organized into three sections addressing questions related to evidentiary procedure, juridical decision-making, and the emergence of a doctrine of reconciliation. In the first section, I begin by examining the configuration of power and knowledge ordering courtroom practice, and particularly the admissibility of and weight accorded to Indigenous evidence. I explore how Gitksan and Witsuwit'en performances on the witness stand were disciplined according to the norms of courtroom practice, and conversely how the Gitksan and Witsuwit'en witnesses' strategic breach of the norms of evidence contributed to reordering the conventions of evidence to include recognition of Indigenous forms of knowledge. In the second section, I address the question of authority. I argue, while in bringing their case for ownership and jurisdiction before the courts the Gitksan and Witsuwit'en hereditary chiefs subjected their claims to the decision-making authority of the Canadian judiciary, the hereditary chiefs nonetheless raised fundamental questions as to who constituted the competent authority to make decisions

with respect to their traditional territories. Finally, I examine how the *Delgamuukw* case interlinked with the development of new regimes of recognition. Particularly focusing on the Supreme Court of Canada ruling in the case, I argue the effect of the *Delgamuukw* decision was not to settle the issue of competing colonial and Indigenous claims but instead to midwife the emergence of a proliferation of techniques to reconcile competing claims to territory and authority. In subsequent chapters, I will address two technologies of reconciliation—those associated with industrial education and traditional land use studies—, however, in this chapter I will first position the emergence of these reconciliation devices as an effect of Gitksan and Witsuwit'en legal activism.

On the Question of Evidence

I begin approaching the interaction of Indigeneity and colonialism in the courts through an analysis of the micro-political regimes disciplining evidentiary procedure. The tactical decision of the plaintiffs in *Delgamuukw* to lead not with the expertise of Western-trained academics but rather with the expertise of the Gitksan and Witsuwit'en authorities on their traditions raised significant questions regarding evidentiary norms. As a result of the incredible evidentiary complexity involved in the case, *Delgamuukw* would become one of the longest cases in Canadian history. In the trial, eighteen hereditary chiefs testified, and an additional ten Gitksan and Witsuwit'en community members, elders and experts in various aspects of their traditions, gave evidence. A further fifteen witnesses provided evidence on commission, and fifty-three Gitksan and Witsuwit'en community members provided territorial affidavits, thirty of which were subject to cross-examination (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 729). I was in elementary school when the case originally went to trial, but the 369 volumes of trial transcripts, as well as *voir dire* decisions related to the admissibility of evidence, and final decisions on the *Delgamuukw* case penned Justices of the trial, appellate court, and Supreme Court of Canada, provide a rich record for inquiry.³⁴ The trial transcripts, commission evidence, and territorial affidavits present a rich record of continuing Gitksan

and Witsuwit'en traditions of territorial governance. But the various judgments related to the case also demonstrate how colonial practices of elision and enframing work to contain Indigenous traditions as a pre-historic object, a vanishing remainder of pre-contact Indigenous authenticity.

Approaching these texts, I argue they bear the trace of both colonial discipline and an Indigenous alterity that both challenged and incited reformulations in colonial disciplinary regimes. In making their claims within the context of the court, the hereditary chiefs both submitted themselves to the forms of power-knowledge that organized courtroom practice and challenged the norms governing these processes through systematically breaching their conventions. As described by Herb George, who holds the Witsuwit'en title Sats'an, the Gitksan and Witsuwit'en entered what they recognized as a rigged game with the intent of changing the rules.³⁵ Describing the decision to go to court, he writes, "we chose ... to challenge the whole bloody game, to say that this game is wrong. ... This is a fixed game. We want to see a change" (George 1992, 55). In going to court, the Gitksan and Witsuwit'en hereditary chiefs exposed the judge to their traditions, challenging him to recognize the depth of their knowledge. While Justice McEachern allowed Gitksan and Witsuwit'en hereditary chiefs considerable breadth at trial, in weighing the value of their evidence he used the Gitksan and Witsuwit'en witnesses' failure to accord with the Canadian judicial conventions of evidentiary behaviour to rationalize dismissing the value of this evidence. The trial decision was upheld at the appellate court, but overturned at the Supreme Court of Canada. The Justices of the Supreme Court of Canada declared the trial judge's treatment of evidence critically flawed his decision, necessitating a retrial. This judgment established precedence for considering Indigenous knowledge (and according it weight in decision-making), redefining the evidentiary frameworks governing court procedure. Thus, although the initial reception of Gitksan and Witsuwit'en performances highlighted the relationships of discipline operant on subaltern peoples in the courts, Gitksan and Witsuwit'en manifestations were not simply ordered by court discipline but also served to present challenges that reordered disciplinary regimes and created

expanded space for performing Indigenous difference within the courts.

The question of oral histories as a form of evidence has been central to numerous commentaries on the *Delgamuukw* case. In the wake of the trial decision, critics wrote extensive denunciations of Justice's McEachern's handling of evidence, particularly taking issue with the way he privileged written history as objective while dismissing anthropology as biased and Indigenous oral history as unreliable (Asch 1992; Cruikshank 1992; Culhane 1992, 1998; Fisher 1992b; McLeod 1992; Miller 1992b; Ridington 1992; Sherrott 1992; Waldram, Berringer, and Warry 1992; Asch and Bell 1993; Fortune 1993; Sparke 1998, 2008).³⁶ The release of the Supreme Court of Canada's decision on *Delgamuukw*, recognizing the validity of Indigenous oral history as form of evidence in the courts, reframed the overwhelmingly critical early discussion of *Delgamuukw*. Writers, such as John Ralston Saul (2008), have celebrated how the Supreme Court of Canada's *Delgamuukw* decision has opened Canadians to a full account of history through extending recognition to Indigenous oral histories. However, a number of salient critiques have highlighted how the courts still struggle to accord evidentiary weight to Indigenous oral histories (Borrows 2001; Napoleon 2005; Miller 2011). In this section, I want to build upon this critical scholarship, specifically addressing the geographies of discipline governing courtroom performances. I particularly build on Mathew Sparke's (2008, 27) argument that through the *Delgamuukw* trial "radically resistant courtroom performances were simply policed and cordoned off with bold disrespect," supplementing recognition of how the interpolation of Indigenous voices into the courtroom was not simply disciplined but also served to reorder regimes governing evidentiary procedure.

At trial, Gitksan and Witsuwit'en witnesses testified to the complexity of their social order and the elaborate practices involved in maintaining and reaffirming the connection between a house and its territories. Rather than casting their existence within the bureaucratic frames of colonial legislation, the Gitksan and Witsuwit'en witnesses focused on the enduring traditional organization of their society into houses. As the witnesses described, Gitksan and Witsuwit'en children are born into a house and clan by virtue of

conventions of matrilineal descent. Each house, led by a hereditary chief, traditionally held title to their own distinct territories within Gitxsan and Witsuwit'en society (Cove 1982; Mills 1994b; Sterritt et al. 1998; Overstall 2005; Daly 2005; Mills 2008). The public demonstration of possession of particular histories, the display of specific crests, and enactment of unique performances linked to a particular identity signified a claim to a particular territory. Following the conventions of Gitxsan and Witsuwit'en law, house members only spoke about the conduct of his or her own house and clan business, and the account of Gitxsan and Witsuwit'en culture accrued through an accumulation of fragments from a range of witnesses. The evidence of the Gitxsan and Witsuwit'en witnesses presented the court with a number of difficult questions regarding: how the court would approach knowledge emplaced within Indigenous epistemologies; and how knowledge of Indigenous systems of territoriality could be transliterated to fit within conventions familiar to colonial authorities.

As Matthew Sparke (1998, 2008) notes in his review of the spatialities of the *Delgamuukw* trial, the performances of the Gitxsan and Witsuwit'en witnesses in the court were enframed by the spatiality as the state. Mitchell (1988) articulated the concept of enframing to describe the colonial exhibitionary order that conjured up a supposedly neutral space of colonial statecraft through a set of disciplinary regimes. The dislocating effects of placing Gitxsan and Witsuwit'en performances within the court system were made abundantly clear when the judge decided to move the case to Vancouver six weeks into trial. The complexity but also radical difference of Gitxsan and Witsuwit'en evidence had created troubling issues for the court, and as the trial waded through these difficulties, McEachern decided that it would be more convenient to relocate the trial from the provincial north. The move displaced the trial from the community of Smithers, on a territorial holding claimed by the Witsuwit'en house of Wos, 1,200 kilometers south.³⁷ While this might have personally eased conditions on the judge, it was a terrible burden and strain on the Gitxsan and Witsuwit'en communities. As Sparke (1998, 271) describes, "The Chief Justice, working with a modern western concept of justice applying equally,

everywhere within the abstract space of the state, could easily argue that Vancouver would be a more convenient location for the trial.” The hereditary chiefs lacked the authority within the court to prevent this move. In making the move, the judge privileged his own convenience over the hardship that dislocating the trial hundreds of kilometres would have on the impoverished northern Indigenous communities. The move increased the cost of the trial, as Gitksan and Witsuwit’*en* witnesses had to travel a great distance from their community, but it also further isolated the court from the local networks of community support that had surrounded Gitksan and Witsuwit’*en* witnesses in the north. As Sparke (1998, 272) again ably articulates, the geographies orienting the courtroom evidenced a “geometry of power” that demonstrated how “the spatial order of the legal system tends to be mapped out in abstract state-space.” Thus, the desires and intentions of administrators of state law, such as McEachern, coordinated the operations of the legal system with little regard for the demands of the Gitksan and Witsuwit’*en* people seeking justice through that legal system.

However, the disciplinary workings of the power within the courtroom extended beyond the macro-geography related to the trial location to micro-geographies of court architecture and performance. An enclosed space, the court worked to individualize witnesses on the stand (Sparke 1998). The spatial compartmentalization of the court’s disciplinary apparatus isolated each witness. Further, the practices of antagonistic courtroom exchange did not accord well with the traditional forms of exposition and debate within the feast hall. The court was conducted in a foreign language for many of the eldest Gitksan and Witsuwit’*en* witnesses, and even for those familiar with the English language courtroom discourse relied upon an often-incomprehensible technical jargon for those untrained in the British legal tradition. Sparke (1998, 471) critiques this individualized geography as constructing “a very difficult space for the Gitksan and Wet’suwet’*en* people to enter into as collective nations.” While I concur that the court presented a difficult space for Gitksan and Witsuwit’*en* witnesses, I think the language of collective nations shifts emphasis from the particular forms of social and political

organization—the house group led by a hereditary chief—that the Gitksan and Witsuwit'en plaintiffs sought to have recognized in the courtroom. The courtroom was a difficult place not because the hereditary chiefs were a collective advancing their claims in an individualizing system but because the Gitksan and Witsuwit'en system that coordinated the authority of the hereditary chiefs was fragmented and reordered within the disciplinary system of the courtroom.³⁸

Similarly, the disciplinary apparatus governing courtroom procedure limited the extent to which Gitksan and Witsuwit'en traditions could be introduced into the court. The Gitksan evidence centred on the *adaawk*, the oral histories that contain the stories of a *wilp*, that define their relationship to their territories. As Pinder (1991, 5) describes, "It is their evidence, their proof, their case." When counsel for the plaintiffs directed Mary Johnson, Gitksan hereditary chief Antgulilibix, to perform a *limx'oooy* (dirge song) associated with her *adaawk* (oral history), McEachern complained.

Mr. Grant (Plaintiffs' Counsel): The song is part of the history, and I am asking the witness to sing the song as part of the history, because I think in the song itself, invokes the history of the—of the particular *adaawk* to which she is referring.

Justice McEachern: How long is it?

Grant: It's not very long, it's very short.

McEachern: Could it not be written out and asked if this is the wording? Really, we are on the verge of getting way off track here, Mr. Grant. Again, I don't want to be skeptical, but to have witnesses singing songs in court is in my respectful view not the proper way to approach this problem.

Grant: My Lord, Mr. Jackson will make a submission to you with respect –

McEachern: No, no, that isn't necessary. If this has to be done, if you say as counsel this has to be done, I'm going to listen to it. I just say, with respect, I've never heard it happen before, I never thought it necessary, and I don't think it necessary now. But I'll be glad to hear what the witness says if you say that this is what she has to do. It doesn't seem to me she has to sing it.

Grant: Well, My Lord, with respect, the song is – is what one may refer to as a death song. It's a song which itself invokes the history and the depth of the history of what she is telling. And as counsel, it is – it is my submission that it is necessary for you to appreciate –

McEachern: I have a tin ear, Mr. Grant, so it's not going to do any good to sing it to me.

(*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 11 1987, 670–671)

Antgulilibix sang her *limx'oooy* to the court. McEachern instructed that it would be unnecessary to have the translator conduct a line-by-line translation of the song, so Antgulilibix roughly translated it. The song related a story about two sisters who caught a grouse, and subsequently remembered their deceased brother and cried and sang a dirge for “the grouse [who] gave himself up to die for them to help them save their lives” (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 11 1987, 673). But while the plaintiffs’ counsel argued that the song as part of Antgulilibix’s *adaawk* served as a vital part of her history and claim to the territory, the judge disagreed.

It seems to me the fact of expressing their ownership or their claim to ownership through songs is a fact to be proven in the ordinary way. It is not necessary, in my view, and in a matter of this kind for that song to have been sung, and I think that I must say now that I—I think I ought not to have been exposed to it. I don't think it should happen again. If it is sought to be—to have that sort of evidence adduced in future, I will expect further and more detailed submissions, because I think I'm being imposed upon and I don't think that should happen in a trial like this. (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 11 1987, 673–674)

Thus, the judge policed courtroom performances. Although McEachern permitted a significant amount of oral history, including the recounting of various stories of seemingly fantastical creatures and events, his comments constructed an unwelcoming climate that discouraged the hereditary chiefs from presenting particular forms of evidence. Indeed Antgulilibix’s *limx'oooy* is notable in its variation from the norms of courtroom behaviour but also as it stands a particularly bold performance of Indigenous alterity before the court.

As trial proceeded, counsel for the plaintiffs worked to construct alternative processes to enable a more efficacious method of collecting evidence. Four weeks into the trial, McEachern complained to the plaintiffs' council that evidence was being adduced at "a less than a snail's pace," and he was having "terrible problems" with the nature of the evidence involved in the case (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 17 1987, 1096). To speed the collection of evidence and reduce the necessary court time, the plaintiffs made a series of proposals to amend the process of adducing evidence. First, rather than trying to comprehensively prove the territorial and jurisdictional claims of every house in the action, the plaintiffs focused on a representative subset of houses whose evidence would stand for the broader collective. Second, witnesses gave evidence on commission. Prior to trial evidence was collected by commission, in the presence of both counsel for the plaintiffs and the defense, from eight witnesses whom were deemed potentially unable to attend trial due to physical disability or illness. This process was expanded to reduce the amount of court time used in the case and particularly to expedite the lengthy delays associated with translating evidence from Indigenous languages to English. Third, the plaintiffs provided territorial evidence in a series of territorial affidavits, which the defense was subsequently given the opportunity to cross-examine. This commission evidence and territorial affidavits served to abridge the lengthy process of taking direct evidence on the territorial holdings on the stand.

Accepting evidence collected on commission enabled the judge to both abbreviate the trial time but also allowed him to bracket unsettling performances, such as evidence adduced through song, to the pages of commission evidence. Thus, although witnesses, such as Lilukhs (Emma Michell), Mikhlikhlek (Johnny David), Xhliimlaxha (Martha Brown), Lelt (Fred Johnson), and 'Niikyap (David Gunanoot), included songs as part of the evidence they provided for the *Delgamuukw* case, as these performances were made on commission their songs were effectively excluded from court.³⁹ Their evidence was only included in the *Delgamuukw* proceedings in the form of written transcripts. Further, as the transcripts of the commission evidence only recorded an account in translation, the songs

were largely quieted from the record. For instance, when Lilukhs sang the beaver song, the record simply reports “WITNESS SINGS SONG” (*Delgamuukw v. the Queen* BCSC Commission Evidence of Emma Michell vol. 5 1986, 5–158). Subsequently Peter Grant, counsel for the plaintiffs, asks for a translation of the song and the translator, George Holland, explains, “Courses are repeating. Watch him slap his tail as he swims and watch the bark flow from him. Basically what the song is about” (*Delgamuukw v. the Queen* BCSC Commission Evidence of Emma Michell vol. 5 1986, 5–158). The cadence and effect of the song thus dissolve into a few repeated lines. The court process, according to Pinder (1991, 11–12), amounted to a “sophisticated technology” through which lawyers “destroyed the stories ... cut the words, even our written words, away from the environment, and hold them up as pieces of meaning, hacked up pieces of meaning.”

Signalling his leanings on the inclusion of Gitksan and Witsuwit'en oral evidence in the courtroom, McEachern issued a preliminary declaration on the admissibility of historical evidence after six weeks of trial. Conventionally in court the Hearsay Rule delimited the extent to which witnesses could report the words and experiences of others. Indigenous oral history, which regularly relied upon the knowledge of previous generations who were not available for cross-examination, presented a challenge to the court. Counsel for the plaintiffs argued for a wider interpretation of evidentiary rules, arguing that a narrow interpretation of historical truth would prevent the plaintiffs from providing evidence on the origins of their crests and connections to their territories, which they suggested as the foundation of their legal claim. McEachern was at least initially willing to consider Indigenous oral history in a breach of the Hearsay Rule as there was no other way to access some of this evidence. While deferring final judgment on the weight of oral evidence, at this point he suggested he possessed an inclination to disregard oral evidence that presented an “anecdotal” character. “Historical facts sought to be adduced must be truly historical and not anecdotal” (*Delgamuukw v. The Queen* BCSC Preliminary Decision on Admissibility of Historical Evidence 1987, para 7). McEachern thus sought to create space for the considering the “truly historical” elements of oral histories while

discouraging the “anecdotal” or “mythological” aspects he associated with legends. McEachern admitted most of the evidence of the hereditary chiefs, leaving the determination of its value to the end of the trial. However, the issue remained contentious throughout the trial. In another chambers decision after two years at trial, McEachern reiterated a willingness to bend the Hearsay Rule, but in a statement that would prove portentous (*Delgamuukw v. British Columbia* BCSC Decision on Admissibility of Historical Documents and Opinion 1989, para 32) warned that he may disregard hearsay evidence “if it is contradicted, or if its value as evidence is destroyed or lessened either internally or by other admissible evidence, or by common sense.”

While McEachern allowed Gitxsan and Witsuwit’*en* witnesses to present evidence on their traditions, in his final reasons for judgment he accorded it little weight. Eliding the salience of Indigenous testimony to an understanding of how jurisdiction is enacted and knowledge is verified within Gitxsan and Witsuwit’*en* legal orders, McEachern remained skeptical of the reliability of subaltern epistemologies and their methods of encoding territorial knowledge. “Except in a very few cases, the totality of the evidence raises serious doubts about the reliability of the *adaawk* and *kungax* as evidence of detailed history, or land ownership, use or occupation” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 149). McEachern dismissed the reliability of Indigenous processes of witnessing oral histories.

The plaintiffs assert that references to their territory in their *adaawk* are powerful evidence establishing occupation and use of land over many, many years. The weight to be given to this kind of evidence depends, of course, upon its trustworthiness. The plaintiffs argue that *adaawk* or *kungax* are particularly trustworthy because of their antiquity and because they are authenticated by public statement and restatement. (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 148)

McEachern criticized the plaintiffs for espousing “a romantic view of their history, which leads them to believe their remote ancestors were always in specific parts of the territory, in perfect harmony with natural forces, actually doing what the plaintiffs

remember" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 121).

Distinguishing between what he considered fact and belief, between traditional practices and folklore, McEachern consistently disregarded evidence that he considered an article of myth or faith. McEachern argued that the Gitksan and Witsuwit'en were naïve people, possessing "an unwritten history which they believe is literally true both in its origins and in its details" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 121). Focusing on Antgulilibix, he criticized her not simply for singing, but for failing to disclose territorial knowledge through her songs. In his decision, McEachern suggests, in her testimony on her house, Antgulilibix's "spoke comprehensively about its legends" but lacked "a clear understanding of the boundaries of her House" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 146–147). As legends fell within McEachern's typology as mythology rather than fact, her evidence was dismissed as presenting no value.

With a notable distrust for any histories, which, "unfortunately, exist only in the memory of the plaintiffs," McEachern's approach to oral history was to discard it in all instances except those in which it either reflected an individual's personal experiences or could be substantiated by written records or scientific research (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 36).⁴⁰ Thus, McEachern finds, "many *adaawk* are of dubious value as detailed proof of specific events (or locations) which are believed to have occurred before contact. The same applies to the *kungax* of the Wet'suwet'en" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 152). In contrast, he suggests, "The scientific evidence, particularly the archaeological, linguistic and some historical evidence persuade me that aboriginal people have probably been present in parts of the territory, if not from time immemorial, at least for an uncertain, long time before the commencement of the historical period" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 200). Notably McEachern excluded ethnographic researchers as biased and unreliable, preferring the objectivist pretences of archaeologists, linguists, and historians (Culhane 1998).

There have been a number of exemplary critiques of McEachern's treatment of Gitksan and Witsuwit'en evidence. Julie Cruikshank (1992, 29), in an appropriately scathing indictment of the rationality of the judge, argues that his decision to "evaluate oral tradition as positivistic, literal evidence for 'history' is both ethnocentric and reductionist." Cruikshank argues that in failing to address Indigenous oral history on its own terms, the judge undermines the complex nature of the oral evidence the Gitksan and Witsuwit'en witnesses brought before the court. Dara Culhane (1998) expands this critique exposing the racist logic the judge has veiled beneath the language of cultural difference. She argues that McEachern could not recognize Indigenous histories as subject to Indigenous processes of validation because he fundamentally believed in the cultural inferiority of Indigenous peoples. In his worldview, McEachern had already determined that Indigenous systems were emotional, subjective, and irrational, and thus not worthy of equal weight in crafting his judgment. He complained, "I have heard much at this trial about beliefs, feelings, and justice. I must again say, as I endeavored to say during the trial, that Courts of law are frequently unable to respond to these subjective considerations" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 4). But, as Culhane argues, McEachern's decision was coloured by his own subjective ideological commitments.

Further, as Sparke (1998, 2008) noted, McEachern found the Gitksan and Witsuwit'en's attempt to transliterate their territories into a map insufficient. McEachern suggested the territorial evidence provided by the Gitksan and Witsuwit'en hereditary chiefs was incomplete and unreliable, particularly with regard to the internal boundaries. Following Sparke's (1998, 2008) eloquent examination of the possibilities and pitfalls of counter-cartography, the Witsuwit'en and Gitksan maps (Fig 2 and 3, respectively) simultaneously worked to visualize their territorial claims and subjected their claims to the territorial logic of the state. Mapping Indigenous territories rendered them vulnerable to evaluation within the standards of Western cartographic fixity. Thus, when the lines between territories presented a degree of liminality that did not meet Cartesian



Figure 3: Witsuwit'en House Territories

From Val Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (PhD Dissertation University of Victoria, 2009), p. 342.



Figure 4: Gitksan House Territories

From Val Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (PhD Dissertation University of Victoria, 2009), p. 342.

expectations of a territory, the territorial claims of the Gitksan and Witsuwit'en were impugned. Indeed, as he viewed the Gitksan and Witsuwit'en people as lacking possession of the technological sophistication to espouse a territorial logic, McEachern disputed the genesis of the territorial holdings, suggesting the overlap between registered traplines and claimed territories indicated that the system of territorial holdings was likely derived from "the arrival of European influences" rather than "indefinite, long use prior to European influences" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 739). Thus, McEachern dismissed Gitksan and Witsuwit'en territorial claims on the basis of the gap between traditional Indigenous methods of mapping territorial claims, using story and song as forms of territorial markers, and the calculated cartographic gaze of Western authority.

However, beyond the problematics of cartographic translation that Sparke so effectively highlighted, the issues at stake in the *Delgamuukw* case also centred on a set of legal and political problematics. In advancing their argument in *Delgamuukw*, the Gitksan and Witsuwit'en hereditary chiefs centred the case not on colonial imaginations of Indigenous geographies but the Gitksan and Witsuwit'en traditional system of territorial holdings. Thus, the hereditary chiefs advanced claims to a series of distinct bounded territories on behalf of their house groups. While the hereditary chiefs argued that the governance of their territories was organized through a broad network mediated through the institution of the feast, their claim to ownership was not a generic claim to all the entirety of claimed Gitksan and Witsuwit'en national territories, but rather an attempt to achieve recognition of a nuanced system of 133 house territorial holdings that constituted the fabric of the Gitksan and Witsuwit'en broader territorial claim. The perceived failure to prove the internal boundaries of their house territories impaired the ability of counsel for the Gitksan and Witsuwit'en to effectively argue for a collective claim to national Gitksan and Witsuwit'en territories.

Refusing the validity of their territorial claims, McEachern ruled against the Gitksan and Witsuwit'en hereditary chiefs' claim to ownership of and jurisdiction over their

traditional territories.⁴¹ McEachern, in his decision, thus sought to mete out settler justice enframing Indigenous voices through disciplinary proceedings then eliding them almost entirely in rendering a decision. The appellate court, while softening the language from McEachern's often-inflammatory tone, supported McEachern's findings. At the court of appeal counsel for the Gitksan and Witsuwit'en hereditary chiefs argued that in failing to give effect to the Gitksan and Witsuwit'en evidence McEachern had erred in his findings of fact. The lawyers for the province took the position that the trial judge had not erred in his conclusions regarding the value of oral histories. Writing for the majority, Justice Macfarlane determined that while the appellate court recognized "there are areas of the evidence, when viewed in isolation from the rest of the evidence, that cause concern," reversing the trial judge's decision would "necessitate a re-evaluation of the evidence" (*Delgamuukw v. British Columbia* BCCA Decision 1993, para 122). On the basis of "the immense volume of evidence," the majority in the court of appeal found that "it would be inappropriate (if not dangerous) for this court to intervene and substitute its opinions for those of the trial judge" (*Delgamuukw v. British Columbia* BCCA Decision 1993, para 124).

However, the Gitksan and Witsuwit'en evidence adduced in *Delgamuukw* was not simply subject to colonial discipline but presented the judicial system with a challenge to colonial evidentiary standards. The contrapuntal voice of Indigenous tradition found a different resonance in different judicial bodies. In the 1980s and early 1990s, the British Columbian judiciary largely accorded with the conventions of provincial discursive frameworks that normalized the dispossession of Indigenous land in the absence of treaty. Antgulilibix's *limx'ooy* found an unwelcome audience in these courts. However, British Columbia had a particular and anomalous history in its relations with the regional Indigenous population. While treaties had been the norm in the other provinces, British Columbia eschewed treaty-making. As a result, the prevalent national and provincial discourses regarding Indigenous-state relations had a long history of discord (Harris 2002). On the national stage, Gitksan and Witsuwit'en songs effectively resonated with shifting federal policy frameworks aimed at increasing recognition of

Indigenous traditions.

In the Supreme Court of Canada, the Gitksan *adaawk* and Witsuwit'en *kungax* presented a productive challenge to extant evidentiary conventions, yielding the reformulation of evidentiary doctrine to explicitly include space for the performance of Indigenous traditions. In fact, on the basis of McEachern's mishandling of the evidence presented to him, the Supreme Court declared a retrial was necessary. In their judgment, the majority of the Supreme Court clearly established that McEachern was correct to admit the *adaawk* and *kungax* as exceptions to the Hearsay Rule, as there was no other way to access the unwritten histories of the Gitksan and Witsuwit'en. However, Justice Antonio Lamer, writing for the majority of the Supreme Court of Canada, criticizes how McEachern "went on to give these oral histories no independent weight at all" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 96). Despite the fact McEachern rhetorically framed "his ruling on weight in terms of the specific oral histories before him," Lamer suggests, the trial judge actually "based his decision on some general concerns with the use of oral histories as evidence in aboriginal rights cases" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 98). McEachern's reasons dismissed oral histories for their lack of historical accuracy and detail, as well as because they could not be confirmed due to the fact knowledge of the *adaawk* and *kungax* was confined to the Gitksan and Witsuwit'en communities whose histories they were. The Supreme Court of Canada, however, determined these characteristics were not case specific but rather general features of Indigenous oral histories. Extrapolating the effect of McEachern's logic, Lamer argued the result of generalizing McEachern's reasoning would be "that oral histories should never be given any independent weight and are only useful as confirmatory evidence in aboriginal rights litigation" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 98). In a ruling widely recognized in Canada and abroad as an important victory for activists and academics in struggles for Indigenous rights, the court overturned McEachern's decision on the basis that it would lead to Indigenous oral histories being systematically undervalued in the legal system.

The Supreme Court's decision with regard to evidence set important new precedents, recognizing the admissibility of Indigenous oral histories in the court and moreover the necessity of giving these histories weight in decisions. The court dismantled McEachern's reasoning with regard to dismissing the evidence tendered the Gitksan and Witsuwit'en community members. Thus, while the trial judge maintained the colonial regimes of power-knowledge that structured the disciplinary space of the courtroom, through the appeal process the Gitksan and Witsuwit'en were able to fundamentally change the procedures ordering courtroom evidentiary procedure. Returning to Sats'an (George 1992), while an analysis of the trial decision seemed to suggest that playing the game to change it was a hopelessly naïve exercise, an analysis of the Supreme Court decision actually elucidates how systematically breaching and challenging the rules can work to redefine them. Contra Sparke's (1998) skepticism, performances that insert a counter-discourse to that of the nation-state within dominant institutions are not simply controlled by micro-geographies of discipline. Rather as the relations of power are not fixed, the challenge of resistance can actually restructure the rationalities of power. However, if Indigenous interventions within the courts can challenge the system in certain ways, it must be noted that such interventions also work to consolidate colonial power in other ways.

On the Question of Jurisdiction

In bringing their case for ownership and jurisdiction before the Canadian judiciary, the Gitksan and Witsuwit'en hereditary chiefs raised not only issues relating to evidentiary procedure but also fundamental questions regarding who constituted the competent authority to make decisions with respect to their traditional territories. The Gitksan and Witsuwit'en hereditary chiefs strategically entered the Canadian courts to assert Indigenous jurisdiction, initiating a complex play between Indigenous and colonial forms of authority. Through this action, the Gitksan and Witsuwit'en asked the court to recognize forms of Indigenous authority that, at least in part, offset the colonial sovereign authority

that the court itself performed in rendering decisions. The hereditary chiefs hoped, in presenting their legal orders within the Canadian courts, they could effectively work at the fissures of colonial discourse to achieve recognition of Indigenous forms of authority and territoriality. Indigeneity was always already included within colonial law, in bringing their legal traditions before the courts Gitksan and Witsuwit'en hereditary chiefs aimed to more fully incorporate their legal orders within the colonial state, and thereby reorient the workings of colonial authority to respect Gitksan and Witsuwit'en forms of territoriality and jurisdiction. However, in presenting themselves to colonial law, the Gitksan and Witsuwit'en hereditary chiefs provisionally subjected their claims to colonial forms of authority and decision-making and in that gesture recognized and consolidated colonial forms of sovereign authority.

The jurisdictional claim of the state over a territory is not a pre-given that simply operates to determine the status and disposition of people and lands. Sovereignty and territory remain provisional accomplishments established through relations of power that are themselves productive of particular subjectivities. Sovereignty is thus co-produced as a part of a network concatenated with the subjects and lands which it ostensibly rules. As Indigenous subjects interpellate themselves, asking colonial authorities for recognition, they necessarily establish relationships with colonial sovereignty. Situating Indigenous territorial and jurisdictional claims under the aegis of colonial law served both to extend the jurisdiction of the colonial sovereign over Indigenous life, and to redefine the relationship between colonial authority and Indigenous being. In this section, I thus argue that advancing Indigenous territorial and jurisdictional claims through Canadian courts subjected Indigeneity to the decision-making authority of the colonial sovereign with its attendant possibilities of disavowal, but simultaneously challenged the terms configuring the relational status of Indigeneity and colonialism.

A number of pertinent analyses have examined the particular rationalities colonial judicial authorities advanced in their decisions with regard to the *Delgamuukw* case, and challenged the violent workings of colonial decisions to exclude and deny Indigenous legal

orders. Numerous scholars criticized the colonial doctrines of extinguishment operant in the trial decision in *Delgamuukw* (Cox 1992; Foster 1992; Walters 1992; Doyle-Bedwell 1993). The higher court decisions overturned the trial decision on extinguishment. However, as Borrows (1999) and Christie (2005) have adroitly demonstrated, the various courts have consistently maintained the colonial fiction that underlying title is the unique possession of the colonial sovereign. Borrows and Christie lament the failure of the court to substantially reckon with the Gitksan and Witsuwit'en claims to ownership and jurisdiction originally at issue in the case. Sympathetic to these critiques of the colonizing logic of juridical authority, I want to argue that legal decisions are not simply the product of judicial fiat but respond to the assemblage of issues, arguments, and actors presented to the court. The outcome of a trial is not simply the product of the judiciary but also the parties to the case and how they self-discipline their arguments. Thus, I approach judicial authority to decide not as pre-given but established through the presentation of particular issues and arguments to the court.

Conventionally, the character of sovereignty is delineated between general external characteristics, which define the nature of an independent political entity within the broader international community of sovereigns, and internal characteristics, which differ from entity to entity in accordance with their domestic constitutions (Marks 2003). In ideal form, a doctrine of mutual exclusion, in which no sovereign rightly interferes within the domain of any other without invitation, governs international relations. Of course, historically sovereignty was not the possession of every political community but rather reserved as the right of the few recognized members of the imperial and colonial family of nations to the exclusion of Indigenous peoples (Anghie 2004). Interveners, such as Brian Slattery (1991) and John Borrows (1992), have tackled the historical exclusions of sovereignty, making compelling cases for the universalization of international law to recognize the historical sovereignty of Indigenous peoples. However, the risk or difficulty with such a model of sovereignty is first that it muddies understanding of the particularities of the historical emergence of relations of colonial sovereignty as developed

through a series of constitutive exclusions to universalize imperial and colonial nation-states as the international subject of history. Second, approaching sovereignty as a relation between sovereign political entities within an international community neglects analysis of the sets of relations with subjects within a territory that configure the emergence of sovereignty. Third, conventional discussions too often take territory as a given category, evading the imbrication of processes of territorial consolidation with the production of colonial systems of power and subjectification.

Drawing inspiration from Michel Foucault (2003), I approach sovereignty not as a uniform possession but fractured relational form of power. As Christian Lund (2011, 886) describes, sovereignty can be effectively defined as “the quality of an institution being able to define and enforce collectively binding decisions on members of society.” This definition, in part, echoes key elements of Max Weber's (1946, 78) classic definition of a sovereign state as “a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.” However, it registers the multiple enactments and relations of sovereignty as a fragmented form of political power enacted by multiple institutions with overlapping geographic domains. Further, approaching sovereignty as a relational enactment enables analysis of the linkages between processes of state formation, territorialization, and subjectification. Sovereign power represents a relation in which particular authorized figures or institutions act to determine the political status of particular subjects or lands. Thus, reformulating a classical Weberian construction, sovereignty can be understood as a relational form of political authority, enacting and enforcing decisions within a territorial domain produced alongside that authority. This conceptualization, in part, resonates with the work of Giorgio Agamben (1998, 2005), who has argued the primary and definitional activity of the sovereign is to exclude or suspend the rights of people defined as threats to body politic, thereby enabling maintenance of law. However, Agamben's theorizing focuses on the purely negative aspect of sovereign power. It is necessary to register how sovereign power can be productive and generous, deciding not only to annul but also to recognize the rights of various subjects or collectivities.

Further sovereign power is deeply materialized in the ontological production of a territorial domain through which it operates.

Following Lund (2011), I pluralize or fracture sovereign action, recognizing the possibility of multiple authorities acting to render decisions in relation to the status of subjects or spaces. I approach sovereignty not as simply a unitary, coherent form of authority that bestows the ability to render decisions, but as something that emerges as an effect of the relations established through the actions initiated by the agents of sovereignty vis-à-vis the subjects of sovereignty (Mitchell 1991). While state formations and the claim of colonial political authorities have shown a remarkable durability, I suggest the endurance of the colonial sovereign derives not from its stasis or rigidity but from its dynamism and malleability. Sovereignty as an aspiration to universal authority is continually mobilized through the messiness of multiple, fragmented configurations of political authority that exercise overlapping claims to determine the status of various peoples and lands. Examining the relational enactment of sovereignty highlights the importance of analyzing the positioning of subjects and the configuration of geography in relation to institutional authorities. As Christian Lund (2011, 888) argues, struggles over “political subjectivity are as much about the scope and constitution of authority as about access to membership and resources.” Thus, as subjects aim to achieve recognition of particular elements of their subjectivity or relation to land from state institutions, they are subjecting themselves to its sovereign authority, appealing to or at least reckoning with sovereign authorities ability to interpellate their subjectivity. But as different forms of state recognition reconfigure the terrain of political subjectivity, conversely the assertions of claims to political subjectivity reorient the working of forms of sovereign authority.

In bringing their claims before the Canadian courts, the Gitxsan and Witsuwit'en hereditary chiefs attempted to insert their claims within the legal framework of Canadian sovereignty. As the trial judge, McEachern, describes, “In their pleadings and argument the plaintiffs admit that the underlying or radical or allodial title to the territory is in the Crown in Right of British Columbia. This reasonable admission was one which the plaintiffs

could not avoid. It sets the legal basis for any discussion of title” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 204). In appealing to the Canadian courts, the Gitksan and Witsuwit’*en* chiefs in effect recognized the authority of that court to render a decision on their claims. As the court grounded its authority on the underlying claim to title and jurisdiction of the colonial sovereign, the legal team of the Gitksan and Witsuwit’*en* hereditary chiefs ceded this point in the hopes that through recognizing the authority of the court, the court may also conversely recognize a place for Gitksan and Witsuwit’*en* legal orders within Canadian law. Engaging with the authorities of the Canadian judiciary, the Gitksan and Witsuwit’*en* hereditary chiefs sought to leverage judicial recognition to force the province to reckon with Gitksan and Witsuwit’*en* forms of authority and territoriality.

The Gitksan and Witsuwit’*en* legal strategy hinged on a historic argument (Gisday Wa and Delgam Uukw 1992). They sought to demonstrate, first, that at the point of contact, the Gitksan and Witsuwit’*en* people possessed their territories and the right to govern them in accordance with their own traditions as organized societies. Second, they asserted that the Gitksan and Witsuwit’*en* hereditary chiefs had never ceded their territories or authority. Third, they argued that both international law and British and subsequently Canadian law necessitated that the colonial sovereign reconcile its presence and practice on Gitksan and Witsuwit’*en* territories with the continuation of Gitksan and Witsuwit’*en* legal orders.

The Gitksan and Witsuwit’*en* case relied upon the authority of the hereditary chiefs to speak for their communities and nations. While there has been sustained commentary on the authority of Gitksan and Witsuwit’*en* authorities as witnesses in the courtroom, there has been limited discussion of the question of the hereditary chiefs authority or standing as plaintiffs before the court. This was a matter of some contention at trial. Geoff Plant, one of the members of counsel for the province in the case, particularly questioned the authority of the plaintiffs to speak for the entirety of the Gitksan and Witsuwit’*en* chiefs, and to speak for the broader Gitksan and Witsuwit’*en* membership of their houses (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 338 1990, 26515–26526). Plant

highlighted a number of inconsistencies in the Gitksan and Witsuwit'en evidence and pleadings at trial. He challenged the claim that hereditary chiefs could be said to be simply acting on behalf of their house members, as the evidence at trial actually adduced a much more complex relationship between house authorities and Gitksan and Witsuwit'en subjects who could claim rights within their legal orders not only as house members but as on the basis of connections through marriage and patriline.⁴² Plant also argued that the plaintiffs were not synonymous with the entirety of the hereditary chiefs, using a number of lines of argument to demonstrate the discontinuities between the population or plaintiffs and the community of hereditary authorities. He highlighted that the hereditary chiefs within Gitksan and Witsuwit'en legal orders were not absolute sovereigns but part of a network of authorities within a house group including the wing chiefs, or Gitksan *hla ga kaaxhl simoogit* and Witsuwit'en *hibi nidiztic*. Further, Plant argued that some Gitksan and Witsuwit'en chiefs had been excluded from the court action, particularly referencing the hereditary chiefs of Gitanyow. As the Gitksan and Witsuwit'en argument for jurisdiction hinged on consolidating the territorial authority of the hereditary chiefs into a collective national claim, Plant suggested the absence of part of the Gitksan nation from the litigation crucially impaired the claim of the plaintiffs. Further supporting his argument regarding the non-representativeness of the plaintiffs for the community of Gitksan and Witsuwit'en hereditary chiefs, Plant also noted the constant reorganization of the named plaintiffs through continual amendment of the Gitksan and Witsuwit'en Statement of Claim, including routine additions and subtractions in house numbers.

The fluidity in the organization of houses was evident at trial and in the trial judgment. As originally filed in the Writ of Summons by which the *Delgamuukw* action was commenced, there were 48 plaintiffs, each of whom was alleged to be the hereditary chief of a named house; however, by the beginning of trial the number of plaintiffs had increased to 54, of which 39 represented their house alone, while another 15 represented the members of their house alongside the members of another related house (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 3 1987, 146–147). In the judgment at the conclusion

of the trial, Justice McEachern lists 51 plaintiffs, including 41 who represent their house alone and 10 who represent their house alongside a second related house (*Delgamuukw v. British Columbia BCSC Reasons for Judgment 1991*, 852–856). However, if only to further underline the ambiguity and fluidity of house numbers, McEachern introduces just 48 plaintiffs, or “35 Gitksan and 13 Wet’suwet’en hereditary chiefs,” in his summary of his findings (*Delgamuukw v. British Columbia BCSC Reasons for Judgment 1991*, ix–x).

For a variety of reasons, such as the illness or death of a chief but also a protracted conflict over the succession of a name, the leadership of a house could be either incapacitated or vacant for periods. These circumstances necessitated either a sub-chief to act on behalf of the house (as happened in the case of Wigidimsts’ol, Dan Michell, who represented the house of Namoks when the title Namoks was vacant), or another related house chief to temporarily represent the house (this happened repeatedly, one example being Gguhlat, Lucy Namox, acting on behalf of the house of Simuyh).⁴³ Furthermore, Gitksan and Witsuwit’én houses were fluid, historically separating and amalgamating as issues related to resource access, population, and political differences required. Colonialism had initiated developments that denuded house territories, introduced diseases decimating Indigenous populations, and exacerbated political conflicts within the Gitksan and Witsuwit’én communities. But colonialism also offered new avenues to accrue wealth and thus maintain the vitality of a house irrespective of its population. Historically, house division and amalgamation related directly to the size of a house and its ability to maintain its responsibilities in the feast hall, repaying debts incurred to other houses through cycles of feasting. With new sources of wealth, the political economy of the feast altered (Overstall 2013).⁴⁴ All of these changes increased the flux of house alignments.

While the provincial lawyers raised various issues with the standing of the hereditary chiefs as representatives of their people, the trial judge accepted the standing of the hereditary chiefs in advancing the claim of their people. McEachern wrote in his judgment, “there is no reason why the named plaintiffs should not represent the Gitksan and Wet’suwet’en people on whose behalf this action has been brought” (*Delgamuukw v.*

British Columbia BCSC Reasons for Judgment 1991, 584–585). This generosity of this recognition of the authority of the hereditary chiefs as the representative authority for the Gitksan and Witsuwit'en people was undercut by the hostility of the trial judge to Gitksan and Witsuwit'en claims. But as subsequent decisions created increased space for negotiation, it was this aspect of the original trial decision, recognizing the authority of the hereditary chiefs as representatives of their people that created the foundation for subsequent negotiations between colonial authorities and the hereditary chiefs.

However, as Sparke (1998, 2008) notes, it was the historical arguments regarding the forms of recognition established through colonial legal discourse that most exercised the judge. The historical arguments advanced by legal counsel for the Gitksan and Witsuwit'en hereditary chiefs spanned centuries of colonial discourse. At one end of a historical chain, they rehashed the arguments of sixteenth-century Spanish jurists Bartolome de las Casas and Franciscus de Vitoria, who argued in favour of Indian rights and denied a colonial right of land possession on the basis of discovery. At the other, they relied upon the immediate precedent of the 1973 Supreme Court decision in the *Calder* case, in which the Supreme Court of Canada issued a split decision on the question of Nisga'a title.

Some of the most vigorous arguments between the province, on one hand, and the Gitksan and Witsuwit'en, on the other, focused on interpretation of the *Royal Proclamation of 1763*. Issued by King George III, the British Crown, shortly after the cession of New France, the *Royal Proclamation of 1763* established that Indian nations living under the asserted protection of the Crown had an exclusive right to any territories they possessed that had not been ceded to the Crown (Miller 2009). On the basis of this proclamation, a historic treaty process was established. Following the dictates of the *Royal Proclamation of 1763*, prior to expanding settlements on Indian lands, representatives of the Crown were intended to call an assembly of the Indian nation concerned and negotiate a price for land surrender. In the absence of such a treaty, the proclamation forbid colonial governments from granting Indian lands to settlers and required the removal of settlers who implanted themselves on unceded Indian lands. The legal team for the Gitksan and Witsuwit'en

argued that this historic proclamation established a framework necessitating treatying with Indigenous peoples in British Columbia for land (Gisday Wa and Delgam Uukw 1992). The province countered that British Columbia was uncharted territory in 1763, and as colonial authorities could not know of the lands in question, they could not intend to include Indigenous lands in that domain under the aegis of the proclamation.

Of course, the danger of the Gitksan and Witsuwit'en strategy in bringing their claim to court was that, in recognizing the authority of the Canadian court to decide the Gitksan and Witsuwit'en claim, they of necessity cast their claim into a regime of power-knowledge not of their making, a regime that was neither familiar with nor friendly to their traditions. While it was a tactical manoeuvre aimed at forcing the provincial government to recognize their competing claims, it was nonetheless a compromising gesture, subordinating their political claims to the decision-making of a colonial court. As Sats'an (George 1992, 54), wrote, "The criticism that we had to take was that we were entering a game in which we had no involvement whatsoever with the putting together of that game, the making up of the rules, in the appointment of referees and umpires." While the Gitksan and Witsuwit'en aimed to play the game to change it, the rules of the game remained aligned with their colonial lineage, and relied upon and reproduced colonial forms of power-knowledge, including the colonial framework of sovereign authority.

In his decision, the trial judge, McEachern, unequivocally voices his commitment to the underlying title and jurisdiction of the colonial sovereign.⁴⁵ On a foundation of colonial jurisprudence, McEachern dismisses the relevance of treaty making to the construction of Canadian sovereignty. He clearly declares that the colonial sovereign, upon asserting sovereignty, acquires underlying title to the soil.

In my view, it is part of the law of nations, which has become part of the common law, that discovery and occupation of the lands of this continent by European nations, or occupation and settlement, gave rise to a right of sovereignty. Such sovereignty in North America was established in part by Royal grant as with the Hudson's Bay Company in 1670; by conquest, as in Quebec in 1759; by treaty with other sovereign

nations, as with the United States settling the international border; by occupation, as in many parts of Canada, particularly the prairies and British Columbia; and partly by the exercise of sovereignty by the British Crown in British Columbia through the creation of Crown Colonies on Vancouver Island and the mainland (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 209).

While McEachern notes the criticism that “the Indians of this province were never conquered by force of arms, nor have they entered into treaties with the Crown that Indigenous peoples,” he dismisses this as an irrelevant point (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 209). He first argues, following the province’s submissions, that effective British sovereignty did not yet extend to British Columbia at the time of the *Royal Proclamation of 1763*. Second, he suggests that the *Royal Proclamation of 1763* should be read as a purposive instrument, directed at furthering mercantile policy in the period, not a general directive that extended beyond the reach of known lands. For McEachern, “The events of the last 200 years are far more significant than any military conquest or treaties would have been” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 209). It is on the basis of “actual dominion” rather than battle or treaty that McEachern determines that “ownership of the soil of all the lands of the province is not open to question” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 210).

McEachern invents rationales to dismiss the majority of the legal arguments that challenge this colonial logic, and recycles the tautologies of colonial jurisprudence. In his view, the law “never recognized that the settlement of new lands depended upon the consent of the Indians” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 652). Obviating any sovereign obligation to Indigenous peoples, McEachern suggests the colonial sovereign’s responsibility was to the progressive replacement of Indigenous territorialities with white settlement. He particularly employs the opinion of the Privy Council in the 1919 case *Re Southern Rhodesia* to rationalize this narrative of colonial progress. Glossing the case, *Re Southern Rhodesia* established that, while recognizing Natives’ law would necessitate getting permission prior to settlement, the fact that the

sovereign's aim was settlement, and the fact settlement occurred, indicated that the law of the colonial sovereign had replaced the Native legal order. McEachern argues the history of development on Gitksan and Witsuwit'en territories was analogous: "the aboriginal system, to the extent it constituted aboriginal jurisdiction of sovereignty, or ownership apart from occupation for residence and use, gave way to a new colonial form of government which the law recognizes to the exclusion of all other systems" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 626)

As the converse to the pronounced dominion of the colonial sovereign over its territory, McEachern denies that the Gitksan and Witsuwit'en societies possessed any of the attributes of a civilized nation.

it would not be accurate to assume that even pre-contact existence in the territory was in the least bit idyllic. The plaintiffs' ancestors had no written language, no horses or wheeled vehicles, slavery and starvation was not uncommon, wars with neighbouring peoples were common, and there is no doubt, to quote Hobbs [sic], that aboriginal life in the territory was, at best, 'nasty, brutish and short.' (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 21)

Representing the Gitksan and Witsuwit'en as primitive societies, McEachern argues that their land interest "at the time of British sovereignty, except for village sites, was nothing more than the right to live on and use the land for aboriginal purposes" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 631)

Post-contact, McEachern suggests the patterns of Indigenous life had been readily superseded by those of a superior white civilization. Thus, he reads the "present lifestyle of the great majority of the Gitksan and Wet'suwet'en people," living in villages with "minimal contact with individual territories" as a sign of their acquiescence to the arrival of white society (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 21). Further, McEachern uses the Gitksan and Witsuwit'en hereditary chiefs' appeal to the authority of the court as a sign of their submission to the underlying sovereignty of the colonial Crown. The hereditary chiefs recognition of the authority of

the Canadian court signals, for McEachern, not a tactical reckoning with state power, but the clear dominion of that authority. “The very fact that the plaintiffs recognize the underlying title of the Crown precludes them from denying the sovereignty that created such title” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 628). He further suggests that colonial sovereignty and jurisdiction, “as a matter of law,” prohibit the unilateral exercise of an “independent or separate status” for Indigenous peoples (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 628).

McEachern thus disregards the Gitksan and Witsuwit'en claim to ownership and jurisdiction, and suggests, “The real question is whether, within that constitutional framework, the plaintiffs have any aboriginal interests which the law recognizes as a burden upon the title of the Crown” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 210). On this question, McEachern makes no marked departure from the colonial logic undergirding his decision. He writes that “aboriginal rights, arising by operation of law, are non-proprietary rights of occupation for residence and aboriginal user [sic] which are extinguishable at the pleasure of the Sovereign” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 535). Existing at the “pleasure of the Crown,” McEachern suggests, aboriginal rights “may be extinguished whenever the intention of the Crown to do so is clear and plain” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, xi). As the pre-Confederation colonial enactments intended to convey an unfettered land title to settlers, McEachern argues, these enactments exhibited “a clear and plain intention to extinguish aboriginal interests” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, xi).

McEachern, however, did retain limited recognition of particular forms of Aboriginal interest in very specific circumstances among the Gitksan and Witsuwit'en people. On the basis that claims to Aboriginal interests must be *sui generis*, of their own kind or unique, McEachern suggested such claims could be considered for “particular Indians in relation to specific territory in their historical, social, legal, and political context” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 581). He found that the Gitksan and

Witsuwit'en peoples had established some limited residual Aboriginal rights. First, McEachern found they had a right to "continued residence in their villages" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 649). Second, he recognized residual "non exclusive aboriginal sustenance and ceremonial rights" to land and resource use within a region of their claimed traditional territories (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 648). In what is presented as a magnanimous gesture, he first outlines two particularly parsimonious approaches to delineating the territorial extent of non-exclusive Aboriginal usage rights, then fixes what he admits to be a set of "arbitrary" lines determining what he considers the broader reasonable extent of Gitksan and Witsuwit'en traditional use areas (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 781–796). These "admittedly approximate" boundaries at points overlap with claimed territorial boundaries, but often shrink the claimed territorial extent of Gitksan and Witsuwit'en lands, and McEachern makes clear in creating his lines he does "not wish to be understood ... to be authenticating the internal [boundaries associated with house groups] or external boundaries [associated with the Gitksan and Witsuwit'en nations] in any way" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 796). Indeed, his entire judgment seems dedicated to ensuring that he is understood to not be authenticating the territorial or political claims of the Gitksan and Witsuwit'en in any way.

McEachern's judicial decision provides an exemplar of the violence that has often characterized the relation between colonial sovereign power and Indigenous peoples. Understood as a performative relation, McEachern enacted the sovereign power to deny, exclude, extinguish. While he argued that extinguishment occurred in the past, McEachern articulated the doctrine of extinguishment in the present through his acts of historical and legal interpretation. This contemporary enactment of colonial sovereign authority, as McEachern pointed out, followed the appearance of the Gitksan and Witsuwit'en hereditary chiefs before the Canadian courts. Responding the trial decision, Pinder, one of the lawyers who served as counsel for the plaintiffs, impugned the legal profession for its involvement

in the continual re-enactment of colonial exclusions. She characterized Canadian lawyers as “the civilized, well-healed, comfortable carriers of no,” thriving on a system designed to determine which “races die” (Pinder 1991, 12). However, other legal scholars criticized the prosecution of the case by counsel for the plaintiffs for attempting an overly bold argument for jurisdiction. In particular, Slattery (1992) critiqued the litigation strategy of the plaintiffs, suggesting their failure to effectively frame their arguments within the conventions of Canadian jurisprudence, and particularly the emergent doctrine of Aboriginal rights, ultimately damned the case. For Slattery, Indigenous peoples would best attempt to realize the possibilities inherent to the existing jurisprudence rather than adopt a radically new approach. But to an extent Slattery’s critique was overstated. Although counsel for the Gitksan and Witsuwit’én hereditary chiefs had not amended the original pleadings, through the trial counsel supplemented arguments for Aboriginal rights implicitly integrating this jurisprudence into their argument. Thus, effectively the argument at trial was for Gitksan and Witsuwit’én hereditary chiefs ownership and jurisdiction, and in the absence of a decision affirming these claims for Aboriginal rights. This implicit argument formed the basis of McEachern’s decision that while Gitksan and Witsuwit’én jurisdiction and territorial claims were extinguished, they retained residual Aboriginal rights.

Subsequent to the trial, counsel for the Gitksan and Witsuwit’én hereditary chiefs appealed the decision to the British Columbia Court of Appeal. At appeal, legal counsel for the plaintiffs reframed the original assertions of the Gitksan and Witsuwit’én hereditary chiefs to better fit the opportunities presented by Canadian jurisprudence.⁴⁶ Challenging the trial decision, legal counsel for the Gitksan and Witsuwit’én hereditary chiefs eschewed the language of ownership and jurisdiction for the concepts of Aboriginal title and self-government. Their appeal focused on five points. First, the lawyers for the Gitksan and Witsuwit’én hereditary chiefs argued the trial judge was wrong in holding that pre-Confederation enactments by the colony of British Columbia had extinguished the Aboriginal rights of the Gitksan and Witsuwit’én people. Second, they argued that the trial

judge erred in not finding that the Gitksan and Witsuwit'en had an unextinguished Aboriginal right to ownership, or at the very least proprietary land and resource interests, in the lands within the external boundary of the claimed Gitksan and Witsuwit'en lands. Third, they argued that McEachern should have found the Gitksan and Witsuwit'en hereditary chiefs continued to hold an unextinguished right to jurisdiction, or Aboriginal self-government, with respect to the lands and resources in their claimed territories, as well as the people who use and occupy it. Fourth, as already discussed, they challenged the way the judge ignored the evidence of the Gitksan and Witsuwit'en witnesses in rendering his judgment. Fifth, they argued that the trial judge's characterization of Aboriginal rights as *sui generis* rights limited to use and occupation was wrong.

The provincial lawyers also modified their stance at the British Columbia Court of Appeal. In a changing political climate, the province was now willing to meet the Gitksan and Witsuwit'en at the negotiations table, and no longer advanced an argument for the blanket extinguishment of Indigenous territorial and jurisdictional claims. They concurred with the Gitksan and Witsuwit'en legal team that McEachern erred in making a finding of blanket extinguishment on the basis of pre-Confederation enactments. However, they continued to argue against a Gitksan and Witsuwit'en right to ownership of, or proprietary interest in, their claimed lands and resources. They also argued that the Gitksan and Witsuwit'en hereditary chiefs did not have a right to jurisdiction or self-government in the way they had argued; the province suggested instead as Aboriginal peoples who historically governed themselves they may have residual rights to self-government subject to the laws of the Canadian and British Columbian governments. The province agreed with McEachern's factual findings and his weighing of the evidence from the trial. Finally, the provincial lawyers agreed Aboriginal rights were *sui generis*, but suggested the precise location, scope, content, and consequences of these Aboriginal rights was a matter for negotiation.

The appellate court upheld the trial judge's rejection of Gitksan and Witsuwit'en claims to ownership and jurisdiction in a 3-2 decision, although it did recognize Aboriginal

rights to use their territories for sustenance. Writing for the majority, Justice Macfarlane declared, “the trial judge properly applied correct legal principles in his consideration of the plaintiff’s claim to ownership” (*Delgamuukw v. British Columbia* BCCA Decision 1993, para 74). As John Borrows (1999, 542) critiqued, “the Court of Appeal left undisturbed McEachern C.J.’s finding that Aboriginal land rights were non-proprietary in nature and a burden on the Crown’s underlying interest.” Furthermore the Court of Appeal upheld the trial decision on Gitxsan and Witsuwit’en jurisdiction. Macfarlane wrote “when the Crown imposed English law on all the inhabitants of the colony and, in particular, when British Columbia entered Confederation, the Indians became subject to the legislative authorities in Canada and their laws” (*Delgamuukw v. British Columbia* BCCA Decision 1993, 171). Following the constitutionalization of Aboriginal rights in 1982, a number of cases had proceeded to the Supreme Court of Canada and established the existence of Aboriginal rights to hunt and fish. The Court of Appeal in *Delgamuukw* recognized the existence of Gitxsan and Witsuwit’en Aboriginal rights without specifically delineating what rights existed where. Instead, creating space for negotiation, the court deferred the question of delineating the specific content and geography of Aboriginal rights as matters for negotiation. Thus, the Court of Appeal largely upheld the trial court decision, modifying it principally in line with changes in the provincial stance on blanket extinguishment before 1871 and pressing for negotiation of Aboriginal rights.

Subsequent appeal to the Supreme Court of Canada, however, did change the legal landscape. The Supreme Court Justices overturned the original trial decision, recognizing a contemporary doctrine of Aboriginal title. The court, however, did not register a decision on the Gitxsan and Witsuwit’en claims to Aboriginal title due to defects in the format of the original pleadings, as well as the trial judge’s mishandling of the evidence. The judgment’s reversal of the lower court decisions has been much celebrated as a win for Indigenous peoples, as it opened much broader spaces of negotiation as I will discuss in the final section. However, the Supreme Court judgment also maintained constructions of colonial sovereign authority vis-à-vis Indigenous peoples that McEachern produced in his trial

decision. Thus, in spite the many laudatory discussions of the case, the Supreme Court decision maintained much of the conservative foundation of the earlier judgments. This is most evident, as John Borrows (1999) and Gordon Christie (2005) have critiqued, in the construction of underlying title as the unique possession of the colonial sovereign. Indigenous sovereignty is effaced in the Supreme Court decision. Further, the Supreme Court of Canada's conceptualization of Aboriginal title renders it a burden on the underlying title of the Crown, nullifying the extent to which Indigenous territorial claims presented competing land claims to those of the state. However, these defects of the judgment can to an extent be correlated to the defects of the Gitksan and Witsuwit'en legal strategy, which from the outset ceded sovereign authority to the colonial sovereign.

Arguments at the Supreme Court of Canada principally dealt with five questions. First, whether reorientations in Gitksan and Witsuwit'en pleadings, shifting from the language of ownership and jurisdiction to Aboriginal title and self-government at appeal unfairly prejudiced the defendants, who had constructed their defense in response original pleadings. Second, whether the factual findings of the trial judge were appropriate, or appropriately weighted the evidence. Third, what is the content of Aboriginal title, what protection is it entitled to, and how can a claim to Aboriginal title be proven before the court. Fourth, whether the Gitksan and Witsuwit'en had effectively made out a claim to self-government. Finally, fifth, whether the province, which now agreed no blanket extinguishment occurred prior to 1871, had the power to extinguish Aboriginal rights after 1871.

In answering these questions, the court established that a case for contemporary Aboriginal title could be made, but the original trial had too many defects to consider the case successfully made in *Delgamuukw*. The language of ownership and jurisdiction that the Gitksan and Witsuwit'en hereditary chiefs had sought to argue at trial was supplanted by the rather different (and as it turns out far more delimited concepts) of Aboriginal title and self-government at appeal. The Supreme Court of Canada allowed this as an idiosyncrasy of the original case, which it suggested had initially been argued at a period

when the concepts of Aboriginal law were not well developed in Canadian jurisprudence. More problematic for the court was the way that the hereditary chiefs had consolidated their claims at appeal not as a collection of individual holdings but as the collective claim of two distinct peoples. In their original case, the claimed external boundaries of the Gitksan and Witsuwit'en people were a product of the agglomeration of the series of distinct house territories. Thus, in the original argument they needed to prove the internal house boundaries in order to establish the national external boundaries. The trial judge found that the Gitksan and Witsuwit'en had failed to prove their internal boundaries. The Gitksan and Witsuwit'en had never appealed this element of the judgment, instead focusing on their collective claim as a unified whole at appeal. The Supreme Court found this to be a substantive change in the pleadings that, alongside the evidentiary problems already discussed, necessitated retrial.

To establish a standard for subsequent trials, the court then elaborated a doctrine of Aboriginal title. Writing on behalf of the majority, Justice Lamer depicted Aboriginal title generally as usufructuary, *sui generis*, and inalienable to third parties. Further, the court found that the *Royal Proclamation of 1763* did recognize Aboriginal title but did not create it. Similarly, Aboriginal title, as a species of Aboriginal right, was recognized and affirmed in the *Constitution Act of 1982*, and thereby provided constitutional protection. However, the origins of Aboriginal title lay not in colonial legislation or imperial decree but in Aboriginal peoples' prior occupation of the land. The *sui generis* nature of Aboriginal title reflected its status as a bridging concept, neither reflective of a right previously known within British common law or any Indigenous system of law, but flowing from the distinctive rules that bridged the gap between these legal systems. Thus, Aboriginal title was a concept of a communal right held by Indigenous peoples that enabled the codification of elements of Indigenous legal orders within Canadian jurisprudence. With Justice Lamer writing for the majority, the court specifically delineated two elements that defined the content of Aboriginal title:

first, that aboriginal title encompasses the right to exclusive use and occupation of the

land held pursuant to that title for a variety of purposes, which need not be aspects of those aboriginal practices, customs and traditions which are integral to distinctive aboriginal cultures; and second, that those protected uses must not be irreconcilable with the nature of the group's attachment to that land. (*Delgamuukw v. British Columbia* SCC Decision 1997, para 117)

Aboriginal title lands were recognized as rights to use lands for a variety of purposes, which could be dynamic but not so dynamic as to undermine the fundamental asserted connection of an Indigenous people and their land. Explicating this point Lamer describes how "if occupation is established with reference to the use of the land as a hunting ground, then the group that successfully claims aboriginal title to that land may not use it in such a fashion as to destroy its value for such a use (e.g., by strip mining it)" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 128).

But if the Supreme Court challenged some aspects of McEachern's ruling, they recycled others.⁴⁷ Particularly, through what Borrows (1999) refers to as sovereignty's alchemy, the court constructed Aboriginal title as a burden on the underlying title of the colonial sovereign. According to Lamer, "Because it does not make sense to speak of a burden on the underlying title before that title existed, aboriginal title crystallized at the time sovereignty was asserted" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 145). As Borrows (1999, 558) describes, through the magic of colonial sovereignty, Aboriginal possession of and jurisdiction over their lands "is ostensibly transformed, for use and occupation are found to be extinguished, infringed, or made subject to another's designs." Through the mere assertion that Aboriginal title is a burden on the underlying title of the colonial sovereign, previous Indigenous titles and systems governing them are displaced, and made subject to, the legal claims of the colonial state. As Christie (2005, 46) notes, "Aboriginal sovereignty is removed from the scene at the point of the assertion of Crown sovereignty (replaced with, at most, the notion of 'self-government'—another construct within domestic Canadian law)."⁴⁸

In the *Delgamuukw* case, the Supreme Court of Canada establishes a test for

Aboriginal title, but no test to determine whether the authority of the colonial sovereign has been effected. The proof of an Aboriginal title claim relates to three criteria. First, “the land must have been occupied prior to sovereignty” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 143). Second, if present occupation is used as proof of occupation prior to the assertion of colonial sovereignty, “there must be a continuity between present and pre-sovereignty occupation” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 143). Third, occupation of Aboriginal title lands at the moment that colonial sovereignty was asserted must have been exclusive. These tests founded the basis for judging a subsequent claim to Aboriginal title. But as Christie (2005) notes, the mere assertion of colonial sovereignty and title is deemed sufficient to establish colonial sovereignty and title.

However, if the court acted to limit the recognized authority of the Gitksan and Witsuwit'en peoples, it also constrained the authority of the provincial government. In answering the question whether the province of British Columbia had the jurisdiction to extinguish Aboriginal rights after it joined Confederation in 1871, the Supreme Court withheld the sovereign right to independently determine the status of Aboriginal peoples from the provincial government. Addressing a series of arguments about potential routes for provincial authorities to suspend Aboriginal rights, the court foreclosed all these avenues.⁴⁹

On the Question of Reconciliation

Possibly the most significant effects of the *Delgamuukw* decision have been in the emergence of new realms of governmental negotiation. Despite all the discussion and valorization of the sovereign authority to extinguish, ultimately the courts suspended, not Indigeneity, but judgment. Deferring judgment, the Supreme Court of Canada did not simply declare the necessity of a retrial but strongly pressed the need to negotiate. Thus, the legacy of the trial rests most fundamentally with the construction of new processes of negotiation and consultation. The Gitksan and Witsuwit'en had originally gone to court

with the intent of coercing the province to negotiate by using its own law against it. While an incredibly fraught exercise, it also proved a productive one. Through their court battles, the Gitksan and Witsuwit'en opened increasing spaces of negotiation. Through the lower courts, it was less the actual decisions of the courts and more the political effects that knowledge of Gitksan and Witsuwit'en claims had on the public beyond the courts and the economic disruption of direct action campaigns that spurred negotiations. The Supreme Court decision, however, definitely contributed to a proliferation of techniques to reconcile Indigenous claims with regimes for regulating development.⁵⁰ The doctrine of Aboriginal title, while relying upon and reproducing colonial rationalities, nevertheless burdened government authority with counter-claims and undermined the security of investments in development. However, the problem of insecurity in this instance was not solved simply by suspending Indigenous claims. Rather through and consequent to *Delgamuukw*, techniques for negotiating Indigenous claims expanded. In subsequent chapters, I will address the negotiations to follow *Delgamuukw*; here, however, I will attempt to trace some of the negotiations that coincided with *Delgamuukw*, and how these negotiations aligned with the constitution and reconstitution of Gitksan and Witsuwit'en forms of political organization.

Although the hereditary chiefs have always continued to feast and carry on the traditions of governance through the networks of houses and clans, modern political efforts to advance Gitksan and Witsuwit'en claims originate within a distinct form of organizing associated with the Gitksan-Carrier Tribal Council. Formed in 1968, the Gitksan-Carrier Tribal Council (1977) purported to represent "all people of Gitksan and Carrier ancestry, regardless of status, if they belong to or descend from one of the following villages: Kitwangak, Kitseguecla, Gitanmaax, Sikadoak, Kispiox, Hagwilget and Moricetown." This constituted all but two bands associated with the Gitksan and Witsuwit'en at this time, excluding the Gitksan community of Kitwancool (Gitanyow) and the Witsuwit'en Omineca band, which was itself the amalgam of a number of small communities. The council was composed of representatives of each village, as well as two representatives of non-resident members. It had a mandate to preserve Gitksan and Witsuwit'en heritage and identity,

improve the social and economic condition of the Gitksan and Witsuwit'en people, promote understanding of Indigenous people with the general public, improve communication with other Indigenous communities, and finally achieve a just resolution to Gitksan and Witsuwit'en land claims and realize Gitksan and Witsuwit'en self-government (Gitksan-Carrier Tribal Council 1977).

The Gitksan-Carrier Tribal Council initially entered into land claim negotiations in 1977, but was stymied by the provincial refusal to consider Indigenous political claims that effectively extended beyond those of a municipality. Changing their name in 1982 to the Gitksan Wet'suwet'en Tribal Council, they began to organize to go to court to press their claim to ownership and jurisdiction based on their distinct Gitksan and Witsuwit'en systems of laws. Focusing on advancing the claims of the hereditary chiefs, the Gitksan Wet'suwet'en Tribal Council was dissolved during the *Delgamuukw* case.

The trial level decision in *Delgamuukw* was devastating and did not aid the Gitksan and Witsuwit'en efforts to achieve recognition of their land interests. However, while the decision was awful, the case itself significantly raised the profile of Indigenous issues in the province. Further, the Gitksan commitment to maintain their connection to their lands using extra-legal means, establishing blockades as well as informational pickets on the highway, created additional pressure to address their claims (Glavin 1990; Wild 1993; Blomley 1996). In 1990, at the close of the *Delgamuukw* trial, Indigenous leaders in British Columbia met with the provincial and federal governments to establish a tripartite task force to develop a process for contemporary treaty negotiations. In March 1991, McEachern released his judgment; in June, the British Columbia Claims Task Force released its report, recommending the establishment of British Columbia Treaty Commission (Mathias et al. 1991). The two documents presented contrasting conclusions, with McEachern suggesting Indigenous territorial claims were largely extinguished while the task force suggested, in contrast, that Indigenous territorial claims should be negotiated.⁵¹ The Gitksan and Witsuwit'en returned to court, appealing the trial decision to the British Columbia Court of Appeal, to enhance their bargaining position.

Although they had not achieved the recognition they desired from the Court of Appeal, the appellate court had at least softened McEachern's presumptions of blanket extinguishment. The Gitksan and Witsuwit'en decided to pause further appeal and attempt to reach a negotiated settlement with the provincial and federal governments. At this point, the Gitksan and Witsuwit'en hereditary chiefs split into two distinct national organizations (Eichstaedt and Donaldson 1994). The Gitksan and Witsuwit'en hereditary chiefs reorganized their claim, not as a collection of individual holdings but as the collective claim of two distinct peoples. The consolidation of the hereditary chiefs claims into two national claims rather than a larger (indeterminate) number of house claims produced a seemingly more simplified political geography with which the state could interface. Rather than having to address the distinct claims of each and every house to its own territories, the government could now negotiate with just two bodies, one representing the collective body of Witsuwit'en hereditary chiefs on behalf of their houses, another representing the collective body of Gitksan hereditary chiefs.

In 1994, The Gitksan and Witsuwit'en signed an *Accord of Respect and Recognition* with the provincial government, adjourning the Delgamuukw action to enter into a year of tripartite negotiations with the provincial and federal governments (Lockyer 1994). The accord stipulated that a treaty was intended to be reached in 18 months, with the possibility of continuing the adjournment if negotiations were progressing well. Through negotiations the Gitksan and Witsuwit'en sought to establish a model of self-governance based on the traditional system, and sought to pursue the establishment of a territorial co-management process with regard to development. Thus, for the two nations, a final agreement was intended not to end negotiations but establish a working relationship through which provincial ministries could interface with the Gitksan and Witsuwit'en, and ensure the Gitksan and Witsuwit'en people were integrated into development through employment guarantees and revenue sharing. "The over-riding aim was to channel revenue from resource extraction back into the region, in order to support self-government" (Mills 2008, 82). The provincial government held, in contrast, that self-government rights were

constrained to reserves and site-specific use rights, relying upon the Court of Appeal decision to back its position. Negotiations broke down with particular acrimony between the provincial and Gitksan negotiators. The province suspended negotiations with the Gitksan, and did not renew the accord at its end, instead taking the *Delgamuukw* case to the Supreme Court of Canada to establish the extent of Aboriginal title and rights (Mills 2008).

The Supreme Court decision was a significant victory for the Gitksan and Wtisuwit'en in that it reinforced their negotiating position. As Slattery (2006) describes, *Delgamuukw* established a contemporary doctrine of Aboriginal title, transforming the historical Aboriginal claims to land as their distinct possession to a latent form of title that could serve as the basis of negotiation. According to Slattery (2006), this latent form was only capable of partial judicial articulation, and modern implementation of Aboriginal title requires agreement between an Indigenous people and the colonial sovereign.

In effect, the courts have the power to recognize certain core elements of a generative right—sufficient to provide the foundation for negotiations and to ensure that the Indigenous party enjoys a significant portion of its rights pending final agreement. However, the courts are not in a position to give a detailed and exhaustive account of a generative right in all its facets. This result can be achieved only by negotiations between the parties. (Slattery 2006, 262)

Slattery here begins to capture the generative nature of the Supreme Court's deferral of judgment in *Delgamuukw*. However, in focusing on Indigenous-state relations, Slattery fails to apprehend the breadth of the governmental network involved in negotiations. In its call for negotiation, the Supreme Court in *Delgamuukw* did not simply constitute treaty tables, although undoubtedly this was their intent. The effect, as I shall explore in the following chapters, was to provoke a proliferation of governance devices aimed at reconciliation and involving a wide range of actors, including not only state agencies and Indigenous organizations, but also corporations, educational institutions, foreign foundations, and local non-profit (or more confusingly non-governmental) organizations.

While the legal particularities of the relationship between colonial state authority and Indigenous peoples do not require corporate engagement with Indigenous peoples, the uncertainty generated by legal recognition of possibly unmet government duties with regard to Indigenous peoples has necessitated business to develop strategies to attempt to resecure their investments in resource development. Conversely, Indigenous peoples have been increasingly disciplined to fit their claims within the governing terms of resource management processes. In congruence with Alan Hunt and Gary Wickham's (1994) engagement with Foucault and the law, the action regulative norm here demonstrates how the law performs as a form of governance. Regulative pressure works through a legal regime that acts not to finally decide but define an acceptable range. Rather than functioning in accordance with a binary logic that simply suspends one claim and warrants another, governmental rationalities work to establish "an average considered as optimal on the one hand, and, on the other, a bandwidth of the acceptable that must not be exceeded" (Foucault 2007, 21). Phenomena are thus considered with reference to a series of probable events, and the costs associated with different scenarios calculated. Through the framework of governmental rationalities, "a completely different distribution of things and mechanisms takes shape" (Foucault 2007, 21). In the context of Indigenous contestation of development projects, regimes of regulation work to establish a productive engagement between Indigenous peoples and industry. This regulative pressure represents a principle way in which Indigenous political movements have reconfigured the politics of development, and conversely the politics of development have reconfigured Indigenous political movements.

Conclusion

In his opening statements at the beginning of the *Delgamuukw* case, Ken Muldoe, the man who then held the Gitksan title *Delgamuukw*, described the case as principally involving not the question of the existence of Gitksan and Witsuwit'en territory and authority but how Gitksan and Witsuwit'en political formations fit within Canada. "The purpose of this case

then, is to find a process to place Gitksan and Wet'suwet'en ownership and jurisdiction within the context of Canada. We do not seek a decision as to whether our system might continue or not. It will continue" (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 2 1987). To advance a case founded in Gitksan and Witsuwit'en legal traditions, the hereditary chiefs took to the stand as their own expert witnesses. The Gitksan and Witsuwit'en hereditary chiefs advanced a radical and subversive litigation strategy, reinserting within the domain of colonial law the Indigenous legal orders that were the foundational exclusions of a claim to colonial sovereignty. Engaging with the Canadian court system, and strategically exposing to the court the continued existence of Gitksan and Witsuwit'en legal orders, the Gitksan and Witsuwit'en hereditary chiefs sought to leverage judicial recognition to force the province to reckon with Gitksan and Witsuwit'en forms of authority and territoriality. The effects of this engagement have flowed in many directions. Gitksan and Witsuwit'en performances in court challenged conventions of evidentiary procedure. This resulted in the disciplining of Gitksan and Witsuwit'en witnesses by judicial authorities but also the reformulation of evidentiary procedures in the courts. Similarly pleading their case before the courts served to extend forms of colonial sovereign authority over Gitksan and Witsuwit'en life in new ways, but it also opened new spaces of negotiation between Gitksan and Witsuwit'en hereditary chiefs and colonial authorities.

Thus, I argue that the *Delgamuukw* case successfully initiated a series of processes to situate Gitksan and Witsuwit'en territoriality and authority in new relationships with colonial regimes. In coming before the court, I argue they also subjected themselves to the authority of the colonial sovereign. Seeking recognition of their legal authorities in the court, the Gitksan and Witsuwit'en had to recognize or reckon with the underlying authority of the colonial sovereign to decide their claims (at least within the courtroom). But engagement is not a simple acceptance of colonial authority. Rather in coming before the courts, the Gitksan and Witsuwit'en hereditary chiefs aimed to expose the inconsistencies of colonial law, to use the courts to expose the inherent weaknesses and fragmentation of colonialism, and to demonstrate the performativity of claims to authority.

The court rulings had the colonizing effect of further enacting the authority of the Canadian state to determine the content of Indigenous rights. However, presented with the challenge of Gitksan and Witsuwit'en counter-claims to territory and authority ultimately the court did not decide the Gitksan and Witsuwit'en case but rather deferred judgment, signaling a shift from processes of colonial prohibition towards governmental techniques of reconciliation through processes of consultation and accommodation.

CHAPTER 4

Indigeneity on the Page: Use and Occupancy Studies

Indigenous peoples in Canada have been inscribing elements of their relationships to their territories on maps and on the written page for decades. In the early twentieth-century, as Gitksan and Witsuwit'en people struggled to resist colonial dispossessions of their territories, they collaborated with allies to construct petitions and early counter-cartographies. As the decades advanced, Indigenous peoples and their collaborators developed a set of techniques to aid the translation of Indigenous territorial knowledge to a series of written inscriptions. This research has been called various names: land use and occupancy work, Aboriginal traditional knowledge programs, traditional use studies, traditional ecological knowledge research. In this chapter, I examine the translation and codification of Indigenous territorial relationships into the form of written studies. To refer to the broad set of research practices associated with the translation of Indigenous territorial knowledge to written texts, I adopt the term traditional use and occupancy in a generic sense.

In the contest between the British Columbian government and the Gitksan and Witsuwit'en in the *Delgamuukw* case, there was a communicative disjuncture between colonial authorities and the hereditary chiefs. Indigenous territorialities presented not only a distinct discourse but presented a fundamentally different way of relating to the land to colonial regimes that ordered environmental knowledge in terms of resources to be managed and exploited (Howitt and Suchet-Pearson 2006). Thus, as Gitksan and Witsuwit'en witnesses spoke of house territories, histories, and crests, they discussed not simply a different representation of land but a different way of relating to and being in the world. The slippage of meaning between Indigenous and colonial frameworks disproportionately impacted the Gitksan and Witsuwit'en as the materialization of colonial geographies displaced those of Indigenous peoples. The asymmetrical geometry of power

required the hereditary chiefs to reckon with colonial regimes of knowledge, rendering Indigenous orders intelligible to colonial authorities in the form of counter-cartographies.

In this chapter, I focus on how the Witsuwit'en have sought to strategically translate Indigenous territorial relationships through a set of research practices associated with traditional use and occupancy studies. Terry Tobias (2000, 3) describes use studies as documenting "where activities like hunting, fishing and travelling occur." Occupancy mapping works in excess of use to assert a legal claim to title, presenting Indigenous peoples as having possession of a territory. Although occupancy claims can rely upon geographies of land use, they have also involved collecting information on habitation sites like cabins and burial grounds, Indigenous place names, spiritual geographies, traditional ecological knowledge, and stories and songs (Zent 2009). Working within the frames of legal discourse, which constructs occupancy as the condition of gaining or having property, occupancy studies transliterate Indigenous territorialities into a claim to space cognizable by colonial authorities. Approaching these studies, my interest is not in constructing a typology of different traditional use and occupancy projects but rather understanding how these studies, as translation devices, work to both advance and constrain recognition of Indigenous geographies. I particularly focus my analysis on those studies that attempt to convey elements of Indigenous geographies that could be impacted by industrial development projects.

The technical process of rendering Indigenous geography legible through research is intimately related to legal processes. Indigenous traditional use and occupancy mapping emerged as a technique for elucidating Indigenous geographies to colonial authorities following the *Calder* case in 1973. The Supreme Court of Canada ruling on *Delgamuukw* in 1997 gave traditional use and occupancy mapping further meaning. As founding member and former President of the Indigenous Bar Association, David C. Nahwegahbow (2000, vii) wrote in the wake of the *Delgamuukw* decision, "the only way to prove occupancy is by having a map that sets out the evidence in terms the people across the negotiating table, or a judge, will understand and accept." While the Supreme Court of Canada in *Delgamuukw*

recognized that Indigenous oral histories have weight in Canadian law, the court also underlined the need to demonstrate physical occupation of territory in order to prove claims of Aboriginal title to colonial authorities.

Research on Indigenous traditional use and occupancy has contributed to increasing recognition of the impacts of development on Indigenous peoples, and the need to consider their traditions in colonial resource management processes. Through research initiatives and collaborations, Indigenous communities have sought to appropriate the map as a technology to advance colonial recognition of Indigenous peoples' land rights based on customary use and occupancy (Brody 1981; Nietschmann 1995; Tobias 2000, 2009; Chapin, Lamb, and Threlkeld 2005; Johnson, Louis, and Pramono 2006). According to Bernard Q. Nietschmann (1995, 37), mapping Indigenous geographies "helps to authenticate traditional territory, [and] calls into question a central government's assertion that indigenous people don't have a land or sea territory." To interface with and respond to development proponents and regulatory agencies, Indigenous communities have collaborated with researchers to develop databases and policy frameworks articulating Indigenous interest in the land (Usher 2003; Chapin, Lamb, and Threlkeld 2005; Budhwa 2005; Klassen, Budhwa, and Reimer 2009; Budhwa and McCreary 2013). Translating Indigenous traditions into legible frames for Canadian resource management, traditional use and occupancy studies have enabled the imbrication of aspects of Indigenous geographies into resource governance.

However, despite an emerging consensus about the value of integrating Indigenous knowledge into Canadian resource management processes, there is substantial debate about the terms of knowledge integration. Whether initiated at the behest of communities, companies, or government regulators, research on Indigenous traditional knowledge remains beset with difficulties. For some, the question of how to render Indigeneity legible to colonial authorities is one of methodology, and developing more finely attenuated techniques to translate between scientific and Indigenous systems of ordering knowledge (Stevenson 1996; Huntington 2000; Usher 2000; Tobias 2009; Zent 2009). But others have

asked after the politics that frame knowledge translation projects, raising the spectre of colonialism haunting the process (Nadasdy 1999, 2005; Spak 2005; White 2006; Johnson 2010). As Richard Howitt and Sandra Suchet-Pearson (2006) note, contemporary efforts to include Indigenous knowledge are framed by the colonial discourse of resource management.

My intervention into these discussions builds on recent work recognizing how the difficult epistemological questions plaguing efforts to translate Indigenous knowledge to governing regimes of resource management converge upon questions related to ontological politics (Bryan 2000; Howitt and Suchet-Pearson 2006; Blaser 2009b; Cameron, de Leeuw, and Desbiens Forthcoming; Desbiens and Rivard Forthcoming). The discourse and practice of resource management continues to rely upon and reproduce a particular modernist ontology of development that shapes particular conditions of possibility for Indigenous being within the becoming space of a capitalist state (Wainwright 2008; McCreary and Milligan Forthcoming). Thus, various efforts to establish recognition of Indigenous being function to bracket Indigenous being as traditional and circumscribe Indigeneity as local to allow for the emergence and extension of processes of global resource extraction. However, as Craig Womack (1999, 12) stresses, “it is just as likely that things [colonial] are Indianized rather than the anthropological assumption that things Indian are always swallowed up by [colonial] culture.”

Rejecting a supremacist account of culture and history that simply centres and privileges colonialism, I highlight the puissance of translations of Indigenous tradition. I examine how land use and occupancy studies strategically instantiate the means of colonial captures. Indigenous research strategies negotiate a complex relationship with colonial power, attempting to establish a counter-discourse legible to colonial authorities and nonetheless challenging the order of colonial knowledge. I argue Indigenous land use and occupancy studies construct knowledge of relations between Indigenous being and the becoming of industrial development, enabling particular techniques of mobilizing and reshaping development vis-à-vis Indigeneity.

To chart Indigenous traditional use and occupancy studies as a technology of power-knowledge that both challenges and stabilizes governing colonial resource management processes, I particularly focus on the Witsuwit'en land use and occupancy research conducted in relation to the Enbridge Northern Gateway Project. Enbridge, a Calgary-based energy transport company, submitted an application to government regulators to construct a pipeline system connecting the Alberta tar sands to the Pacific. One pipeline flowing east would carry 193,000 barrels per day of condensate, a low-density mixture of hydrocarbon liquids used to thin heavy oil for transport, while the other pipeline flowing west would traffic 525,000 barrels per day of diluted bitumen to the coast. In association with the pipelines, a coastal terminal would be constructed to facilitate the global distribution of bitumen derived from the Alberta tar sands. If constructed, the pipelines will cross the territories of more than 50 Indigenous communities and the marine traffic to the terminal would impact numerous other coastal Indigenous communities. As part of state regulation of the proposed development, a Joint Review Panel (JRP) of the National Energy Board and the Canadian Environmental Assessment Agency has been established. For the regulatory process overseen by the JRP, Enbridge has been asked to include in their project application detailed information on Aboriginal traditional land use, potential effects of the proposed development on these specified uses, and plans for mitigation. Additionally, in their application, they are asked to provide a description of the methodology used to collect traditional use information as well as evidence that participating Aboriginal groups had opportunity to review and comment on collected information and proposed mitigation. Similarly, Indigenous interveners have been provided with an opportunity to submit information on traditional land use for consideration by government regulators.

I examine both research on Witsuwit'en land use and occupancy conducted collaboratively between the development proponent and a Witsuwit'en band, and research conducted independently by the Office of the Wet'suwet'en on behalf of the Witsuwit'en hereditary chiefs. I examine how traditional use and occupancy studies make Indigeneity legible to colonial authorities and contribute to the formulation of techniques to harness

the forces of development and secure elements of an Indigenous geography. To translate the impacts of particular development projects on Indigenous geographies, traditional use and occupancy studies work to define an intelligible field of Indigenous traditions and industrial impacts with specifiable limits and particular characteristics. Conceptually bounding Indigeneity and development impacts, land use and occupancy studies create a domain of knowledge with which to regulate development projects, and articulate particular techniques to mobilize Indigenous and colonial entities through development.

I begin the chapter with a review of the emergence of Indigenous traditions as a contemporary research subject in struggles to get the government to recognize the impact of development on Indigenous people and include Indigenous peoples and their knowledge in environmental decision-making. I then focus on how two Witsuwit'en organizations strategically mobilized traditional use and occupancy studies in response to the Enbridge Northern Gateway Project. First, I examine how the Witsuwit'en band of Skin Tyee worked collaboratively with the development proponent to strategically leverage a connection to particular lands to negotiate a stake in development. Second, I explore how the Office of the Wet'suwet'en, which represents the Witsuwit'en hereditary chiefs, constructed an independent report opposing the project. I argue that the Office of the Wet'suwet'en sought to strategically employ a discussion of their traditions as a wedge through which to force greater recognition of their Indigenous system of territory and jurisdiction. The contrast of these two studies highlights the overlapping dynamics of concatenation and contestation configuring development. I close the chapter with a discussion of the aporia of traditional use and occupancy studies. I argue that a slippage between the dynamics of Indigenous empowerment and colonial co-optation is an endemic and undecidable characteristic of the colonial present. Indigenous land use and occupancy studies thus simultaneously offer strategic opportunities to advance Indigenous interests and capture Indigeneity within colonial regimes of recognition that condition a range of possibilities for Indigenous becoming within the capitalist nation-state. Through the chapter, I argue that the technology of traditional use and occupancy studies does not reverse colonial relations so

much as rework them, both delimiting the terms within which Indigeneity is cognized and simultaneously opening avenues for articulations of Indigeneity challenging colonial governance.

The Counter-Inscription of Indigeneity

Indigenous strategies of using traditional use and occupancy studies to articulate territorial claims have contributed to increasing recognition of Indigenous geographies. Within the courts, Indigenous claims have created new legal precedents requiring colonial authorities to engage with Indigenous communities and reconcile the territorial claims and interests of Indigenous peoples with the geographies of colonial development. The effect of Indigenous litigation has been to introduce new problematics to the exercise of colonial governance. One of these problematics centres on how resource management processes can incorporate Indigenous peoples as political actors with a claim to participate in the management of their traditional territories. A second, related, question involves how Indigenous geographies can be cognized and integrated into colonial processes of land and resource management. Both constituting and addressing these problematics, a composite network of actors, prominently including Indigenous peoples and a variety of academic experts, have developed a broad set of practices to render Indigeneity legible in processes of colonial governance.

Research practice is not simply out there in the ether, objectively observing, analyzing, and reporting. It is both localized and localizing, enmeshed within the co-production of knowledge and place as an “active social force on society and on the environment” (Evenden 2005, 32). According to Matthew Evenden (2005, 29) it is necessary to recognize “the conditioning effects of place on scientific investigation, the influence of science on local regional cultures and *vice versa*, and the problems of moving scientific ideas and objects from place to place.” Knowledge production does not transcend space, but instead belongs to sets of networks that bring possibilities of connecting and interacting with other settings (Withers 2007).⁵²

Beginning in the 1970s, social scientists in Canada began to document Indigenous relationships to their lands. The 1973 Supreme Court of Canada decision in *Calder* case created the impetus for the creation of a federal contemporary land claims process (Godlewska and Webber 2007). The methodologies of contemporary traditional use studies developed in association with the practical aim of identifying particular geographic areas as the basis for Indigenous land claims.⁵³ The path-breaking work of Milton Freeman (1976) and Carol Brice-Bennett (1977), in both cases undertaken to support Inuit land claims in the North, began to document the connection Indigenous peoples maintained to their traditional resources. These research projects relied upon a methodology referred to as the map biography. Interviewers asked Indigenous informants to locate and map their personal land use activities, tracing the geographies of hunting, fishing, gathering, travel, camping, burial sites and spiritual locations on map transparencies (Tobias 2000, 2009). Researchers then aggregated the information from community interviews by map categories to construct a community portrait (often gradating the boundaries to indicate higher intensity core land use areas). By the early 1990s, Peter Usher, Frank Tough, and Robert Galois (1992) argued that the map biography had become the primary method used in Indigenous traditional use mapping due to the perceived objectivity of the community survey methods and the legibility of the maps to colonial authorities. Two decades on, the particular techniques of constructing the maps are being modernized to better utilize modern cartographic software and hardware, but the basic methodology of map biographies remains entrenched.

Traditional use studies served to highlight the conflict between Indigenous use patterns and resource development projects. Beginning in 1974 with the commissioning of the Mackenzie Valley Pipeline Inquiry, more popularly known as the Berger Inquiry, there has been a marked shift towards integrating consideration of Indigenous peoples in resource management processes (Notzke 1994, 1995; Christensen and Grant 2007).⁵⁴ Modifying the methods of map biography, research on the impacts of resource development projects on Indigenous peoples focused analysis on the overlap of Indigenous

land use patterns with the geography of proposed industrial activity (Brody 1981). This methodology effectively highlighted the spatial conflicts between industrial development and Indigenous subsistence regimes, and established a counter-discourse to challenge governing paradigms of resource management. Berger's (1977, 1) report, for instance, recognized how "subduing the land and extracting its resources" advanced an industrial economy that displaced traditional Indigenous sustenance economy. While he recognized that industrial development provided job opportunities, Berger (1977, xxi) suggested, "To the extent that the development of the northern frontier undermines the possibilities of self-employment provided by hunting, fishing and trapping, employment and unemployment will go hand-in-hand." Recognizing that the North was home to Indigenous peoples whose lives would be dramatically and irreversibly altered by the introduction of a gas pipeline, Berger recommended delaying pipeline construction to allow time to address Indigenous interests.

Studies demonstrated development impacts on Indigenous interests, constituting new avenues for Indigenous peoples to strategically challenge colonial resource governance processes. Subsequent to the *Calder* decision and the Berger Inquiry, Indigenous peoples increasingly sought to advance claims based on their traditional use and occupancy. In May 1979, the Trial Division of the Federal Court of Canada heard the *Baker Lake (Hamlet) v. Canada (Minister of Indians Affairs and Northern Development)* case (Bickenbach 1980; Elliott 1980). In the case, the Hamlet of Baker Lake, the Baker Lake Hunters and Trappers Association, the Inuit Tapirisat of Canada, and 113 local residents brought forward a claim to Aboriginal title over 78,000 square kilometers surrounding Baker Lake in the Northwest Territories. The defendants in the case were the Minister of Indian Affairs and Northern Development, various branches of the federal government, and six mining and exploration companies who had been issued exploration and land-use permits by the federal government. The case followed the prior issuance of an interlocutory injunction based on evidence that minerals exploration activities would adversely affect Inuit caribou hunting. The Inuit sought declarations that, first, the Baker

Lake area was subject to an Inuit Aboriginal title to hunt and fish, and, subsequently, that the mining regulations licensing exploration activities did not apply in the Baker Lake area. On this basis, they aimed to elicit orders halting mining exploration in the region. In a partial recognition of an Inuit title, Justice Mahoney determined that the Inuit did have Aboriginal title to the majority of the Baker Lake area, but that rights pursuant to this title could be abridged by legislation (Bickenbach 1980; Elliott 1980).

Although it was only a trial level decision, *Baker Lake* nonetheless both outlined requirements for a proof of Aboriginal title and pressed the need for the government to account for Indigenous land interests (Bickenbach 1980; Elliott 1980). In his decision, Mahoney articulated four elements of a proof of Aboriginal title. First, the claimants and their ancestors must be members of an organized society. Second, that organized society must occupy the specific territory over which they assert Aboriginal title. Third, the claimants' occupation of that territory must work to the exclusion of other organized societies. Finally, fourth, the particular Indigenous occupation in question must have been an established fact at the time of the assertion of colonial sovereignty. Thus, legal processes required Indigenous peoples provide proof of their connection to their lands in a form cognizable to the courts (McNeil 1999).

Baker Lake also resonated with an increasing acknowledgement by colonial authorities of the need to recognize Indigenous territorial claims and incorporate Indigenous peoples into resource governance. The case prefigured subsequent developments in the Northwest Territories, in which colonial authorities responded to Indigenous demands for recognition, and particularly demands to recognize Indigenous geographic knowledge. In the territorial North, language within comprehensive land claims, beginning with the *Inuvialuit Final Agreement* in 1984, requires the incorporation of "the relevant knowledge and experience of both the Inuvialuit and the scientific communities" in wildlife management processes (*Inuvialuit Final Agreement* quoted in Usher 2000, 184). In 1993, the Northwest Territories further adopted a Traditional Knowledge Policy, recognizing "aboriginal traditional knowledge is a valid and essential

source of information about the natural environment and its resources, the use of natural resources, and the relationship of people to the land,” and committing to incorporating traditional knowledge in resource management processes (Northwest Territories Traditional Knowledge Policy quoted Usher 2000, 184).

The Supreme Court of Canada decision in *Delgamuukw* conveyed new meaning and import to studies of Indigenous land use and occupation. Writing for the majority, Chief Justice Lamer delineated three criteria necessary to make out a claim to Aboriginal title: “(i) the land must have been occupied prior to sovereignty, (ii) if present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation, and (iii) at sovereignty, that occupation must have been exclusive” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 143). As discussed in the previous chapter, Lamer uniquely situated Aboriginal title at the interface of colonial and Indigenous territorial visions, with sources in both Indigenous legal orders and colonial doctrine. In congruence with the court’s construction of Aboriginal title, Lamer directed that both evidence based in Indigenous traditions and the physical reality at the time of colonial sovereignty was first made effective “should be taken into account in establishing the proof of occupancy” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 147). Thus, although Lamer recognized the import of the Gitksan *adaawk* and Witsuwit’en *kungax* as a form of evidence, he also stressed the need for Indigenous peoples to demonstrate physical occupation of territory in order to prove claims of Aboriginal title to colonial authorities (McNeil 1999). Citing Kent McNeil (1989), Lamer particularly found convincing the argument that “physical occupation is proof of possession at law, which in turn will ground title to the land” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 149). To provide proof of Aboriginal title, Lamer directed that “an aboriginal community may provide evidence of present occupation as proof of pre-sovereignty occupation in support of a claim to aboriginal title” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 152). Lamer listed a variety of ways that a claim to physical occupation could be established, “ranging from the construction of dwellings through cultivation and enclosure

of fields to regular use of definite tracts of land for hunting, fishing or otherwise exploiting its resources” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 149).

While Lamer framed Aboriginal title in terms of “a *continuity* between present and pre-sovereignty occupation,” he at least partially registered the need to recognize the ways Indigenous relationships to the lands have changed post-contact (*Delgamuukw v. British Columbia* SCC Decision 1997, para 152). Lamer suggested “the relevant time for the determination of aboriginal title is at the time before sovereignty,” and limited Aboriginal title to contemporary uses congruent with the particular Indigenous connection to that land at the moment of the assertion of colonial sovereignty (*Delgamuukw v. British Columbia* SCC Decision 1997, para 152). But despite pinning Indigenous territoriality to the past, Lamer recognized a degree of Indigenous territorial dynamism. He refused to completely restrict Indigenous occupancy to the terms of Indigenous relationships to their lands at the moment in which colonial sovereignty was asserted. Further Lamer recognized colonialism has often disrupted Indigenous peoples ability to occupy their traditional lands as colonial authorities have continually advanced a new territorial order materially displacing that of Indigenous peoples. Recognizing the effects of this displacement on Indigenous communities, Lamer did not require Indigenous peoples possess an unbroken chain of continuity in their relations with their lands. Although to make an argument based on present day possession, an Indigenous community must occupy its lands today. The *Delgamuukw* decision further spurred the development of land use and occupation studies.

Researchers increasingly recognized Indigenous geographies as a contemporary research subject, while policy-makers increasingly accepted the relevance of considering Indigenous land use in resource management. Various formal governmental devices call forth Indigenous knowledge in the form of Aboriginal traditional knowledge as an object to be apprehended and included within state regulatory processes. A 2003 amendment to the *Canadian Environmental Assessment Act S.C 1992 C. 37* directed assessment processes to consider the effects of development on Indigenous peoples and their traditions. This legislation was repealed in 2012 and replaced by a new *Canadian Environmental*

Assessment Act, 2012 - S.C. 2012, C. 19. However, the new act maintained a governmental consideration of Aboriginal land use in regulating development. The 2012 *Canadian Environmental Assessment Act* in *Sec. 4(1)(d)* lists the promotion of “communication and cooperation with aboriginal peoples with respect to environmental assessments” as one of its underlying purposes; includes in *Sec. 5(1)(c)* potential impacts to Aboriginal health, socio-economic conditions, heritage, and traditional land use as environmental effects to be taken into account in relation to a proposed development; and indicates in *Sec. 19(3)*, “The environmental assessment of a designated project may take into account community knowledge and Aboriginal traditional knowledge.” Similarly, the National Energy Board *Filing Manual* requires that proponents provide detailed information about Indigenous land use if: 1) “The project would be located on, or traverse, Crown land or the traditional territory, reserve land or settlement area of an Aboriginal group;” 2) “The project may adversely affect the current use of lands and resources by Aboriginal people;” or 3) “there is outstanding concern about this element of the project, which has not been resolved through consultation” (National Energy Board 2012 [2004], 4A–29).

The emergence of management regimes integrating Indigenous peoples and their knowledge is conditioned by the legal reasoning of colonial juridical authorities and the practical rationalities of colonial governmental apparatuses. As Nadasdy (2005, 224) has described in the Klane territories of the Yukon, restricted notions of Indigenous traditions in resource governance work to situate the “place at the table” of local Indigenous peoples by reinforcing an *a priori* set of normative colonial relationships, “preventing rather than fostering meaningful change by ensnaring participants in a tangle of bureaucracy and endless meetings.” Despite rhetorics of empowerment, Nadasdy suggests that studies of Indigenous environmental knowledge foreclose on real possibilities of addressing power relations in the colonial present. Positioning Indigenous territorial knowledge as simply more data for governing management bureaucracies results in the distortion of Indigenous political geographies, as Indigenous knowledge is framed and screened to fit within institutional knowledge management practices (White 2006). This does not only obscure

the holistic and contextual value that traditional knowledge experts often stress makes Indigenous knowledge unique, it fundamentally serves to empower colonial centres of calculation, which work through the possession of abstract quantified knowledge that allows them to act at a distance. So doing, it reconstitutes the territoriality of the capitalist nation-state oriented to the extraction of resources from its peripheral regions.

The practical rationalities undergirding resource management processes thus continue to condition the terms on which Indigenous being is recognized. Resource management works through Cartesian cartographies that assume space can be segmented into a linear, coordinate system. Cartesian imaginaries conceptualize the cultural and ecological landscape as a discrete and exclusive plane, and thus, within this paradigm, cultural sites are imagined as discrete and exclusive (Pearce and Louis 2008). As J. B. Harley (1989) reminds us, the power-knowledge relations implicit in the map function as a form of political discourse in which the inclusion and exclusion of material works to particular interests. Neglecting the interrelation of sites throughout a territory, the definition of sites worthy of protection through a Cartesian schema simultaneously outlines those empty territories where development can proceed. Thus, the cartographic delineations implicit in recognizing sites of Indigenous cultural significance through Cartesian mapping work to simultaneously produce a mythological *terra nullius* open for colonial visions of development (McCreary and Milligan Forthcoming). The recognition of Indigenous traditions continues to relegate Indigenous peoples to a past and restrict their claims to modern jurisdiction. This regularizes the particular relation to nature encoded in colonial ideas of development and renders alternative articulations of socio-natural relations within Indigenous societies subaltern.

Responding to the constraints of mapping in resource governance processes, Richard W. Stoffle and Michael J. Evans (1990) have documented the consistent bifurcation of Indigenous research strategies in studies commissioned in the United States as part of the environmental impact assessment of development projects. The United States *National Environmental Policy* requires American Indian cultural resource studies in association

with the environmental assessment process. Stoffle and Evans argue that there are two broad trajectories of Indigenous response to development projects through cultural resource studies: that of cultural triage and holistic conservation. The strategy of cultural triage seeks to identify sites of particular importance, and prioritize the protection of particular sites in development. In contrast, the strategy of holistic conservation works to refuse accord with the development consensus and posit a politics of Indigenous being and becoming in competition with the unfolding of resource development. These two trajectories of response highlight how Indigenous peoples continue to strategically negotiate their relationships with colonial power, reconstellating the terms not only of Indigenous being but also of colonial governance.

Permitting Pipelines: Collaborative Approaches to Research

Elaborating Indigenous strategic employment of land use and occupancy studies, I examine the distinct strategic orientations to research employed by different Witsuwit'en authorities in response to the Enbridge Northern Gateway Project. The Northern Gateway is a proposed set of pipelines, approximately 1,170 kilometres in length, connecting the Alberta tar sands to the Pacific coast (Fig 4). This pipeline project requires certification of public convenience and necessity by the National Energy Board and triggers environmental assessment under the *Canadian Environmental Assessment Act*. In 2009, the Minister of the Environment and the National Energy Board established a Joint Review Panel (JRP) for the project, reviewing it under both the auspices of the *National Energy Board Act* and the *Canadian Environmental Assessment Act*. The Northern Gateway pipelines would transect the traditional territories claimed by the Witsuwit'en hereditary chiefs (Fig 5), and follows a course adjacent to numerous Witsuwit'en reserves (Fig 6 and 7). Thus, the governmental review of the project includes consideration of Aboriginal traditional knowledge studies outlining how development would impact Witsuwit'en geographies. Both the development proponent, Enbridge, and Witsuwit'en interveners have submitted detailed information to

government regulators on Aboriginal traditional land use and potential effects of the proposed development, as well as proposals to mitigate project impacts.

Figure 5: Proposed Enbridge Northern Gateway Project

From Enbridge, Northern Gateway Sec. 52 Application, Vol. 5A: Aboriginal Engagement, Part 4, (Submitted to Enbridge Northern Gateway Project Joint Review Panel, 27 May (2010c)), p. 2.



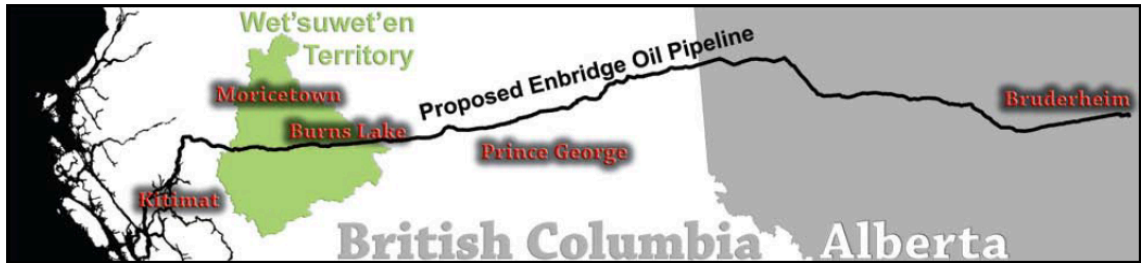


Figure 6: Witsuwit'en Territory and Proposed Enbridge Northern Gateway Project

From Office of the Wetsuwet'en, Wet'suwet'en Rights and Title and Enbridge's Northern Gateway Pipelines Project, (Submitted to Enbridge Northern Gateway Project Joint Review Panel, 9 January 2012), p. 18.

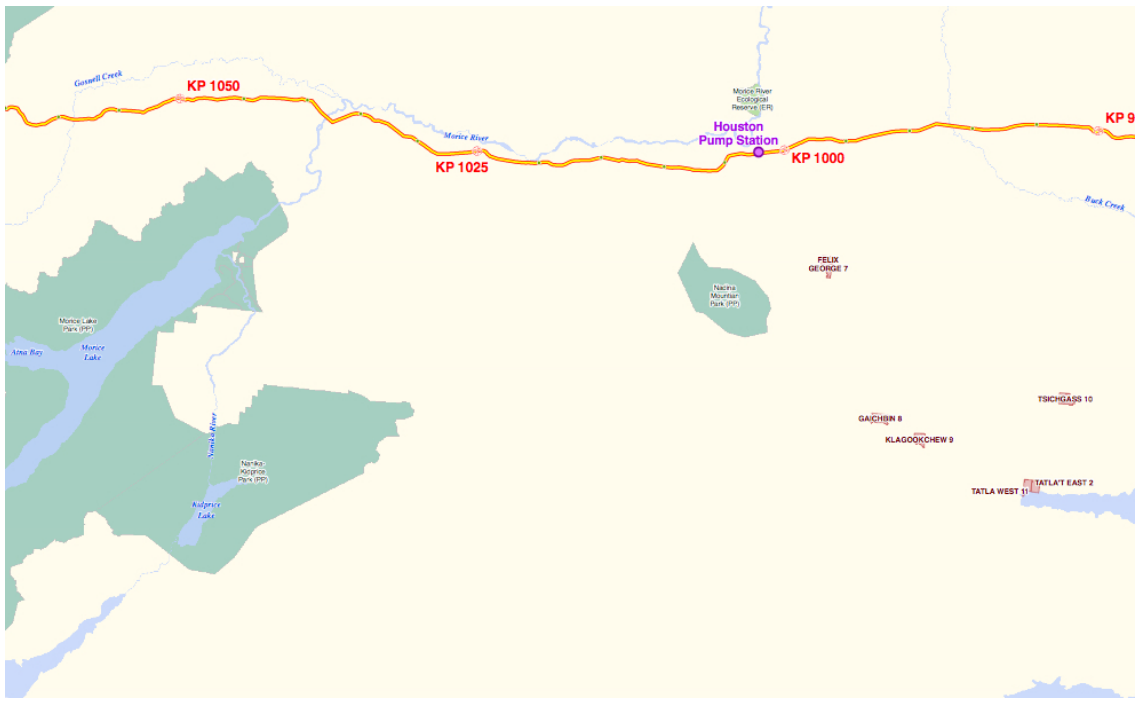


Figure 7: Northern Gateway and Reserves Associated with Skin Tye and Wet'suwet'en First Nation

From Enbridge, Northern Gateway Sec. 52 Application, Vol. 5A: Aboriginal Engagement, Part 2, (Submitted to Enbridge Northern Gateway Project Joint Review Panel, 27 May 2010), p. 2.

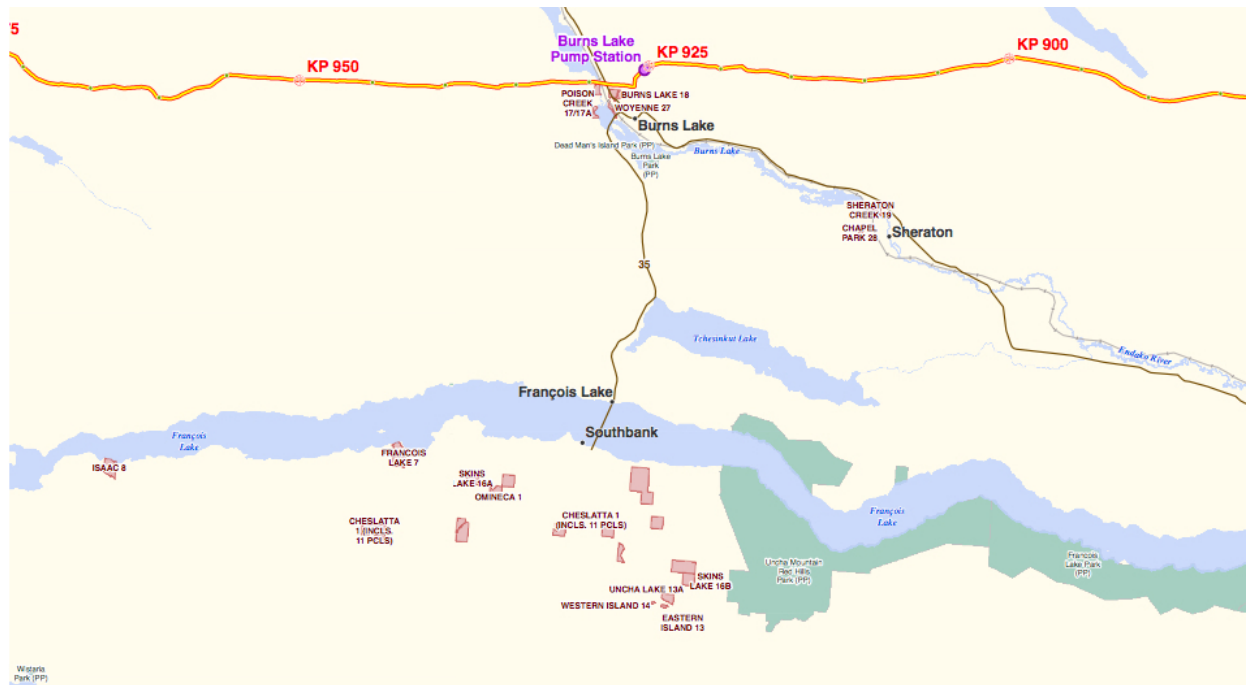


Figure 8: Northern Gateway and Skin Tyee, Nee Tahi Buhn, Cheslatta, Lake Babine, and Burns Lake Reserves

From Enbridge, Northern Gateway Sec. 52 Application, Vol. 5A: Aboriginal Engagement, Part 2, (Submitted to Enbridge Northern Gateway Project Joint Review Panel, 27 May 2010), p. 1-2.

Different Witsuwit'en bands have distinct relationships to both the proposed Enbridge diluted-bitumen pipeline and the hereditary chiefs' claims to authority. As discussed in the previous chapter, the Moricetown and Hagwilget bands were historically part of the Gitksan Carrier Tribal Council, which advanced the *Delgamuukw* litigation associated with the hereditary chiefs. Moricetown and Hagwilget continue to be most strongly aligned with the hereditary chiefs.⁵⁵ However, the historic Omineca band was outside the Gitksan Carrier Tribal Council. Although it no longer exists, the descendant bands of Omineca have remained external to the the Witsuwit'en hereditary chiefs efforts to advance territorial claims. In 1984, Omineca divided into the Broman Lake and Nee-Tahi-Buhn bands. Broman Lake has subsequently been renamed Wet'suwet'en First Nation, belongs to the Carrier Sekani Tribal Council, and is a vocal opponent of the Northern Gateway Project (McCreary and Milligan Forthcoming). In 2000, the Skin Tyee Band further

separated from the Nee-Tahi-Buhn Band. As of July 2013, the Skin Tyee Band had a registered membership of 169 people, 54 of which lived on Skin Tyee reserve lands (Aboriginal Affairs and Northern Development Canada 2013).⁵⁶ Both Skin Tyee and Nee Tahi Buhn are currently independent bands, and both are reputed to be among the communities that have signed private equity agreements to become part owners of the Enbridge Northern Gateway Project (Feldman and Doyle 2012). Both band governments refuse to comment on the issue.

As reviewed in submissions to the federal review panel, Skin Tyee worked with Enbridge traditional knowledge facilitators to strategically leverage a connection to particular lands to negotiate a stake in development. The Skin Tyee land use and occupancy worked to advance knowledge enabling the implementation of conditions regulating development to ensure the protection and advance of Indigenous interests. Through delineating particular camps and trails to be protected, the Skin Tyee Aboriginal traditional knowledge research served to construct the knowledge necessary to mitigate the impacts of pipeline development on Skin Tyee land use. Further, the Skin Tyee highlighted modifications to the process of pipeline construction that would promote the maintenance of Skin Tyee traditional land use activities. However, the study did not simply engage in cultural triage but further sought to advance conditions on development that would secure the well-being of the population of Skin Tyee. Particularly, the Skin Tyee study leveraged a connection to the land, and an analysis of the cumulative impacts of development, to ensure pipeline development provided opportunities to secure employment for band members, to improve transportation services on reserve, to enhance the intergenerational transmission of Skin Tyee culture, and to garner financial benefits for Skin Tyee members.

I interrogate the research collaboration between Skin Tyee and Enbridge, querying the Indigeneity supposed by and engaged through Enbridge's research program. Examining this collaboration, I do not critique the fidelity of the knowledge translations but instead highlight how this Indigenous-industry alliance can be read as an example of the relations established through land use and occupancy studies. Thus, I focus on how Enbridge's effort

to integrate Skin Tyee knowledge into their project planning can be understood as an instance modeling a broader pattern, a singularity that in its repeatability is capable of tacitly modeling patterns in the practice of knowledge translation and integration. Through this example, I extend the scholarship on Indigenous peoples and resource governance, highlighting how efforts to translate Indigenous knowledge into regulatory practices governing resource development work to both modify and extend the systems of power-knowledge enabling development.

While the motivation to include Aboriginal traditional knowledge stems from Indigenous activism and critical academic work aimed at addressing the most bald-faced exclusions of Indigenous peoples from resource management decisions, the inclusion of traditional knowledge within governmental processes continues to be framed by colonial relationships of power-knowledge. Elements of Indigenous knowledge are selectively screened to fit within Enbridge's Aboriginal traditional knowledge submissions. The Skin Tyee traditional knowledge data collected and summarized in the Northern Gateway application served to demarcate the geography of Skin Tyee traditions—to fix it on the map and provide opportunities to route development around it—, while offering avenues to integrate contemporary Skin Tyee interests into development through employment and compensation programs.

In the initial phases exploring the potential development of a tar sands pipeline, the primary actors consisted of corporate consultants and impacted communities. From April 2002 until June 2005, Enbridge conducted feasibility studies considering various routes and options for a pipeline connecting the Athabasca tar sands to a Pacific port. During this period, the company notified 171 indigenous groups of proposed activities through a mailed brochure and introductory letter; following up this initial contact, the company also conducted meetings, had telephone conversations, and issued further letters clarifying central concerns. Through this phase, Enbridge (2010a, 3-2) reported, "communities expressed concern over their lack of capacity to fully participate in the engagement process." After defining the project corridor between Bruderheim, Alberta and Kitimat,

British Columbia in 2005, Enbridge focused its engagement activities on Indigenous groups with either reserves or traditional lands located within 80 kilometers of the project corridor. Communities were provided with opportunities to participate in direct consultations with the company and to complete Aboriginal traditional knowledge studies.

Subsequent to determining that an Aboriginal traditional knowledge study was required for a given community, Enbridge Aboriginal traditional knowledge facilitators contacted that community. Facilitators discussed with the community the regulatory requirements and objectives, and the community's own objectives for the Aboriginal traditional knowledge research, and worked to define what was necessary to implement a successful Aboriginal traditional knowledge program. Through meetings with Aboriginal traditional knowledge facilitators, communities agreed to a work plan for the research. The Aboriginal traditional knowledge research combined two types of studies: traditional use and traditional ecological knowledge studies. Traditional use studies collected information on activities and sites or areas of cultural significance for Aboriginal peoples within their traditional territories. These types of activities, sites, or areas were classified under four categories (overlapping in multi-use areas): travel (trails, waterways, landmarks), harvesting (registered traplines, resource use areas, fish camps, berry-picking areas, medicinal plant collection areas), habitation (occupation sites, gathering places, camp sites, cabins), and spiritual (burial sites, sacred sites, sacred landscapes). Traditional ecological knowledge, in contrast, consisted of “the wisdom and understanding of a particular natural environment that has accumulated over countless generations” (Enbridge 2010d, 4–3).

Enbridge treated this information as supplemental to the research collected as part of the environmental assessment, as it provided “additional context to baseline descriptions and the analysis of potential project effects” (Enbridge 2010d, 4–3). In their application, Enbridge suggested Aboriginal traditional knowledge contributed in a variety of aspects, specifically project design and planning, assessment of the biophysical components and environmental management planning, assessment of the human or socio-cultural aspects, and assessment of the cumulative effects of past and existing activities on

both culture and the environment. In particular, Enbridge emphasized how sharing the locations of identified traditional use sites and areas aided the company in its constraints mapping, rerouting assessments, and watercourse crossing analysis.⁵⁷

Research typically advanced through three stages. First, in interviews, traditional knowledge holders were “provided with a general project description, including project-specific and regional maps” (Enbridge 2010d, 4–8). Semi-directed discussions focused on baseline conditions (i.e. air and water quality, health and abundance of fish and wildlife), the potential project effects on traditional use areas, and any possible mitigation measures the company could take to lessen these potential effects. Based on the interviews, traditional use sites were marked on the maps. The interview process also served to determine sites for field visits. Visiting particular field sites, research participants were able to view the proximity of traditional use areas to the project development area. Site visits further enabled recording traditional and culturally important ecological sites with photographs, GPS, notes, and sketch maps. Finally, reports based on interviews and field surveys were compiled, “including maps of sites and areas discussed during interviews and recorded during field visits,” and reviewed by research participants and designated community representatives for accuracy and suitability for release to the public regulatory process (Enbridge 2010d, 4–8). By 2009, 17 Aboriginal traditional knowledge community reports had been completed. These studies were then subsequently summarized in the Aboriginal tradition knowledge volume of the Enbridge Northern Gateway Project application.

The volume represented a limited encoding of Indigenous concerns about the impact of development to their territories. The bulk of the volume (354 of 428 pages) consisted of a series of appendices compiling the information from the Aboriginal traditional knowledge studies (both collaborative and independent) in the form of a table listing the baseline conditions, project impacts, and mitigation recommendations. These frames worked to contain Indigenous concerns to a particular fixed geography. Bounding Indigenous concerns to these delimited sites served to open up the territory for the

unfolding of pipeline development. This inserted Indigenous concerns into resource governance processes and reconciled them with development; sites of significance to Indigenous peoples were recognized as part of the geography of constraints imposed on development. However, recognized as limitations that development needed to accommodate, Indigenous geographies were also curtailed. Development proponents could mitigate the impacts on indigenous peoples through routing development around particular sites of Indigenous interests, such as traditional harvesting sites or burial grounds, but did not extend recognition to broader Indigenous territorial claims and jurisdiction. Thus, this integration of Indigenous concerns into natural resources governance screened elements of Indigenous territoriality from view.

In their study, Skin Tyee community members collaborated with corporate research facilitators to map Witsuwit'en traditional use. This mapping elided broader Witsuwit'en territorial claims. The definitional geography for the research was not Witsuwit'en territory or Skin Tyee geographies of land use but rather the regional effects assessment area defined by the swath of land surrounding the proposed pipeline right of way. Development impacts were only considered in areas within 60 kilometers of the proposed pipeline right of way. Approximately 325 kilometres of the pipeline right of way crossed land considered within the regional effects assessment area associated with Skin Tyee traditional use (Enbridge 2010d, 5-15).

Skin Tyee First Nation participants provided an extensive list of areas of traditional use, animal habitat and ecological concern. Skin Tyee identified numerous multi-use and harvesting areas important to the community as being intersected by, or adjacent to, the pipeline development corridor. Particularly the proposed Northern Gateway pipeline would run in close proximity to Lamprey Creek and Morice River. Skin Tyee members stressed that the Morice River and its surrounds are intensively used for fishing, camping, hunting, and plant gathering. Skin Tyee members identified numerous multi-use areas, two hunting areas, and six trails either crossed by, or adjacent to the proposed right of way. The report highlighted the primary concerns related to potential pipeline spills and the health

of fish populations. To mitigate these impacts, the report suggested maintaining a project route that limited the risk of spills reaching the Morice river system, particularly situating the pipeline on a bench away from the river. Further, the report stressed the need to “Protect spawning grounds of all fish including non-commercial species such as pacific lamprey eel” (Enbridge 2010d, C-280).

The Skin Tyee research also highlighted the importance of minimizing the impacts of Skin Tyee geographies of traditional use. This process of documenting sites and mapping constraints around which development should be rerouted was central to the enterprise of conducting a collaborative Aboriginal traditional knowledge study with the development proponent. The community report recommended mitigating the impacts of pipeline development by avoiding “hunting camps with a 75 m. buffer” (Enbridge 2010d, C-285). Similarly, the project had the potential to affect traditional trails used by Skin Tyee members, and the community Aboriginal traditional knowledge report recommended pipeline routing “Respect traditional trails and protect with buffer during construction” (Enbridge 2010d, C-310). Skin Tyee members indicated a number of plant gathering areas that would be impacted by pipeline development. To mitigate the impact of development on traditional plant use, the report recommended that “if healthy cottonwood trees are cut down and are of 1.5 m or more in circumference,” they should be provided to the community.⁵⁸

The Skin Tyee research also suggested a number of modifications to the pipeline construction process to mitigate the impacts of the Northern Gateway Project on traditional land use. For instance, the research indicated that plants used traditionally, such as berry patches, may not return after being disturbed by development because they have a hard time competing with other species. As this would lead to a reduction in availability of traditional plants, the Skin Tyee report recommended replanting the project right of way “with the same species of plants that were removed” (Enbridge 2010c, C-285). Similarly, based on observances of the impact of logging roads, Skin Tyee members suggested the installation of roads impacted how water flows, altering vegetation. To mitigate the

increase in runoff and change in drainage patterns associated with the project, there was a recommendation to “use existing roads as much as possible. Reclaim any access or roads that are not needed long-term; replant with trees” (Enbridge 2010d, C-279). To mitigate the possible effect of pipeline construction on deer, moose, elk, and caribou migrations, “Construction must be sensitive to animal migrations, especially those that need to cross the [Right of Way]. Avoid construction during spring and fall migrations” (Enbridge 2010d, C-311). To mitigate soil disturbances, contractors should ensure that the soils and plants replaced after pipeline installation “match what was there as much as possible” (Enbridge 2010d, C-278). To minimize food contamination concerns associated with pesticide use, the plants on the project right of way should be managed “without the use of chemical sprays” (Enbridge 2010d, C-284).

Rather than simply portraying pipeline development as detrimental to Indigenous traditional land use, the Skin Tyee study suggested that development could also be a vehicle for the maintenance of community traditions. “Elders expressed a desire to teach the younger generation cultural values and traditions, to transfer ... skills, knowledge, language, culture and pride to the young people” (Enbridge 2010d, C-289). Elders were limited in their ability to share traditional knowledge by the costs associated with traveling out to the land. Through “annual financial support (\$20,000),” the Skin Tyee study suggested that Enbridge could contribute to the establishment of a one-week culture camp to ensure the intergenerational transmission of knowledge (Enbridge 2010d, C-289).

As the cumulative effects of development forced Skin Tyee members to travel greater distances to find traditional foods, it was also suggested that the project proponent could facilitate access to traditional resources by providing a truck or van to each Skin Tyee reserve.⁵⁹ These vehicles would not only alleviate the conditions imposed by development, but also improve the isolation suffered by many community members, “who are too poor to afford vehicles, and cannot make use of the land as much as they used to as a result” (Enbridge 2010d, C-290). Transportation would enable Skin Tyee members to go “out into the bush to gather food and prepare for the winter” (Enbridge 2010d, C-309).

Transportation would also serve to ensure vital medical transportation for isolated reserve residents, helping to secure the health of the reserve population.

Further, while there was community concern with the potential adverse effects of pipeline development, the Skin Tyee report also stressed the potential community and economic benefits associated with the Enbridge Northern Gateway Project. The largest area of concern with regard to the pipelines was potential impacts to sensitive watersheds. In addition to the Morice River, the report listed a number of commonly used sensitive areas, including: Trout Creek, Parrot Creek, Owen Creek, Skins lake, Lamprey Creek, Nadina Lake, and Owen Lake. To address water quality concerns, the report suggested Skin Tyee members should be hired “to monitor streams and conduct clean-up (trees and debris). Streams that need to be cleaned are Trout Creek, Parrott Creek, and Lund Creek” (Enbridge 2010d, C-279). These environmental monitoring positions further served to address political economic concerns for the band, for which “Unemployment and under-employment are critical issues” (Enbridge 2010d, C-290). Without expertise or training in pipe-fitting, Skin Tyee members were best suited for entry-level positions, such as environmental monitoring, brushing, and reclamation work. The Skin Tyee report recommended “Northern Gateway to provide direct awards (employment) through the band office with first refusal to [Skin Tyee members] on work within the [Skin Tyee] traditional territory” (Enbridge 2010d, C-290).

The Northern Gateway Project interlinked with a long-term process of degrading the traditional economy, but simultaneously offered an opportunity to begin to address the economic insecurity of the Skin Tyee community through economic returns. Pipeline development threatened to diminish the traditional Skin Tyee economy. Due to industrial development, Skin Tyee members “are no longer able to make a living hunting and trapping as a result of decreased wildlife and furbearer populations” (Enbridge 2010d, C-309). The construction of the Northern Gateway Project would exacerbate these conditions. Removal of forest cover to prepare the project right of way would contribute to declining wildlife. The introduction of new roads would create avenues for both predatory animals and non-

resident hunters to access wildlife populations, thereby increasing competition for a limited resource. To address these concerns, the report recommends Enbridge consult with the Skin Tyee chief, council, and elders to determine an appropriate amount of compensation to “administer to band members on a monthly basis” (Enbridge 2010d, C-309). Enbridge is particularly offering Indigenous communities the opportunity to purchase an equity stake in the Northern Gateway pipelines. Listing the benefits of equity ownership on their website, Enbridge (2013) argues, “Becoming an owner in this project means Aboriginal groups are going to see cash flow within the first year of operations. Through equity ownership, Aboriginal people will be able to generate a significant new revenue stream that could help achieve the priorities of their people.”

The Skin Tyee research collaboration, however, raised a number of disturbing issues that would not be addressed by the Enbridge Northern Gateway Project. For instance, numerous aquatic animals were identified as suffering from poor water quality. Similarly, troubling health conditions on reserve were identified. Skin Tyee members “have experienced increase in heart conditions, cancer and diabetes. Diabetes is attributed to a change from the traditional diet” (Enbridge 2010d, C-288). In both cases, this was bracketed as a baseline condition. No impacts related to the Enbridge Northern Gateway Project were identified, and thus no mitigation strategy was plotted.

The effect of the Skin Tyee land use research articulated a constrained representation of Skin Tyee members’ traditional geographies that ultimately served to enable the unfolding of the territorial logic of the capitalist state. The abstracting and compartmentalizing spatial formulas of the approach to Skin Tyee land use worked to fragment Witsuwit’en or Skin Tyee territoriality into a patchwork geography of sites of intense Indigenous use. This mapping elides Indigenous peoples’ traditions of resource governance over large areas, limiting recognition of the geography of Indigenous traditions to small intensively occupied areas such as village sites, cultivated or enclosed fields, fishing sites, graveyards, and specific culturally significant locations. Efforts to account for sites of Indigenous cultural importance in Enbridge’s collaborative research with

Indigenous communities on Aboriginal traditional knowledge effectively deny interconnections between people and territory by focusing narrowly on charting specific bounded locations around which to route development.

Enbridge solicited Indigenous communities to provide information to protect particular sites of cultural interest, thereby directing development to other areas within their territories. This constrained notion of cultural recognition works to incarcerate Indigeneity in the local.⁶⁰ Collaborative community reports work to systematically reduce Indigenous spatialities to an economic interest in local land that can be effectively and profitably sublated into a developing industrial economy through employment opportunities and equity agreements. It is precisely this confined imagination of Indigeneity that land use and occupation reports in resource governance processes attempt to call forth. Through bounding Indigeneity in association with a conception of tradition, the universal claims of scientific resource management are established.

Writing Back: Oppositional Politics in Regulatory Reports

The Office of the Wet'suwet'en prepared an independent traditional use and occupancy study, challenging not only the Enbridge Northern Gateway proposal but the authority of regulators to determine the conditions shaping the project without Witsuwit'en consent. Titling their written submissions to the federally-appointed review panel, *Wet'suwet'en Rights and Title and Enbridge's Northern Gateway Pipelines Project*, the Office of the Wet'suwet'en vested their submissions in a reading of the legacy of the *Delgamuukw* litigation that challenged the frames of Aboriginal traditional knowledge that Canadian regulatory bodies called forth. Regulatory processes sought to document geographies of Indigenous use, and enlist Indigenous peoples in the acts of cultural triage and economic substitution, prioritizing specific sites to be reserved from development and negotiating the terms on which Indigenous community members could be incorporated into economies of industrial development that supplanted traditional economies. Absent from this colonial frame was acknowledgement of Indigenous political desires to control not just where

development happens in their territories but whether it happens in their territories. The Office of the Wet'suwet'en, however, made the question of jurisdiction, and specifically Witsuwit'en hereditary chiefs' claims to a counter-jurisdiction to that of federal regulators, central to their submission. This demonstrated a point of interaction with international law—particularly the requirement for free prior and informed consent established under the United Nations *Declaration on the Rights of Indigenous Peoples*—operating in excess of the categories of colonial jurisprudence. Producing an independent report, the Office of the Wet'suwet'en sought to strategically employ the traditional use and occupancy study as a wedge to open discussion of Witsuwit'en territoriality absent in the Enbridge submissions based on their collaborative work with Skin Tyee. Through asserting Witsuwit'en jurisdiction, the Office of the Wet'suwet'en sought to use a traditional use and occupancy study as a tool to challenge not simply a development but the underlying regimes of power-knowledge on which governmental regulation relied.

The Office of the Wet'suwet'en submission immediately pluralized the territorialities involved in the development. Rather than particular sites of land use interfacing with a proposed development under the jurisdiction of federal regulators, the Office of the Wet'suwet'en submission recognized how the 170 kilometres of the proposed Northern Gateway Project lay within the *yin tah* of Witsuwit'en *lha l'awoyh dil yēh*. “The proposed corridor, including its resources, was traditionally occupied by Wet'suwet'en Clan and House members, who exercised land and stewardship rights, prerogatives, and responsibilities; these Wet'suwet'en traditions continue into the present” (Office of the Wet'suwet'en 2012, para 3). Instead of simply mapping the geographies of Witsuwit'en land use, the Office of the Wet'suwet'en began by laying out the nine *yikh* territories transected by the Northern Gateway Project. For each *yikh* territory, they established the *yikh* responsible for managing the territory, and outlined the territorial boundaries. From east to west, the proposed pipelines would: enter the Tselh K'iz Bin territory of C'inegh Lhay Yikh of the Likhsilyu (Fig 9); proceed through the Tasdlegh territory also associated with C'inegh Lhay Yikh (Fig 10); move across the Nelhdzī Tēzdlī Bin territory belonging to

Tsa Kën Yikh of the Tsayu (Fig 11); travel the Ts'in K'oz'ay, Bī Winī, and Lhudis Bin territories respectively associated with Insggisgī, Këyikh Winits, and Cas Yikh—the three houses of the Gidimt'enyu—in succession (Fig 12, 13, 14); cross the Widzin Kwah or Morice River, and enter the Talhdzī Wiyez Bin territory of Yikh Tsawilhggis of the C'ilhts'ëkhyu (Fig 15); return to Talbits Kwah territory of Tsa Kën Yikh of the Tsayu (Fig 16); and finally skirting the edge of the Lho Kwah territory of Sa Yikh of the Likhts'amisyu (Fig 17). The Northern Gateway Project would thus impact territories belonging to all five Witsuwit'en clans.



Figure 9: Tselh K'iz Bin⁶¹



Figure 10: Tsdlegh

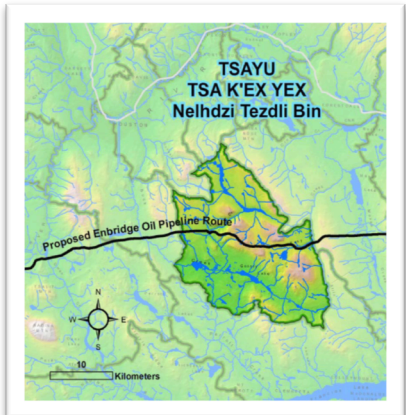


Figure 11: Nelhdzī Tezdli Bin⁶²

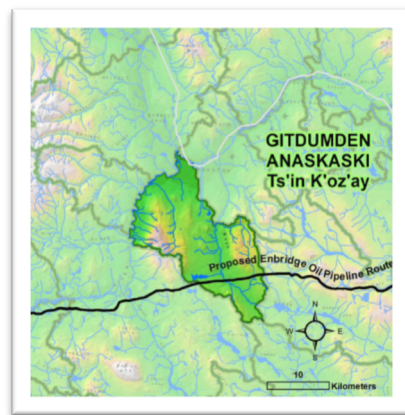


Figure 12: Ts'in K'oz'ay⁶³

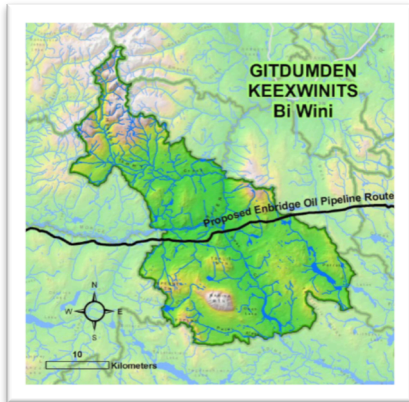


Figure 13: Bi Wini⁶⁴

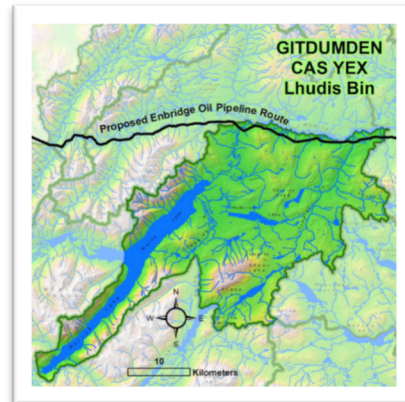


Figure 14: Lhudis Bin⁶⁵

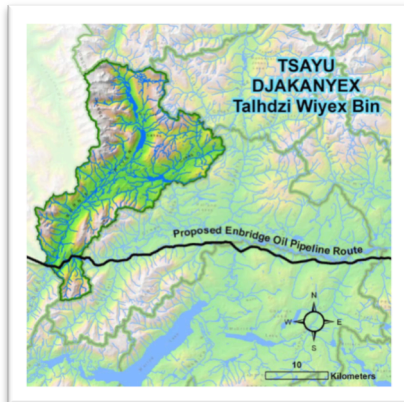


Figure 15: Talhdzi Wiyex Bin⁶⁶



Figure 16: Talbits Kwah⁶⁷

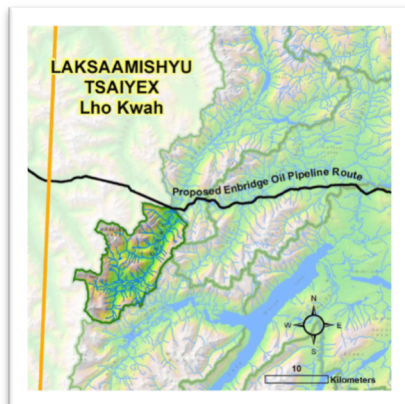


Figure 17: Lho Kwah⁶⁸

Fig 9 to 17 are from Office of the Wetsuwet'en, Wet'suwet'en Rights and Title and Enbridge's Northern Gateway Pipelines Project, (Submitted to Enbridge Northern Gateway Project Joint Review Panel, 9 January 2012), p. 19-26.

The Office of the Wet'suwet'en submission thus approached land use and occupancy as a means of articulating a territorial claim competing with that of colonial authorities. Echoing the evidence presented to the courts in the *Delgamuukw* case, the Office of the Wet'suwet'en explained that authority over a *yikh* territory was embodied in the figure of a hereditary chief, who held particular responsibilities to maintain the integrity of house *yintah*.

Hereditary Chiefs are entrusted with the stewardship of territories by virtue of the hereditary name they hold, and they are the caretakers of these territories for as long as they hold the name. It is the task of a head Chief to ensure the House territory is managed in a responsible manner, so that the territory will always produce enough game, fish, berries and medicines to support the subsistence, trade, and customary needs of house members. The House is a partnership between the people and the territory, which forms the primary unit of production supporting the subsistence, trade, and cultural needs of the Wet'suwet'en. (Office of the Wet'suwet'en 2012, para 6)

Thus, the Office of the Wet'suwet'en continued to advance claims based on tradition.

However, rather than simply articulating territorial claims in terms of Witsuwit'en law, the Office of the Wet'suwet'en continually invoked the language of the Supreme Court of Canada in *Delgamuukw* as a validation of their traditional legal order. The Office of the Wet'suwet'en suggested the project lay "within Wet'suwet'en Territory over which the Wet'suwet'en maintain Aboriginal Title and Rights" (Office of the Wet'suwet'en 2012, para 4). The report cites the Supreme Court of Canada as establishing that "Aboriginal title is based on and informed by the Aboriginal people's special attachment or relationship to the land" (Office of the Wet'suwet'en 2012, para 7). On the basis that the court determined the validity of Indigenous traditions as a form of evidence, the Office of the Wet'suwet'en argued that the territorial claim needed to be understood in association with Witsuwit'en regimes of ordering political life and territorial knowledge.

The Wet'suwet'en's special relationship to the land, grounds and affirms our title. The Wet'suwet'en express their special relationship through how we organize ourselves on the land, through our governance system, our laws, feast, clans, houses, chiefs, our people's identification with the territory through our crests, *Kungax*, totem poles and *Baht'lats* [*Bahlats*]. Individually and together these expressions of our special relationship to the land are integral to our distinctive Wet'suwet'en culture, and our title includes exclusivity and incorporates present-day needs. (Office of the Wet'suwet'en 2012, para 7).

Thus, the Office of the Wet'suwet'en leveraged a reading of a Canadian court decision to further advance their territorial claim.

However, the Office of the Wet'suwet'en forwarded a particular reading of *Delgamuukw* that prioritized fidelity to Witsuwit'en legal orders over strict adherence to the discourse of colonial jurisprudence. Thus, if the Office of the Wet'suwet'en approached Aboriginal title as a translation concept bridging colonial jurisprudence and Indigenous legal orders, they relied principally on Witsuwit'en legal orders to give it meaning. They also adopted a particularly broad interpretation of the meaning of the Witsuwit'en hereditary chiefs' victory at the Supreme Court of Canada: "The Wet'suwet'en have a strong case for title and rights to their territory, as confirmed by the *Delgamuukw* case" (Office of the Wet'suwet'en 2012, para 503). Although the Supreme Court of Canada never issued a decision on the particular case of Witsuwit'en hereditary chiefs claims to ownership and jurisdiction or Aboriginal title and self-government, the Office of the Wet'suwet'en employed the language of the court to transliterate claims grounded within the Witsuwit'en legal order.

The Wet'suwet'en have never relinquished or surrendered Wet'suwet'en title and rights to the lands and resources within Wet'suwet'en territory and continue to occupy and use the lands and resources and to exercise existing title and rights within the territory. We have an inherent right to govern ourselves and our territory

according to our own laws, customs, and traditions. This was affirmed in the Supreme Court of Canada *Delgamuukw* decision (Office of the Wet'suwet'en 2012, para 512). Thus, although the Supreme Court of Canada left the question of Indigenous jurisdiction unresolved due to issues with the original trial, the Office of the Wet'suwet'en approached the recognition of Indigenous knowledge in the decision as equivalent to a recognition of the puissance of Indigenous legal orders.⁶⁹

Employing Canadian legal discourse to give meaning to Witsuwit'en legal concepts, the authors of the Office of the Wet'suwet'en report appropriate Chief Justice Lamer's discourse on the requirement that Aboriginal title operate to the exclusion of other organized societies, arguing that this exclusivity should extend to colonial authorities.

Our Aboriginal title provides us with the right to occupy and use the land exclusive of all others. It provides us with an exclusive right to decide whether and how land and resources will be occupied and used according to our cultural values and principles, exclusive not only of Enbridge and its investors but also of the JRP [Joint Review Panel]. It provides us alone—exclusive of Enbridge and its investors with right to develop and benefit from the economic potential of our land and resources. Development and use that is irreconcilable with the nature of the Wet'suwet'en's special attachment to the land is precluded (Office of the Wet'suwet'en 2012, para 8). The translation of Indigenous traditions through the land use and occupancy study here sought to disrupt normalized colonial claims to jurisdiction and authority over Witsuwit'en lands.

However, the Office of the Wet'suwet'en strategically did not limit their submission to simply displaying jurisdiction that exceeded the terms of reference of the government review panel. While the Office of the Wet'suwet'en submission was grounded in a counter-claim to jurisdiction, the Witsuwit'en also identified how the proposed Northern Gateway Project would impact their ability to use their traditional lands and exercise their traditions. The study contains extensive details about local fish stocks derived from the Office of Wet'suwet'en's involvement in contemporary fisheries management. The authors

also detail a list of inadequacies with the Enbridge project application, extending from the failure of the process to uphold legally recognized duties with regard to Aboriginal peoples in Canada to gaps in Enbridge's environmental effects assessment. Thus, working to advance both a list of particular complaints commensurate with the terms of colonial resource governance and simultaneously challenging these terms, the Office of the Wet'suwet'en sought to both defend their interests within the colonial process of resource governance while challenging the legitimacy of that process.

On the Undecidability of Translations

The Skin Tyee and Office of the Wet'suwet'en land use studies demonstrated a marked contrast. Working with and against a development proponent the two research endeavours demonstrated the multivalence of Indigenous land use and occupancy studies as simultaneously offering opportunities to mitigate the impacts of development, negotiate the terms of Indigenous support for development, and assert a counter-jurisdictional claim to the state as the appropriate authority to determine the course of development. I argue that this slippage between the dynamics of Indigenous empowerment and colonial co-optation is an endemic and undecidable characteristic of the colonial present. But in their fundamental undecidability, I suggest traditional use and occupancy studies remain open, presenting possibilities for strategic reformulation that Indigenous communities continue to leverage.

In this final section, I argue that technology of Indigenous traditional use and occupancy studies does not reverse colonial relations so much as rework them. The rationality undergirding those studies remains contained within the configuration of colonial politics, thus limiting the recognition of Indigenous systems of power-knowledge, even as these studies present opportunities to make claims against colonial authorities. This is a contradiction that cannot be easily remedied: the political and economic context of Indigenous peoples' submergence within a colonizing state requires that they and their allies develop techniques to interface with and challenge colonial governance processes. In

so doing, Indigenous peoples are forced to reckon with the colonial power they seek to challenge. However, the engagements of Indigenous peoples with colonial authorities are not foreclosed to a set domain. Rather Indigenous repurposing of colonial concepts continues to disrupt and reconfigure dominant systems of meaning. This results in partial victories, often preserving vital cultural resources but invariably leaving elements of Indigenous peoples' challenges to colonial power unanswered. This, I argue, is an aporia that we must continually confront but cannot simply or easily transcend (Spivak 1999; Wainwright 2008). As Boaventura de Sousa Santos (2002 [1995]) describes, the law presents both regulatory and emancipatory dimensions, enabling partial victories as Indigenous peoples appropriate legal instruments and discourses to advance their claims while simultaneously exposing themselves to regimes of regulation.

While traditional use and occupation studies are projected as an aid to the original presence of Indigenous territorial orders, their development creates an aporetic relation between counter-cartography, as a modality of translation and resignification, and its Indigenous source material. Echoing Derrida's (1997 [1976]) discussion of the undecidable relation between writing and speech, land use and occupancy studies exist in an undecidable relationship with Indigenous traditional forms of ordering territorial knowledge that studies aim to supplement.⁷⁰ On one hand, the addition of written studies to Indigenous oral traditions as supporting evidence can be understood as cumulating evidence to give the fullest measure of presence to Indigeneity. On the other hand, land use and occupancy studies signify something lacking in Indigenous traditional systems of ordering power-knowledge. The existence of traditional use and traditional knowledge studies is premised on the (often implicit) supposition that Indigenous territoriality can only accomplish itself through rendering it legible with the proxy of said studies. The traditional use and occupancy study, as substitute, "is not simply added to the positivity of a presence, it produces no relief, its place is assigned in the structure by the mark of an emptiness" (Derrida 1997 [1976], 145). Indigenous territoriality "can accomplish itself, only by allowing itself to be filled through sign and proxy" (Derrida 1997 [1976], 145).

Traditional use and traditional knowledge studies do not simply add to Indigenous traditions but also aim to address the illegibility or absent presence of Indigenous traditions for colonial authorities. Traditional use and traditional knowledge studies thus exist in an unresolved relation to the Indigenous territorialities they seek to encode, accreting inscriptions that codify Indigeneity as a presence reshaping colonial resource governance and its regimes of power-knowledge, and simultaneously standing as substitute for and thereby displacing Indigenous traditions of ordering territorial knowledge. Stated differently, there is an ambivalence to traditional use and traditional knowledge as a technology that seeks to empower Indigenous territoriality but aims to do so through casting Indigenous territorial knowledge within the frames of a colonial discourse founded on the suspension of Indigenous territorialities.

The political impetus to integrate Aboriginal traditional knowledge into resource management practices emerges from recognition within governmental apparatuses of decades of Indigenous political activism. But these recent developments do not divorce contemporary discussions of the relationship between Indigenous knowledge and Canadian management practices from the paradigm of colonial knowledge translation that sets the discursive and material terms for these relationships. While intellectual histories and policy studies chart the recent development of Indigenous knowledge as an object of intellectual interest to the scientist and the bureaucrat, I have extended analysis by rendering explicit how technology of land use and occupancy studies sits within relations of power-knowledge. Particular practical rationalities guide the constitution of Indigenous knowledge as an object of scientific investigation, as well as the basis for and site of regulatory intervention. However, strategies of engagement and knowledge translation remain plural, shaped by different project of becoming in the world.

I have sought first to argue that initiatives aimed at knowledge integration come with defined limits, and rely upon continually separating Indigenous traditions from contemporary politics. The constrained frame of Aboriginal traditional knowledge within bureaucratic discourse works to structure the spaces that Indigenous peoples are seen to

occupy and to which they may lay claim. This works to define the language of contention, framing a legitimate set of bounded geographies for which Indigenous people can lobby, and inscribing a set of knowledges about what it means to be Indigenous. Thus, even as Indigenous land use and occupancy studies emerge of a tradition of counter-research aimed at pressing back against colonial impositions, the practical rationalities of colonial governance continue to enclose notions of Indigenous traditions and being. However, through strategic interventions Indigenous peoples continue to employ colonial concepts to carry alternative meanings and advance different ends.

A critical reading of Enbridge collaboration with Indigenous communities in constructing its Aboriginal traditional knowledge submissions contributes to naming the ways in which the systemization of Indigenous knowledge in the form of Aboriginal traditional knowledge studies contributes to the production of unjust power relations. Through delineating particular Indigenous sites to be protected, the recognition of Indigenous knowledge in Aboriginal traditional knowledge studies marks Indigeneity as local and traditional. This works to contain the terms on which Indigenous being was recognized, stabilizing and naturalizing the territorialization of the colonial nation-state. Marking Indigenous knowledge as local continually effaces the way in which its locality is the product of implicit (and sometimes explicit) contrasts to networks that continually accumulate knowledge in particular centres of calculation, empowering contemporary colonial agents to act at a distance on sites and peoples demarcated as distinctly local.

Addressing colonial legacies is neither a question of silencing nor celebrating difference. Rather, researchers must recognize and sustain ambivalence towards both colonial dichotomies and our own theoretical methods (Young 2004 [1990]). As researchers we need to develop “a more critical understanding of the underlying assumptions, motivations and values” that inform our society and our own research practices (Smith 1999, 20). Researchers need to interrogate the term of scientific resource management within an understanding of the ontological politics associated with these terms, and how they link to broader colonial legacies. Mutuality in knowledge exchange

requires that researchers develop thoroughgoing and critical histories of scientific resource management practices in connection to colonialism (Johnson, Louis, and Pramono 2006). Further, researchers ought to be forthright with this information if they attempt to include in their practice the knowledge of Indigenous communities, who should be empowered to negotiate past grievances as well as ensure that historic injustices are not reproduced in future developments.

As Spivak (1999, xii) suggests, scholars must constantly hold up for interrogation the foreclosures that we must not want, and develop a “productive acknowledgement of complicity.” It is necessary, following the guidance of Rauna Kuokkanen (2007), to expose the way in which the totalizing logic of exchange annuls the gift of Indigenous knowledge and possibility of reciprocal relations at the moment of their recognition. In the context of land use and occupancy studies, this entails recognition that the condition of their possibility is also, and simultaneously the condition of their impossibility. Efforts to translate Indigenous knowledge to colonial resource management processes governing by the ontological project of resource development are necessarily fraught. As Indigenous knowledge achieves commensurability with the terms of colonial discourse, as thus is capable of being integrated, it also crosses the threshold from emancipatory to co-opted knowledge. Seeking accord with colonial regimes of power-knowledge, studies of traditional knowledge are consistently contoured to construct Indigenous being within frames that rationalize resource development. Thus, Indigenous peoples providing cultural information to resource governance processes are constantly forced into undecidable moments where they must either perform cultural triage, privileging the protection of particular cultural interests or sites and thus directing development to other areas within their territories, or risk having their views disregarded as unreasonable arguments beyond the purview of governmental consideration.

I do not believe there is an easy answer to this problem, but instead think it necessary to reside uncomfortably within the paradox of the necessity of articulating Indigenous interests with the inevitability of the co-optation of elements of Indigenous

knowledge. But rather than simply normalizing these processes of co-optation, it remains necessary to constantly question and challenge them. Stoffle and Evans (1990) contend that the imbrication of conflicting political demands—those that are incommensurable with development, in the form of holistic conservation, on the one hand, and those that are commensurable with development, in the form of cultural triage, on the other—can be a productive strategy for interpolating Indigenous concerns into resource management. Thus, the political challenges on incommensurability—assertions that refuse to accord with the development consensus and posit a politics of Indigenous being and becoming in excess to the ontology of resource development—destabilize the development consensus, opening spaces of negotiation. Conversely, the assertion of commensurable site-specific demands create the basis for integrating Indigenous interests in the realignment of development agendas. However, in mobilizing such a strategy, Stoffle and Evans emphasize the primacy of methodologies that elicit both perspectives. This position, however, again risks sublating the political problematic of conflicting ontologies to the realm of method and question of epistemological sophistry, risking pacifying the political valences of the encounter with development. Rather it remains necessary that researchers remain sensitive to the politics of their work, and particularly how their work relates to the ontological production of the territorial state, as well as the articulation of Indigenous processes of becoming in excess of colonial registers.

CHAPTER 5

Sovereignty's Returns

As the contest between the British Columbian government and the Gitxsan and Witsuwit'en advanced through the courts in the *Delgamuukw* litigation, there were simultaneous negotiations playing out between provincial foresters and the hereditary chiefs in the woods. Despite the legal contestation of its jurisdiction, the province continued to materialize its territorial claim, issuing forest licenses to log claimed Gitxsan and Witsuwit'en land. The hereditary chiefs protested this development, and authorities from the Ministry of Forests met the hereditary chiefs in Hazelton to address the disputed governance of the territory (Chamberlin 1999). At the meeting, the epistemological and ontological divide between the foresters and hereditary chiefs was rendered explicit. The hereditary chiefs struggled to understand colonial claims to the territory through forest maps. One Gitxsan hereditary chief condensed his discomfort into a question: "'If this is your land,' he asked, 'where are your stories?'" (Chamberlin 2004, 1).

Negotiations were impaired by a communicative disjuncture between colonial cartographies and Indigenous orders of territorial power-knowledge. The provincial foresters and the hereditary chiefs were not only using different languages—employing distinct discourses to cognize territory—but moreover the territories they were discussing were fundamentally different things. Colonial regimes approached the land as a resource to be exploited and relied upon cartographic technology to exercise power at a distance (Latour 1987; Harley 1989; Bassett 1994; Godlewska 1994, 1995; Edney 1997, 1999; Akerman 2009). The embodied performances of Gitxsan *adaawk* and Witsuwit'en *kungax* presented not only distinct processes of enacting territorial claims but configured territory in fundamentally different ways (Mills 1994b; Daly 2005; Mills 2008). Meaning constantly slipped between interlocutors who were talking about and moreover involved in different—if coextensive, frictional, and entangled—processes of becoming in relation to

an unfolding of the world. Scholars have often represented this uncontrolled equivocation as a product of the epistemic differences between how different cultures interpret the world, but it can be better understood as the product of the disjunction between overlapping Indigenous and colonial ontologies or worldings (Bryan 2000; Blaser 2009a, 2009b, Forthcoming). To analyze the ontological politics of governmental encounters and communicative disjunctures, it is necessary to call into question how frameworks of enacting and encoding Indigenous knowledge interlink with processes of coming into relation in the world.

In this chapter, I return to the resource governance process associated with the Enbridge Northern Gateway Project discussed in the previous chapter. Where that chapter sought to survey Witsuwit'en efforts to translate Indigenous territorial knowledge into the written form of land use and occupancy studies, here I examine the legal pluralism of the encounter between colonial and Indigenous authorities in the oral evidentiary hearings. In federal regulatory hearings, traditional Witsuwit'en authorities, *dinī ze'*, *ts'akē ze'*, and *hibī nidīztic*, articulated claims to Indigenous jurisdiction over their territories. Despite the precedent of earlier Witsuwit'en performances before the courts, government regulators still failed to recognize the legal pluralism that Witsuwit'en witnesses enacted within the space of the oral evidentiary hearings. Regulators continually mistook Witsuwit'en political articulations for simply cultural expressions. Colonial frames of regulatory recognition reduced Indigeneity to a different way of knowing, not a way of being in relation to territories that makes the land something distinct from colonial visions of natural resources. Refusing to acknowledge the ontological politics of the encounter between Witsuwit'en and colonial processes of territorial governance, colonial authorities sought to secure Indigenous being and make it legible within a singular worlding associated with the territorial becoming of the capitalist nation-state. However, despite the injunctions colonial governmental processes placed on Witsuwit'en sovereignty, and on Witsuwit'en being itself, the Witsuwit'en people continued, through their performances, to call into being forms of Indigeneity in excess of colonial containments.

I aim in this chapter to present a contrapuntal account of the resource governance process, exposing both the workings of colonial will to contain the world within a singular ontology of development and Indigenous assertions of a competing sovereign will to decide the course of development on their traditional territories. I understand the contestations of Indigeneity in the hearings chambers as involving not simply the boundaries of recognized Indigenous traditions within state law but a fundamental conflict of laws, a contest between Canadian and Indigenous legal orders. While ostensibly this debate centres on the potential construction of a tar sands pipeline, the terms of discussion are determined by questions of sovereignty. Who is sovereign? Who enacts the authority to decide, to prohibit or permit particular forms of development? How is sovereignty produced? What is the relationship between territory and sovereignty? Can territories overlap, and if so, what is the nature of this overlapping multiplicity? How is sovereignty performed and contested in encounters with Indigenous people brought before the law? In my analysis, these are necessarily open questions, as the enactment of sovereignty in association with its constitutive exclusions is an ongoing performance, and best addressed through the lens of ontological politics.

Developing this account, I attempt to examine the simultaneity of Canadian and Witsuwit'en performances of sovereignty. Thus, I study both how colonial presumptions of universal domain seek to encode Indigeneity within the ontological unfolding of the settler state, and conversely how the Witsuwit'en hereditary chiefs continue to assert an Indigenous sovereign will to determine the course of development on their territories. I seek to track a dialogue marked by uncontrolled equivocation, where the parties not only struggle to translate terms but are fundamentally talking about different things (Viveiros de Castro 2004). While the two parties used and struggled to translate between different languages at times, I argue it was not linguistic but ontological difference that impaired understanding. This chapter thus asks after the ontological antagonism immanent to a condition of legal pluralism in which different competing regimes attempt to determine what can or cannot be.

Focusing my analysis on the articulation of categories of Indigenous being and processes of Indigenous becoming, I advance two broad arguments. First, I suggest that the coding of Indigenous being as traditional works as a form of containment within the rationalities of the state. Thus, state actors, and particularly the quasi-judicial members of the review panel overseeing the hearing process, rely upon and reproduce a construction of Indigenous traditions as domesticated within and subject to the ultimate decisions of colonial authorities. Second, I argue that Indigenous politics continually exceed this containment, breaching the bounds of these enclosures, and moreover, articulating resistant forms of subjectivity, territoriality, and authority. The trajectory of law produced through Witsuwit'en resistance to the Canadian state cannot be contained within—and remains necessarily surplus to—the framework of colonial state sovereignty. These political articulations challenge colonial processes designed to push through the approval of extractive development projects. In so doing, they assert an Indigenous right to decide, thereby expressing a form of Indigenous sovereignty. Articulating counter-jurisdictional claims, the Witsuwit'en presenters resonated contrapuntally to the coded performances state processes seek to orchestrate.

Performances of Indigenous authority may supplement the deficiency of the original non-presence of Indigenous sovereignty within colonial legal discourse. Like a pharmakon, these articulations of Indigeneity possess the potential of both a poison and cure, both an irruption against and a repair for state sovereignty. Asserting Indigenous sovereignty within the fora of colonial law represents a necessary impossibility for Indigenous peoples who must reckon with but do not simply want to cede to colonial authority. As Lindsey Te Ata O Tu MacDonald and Paul Muldoon (2006, 201) express, “recognition is demanded from the state at the same moment that its authority is disavowed.” Through placing state practices of recognition in parallax with the articulations of Indigenous law, it is possible to think about the state's “traditions” and how they continue to reproduce colonial relations in the present. While the confines of colonial recognition imagine a foreclosure of Indigenous being to the past and refuse the possibilities of a contemporary Indigeneity,

shifting perspective brings into view Indigenous articulations contesting the exclusive jurisdiction of the state and highlights Indigenous relations to territory and tradition as activated contemporary forces rather than historical artifacts to salvage.

I develop these arguments through four acts. In the first act, I introduce the encounter between the colonial regulatory authorities and the Witsuwit'en *dinī ze'*, *ts'akē ze'*, and *hibī nidīztic* as one contoured by an enduring and unresolved legal pluralism. Witsuwit'en authorities asserted a sovereign legal tradition, and called upon colonial authorities to respect Indigenous law. Government regulators, however, refuse to recognize the political content of Indigenous assertions, consistently interpreting Indigenous legal discourse as simply a series of cultural expressions. Thus, surplus to traces of Witsuwit'en performances the hearing transcripts inscribe a record of colonial disregard and disavowal of Indigenous political claims in order to permit development. In the second act, I focus the reader's attention on constrained colonial processes of recognition, and how Canadian regulatory processes offer to consider Indigenous concerns but refuse claims to Indigenous sovereignty. In the third act, I adopt a parallax view of the hearings process to examine the ways that Indigenous assertions exceed this containment articulating a sovereign will to decide. Finally, in the fourth act, I follow a trajectory of resource governance that extends beyond colonial hearing chambers to include a political topography of Indigenous dreamscapes and feasts, as well as the spaces of corporate governance. Examining this broader plural assemblage of resource governance, I highlight the proliferating enactments of Witsuwit'en law and how *dinī ze'*, *ts'akē ze'*, and *hibī nidīztic* have sought to render corporations subject to the sovereign dictates of Witsuwit'en authority.

Act I: Opening with a Song

The primary argument in this chapter is that sovereign authority within colonial society is not unified as the possession of colonial authorities but rather articulated through diffuse and competing networks of relation. In a condition of legal pluralism, law is not

subsumable into a singular system and has multiple origins in different fields through which regulatory processes are enacted. Different processes of decision-making variously support, complement, ignore, and frustrate one another. Drawing upon Christian Lund's (2011) conceptualization of sovereignty as the fragmented practice of working to define and enforce collectively binding decisions on members of society, various institutions can be understood to enact a form of sovereign power. Inverting prevailing political imaginaries, Lund (2011, 889) insists that "institutional control over land and political subjects does not *represent* or *reflect* pre-existing sovereignty. It *produces* it." Thus, colonial efforts to police appropriate articulations of Indigeneity can be seen as an enactment of colonial sovereignty. Conversely, Indigenous peoples too enact forms of sovereign power in actions to determine the course of development on their territories.

On 16 January 2012, the federally appointed Joint Review Panel (JRP) of the National Energy Board and Canadian Environmental Assessment Agency convened a community hearing in Smithers, British Columbia. The community hearings sought to collect oral information from interveners for review of the proposed Enbridge Northern Gateway Project. The government tasked the JRP with evaluating the environmental impacts of the proposed pipeline, possible measures to mitigate adverse environmental impacts, the broader national interest served by the project, as well as public and Aboriginal concerns. The JRP designed the community hearings to facilitate the consideration of knowledge best conveyed in an oral format, particularly the oral testimony of Indigenous traditional knowledge holders.

However, if the oral evidentiary hearings were constituted under the aegis of the Canadian sovereign, at the hearing session at the Hudson Bay Lodge in Smithers, members of the Witsuwit'en community performed a competing claim to sovereignty. They opened the oral evidentiary hearing of the review panel by singing a song specially composed for the occasion. The song expressed the depth of the Witsuwit'en connection to their territory; the chorus "*noh' y'in tah way atsaan tsun*" translated to "our territory is our livelihood" (Alfred 2012).⁷¹ The song also clearly expressed their determination to block

the pipeline, closing with the line, "Enbridge *noh' y'in tah wagga way sow' ye'h*" (Enbridge don't step onto our land). The song articulated a Witsuwit'en sovereign will to determine the course of development on their territories, and thus represented an assertion of Witsuwit'en law.

From the perspective of federal government regulators, the Witsuwit'en song was beyond the pale of conduct appropriate to the hearings process. The articulation of a Witsuwit'en sovereign will to determine the course of development on their traditional territories worked in excess of the terms of the federal joint review process. Exceeding the terms in which Canadian government officials had established for regulatory review, Indigenous performances appeared to disrespect the review process. Asserting jurisdictional claims competing with those of the colonial state, Indigenous political claims challenged the frames of colonial sovereignty. This challenge, however, was quietly handled within the review process as a matter of protocol and establishing the appropriate bounds for Indigenous cultural expressions.

The official JRP transcript elided the political content of the Witsuwit'en opening performance, only inscribing bracketed mention of an "(Opening Ceremony and Prayer)" (JRP 2012a, ~ para 5419). Rendered mere ceremony, this elision silenced the way in which Witsuwit'en claims to sovereignty troubled the territorial jurisdiction of state, asserting a competing Indigenous territoriality. The Witsuwit'en opening performances exceeded the bounds of appropriate conduct in a colonial regulatory discourse in terms of both content and form. The issuance of an Indigenous sovereign will to determine the course of development on Witsuwit'en lands exceeded the conditions within which colonial regulatory authorities would grant hearing. But moreover, the form of Witsuwit'en expression, a song in an Indigenous language, was unintelligible to colonial authorities as a part of a governmental process. As a performance that could not be accounted for in its political character, the Witsuwit'en song was transcribed in the colonial record as simply a cultural opening.

Registering Witsuwit'en performances as cultural rather than political within the hearing transcript worked to put Witsuwit'en sovereignty under erasure as Indigeneity was brought within the registers of the colonial governmental process. Panel Chair Sheila Leggett explained in her opening comments that "The record includes all of the information that the Panel will consider in making our decisions. We will not consider any information that is not in the record" (JRP 2012a, para 5437). The elision of the Witsuwit'en song highlighted its status as a cultural supplement to the hearings process. In the hearing chambers, the subaltern could sing, but the performance of Witsuwit'en law through song could not find resonance in the hearing of colonial authorities. As Julie Cruikshank (2012, 246) describes, Indigenous accounts of territorial relations are often interpreted as simply culturally distinct expressions "rather than paradigms based on long-term, engaged relations with other active beings." Including recognition of Witsuwit'en articulations as cultural expressions rather than political assertions, colonial regulatory authorities consolidated their jurisdiction over Witsuwit'en subjects and territories within its registers. The inclusion of Indigenous cultural difference signaled the generosity of colonial power, offering forms of inclusion and acknowledgement to Indigenous Others, while enacting the epistemic violence of silencing Indigenous ways of being and becoming in relation to the world. However, the equivocation of meaning between Indigenous and colonial orders did not simply reflect distinct epistemological frames. Colonial authorities projected a false universality to colonial processes of becoming in relation to the world as resource.

As a further enactment of a colonial will to determine the shape of the hearings, representatives of the National Energy Board indicated that they did not want the Witsuwit'en to open with an anti-Enbridge song again at the Burns Lake hearings in the Island Gospel Fellowship Church on 17 January. While the review panel justified their attempt to silence the song on the grounds of respect for Enbridge in this state-administered process, the Witsuwit'en hereditary chiefs perceived the attempt to dictate the terms of traditional opening ceremonies as an affront to their authority in their own

territories. The Witsuwit'en did not cede control of the opening. The panel was convened to hear their testimony, and would begin in accordance with their process. The chiefs entered the church gymnasium in Burns Lake in full regalia. They assembled before the crowd, and they again performed their oppositional anthem. However, the details of this performance were, perhaps unsurprisingly, again quieted in the official JRP record, which only recorded this demonstration as the "(Opening Ceremony)" (JRP 2012b, ~ para 6354).

In her opening remarks in Burns Lake, Leggett, the Joint Review Panel Chair, noted how "that word 'respect'" had been repeated in each community they visited: "We talked about it yesterday; we've talked about it every day" (JRP 2012b, para 6386). At the hearing session in Smithers, British Columbia, on 16 January 2012, Witsuwit'en presenters spoke fervently about the need for *wiggus* or respect to ensure that people acted with humility in relation to the land, recognizing the obligation to preserve the land for future generations. George Williams, who holds the name Sa'un in the Tsayu (Beaver), told the panel in Smithers, "Wakoos [*wiggus*] means respect. It is our job, Tsayu, Laksilyu [Likhsilyu], Gilseyhu [C'ilhts'ekhyu], Laksamshu [Likhts'amisyu], to protect our territories. Our language, our culture comes from the territories" (JRP 2012b, para 6386). However, in invoking the concept of respect, the Joint Review Panel Chair transliterated the term from the registers of Indigenous legal orders to those of the state, reminding presenters "to be respectful of all parties involved in this proceeding in their evidence" (JRP 2012b, para 6389). While Indigenous presenters had spoken of the need for the government and industry to respect Indigenous traditional laws in previous community hearings for oral evidence, Leggett employed the term as a thinly veiled criticism of Indigenous peoples' failure to comply with the mandated bounds of the state-defined process. Through colonial and Witsuwit'en authorities both used the same term, there was a communicative disjuncture as they talked of respecting different sets of relationships. The issue was not one of linguistic difference per se but rather distinct discourses associated with heterogeneous ways of being in the world.

While Leggett stressed that the hearing was convened “to listen to the Oral Traditional Knowledge that you [Indigenous peoples] have to share with us” (JRP 2012b, para 6385), colonial rationalities of listening to evidence enframed the Indigeneity that regulators heard within the hearings chambers. The panel chair orchestrated acceptable articulations of Indigenous traditions to fit within the terms of colonial discourse. Leggett encouraged presenters to focus on describing the value of “historical perspectives ... about hunting for the berries, about the spirituality that’s involved in going fishing” (JRP 2012b, para 6388). Thus the review panel sought to conceptually enframe Witsuwit’*en* being with a particular colonial imagination of Indigeneity.

The hearings were thus composed of practices of Indigenous orality but also the techniques of colonial aurality. Witsuwit’*en* presentations were contrapuntal, playing off colonial arrangements. Rather than simply articulating their subjectivity in the frames of the colonial state, the positions of Witsuwit’*en* *dinī ze’*, *ts’akē ze’*, and *hibī nidīzitic* were always already interpellated within Indigenous legal orders. Thus, while Witsuwit’*en* performances in the hearings chambers were invoked by the issuance of a colonial hearing order, they nonetheless maintained an independent rhythm voicing a counter-point to a performance of colonial sovereignty. The song of Witsuwit’*en* sovereignty presents a metonym for a broader political performance of Indigenous sovereignty in the evidentiary hearings. In their testimony, Witsuwit’*en* witnesses spoke to the depth of their connection to Witsuwit’*en* lands, and moreover, expressed political claims to jurisdiction over Witsuwit’*en* territories. The official records of the hearing maintained by the National Energy Board and Canadian Environmental Assessment Agency silenced the song but recorded Witsuwit’*en* speeches.⁷² Nonetheless, the practice of colonial aurality within the hearing process, selectively listening to and codifying information, warped Witsuwit’*en* performances. In the hearing of colonial authorities, Witsuwit’*en* performances were encoded as simply cultural rather than political expressions, projecting the colonial sovereign right to decide as a solo.

Incarcerating Indigenous being, the review panel implicitly presented a particular colonial ontology as a universal plane. The review panel relied upon and reproduced a colonial conception of the world as a singularity. This masked the ontological and legal pluralism that characterized a geography simultaneously defined as Canada and as Indigenous territory, and how multiple processes of becoming in relation to heterogeneous assemblages of the world coexist, overlap, and conflict. Colonial authorities elicited a world possessing a singular truth. Further, colonial authorities presented themselves as the arbiters of the truth, naturalizing the enactment of a colonial sovereign authority to enforce binding decisions regarding the disposition of lands. However, Indigenous performances in excess of the terms of this containment continued to contest the projection of a universal jurisdiction of the colonial sovereign within its claimed territories.

Thus, both Indigenous peoples and colonial authorities have sought to enact a sovereign right to determine the course of development and define limits which may not be exceeded. However, if colonial and Indigenous political communities share basic characteristics associated with the exercise of sovereign power, their coextensive articulation and overlap results in friction. As collectivities articulating political claims in excess of the frames of colonial sovereignty, indeed asserting a jurisdictional claim competing with that of the colonial state and a willingness to fight for it, Indigenous peoples constitute a threat to the political community of the colonial sovereign. Conversely, as the enactment of the power of colonial sovereignty is achieved through the suspension of Indigenous legal orders, the settler colonial state constitutes a threat to the political community of the Witsuwit'en. These conflicting sovereignties have at times resulted in the violent inscription of the force of one legal order on the bodies and territories of the other—typically with colonial authorities inscribing their will on Indigenous peoples. Critics of colonial biopolitics have highlighted how most often this has involved the inscription of colonial violence on Indigenous bodies and territories, which are transformed through the materialization of colonial designs (Muldoon 2008; Rifkin 2009; Morgensen 2011a, 2011b). However, it is important to register that colonial sovereign

power relations are not simply violent, in establishing the boundaries of warranted subaltern being, but also productive, in constituting particular forms of recognition of subaltern peoples with profound political effects (Lund 2011; McCreary and Milligan Forthcoming).

Act II: Colonial Arts of Listening

This vantage sheds light on the problematic for state law of recognition of Aboriginal title and consideration of Indigenous territorial rights within the purview of the state's sovereignty. Domestic court rulings and government policies have not simply sought to suspend Indigeneity. Courts and bureaucrats have increasingly recognized a role for Indigenous peoples in decision-making on their traditional territories. But the development of these regimes of recognition can too be understood as advancing through a series of expulsions that continually suspend recognition of Indigenous sovereignty (Monture-Angus 1999; Christie 2005). While Indigenous peoples' counter-claims regularly evoke Indigenous legal frameworks in excess of the constrained recognition offered by the colonial state, the performance of colonial authority as the ultimate arbiter of Indigenous concerns continually enacts the supersession of colonial sovereignty over Indigenous polities. Thus, I argue, interrogating the processes through which Indigeneity has been incorporated into the state exposes the exclusionary workings of colonial sovereignty.

While the acknowledgment of Aboriginal rights and title in the Canadian courts has often been celebrated as the foundation of a movement to reconcile Indigenous claims with the colonial settlement and development of the land, it also exemplifies a record of continual expansion of colonial state authority and constriction of Indigeneity within defined bounds. Within the framework of Canadian law, Aboriginal rights are restricted to the customs, practices, and traditions that a particular group of Aboriginal people exercised at the time of contact with continuity through to the present. This constrained notion of cultural legitimacy eschews recognition of practices that lie outside colonial conceptions of being Indigenous (Borrows 1996, 1997; Henderson 2006). Thus, it is unsurprising that the

vast majority of Aboriginal rights court cases have involved hunting and fishing, basic sustenance activities that accord with colonial imaginations of Indigenous peoples. But perhaps of utmost concern, the Canadian court has conceptualized Aboriginal title as a burden on the underlying Crown title. In this framing, the dominance of colonial sovereignty—a claim based on the suspension of Indigenous jurisdictional claims—serves as the only basis for a recognition of Aboriginality (Borrows 1999; Christie 2005).

The regulatory inclusion of Indigeneity in colonial resource governance processes, such as oral evidentiary hearings, thus works through the definition of an acceptable recognized Indigenous being. On the basis of the principles of reconciliation established, in part, through *Delgamuukw*, the Supreme Court has steadily advanced a doctrine that requires that the colonial government consult with Aboriginal peoples and accommodate their interests in regulating development. In the 2004 case *Haida Nation v. British Columbia*, Chief Justice McLachlin, writing for a unanimous court, found that the Crown has a “duty to consult with Aboriginal peoples and accommodate their interests” (*Haida Nation v. British Columbia* 2004, para 16).⁷³ The Supreme Court grounded this duty in the honour of the Crown, and indicated that the duty applied even in the absence of proven Aboriginal title. According to the court, the scope of this duty varied—proportional to the strength of an Aboriginal claim to title or rights and the seriousness of the potential effect that a proposed development would have upon the claimed Aboriginal title or rights. In instances where there was a strong *prima facie* case for a claim to Aboriginal title or rights and serious adverse effects associated with the proposed development, the court articulated that the government may be required to accommodate development, modifying projects to mitigate the harm or negative effects on claimed Aboriginal title or rights.

However, as with earlier judgments, this advance in Aboriginal law also served to further institutionalize a conception of the colonial state as the only agents exercising sovereign power. It was the strength of the Indigenous community’s ability to claim an Aboriginal title or right that the court adopted as a metric in determining the duty of the colonial sovereign (Christie 2005). As had consistently been the case through Aboriginal

rights and title cases, the burden of proof was placed on Indigenous peoples and the territorialization of colonial jurisdiction taken-for-granted (McNeil 1999). Furthermore, while the Supreme Court suggested the colonial government must act in good faith through consultation, they also burdened Indigenous counter-claims with a requirement to remain reasonable in their participation in the exercise of consultation. Thus, Indigenous peoples were refused the possibility of simply deciding against a given development project, as such a position could be construed as an unreasonable attempt to thwart development and a violation of the requirement to participate in consultations in good faith. A second case decided alongside *Haida* highlighted this problem.

While in the *Haida* case the Supreme Court found a duty to consult and likely accommodate Haida interests in authorizing the transfer of the tree farm license on Haida's claimed traditional territories, in the *Taku River Tlingit First Nation v. British Columbia* case the Supreme Court found against the position of the Indigenous people at court. Again writing for a unanimous court, Chief Justice McLachlin found that while the Taku River Tlingit had a strong *prima facie* claim, and there were substantial risks of negative impacts to the Taku River Tlingit's claims through the proposed reopening of a mine, the colonial government, through the environmental review process, had considered Taku River Tlingit concerns and included measures to address their immediate and long-term concerns in the conditions placed on final project approval (*Taku River Tlingit First Nation v British Columbia* 2004). Though the Taku River Tlingit still opposed the development project, the province was under no duty to garner their consent.⁷⁴ Thus, the province in both consulting with the Taku River Tlingit, and accommodating their interests, had upheld the honour of the colonial Crown while denying the authority of the Taku River Tlingit to determine the course of development on their traditional lands.

Thus, while the legal development of the duty to consult is often celebrated as grounds to reconcile Aboriginal claims with development of the land by non-Aboriginal people, they also exemplify a record of continual expansion of state authority to designate specifically bounded forms of Indigeneity (Christie 2005). Taken for granted as legal

fundamentals, the presumptions of state sovereignty and Indigenous domesticity continue to inform the practices of accommodating Indigenous land use and traditional knowledge in state permitting processes. Prevailing approaches to including consideration of Indigenous concerns within the domain of state decision-making continue to enact naturalized colonial forms of jurisdiction and territoriality in spaces of contestation. Such forms of recognition work to reify Indigeneity as a subject within the categories of colonial state law. This frame is a screen that blocks from view other possibilities for becoming a subject within Indigenous legal orders. Thus, the dominant frame governing the constrained incorporation of Indigeneity necessarily relies upon the foreclosure of recognition of Indigenous traditions as a body of law constituting competing jurisdictional and territorial claims to those imagined as the exclusive possession of states.

It is precisely such a limited conception of Indigenous claims and territorial relationships that review hearings call forth as evidence in the form of traditional knowledge. Responding to evolving Canadian legal duties to reconcile state processes with Indigenous concerns, aspects of consultation have been integrated into various governmental bodies and practices. Section 8(1) of the *Agreement between the National Energy Board and the Minister of the Environment Concerning the Joint Review of the Northern Gateway Pipeline Project* (henceforth, the *Joint Review Panel Agreement*) indicates that the panel is mandated to “receive information from Aboriginal peoples related to the nature and scope of potential or established Aboriginal and treaty rights that may be affected by the project and the impacts or infringements that the project may have on potential or established Aboriginal and treaty rights” (*Joint Review Panel Agreement* 2009, 6). On this basis, the panel can issue “recommendations for appropriate measures to avoid or mitigate potential adverse impacts or infringements on Aboriginal and treaty rights and interests” (*Joint Review Panel Agreement* 2009, 6). Section 8(2) further delineates the reporting requirements of the Panel in relation to information collected about Aboriginal rights.

8.2 The Panel shall reference in its report:

- a) the information provided by Aboriginal peoples regarding the manner in which the Project may affect potential or established Aboriginal and treaty rights; and
- b) in the case of potential Aboriginal rights, the information provided by the Aboriginal groups regarding the Aboriginal groups' strength of claim respecting Aboriginal rights. (*Joint Review Panel Agreement* 2009, 7)

Thus, while the primary purpose of the *Joint Review Panel Agreement* was to coordinate the assessments of environmental effects required under the *Canadian Environmental Assessment Act* and of public convenience required under the *National Energy Board Act*, the government also sought to use the review process to discharge the state duties to consult and accommodate Aboriginal peoples.

In their orchestration of Indigenous presentations of oral evidence in community hearings, the review panel sought to constrain the terms under which Indigenous peoples could speak. Panel chair, Sheila Leggett, directed presenters in Smithers, "oral evidence is information that is relevant to the matters the Panel will be considering, as stated in the List of Issues in the Hearing Order, but that cannot be provided as written evidence" (JRP 2012a, para 5439). For Indigenous peoples, these issues included potential impacts on Aboriginal interests including treaty rights, asserted and proven Aboriginal rights (including title), and socio-economic matters. The socio-economic matters under consideration by the panel include human occupancy and resource use, heritage resources, traditional land and resource use, social and cultural well-being, human health, infrastructure and services, and employment and economy. Issues related to consultation with Aboriginal groups and the public on the project also registered on the list. However, in procedural directions for the oral evidentiary hearings, the panel clearly indicated that these hearings were for oral traditional knowledge, not "recommendations to the Panel on whether or not to approve the Project or terms and conditions that should be applied if the Project were to proceed," which it considered argument not evidence (JRP 2012c). Thus, Indigenous knowledge was engaged as a source of information but denied recognition as a potential framework through which a decision could be rendered.

In the procedural direction for the oral evidentiary sessions, the JRP clarified the sessions were designed to hear oral traditional knowledge, particularly that of Indigenous peoples, as well as knowledge and personal experiences relevant to understanding the effects of the project (JRP 2012c). The directive clearly stated that a number of types of evidence were not appropriate for these hearings. This included accounts detailing presenters' opinions about the decision the panel should make or presenters' opinions about the project. The directive also stated that it was not appropriate in the oral evidentiary hearing to provide recommendations to the commission about whether or not to authorize the project or the terms and conditions that should be binding if such authorization was deemed appropriate. The procedural direction forbade questioning the legitimacy of the purported authority of the panel.

The procedural direction indicated that rhetorical questions, alongside arguments about decisions and conditions related to the project, should be presented at the final hearing. Refusing the possibility that Indigenous traditions and knowledge constituted vital frameworks for argument and decision-making, the panel aimed to include Indigenous traditions only as evidence for the panel to review. Thus, the panel approached Indigenous knowledge as simply evidence to be considered within the frames of Canadian legal argument. This neglected the extent to which Indigenous traditions and legal orders constituted vital frameworks for understanding issues and rendering decisions. By excluding the capacity to make arguments from the submission of Indigenous oral evidence, the panel winnowed the meaning of Indigeneity and fundamentally denied the vitality of Indigenous traditions in the moment of their recognition. Thus, contemporary state processes of including Indigeneity in resource governance continues to vitalize the exclusion of Indigenous sovereignty through the filtered incorporation of difference, and in so doing enact the sovereignty of the state.

In a tautology of the state, the panel derives its authority from prior enactments of colonial sovereign power which the panel relies upon and reproduces while holding the question of the constitution of both the panel and colonial sovereignty outside the terms of

reference. Rendering Indigeneity technical, colonial governmental processes approach Indigenous traditions as a fragmentary collection of recognized practices. Through localizing and particularizing Indigeneity, the universal reach of the colonial power is secured. In coming before the review panel, the Witsuwit'en presenters came to reckon with colonial authority, making presentations to be considered in colonial processes of regulatory decision-making. Before the panel, the Witsuwit'en people petitioned the government to consider their connections to their traditional lands in decisions related to the Enbridge Northern Gateway pipelines. But while the review panel sought to respond to new regulatory demands to imbricate recognition of an Indigeneity coded as traditional, the review panel allowed the Witsuwit'en presenters considerable breadth in their presentations before the panel.

In their presentations, Witsuwit'en *dini ze'*, *ts'akë ze'*, and *hibi nidiztic* contested and exceeded the enframing of their relationship to their territories as traditional. The Witsuwit'en people, who have never treated with either the British or Canadian governments and who continue to claim title and jurisdiction to their traditional territories through their own system of laws, have staunchly opposed the Enbridge Northern Gateway Project through both oral and written submissions. However, the permitting process is framed by legal apparatuses of the Canadian state, and governed by claimed jurisdiction of the state not the Witsuwit'en. Thus, while Indigenous peoples may assert competing sovereignties, within state processes these contrapuntal legal performances are orchestrated to resonate within state sovereignty.

Act III: A Contrapuntal Hearing

The Witsuwit'en concern with upholding their responsibilities under their own body of law remained an excess beyond the frame of Oral Traditional Knowledge the review panel, as convened, was prepared or able to hear. But as a surplus to the totality of the colonial sovereign's claim to jurisdiction, Witsuwit'en articulations continued to beg the question of the sovereign's legitimacy, advancing competing claims to authority to decide what

happens on their traditional territories. In their evidence, Witsuwit'en *dinī ze', ts'akē ze'*, and *hibī nidīztic* forwarded arguments about Witsuwit'en law and jurisdiction. Witsuwit'en presenters centred their testimony on the dictates and responsibilities of their own legal order—and not the delimited frames of the review panel. And on the basis of the Witsuwit'en legal order, the *dinī ze', ts'akē ze'*, and *hibī nidīztic* explained: first, their responsibilities to protect their land and the traditional lifeways of their people, and, second, their clear decision that the proposed Enbridge Northern Gateway pipelines could not proceed.

Darlene Glaim, who holds the name C'oligit in the Gidimt'enyu (Bear), spoke first before the panel as the hearing was located on the traditional territory for which she was responsible. She began by addressing not the authority of the Canadian review panel but the hereditary chiefs assembled in the room: “*Dinī ze', ts'akē ze', skiy ze'.*” In her opening, she recognized the male and female hereditary chiefs in the room, as well as the future generations of hereditary chiefs. This address, recognizing the authority of the chiefs, however, was quieted from the JRP record, which simply bracketed that Glaim began “(Speaking in native language)” (JRP 2012a, para 5473). In English, however, her message was clear: “As Gyolo'ght [C'oligit], I come back here before your Panel today, respectfully, to speak about our laws, language and culture, our social structure” (JRP 2012a, para 5473). Glaim began, as the vast majority of the Witsuwit'en speakers to follow would, by recognizing the lineage of her name, and how her authority accrued on the basis of her knowledge of her lineage and its connection to her house territories. She recognized C'oligit had been held previously by her uncle, and how the name was transferred to her through the *balhats*: “as a Gitdumden [Gidimt'enyu] clan member, I've been holding feasts and living among our Nation here through our form of government, which is the feast and clan system, and I held the feast in Moricetown ... as all our clans do” (JRP 2012a, para 5475). She also described the significance of the crest blanket she wore before the panel: “It holds our laws, our strength and our power behind the name that I hold, and it is related to the land here. This is Gyolo'ght [C'oligit] territory” (JRP 2012a, para 5476).

C'oligit and her fellow clan members described the centrality of their relationship to the territories, and how they had learned about their responsibilities to the territories from their elders. The themes of C'oligit's testimony were echoed by Russel Tiljoe, a member of the Gidimt'enyu *hibi nidiztic* who holds the name Likhdilye. Tiljoe presented with the aid of translator Victor Jim (Misalos), described to the panel, "It is our tribal law that we look after our territories" (JRP 2012a, para 5540). Tiljoe explained Witsuwit'en opposition to Enbridge in terms of these enduring responsibilities: "We did not give up our territories to anyone and our ancestors as well did not sign the Wet'suwet'en territories away. That is why we say no to Enbridge, absolutely no. They will not touch our territories." (JRP 2012a, para 5548).

While the announcement of review agreements by federal Ministers, issuance of hearing orders by government appointees, and enunciation of the opening remarks in a hearing by the panel chair all enacted the theatre of the sovereign, Witsuwit'en performances also served to render the space of the hearing as uniquely legible within their own legal orders. In Burns Lake, after the Witsuwit'en entered, singing "Enbridge *noh' y'in tah wagga way sow' ye'h*," Danny Pierre performed a sacred ceremony.⁷⁵ Frank Alec issued opening remarks, explaining the ceremony:

Guests, the National Energy Board, Government of Canada and citizens of Burns Lake and the surrounding areas.

The next portion is very important to us; for every gathering, for every ceremony that we plan a year ahead there is a ceremony called "the Rattle". It signifies the start of serious business of talking straight and talking in an appropriate manner.

Along with the rattle cry is the feather, the plume when it rises, and it rises in a gathering like this; that means whatever that has been spoken about, that whatever that is mentioned needs to be listened to.

The feather is very sacred to us when it rises the way you will witness it today. And the rattle cry itself is very sacred to us as well; it signifies the start of serious business.

And when I say serious business, it means that there is work behind all of what is going to be talked about, what is going to be mentioned.

In our culture, most of the work that has been done for over a year, all the planning that we've been doing on the land, the trapping, the hunting, the fishing, all the resources that come from the land is what signifies the rattle cry and the feather when it rises and when we're going to be talking serious business.

And we're doing it here because this is serious business. This has to do with the livelihood with everybody, non-Natives alike. That's the way we look at it. (JRP 2012b, para 6354–6359)

This sacred ceremony, initiating the proceedings of “serious business,” invokes Witsuwit'en law. As Jo-Anne Fiske and Betty Patrick (2000, 62) describe, “The rattle cry, *sinelh*, is a highly valued clan song performed only by and for persons of high rank. ... this sacred music should never be used for entertainment, outside the territory, or outside of an appropriate ceremony.” The *sinelh* “sanctions the event and the words of the chief” (Fiske and Patrick 2000, 62). Similarly, the feather plume, *cis*, is used to signify “the opening of the main business of the *balhats* and reminds all present that the event will unfold according to time-honoured laws and customs. ... It is the most significant symbol of the chiefs' power and of the sacred intent of the *balhats*” (Fiske and Patrick 2000, 83). Invoking these sacred symbols, the Witsuwit'en signaled the beginning of formal proceedings under Witsuwit'en law.

However, the audibility of Witsuwit'en law as law before the review panel was inhibited by the regulators' presumption of an underlying colonial sovereignty. While Panel Chair Sheila Leggett recognized the possibilities for cross-cultural learning afforded by the assemblage of government officials to listen to Witsuwit'en authorities, she addressed the opening as a cultural rather than legal performance.

Thank you very much for the welcoming and for joining us for this Joint Review Panel Community Hearing for the Enbridge Northern Gateway Project.

I was particularly struck with some of the opening comments. This is a tremendous opportunity of learning, certainly for this Panel, of a variety of cultural ways and one of the things that struck me was the explanation, which I appreciated, about the rattle cry and how that signifies straight talk and serious business. (JRP 2012b, para 6380–6381)

Transliterating the *sinelh* across legal orders, Leggett affected a potent gesture of inclusive exclusion, denying the legal aspect to the performance of Witsuwit'en law in the moment of its recognition by Canadian regulators. As colonial regimes of recognition condition the articulations of Indigeneity audible within Canadian regulatory processes, the invocation of a discourse of Witsuwit'en law through a rattle cry and distribution of feathers marked an excess that cannot be “heard” in the regulatory proceedings of the Joint Review Panel.

Leggett's opening remarks articulated the constrained terms on which the panel invited Indigenous peoples to speak: “Sharing your personal knowledge and views on the impacts that the proposed project may have on you and your community and how any impacts could be eliminated or reduced is of great help to us, and we appreciate that you've chosen to be here today” (JRP 2012b, para 6410). The discussion of effects, premised on the responsibilities of the review panel as defined by the *Canadian Environmental Assessment Act*, asked the *dinī ze'*, *ts'akē ze'*, and *hibī nidīztic* to articulate the impacts of pipeline development on Witsuwit'en ways of being in terms of a colonial ontology. By consistently regarding Witsuwit'en legal discourse as simply cultural expressions, colonial regulators denied the politics of Indigenous becoming in relation to the world through songs and seemingly ineffable connections. These political expressions, surplus to the spatial ontology of the capitalist nation-state, were refused hearing within a colonial regulatory process premised on the uniform jurisdiction of colonial authorities through their claimed territories. Narrowing discussion to technical details of “evidence,” the panel sought to foreclose the question of the politico-legal constitution of the hearing and sovereignty.

Against this normative tyranny of the present politico-legal formation, Slavoj Žižek (1999, 204) insists that politics must articulate “the art of the impossible,” reconfiguring

“the very parameters of what is considered ‘possible’ in the existing constellation.” Erik Swyngedouw (2010, 194) describes politics as “the space of litigation” for those excluded from the state order. He writes, “A true political space is always a space of contestation for those who have no name or no place” (Swyngedouw 2010, 194). Political interventions become political through addressing the constitutive exclusions of the present order, and calling forth alternative spaces of becoming. Concurring with Swyngedouw and Žižek on the primacy of a transformative antagonism in politics, I argue that these other spaces of becoming necessitate engaging with the othered legal orders positioned as outside the dominant frames of international and Canadian law.

Within the context of the Joint Review Panel oral evidentiary hearings, Witsuwit’en Hereditary Chief Namoks of the Tsayu (Beaver) explicitly set discussion not in terms of the state designation of oral traditional knowledge, but of political conflict between Indigenous peoples and an imposed sovereign.

I want to thank Danny ... Pierre for doing our syneth [*sinelh*]. He stated that it's our national anthem. Canadians, they have one, too. In there, it states it's "our home and native land". This is our home in Wet'suwet'en land.

For centuries, the Wet'suwet'en, as it's been stated before, we protected our lands from any form of incursions, whether it be from other nations and now, with this threat that's on hand.

With five minutes to speak, I will only say a few words because it's highly insulting you tell a Chief that you're only going to say a few words when he stands on his own land. I am Wet'suwet'en. I carry the name of Namox [Namoks] and I know my authority. I know my rights and I know our title.

--- (Applause)

THE CHAIRPERSON: Chief---

CHIEF JOHN RIDSDALE: I'm going to speak on our survival on the land, how we become Chiefs, how we get from boys to men and how we do that when we're teenagers; how we set ourselves up to carry names in the future; how we know to

speaking on our lands; how we know to respect our Elders; how we know to respect the guests on our territory. With a couple of minutes, that's a quick view that I can give you.

We're going to speak on the mountains where we were raised, where we did our winter; Tsalit Mountain, Nadina Mountain. I wanted to speak on Wetzin'kwa. Wetzin'kwa means blue-green waters. The threat to our territories and to our waters. We'd have to change the name of our rivers, the name of our mountains, the name of our creeks, the name of our stories, the name of our names.

When we speak in the feast hall, we tell the truth. When I swore on the Rattle, the Rattle is hundreds of years old. I did not plan on coming here and telling lies. I did not plan on coming here and saying these are things that we will allow. I did plan on coming here and tell you that this threat to our territories, to our lands, to our culture, to our people is cultural genocide, and we would not allow that.

I did come here to state that, as the Wet'suwet'en Chief, we were taught right on how to look after our lands, how to respect our laws, how to look after our youth and make sure that the promises we made to our grandchildren were never broken.

We do not own the land. We're only borrowing it from our grandchildren. It is of the utmost importance that we return the land to our grandchildren in better condition than when we walked on it.

This proposed project endangers our promises to our grandchildren that we would look after our land, our culture, our people for them. We cannot break this promise to our grandchildren. (JRP 2012b, para 6645–6654)

While Ridsdale compressed his speech in response to panel demands (after successive Witsuwit'en presenters had exceeded the time provided by the panel), he did not cede jurisdiction to the panel. In fact, he made no mention of the panel beyond its disrespect of his authority as a Witsuwit'en chief. Instead, he pronounced his solemn commitment to uphold his responsibilities under Witsuwit'en law.

Henry Alfred, who holds the title Ut'akhgit as hereditary chief of Tsë Kal K'iyikh (House on the Top of the Flat Rock) within the Likhsilyu (Small frog/caribou), spoke in the Witsuwit'en language about the strict Witsuwit'en territorial system. Ron Austin, who holds the title T'sek'ot, translated for him. One of the elder statesmen of the Witsuwit'en, Alfred has held his chiefly title since 1967. He recounted how "In the old days, they were strict about their territories, trespass" (JRP 2012b, para 6608). Austin summarized a story Alfred told about his grandfather, a predecessor in the lineage of the title Ut'akhgit, "who caught a person trespassing" (JRP 2012b, para 6608).

The first time he gave him a feather and, then, the next season, his grandfather came back, the person was trapping again on his territory, so he told him to stop, gave him a second feather. I don't—he told the person "I don't want to hurt you."

Third season, Wah tah K'eght [Ut'akhgit] went into his territory, again, the person was still on the trap line so he took a rope out of his pack—the person didn't know he was coming—wrapped it around his neck, killed him and tossed him into the river.

They were strict about their territory. (JRP 2012b, para 6609–6610).

Alfred continued on to describe how he did not want a pipeline through his territories. "If the water is contaminated in our territory, my grandchildren will never know what it's like to have clean water and to enjoy the territories" (JRP 2012b, para 6611). His position on the proposed pipeline was clear: "we say 'No' to Enbridge. 'Don't spoil our territory'" (JRP 2012b, para 6612). Ut'akhgit closed his presentation stating, "if this pipeline goes through, the succession of names will be ruined, the succession of lands that are handed down to Chiefs will also be ruined" (JRP 2012b, para 6614).

A claim to political sovereignty emerges in the moment where a form of collective identity or difference is constellated as the basis for implementing a sovereign will or decision. Members of a political community constitute themselves as such in deciding on an issue key to their security or way of life, and taking action to implement this decision. It is thus the political existence of a people, their willingness to fight for themselves, that grounds their claim to sovereignty. When Agamben (2005, 3) argues that the state of

exception constitutes the “structure in which law encompasses living beings by means of its own suspension,” his description could characterize not only colonial but also the activity of Indigenous legal orders, which traditionally relied on mechanisms of expelling subjects from the rule of law to realize the force of law. As long as a people possess a collective identity strong enough to motivate its members to defend the security of the collective, it is capable of sustaining a claim to sovereignty. Constituted as a political collective with a more or less legitimate to sovereignty, people may make assertions on the basis of a legal order, a constitutional framework that they call into existence.

The Witsuwit'en *dinī ze'*, *ts'akë ze'*, and *hibi nidiztic* participated in the review process without accepting its limitations, its presumption of colonial authority. Witsuwit'en community members continually resisted incarceration within delimited notions of tradition and overloaded the governmental processes regulating development with assertions of their own sovereignty and right to decide what happens on their territories. In this, they pluralize enactments of who has jurisdiction, and asserting their own right to fight to determine what forms of development are prohibited from their lands. Enacting a form of Indigenous sovereignty, the Witsuwit'en *dinī ze'*, *ts'akë ze'*, and *hibi nidiztic* articulated forms of authority, subjectivity, and territory surplus to those associated with colonial frames. Exceeding the enframed Indigeneity of colonial disciplinary and governmental regimes, Witsuwit'en authorities advanced jurisdictional claims problematizing those of the colonial sovereign and opening new spaces of negotiation.

Act IV: With the Weight of a Feather

While the Canadian government has sought to contain recognition of Indigenous geographies and construct the Northwest Interior as a landscape of industrial development, for the members of Witsuwit'en *yikh* the region never ceased to exist as Indigenous territory. As a result of conflicts over development, the political meaning of Witsuwit'en territory and jurisdiction has emerged ever more forcefully. The Witsuwit'en word for territory is *yin tah*. The root term, *yin*, refers to earth, but in *yin tah* this root is

modified to denote not only a physical landscape but the interconnection of a landscape with a people (Morin 2011, 1). The concept of *yin tah* or territory for the Witsuwit'en is a multifaceted one. *Yin tah* connotes relations that pertain to modes of resource ownership and regimes governing use, but it also signifies continuities in enactments of Witsuwit'en jurisdiction that span across generations. The practices of enacting Witsuwit'en territory and jurisdiction have continued to evolve over the centuries, responding to developments both internal and external to Witsuwit'en society.

In August 2010, the political significance of *yin tah* became a focal point of negotiations between Witsuwit'en people and representatives of Enbridge, as *hibi nidiztic* of the Likht'amisyu (Fireweed), Hagwilakw and Toghestiy, issued formal notice that Enbridge was trespassing on unceded Likht'amisyu lands and did not have permission to build a pipeline on their territories. On 24 August 2010, Enbridge had sent Michelle Perret and Kevin Brown to present the municipal council of the Town of Smithers with an update on their proposed Northern Gateway pipelines. The council meeting was packed. As the Enbridge representatives moved to the front of the room, members of the Witsuwit'en greeted them with a war song. Perret gave a short presentation, outlining how Enbridge was cleaning up the recent pipeline spill into the Kalamazoo River in Michigan and then emphasizing the thousands of jobs that building the Northern Gateway pipelines would create. At the end of the Enbridge presentation, Warner Naziel took the floor. Naziel held the title Toghestiy in the Likht'amisyu. He reminded the Enbridge representatives that jurisdiction over Witsuwit'en lands lay with the Witsuwit'en people not the municipal government. He stated Enbridge did not have permission to be on Likht'amisyu territories and had already been warned that they were trespassing. Toghestiy and Hagwilakw, a title held by Antoinette Austin, each hand delivered the Enbridge representatives an eagle feather, issuing their final warning. To cheers from the assembled crowd, Toghestiy stated, "further trespass will be dealt with under Witsuwit'en law."

The feathering was an issue of considerable contention. The Witsuwit'en activists that conducted the 2010 feathering were associated with the Lhe Lin Liyin, a society of

warriors or guardians who were organizing a grassroots campaign within the Witsuwit'en community against pipeline development. The group, which formed in response to what grassroots activists considered the overly sedate response of the Office of the Wet'suwet'en to industry's attack on Witsuwit'en territories, sought to revitalize ancient Witsuwit'en laws and construct vehicles for their enforcement. The feathering did not have the authorization of the *dinī ze'* and *ts'akē ze'*, but instead was rationalized on the basis of grassroots members' dreaming. As Antonia Mills (1994b, 40) describes, there are dual sources of authority in Witsuwit'en society, both originating "from the assumption of the highest chiefs' titles" and "from individual contact with the spirit realm through dreams, medicine-dream sickness, and visionary experiences." While the Lhe Lin Liyin had coordinated a protest action when they learned of Enbridge's planned visit, the feathering emerged organically. One group member brought the feathers in response to a compulsion that they might be needed. When she arrived with the feathers, the others responded to the call to action. Two Likht'amisyu *hibī nidiztic* determined that it was appropriate to issue the warning of trespass, and performed the feathering at the close of the evening's events. Thus, the Lhe Lin Liyin projected a claim to represent the sovereignty of the Witsuwit'en on the basis of their connection to the spirit power of the Witsuwit'en people.

Presented with explicit articulations of a Witsuwit'en sovereign will to determine and enforce limits to the development of their territories, Enbridge did not regard Witsuwit'en performances as merely cultural forms of expression. Instead, the company presented the various sovereignty practices of the Witsuwit'en as a series of extra-legal threats that disrespected and violated the spirit of good faith negotiations and reasonable conduct within which Canadian law mandated that the Witsuwit'en people advance their interests. In an Enbridge update on Aboriginal engagement, submitted as written evidence to the review panel, the company referred to the 2010 feathering as "a setback" in relations with the Witsuwit'en that resulted in "a shift and cooling of communications" (Enbridge Northern Gateway Project 2012, 6–65). The company then continued in the update to

parallel the feathering in the Smithers town council chambers with the opening of the Burns Lake JRP oral evidentiary hearing in the Island Gospel Church.

Following a ceremonial incantation addressed to the 'northern gods,' a Wet'suweten [sic] Elder blew a myriad of tiny feathers over a Northern Gateway representative in attendance. These feathers covered the hair and clothing of the Northern Gateway representative targeted by this feathering incident. Following this incident, it was explained by one of the registered Wet'suwet'en speakers at the JRP hearing session that breach of traditional Wet'suwet'en laws could result in banishment from the community, or death, and that Wet'suwet'en trespass laws were just as strictly enforced as those other offenses described by the speaker which were punishable by death. (Enbridge 2012)

Through this series of events, Enbridge tracked a steadily deteriorating relationship between the community and the company.

If the relationship between Enbridge and the Witsuwit'en was becoming increasingly fraught, the shift in relations between the company and the community highlighted how the Witsuwit'en have been steadily articulating and strengthening their position as a sovereign people capable of deciding whether a pipeline should transect their territory. Different collectives of the Witsuwit'en have adopted distinct strategies for engaging colonial power and articulating their territorial relationships. At one extreme, the Skin Tyee band collaborated with industry, at the other extreme, the Lhe Lin Liyin remained external to the federal regulatory process, enacting claims to Witsuwit'en sovereignty not simply in excess of but entirely external to the formal Canadian review process. The Office of the Wet'suwet'en participated in the review process as part of an effort to articulate claims to jurisdiction that exceeded its regulatory hearings. However, for Enbridge, both the expressions of the two Likht'amisyu *hibi nidiztic* and the Office of the Wetsuwet'en to block the unfolding of colonial designs for development represented a threat. Thus, the company did not differentiate the Office of the Wet'suwet'en and the *hibi nidiztic* associated with the Lhe Lin Liyin.

Within the review process, the Enbridge update was a document of considerable debate. The Office of the Wet'suwet'en forwarded a motion that Enbridge's depiction of this sacred ceremony invoking their law as "an incantation to 'northern gods'" be stricken from the JRP record as an "appalling and abusive" misrepresentation (Ridsdale 2012, 1). Writing on behalf of the Office of the Wet'suwet'en, Mike Ridsdale (2012, 2) clarified the Witsuwit'en possessed no "northern gods." Appropriating the language Enbridge used to describe the rising plume of feathers, Ridsdale (2012, 2) stressed the "ceremonial incantation" was actually "a prayer to allow the spirit power to guide the JRP Hearing." Ridsdale (2012, 2) elaborated, "this expression is important, when eagle down is distributed the peace is binding and retaliation is stopped, unless that peace is broken by the outsider or offending party." The JRP, however, ruled that striking this Enbridge evidence from the record was unnecessary (Young 2012). This ruling reflected the distance between Witsuwit'en authorities and Canadian regulators.

Enbridge's depiction of events at the Island Gospel Church by in their update on Aboriginal engagement is notable not simply for its antiquated language. It also confused the feathering at the Town of Smithers with the process of returning the feathers at Burns Lake. The two events used different types of feathers and distributed feathers in distinct ways. Moreover, there were different meanings in associated with the distribution of feathers in the two cases. Trespass was marked with giving a person a solitary long eagle feather, in contrast, spreading eagle down through the air from the head of a dancer sacralized proceedings as determinative of the terms of peace.

Although both events articulated a Witsuwit'en legal order constituting relations between people, and between people and territories, the two events articulated sovereignty in contrasting ways. In the first instance, feathering for trespass, *hibi nidiztic* of the Likht'amisyu banned Enbridge from their territories, and stripped the company of rights under Witsuwit'en law should they return. In the second instance, spreading eagle down, the Witsuwit'en *dini ze'*, *ts'akē ze'*, and *hibi nidiztic* established the terms for peaceful

relations on the basis of respecting the jurisdiction of Witsuwit'en *lha l'awoyh dil yëh* over their territories and not constructing the Northern Gateway Pipeline.

The long eagle feathers that Hagwilakw and Toghestiy handed the Enbridge representatives at the Smithers council chambers were distributed as a mark of shame. These feathers denoted, in the context of trespass, a body rendered bare life subject to killing without consequence. Clarifying the significance of the feathering, Toghestiy made a speech about trespass when Enbridge received the feathers. The Likht'amisyu *hibi nidiztic*, backed by the Lhe Lin Liyin, threatened violence if Enbridge returned to develop their lands, and indicated that Enbridge (or possibly its employees) were no longer given the protection of Witsuwit'en law, but would instead be subjects brought within Witsuwit'en law as bodies stripped of rights. Traditionally, in the case of a person, further trespass meant death. As Witsuwit'en law has only recently had to begin to address corporations, the way in which corporations are cognized and treated within Witsuwit'en law remains a subject of considerable debate. Questioned about this, Toghestiy suggested if the corporate entity, Enbridge, continued to disrespect the order to stay off Likht'amisyu lands, the *dini ze'*, *ts'akë ze'*, and *hibi nidiztic* would have to meet to determine an appropriate response. Nonetheless, the feather is a mark that externalizes bodies from the traditional protections of Witsuwit'en law.

In the Island Gospel Church, the Witsuwit'en distributed a plume of eagle down that floated through the air. Eagle down, the emblem of Witsuwit'en law, is distributed, as Frank Alec described to the JRP, as a sign "whatever that is mentioned needs to be listened to" (JRP 2012b, para 6356). As Mills (1994b) describes in her book on the Witsuwit'en legal order, *Eagle Down Is Our Law*, eagle down signifies the opening of formal governance proceedings. Eagle down distributed in the feast hall signals that the decisions reached construct the binding terms of peace. The Witsuwit'en presenters, clearly articulating their opposition to Enbridge's proposed pipeline, offered peace with the company if they respected the Witsuwit'en sovereign decision. Thus, the framework here is one of respect, establishing the terms and conditions of respectful relationships, the terms on which

reconciliation can occur. Historically this framework referred to establishing peace between conflicting individuals, houses, clans, or nations, and not corporations or states. But extrapolating the paradigm of Witsuwit'en reconciliation, we can understand that respecting the Witsuwit'en obligation to protect the land and prevent the Enbridge pipeline forms the basis for reconciling the Witsuwit'en community and Canada, as well as the Witsuwit'en community and Enbridge.

On 20 April 2013, Namoks hosted a Tsayu feast in which his clan publicly displayed their opposition to all pipeline development in the feast hall. He then subsequently mobilized his traditional territorial responsibilities in exercising counter-claims to the jurisdiction of the Canadian state and bringing them to bear on the Enbridge corporation. Namoks traveled to Enbridge's annual general meeting in Calgary on 8 May 2013 wearing traditional regalia bearing symbolic connections to his territories, bringing them notice of the final Tsayu decision on the Enbridge pipeline. Rather than simply juxtaposing local Indigenous traditions with global dynamics of resource development, this movement worked to reterritorialize the geographies of resource development. This was done within the traditional body of Witsuwit'en law through stretching the geographic responsibilities of Witsuwit'en law to encompass the geographies of capital penetrating Witsuwit'en territories. In so doing, the Witsuwit'en have sought to establish a sovereign demand that no pipeline development proceed. Working to defend their lands, the Witsuwit'en *dinī ze'*, *ts'akē ze'*, and *hibī nidīztic* have acted to offset the authority of the colonial sovereign to decide on development projects on Witsuwit'en territories, and they have also served to begin to reconcile the position of the hereditary chiefs with the grassroots activists who dreamed of a future in which their territories remained intact and their traditions vital.

Conclusion

To understand the action of Indigenous sovereign claims against the state it is necessary to theorize a condition of ontological pluralism within settler colonial states. Rather than accepting colonial efforts to totalize the sphere of politics as complete, it is necessary to

recognize that Indigenous peoples continue to not only contest the terms of their inclusion within the colonial state but also the legitimacy of the state sovereign itself. Examining the indeterminacy of the encounter between contestant articulations of sovereignty demonstrates the possibilities inhering to a condition of territorial and jurisdictional multiplicity. Thus, sovereign action cannot be reduced to a singular state-centred system. Rather it has multiple sources, which may complement, overlap, or offset one another. This is not to suggest two autonomous fields evolving without interaction. Rather through constant interaction, the language and idioms of autonomous fields are transliterated into other frames. Thus, one word is contoured to have many meanings as it moves through different regimes. The conflict here is ontological, as different regimes aim to implement a sovereign will to decide, to suspend particular political claims and call others into being.

In this chapter, I have used the conflict between Canadian and Witsuwit'en legal orders to explore broader questions about the nature of sovereignty. My engagement with the question of sovereignty here thus examined both the constitutive exclusions involved in the production of state sovereignty and the necessity of refusing foreclosure of political knowledge to the categories of state law. I have advanced an analysis that reads both along and against the workings of colonial sovereign power. Through examining the action of state sovereignty on subaltern polities, and conversely Indigenous contestations not simply within but against the authority of the sovereign, I examined the space of hearing as not simply a medium for conveying knowledge but a frontier between legal orders, a place of struggle, advances and retreats. This vantage sheds light on the problematic of Indigenous claims as simultaneously working in concert with a colonial order that domesticates Indigeneity, and functioning as a challenge to that order. On one hand, Indigenous claims represent a moment in which the state recognizes a domesticated Indigeneity subservient to the authority of the colonial sovereign through the continual suspension of Indigenous claims to sovereignty. On the other hand, Indigenous claims call into question state sovereignty and assert unreconciled claims to Indigenous sovereignty; they demand a reordering of colonial regimes. Indigenous claims remains irreconcilable within the

existing range of possibilities contouring the colonial order, as colonial authority founded in the suppression of Indigenous legal orders is forced to reckon with Indigenous assertions that exceed the terms of colonial discourse. Thus, there is both a regulatory and an emancipatory impulse operating in Indigenous claims.

I have suggested that Canadian sovereignty has been constructed through the exclusion of Indigenous peoples as non-sovereigns. Despite the incorporation of elements recognizing Indigenous peoples' distinct relationships to their territories within Canadian law, I have argued that the enactment of Canadian sovereignty continues to reproduce the suspension of broader Indigenous claims. Thus, within the frames of Canadian law, Indigenous claims are constructed as a burden on the underlying sovereignty of the state. While Indigenous peoples may assert competing sovereignties, within state processes these contrapuntal legal performances are orchestrated to resonate within state sovereignty in the hearing of the colonial sovereign. However, the denial of Indigenous sovereignty within the terms of Canadian law elides rather than erases broader Indigenous claims. Indigenous people continue to contest the dominant frames of sovereignty and maintain legal traditions in excess to the terms of recognition in state law.

Approaching the performances held in the Hudson Bay Lodge and the Island Gospel Fellowship Church, I have asked, how can Indigenous political claims be understood as political if in their hearing by state authorities they are distorted? How can one articulate political utterances in a legal vacuum? By way of answer to such questions, I examined the political antagonism of two competing trajectories of law that assembled in the halls before the review panel. The first trajectory, articulated by the Canadian state, presents a clearly domestic affair: the Canadian process of reviewing and permitting Enbridge Corporation's Northern Gateway Project. However, Witsuwit'en assertions of a sovereign will to decide the course of development on their traditional territories present a second, unreconciled trajectory of law working in excess of the framework of state sovereignty. Thus, the call to respect the law of the sovereign is contoured to have distinct meanings as the Canadian government and Witsuwit'en people variously aim to constitute themselves as the

legitimate authority who may decide the disposition of lands variously territorialized as northwest British Columbia and Witsuwit'en *yin tah*.

Recognizing the constant misrecognition of Indigenous articulations again highlights the necessity of approaching sovereignty not as *fait accompli* but an ongoing set of plural enactments. I want to suggest that Indigenous claims work to reassert the basic antagonism undergirding the law and informing its application. Thus, in contesting the normal suspension of Indigenous sovereignty, Indigenous claims are political insofar as they return discussion to the original and normalized suspension of their legal orders. Precisely as Indigenous peoples generate political crises through their confrontation with the state, they open spaces of possibility and negotiation, seeking to reassert sovereignty beyond the bounds of the Canadian state. The political antagonism constructed through Indigenous struggles for sovereignty calls forth a range of possibilities in rearticulating the authority of the colonial sovereign, including the possibility of suspending or placing in abeyance the sovereign authority of the colonial government to decide the course of development. Thus, political conflict presents a moment in which the sovereignty of the state can be reconstituted, or offset, in recognition of Indigenous sovereignty. Indeed, to an extent this has occurred through the articulation of new doctrines encumbering the exercise of the sovereign authority of the Crown in Canada with, for instance, the duty to consult Aboriginal peoples, even as such doctrines work to restore legal normalcy and domesticate Indigeneity within the sphere of a colonial doctrine of Aboriginal law. But if such moments result in the recapture of Indigeneity, I want here to hold open the possibility that assertions of Indigenous sovereignty present for the reconstellation of colonial legal orders.

CHAPTER 6

Learning to Share: Indigenizing Industrial Education

Indigenous strategies of engaging with colonialism have produced new relationships in development. Operating beyond a simple binary of colonial oppression and Indigenous resistance, Indigenous engagements with forms of colonial power have constituted new spaces of negotiation. Approaching these negotiations, a fundamental goal for Indigenous peoples impacted by minerals industry activity is to use development to achieve a better life for themselves and their children. Indigenous peoples are looking to involvement with programs of industrial development as a mechanism of empowerment. Conversely, corporations have expressed an increased willingness to partner with Indigenous peoples as a means of clearing away political-legal obstacles for capitalist resource development. Colonial state authorities have come to support these partnerships as a means to both secure capitalist development and reduce the burden of state obligations to marginalized Indigenous peoples. Integration into resource development schemes, as Gabrielle Slowey (2008, xviii) notes, is “creating new models of self-determination through market partnerships designed to improve [Indigenous] socioeconomic conditions.” Indigenous aspirations to secure a livelihood have thus been linked in a governmental assemblage with state and corporate designs to secure development projects from potential disruptions associated with Indigenous protests and litigation.

Indigenous strategies to secure the well-being of their community interlink designs for inclusion in industrial activity and protection of traditional territorial relationships. In a situation analogous to that of the British Columbia Northwest Interior, Ciaran O’Faircheallaigh (2006) describes how impoverished Indigenous peoples in Australia negotiated with mining companies to secure both livelihoods in the industrial economy and protections for traditional land use. Within the industrial economy, Indigenous peoples “want to get jobs both to supplement incomes that are often low and as a way of achieving

personal autonomy and self-respect” (O’Faircheallaigh 2006, 3). Economic opportunities through work are desired as an ameliorative to “problems of substance abuse, incarceration and, often a grim reality in Aboriginal communities, suicide” (O’Faircheallaigh 2006, 3). However, Indigenous designs for a better life also include ensuring that the land “is being looked after and not damaged by the effects of exploration and mining; that sites are being protected; that culture is being passed on to the next generation” (O’Faircheallaigh 2006, 3). It follows that Indigenous peoples do not universally oppose industrial development on principle, and can indeed become strong supporters of it when industrial activity interlinks with programs of Indigenous empowerment. Indeed, as a number of scholars have pointed out, there is an extended history of Indigenous labour in resource industries in British Columbia that was only suppressed through processes of racial exclusion in the later half of the twentieth-century (Knight 1978; Galois 1993; Lutz 2008; Carlson 2010). Recent efforts to indigenize industrial labour, as Lindsay Bell (2012) describes, resonate with the extended history of colonial labour relations, harnessing the characteristics of indigenous locality to the territorialization of space as a resource extractive frontier.

In this chapter, I examine the convergence of strategies for resource development and Indigenous empowerment. I argue that employment guarantees, established in agreements between companies and Indigenous communities, function to secure Indigenous interests through development. Incorporating Indigenous people into development as labourers necessitates the constitution of new training regimes for Indigenous workers. Thus, the shifting political economy of development is linked to a reconfiguration of education. The creation of educational regimes targeted at Indigenous industrial education imbricates Indigenous aims alongside those of capitalist development. Thus, I argue the establishment of new training programs to discipline Indigenous students for the workforce is a product of a governmental assemblage including state authorities, forces of capital, educators, and Indigenous authorities.

Making these arguments, I focus on the example of the School of Exploration and Mining (SEM) at Northwest Community College (NWCC). The regional community college for the Northwest Coast and Northwest Interior of British Columbia, Northwest Community College, has reformed its programming and institutional governance processes to increasingly integrate Indigenous concerns. However, as Indigenous interests reshaped the colonial governance of education and industrial development, the relation also worked in reverse. The integration of Indigenous interests in the processes governing development and education reshaped Indigeneity. Colonial frameworks defined a range of acceptable difference within which industrialized Indigeneity could be called into being. Further, regimes of recognition worked to reconfigure the workings of Indigenous authority and the practices of Indigenous land use.

This chapter advances through a series of related arguments. I begin with a discussion of the interface of Indigenous peoples with minerals industry development in the Northwest Interior. Indigenous activism has pressured development proponents to warrant their activities through demonstrating benefits to Indigenous communities. Responding to Indigenous demands, industry has increasingly extended employment offers to Indigenous peoples to secure social license for development. This creates the basis for constructing training programs targeting Indigenous peoples. In the second section, I examine how Indigenous demands have been worked into educational governance at Northwest Community College. In recent years, Indigenous peoples have garnered greater authority over education, particularly in provincial resource peripheries. The creation of new governance processes and programs at Northwest Community College entwine Indigeneity with contemporary educational regimes. However, as Indigenous territorial claims are sublated into the registers of employment strategies and job training, I suggest the politics of engagement remains selective. In the third section, specifically addressing the School of Exploration and Mining at Northwest Community College, I argue newly emergent regimes aim to secure Indigenous well-being through indigenized industry training. These regimes of education do not erase Indigeneity but inculcate students with a

particular version of Indigenous subjectivity reconcilable with and employable within industrial development. Thus, training regimes offer students opportunities to work with industry while simultaneously working to secure Indigenous support for industrial development.

The Convergence of Industry and Indigenous Peoples

A composite governmental apparatus has shaped Indigenous industrial education. Indigenous education, and Indigenous industrial education in particular, combines aspects of colonial regimes designed to facilitate resource extraction and regimes through which Indigenous peoples have sought to realize their self-determination. The convergence of Indigenous goals of secure livelihoods with corporate aims to secure developments from Indigenous protest is a product of the regulation of the dynamics of both industrial development and Indigenous resistance. Indigenous legal and direct action have introduced greater costs and uncertainty to development projects. Industry and state actors have sought to manage the uncertainty that Indigenous claims present by ensuring that Indigenous people are increasingly included as beneficiaries of development. Conversely, colonial legal frameworks have increasingly delimited the terms on which Indigenous claims can be cognized, pressing Indigenous peoples towards engagement and negotiated compromises with industrial development.⁷⁶ The resulting governmental apparatus, integrating state, corporate, and Indigenous actors, has reshaped industrial labour markets to increasingly recognize a place for Indigenous workers in development.

In his late lectures, Michel Foucault (2007, 2008) began to develop an analysis of governmentality, connecting the genealogy of the liberal state to the emergence of new technologies associated with the market and personal management. Governing entailed “knowing and regulating the processes proper to the population, the laws that modulate its wealth, health, and longevity, its capacity to wage war and engage in labor, and so forth. To govern ... it was necessary to know that which was to be governed, and to govern in the light of that knowledge” (Rose, O’Malley, and Valverde 2006, 87). Governmental power

made the security of the population both its target of intervention and the proposed end to the techniques of government. Colonial governmentality, while historically installing life projects to ensure the well-being of settlers has at times amounted to little more than an apparatus of death for the Indigenous peoples it encountered (Morgensen 2011b). However, as Wendy Larner (2000) articulates with reference to Australia, the dynamism of settler colonial liberalism is such that it is able to incorporate the struggles of its Indigenous Others. It is necessary to recognize the ways in which colonial liberal regimes also construct spaces of opportunity for Indigenous populations and contour particular regimes of empowerment.

In the Indigenous resurgence that followed the 1969 White Paper, Indigenous leaders particularly targeted control over education as crucial to the task of enhancing Indigenous self-determination. In August 1972, the General Assembly of the National Indian Brotherhood, the federation of Indian band governments across Canada, adopted the principle of Indian control of Indian education (National Indian Brotherhood 1973). After the National Indian Brotherhood presented the Minister of Indian Affairs and Northern Development with the policy of Indian control of Indian education, the Canadian government recognized the principle. While the extent and implementation of Indigenous control remain issues of dispute, federal government policy has shifted to relinquish some of its control over Indigenous education on reserve, and transferred administration of financial assistance programs for adult learners to the control of Indian bands and Inuit authorities (Lanceley-Barrie 2001). Although the devolution of administrative authority over Indigenous education to band governments served to increase Indigenous control over education by degree, the reforms left broader colonial power relations relatively undisturbed. The accreditation of institutions and the formulae determining the funding available for band governments to administer remain external to Indigenous control. In continuity with the more violent and direct historic forms of colonial education such as Indian residential schools, Indian education has remained poorly funded through the devolution of administrative authority.⁷⁷

This initial thrust of devolving educational governance reflected only a small subset of the package of Indigenous demands for control over education. In the release of the Indian Control of Indian Education policy, the National Indian Brotherhood (1973) stressed numerous elements of adult education that they wanted reformed. In particular, the policy of Indian control of Indian education demanded new approaches to vocational training, basic adult education, post-secondary education, and counselling services for drug and alcohol addiction. In vocational training, the National Indian Brotherhood (1973, 12) lobbied for: first, distinct training regimes overseen by Indigenous authorities to skill workers for jobs within Indigenous contexts; and, second, efforts “to encourage business and industry to open up jobs for Indian people” and associated job training that reflected the available employment opportunities and economic realities. With regard to basic adult education, the National Indian Brotherhood (1973, 12) stressed the importance of education as both “a means for many Indians to find economic security and self-fulfillment.” In basic adult education, they stressed the importance of integrating programming focused on Indigenous language and traditions, and coordinating these programs under the authority of local Indigenous authorities. In post-secondary education, they highlighted the need to modify post-secondary recruitment processes, entry requirements, student support services, and curriculum. The National Indian Brotherhood (1973, 14) also stressed the need for Indigenous “representation on the governing bodies of institutions of higher learning. This includes university senates and boards of governors, as well as the governing councils of colleges, community colleges and technical schools.” Contrary to the penurious logic that governed the government funding regimes, particularly evident in the education funding limits imposed on bands, the National Indian Brotherhood (1973, 13) argued for “generous federal financial support eliminating the difficulty and uncertainty which now accompanies a student's decision to continue on for higher education.” Finally, the National Indian Brotherhood highlighted the need for counselling services designed for and operated by Indigenous people to address addiction issues among Indigenous people.

In succeeding years, Indigenous control of determinations about funding priority areas worked in concert with other changes to meaningfully elevate the importance of addressing Indigenous concerns in college governance. Recognition of Indigenous authority over the administration of student funding combined with the accidental and targeted effects of policy changes to construct a context for genuine change in British Columbian colleges, particularly in remote resource peripheries (Mills and McCreary Forthcoming). The marketization of provincial college funding models through the 1980s and 1990s, shifting to a model of distributing funding based on enrolment numbers, alongside the proportional increase in the size of the Indigenous population through demographic change in declining industrial peripheries, necessitated that colleges in remote regions develop strategies to increase Indigenous enrolments.⁷⁸ Further, as Indigenous political resurgence advanced, the provincial and federal governments increasingly offered targeted funding for institutions to address Indigenous education as part of strategy to reconcile relationships between Indigenous peoples and the dominant colonial economy.

Schools function as a central mechanism for transmitting cultural knowledge and skilling future generations. It is in schools, colleges, and universities that future generations are formed into the citizenry imagined in powerful political rationalities. Education is a central institution through which governing rationalities are materialized (Basu 2004; Hay 2004; McCreary, Basu, and Godlewska 2013). As Marxist critics, such as Samuel Bowles and Herbert Gintis (1976), have suggested, education serves to discipline students for the workforce and inculcate dominant capitalist norms. However, if the forms of discipline working through adult education function as a process of subjectification for market participation, they are also productive of new relations, integrating Indigenous interests alongside those of capital (Haig-Brown 1995).

Educational governance in British Columbia thus possesses a complex, composite character. In April 2005, the province signed a vision statement, entitled the New Relationships, with the leadership of the three major Indigenous organizations in the province—the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS), and

Union of BC Indian Chiefs (UBCIC). In contradistinction to earlier provincial policy frameworks that sought simply to annul or advance the extinguishment of Indigenous claims, the New Relationship framework sought to explicitly recognize an ongoing relationship between Indigenous peoples and the provincial government (Wood and Rossiter 2011). The vision statement began repeating the final line of the Supreme Court of Canada's decision in *Delgamuukw* (although without explicit acknowledgement of the source of the phrase): "We are all here to stay" (First Nations Summit et al. 2005, 1). The vision of the New Relationship broadly oriented Indigenous peoples and the provincial government to the shared task of "reconciliation of Aboriginal and Crown titles and jurisdictions" through a process of mutual recognition and accommodation (First Nations Summit et al. 2005, 1).

Amongst the areas of engagement, education has particularly been prioritized as a central technology to enabling the reconciliation of Indigenous and colonial territorializations. In March 2006, the government of British Columbia passed the *New Relationship Trust Act* to create a non-profit corporation to manage \$100 million that the province dedicated to the task of actualizing the vision of a new relationship between Indigenous peoples and the province. Over the summer of 2006, the New Relationship Trust Corporation commissioned a province-wide engagement process of Indigenous community members to orient its activities. In the sessions, participants endorsed four core objectives of the New Relationship Trust: enhancing Indigenous governance, developing Indigenous capacity, improving Indigenous land and resource management, and improving the economic status of Indigenous communities. In the sessions, Indigenous community members ranked education as their top funding priority. Indigenous youth in particular "ranked education as the top priority by a wide margin" (Coppermoon Media 2007, 7). Further, as detailed in the summary report, "most respondents identified the lack of trained people as the highest barrier to positive change" (Coppermoon Media 2007, 7). Traditional knowledge and trades were the two most emphasized types of knowledge in which participants suggested Indigenous people needed additional training. Echoing the

priorities established through this consultation process, in 2007 the British Columbia Ministry of Advanced Education launched a new Aboriginal Post-Secondary Education Strategy and Action Plan, investing significant funding in training Indigenous adult learners to encourage their incorporation into the developing economy and society.

The dynamic contest between Indigenous peoples and resource development has entangled the aspirations of Indigenous peoples, state agents, and industry. After decades of resistance to colonial impositions, Indigeneity has now gathered profound significance within regimes governing industrial development in northern resource peripheries. Rendering the uncertainties associated with Indigenous claims subject to calculation, the provincial government and corporate investors have expressed an increasing willingness to recognize elements of Indigenous aspirations for a share of the benefits of development and enhanced economic well-being in their communities as goals that can be made congruent with industrial development. As Roger Hayter and Trevor Barnes (2012) have described, idealized liberal frameworks of free flowing resources continue to be limited by the political movements of Indigenous peoples. Michael McPhie (2006, A11), the former head of the Mining Association of British Columbia, linked the province's "new relationship" with Indigenous peoples to the aims of industry in an opinion piece entitled, "A Social Licence to Operate." McPhie (2006, A11) argued that the mining sector "has been very supportive of the "New Relationship" direction of the province and BC's Aboriginal communities. We believe our future rests on our ability to secure strong and productive relationships between our industry and the communities in which we operate." To help realize the potential for collaboration, the British Columbia and Yukon Chamber of Mines commissioned a guidebook, entitled *Mineral Exploration, Mining and Aboriginal Community Engagement* (Jepsen et al. 2005), outlining how companies should approach engaging Indigenous communities.

A number of observers have argued that the new dynamics of corporate-community partnership is reconstructing a political economy of opportunity for Indigenous peoples by harnessing Indigenous empowerment to capitalist systems of production, distribution, and

consumption (Helin 2006, 2011; Slowey 2008). While Indigenous resistance can be observed in moments to assert claims to jurisdiction, expressing a will to decide the course of development on their territories, Indigenous politics is now entangled with regimes of engagement and consultation, of negotiation and balancing competing interests. Positioning underdevelopment as a result of the repressive workings of colonial government oversight, authors such as Calvin Helin argue for models of market liberty for Indigenous people. These writers argue that partnerships between corporations and Indigenous communities present opportunities to transcend the dynamics of dependency and realize Indigenous self-determination within the capitalist economy.

Central to the strategy of warranting minerals development through employing Indigenous peoples is ensuring that Indigenous peoples are adequately trained to participate in the industry. In a Fraser Institute survey of mining companies, nearly a third (31%) indicated that uncertainty associated with Indigenous claims was a strong deterrent to investment, and 6% indicated they would not invest in the region on this basis (McMahon and Vidler 2008, 68). The induction of Indigenous peoples into the minerals industry as labourers worked to secure greater certainty of investment for minerals exploration and extraction firms. As one college employee described, “if enough people’s jobs depend on the resource, ... it’s goinna create a dependence on industry.” That individual continued to explain the logic of providing minerals industry training for Indigenous peoples: “If Aboriginal people just work in the industry, and they are invested in their jobs, [then] they are not going to have any problems with exploiting the land.”

Further, the integration of “nontraditional labour markets” for the minerals industry functioned to offset concerns about aging demographics of the existing minerals workforce (British Columbia Ministry of Energy and Mines 2012, 21).⁷⁹ For instance, a recent minerals and mining sector economic development strategy report, commissioned by a Northern Interior coalition of regional mayors and regional district chairs, stressed the need for education services to prepare a local minerals industry workforce (DPRA 2008).⁸⁰ “A skilled workforce is an essential part of any prosperous sector, and BC’s mining and

exploration industry is currently facing considerable demand for skilled labourers which is expected to rise even further in the coming years” (DPRA 2008, 16). Addressing this need, the coalition of local settler governments articulated a vision in which regional education opportunities associated with the minerals industry could “develop the interest and skills required for mining and exploration activities with innovative and sustainable mining practices being accomplished through effective communication, strong relationships, and multiple partnerships” ” (DPRA 2008, 1).

New models of labour relations offer to extend employment opportunities to Indigenous peoples and thereby offer them avenues to empowerment through participation in local labour markets. The convergence of Indigenous movements with corporate development strategies represents a crucial point of critical inquiry. Interrogating the linkage of Indigenous empowerment to colonial designs exposes how contemporary colonial capitalism continues to fold in dissident voices to relegitimize itself. Touted as enhancing Indigenous self-determination, industrial employment appears to respond to Indigenous demands but simultaneously serve an economic agenda centred on resource extraction. The appropriation of the legacy of Indigenous resistance is selective, eliding elements of Indigenous struggle that target the underlying systems of colonial authority to cultivate a convergence between Indigenous life projects and capitalist development projects. The convergence of Indigeneity and development links Indigenous aspirations for self-determination to the processes of accumulation by dispossession. If the offer to participate in the destruction of one’s traditional territories seems perverse, it is nonetheless seductive for people that colonial policies had long relegated to the past, denying them a stake in the present or future of settler colonial society. As John Ridsdale (quoted in Fox 2013, 3:23), who holds the Witsuwit’en title of the hereditary chief Namoks, stated in relation to Indigenous participation in the minerals industry, “We are watching young people go out there and see there is a future. They have a right to it and they are getting trained to go there.”

The imbrication of Indigenous knowledges and practices within colonial governmental and disciplinary apparatuses modify processes of capitalist subjectification while maintaining the centrality of participation in the industrial labour market as a model of empowerment. Corporations and the state have developed legal mechanisms to integrate Indigenous aspirations into development. Rather than directly addressing Indigenous title claims, corporations operating on claimed Indigenous territories have increasingly sought to use private agreements, often referred to as Impact Benefit Agreements with affected Indigenous communities, to secure a social license development for development (Gogal, Reigert, and Jamieson 2005; Fidler and Hitch 2007; O’Faircheallagh 2010). A principal term within these agreements has been employment guarantees for Indigenous people (Mills 2011; Mills and McCreary 2012). As Rebecca Lawrence (2005) demonstrated in Australia, securing resource developments from Indigenous protests necessitates training an Indigenous labour force. As a manager with an exploration firm told me, “it has to be a mutually beneficial relationship.” He was sceptical of what he described as simply “throwing money” at First Nations, particularly as a large portion of the regional minerals industry focused on prospecting and possessed limited reliable revenue streams. But he suggested Indigenous people could provide value for his company through their labour and thereby gain access to a portion of the benefits of minerals exploration. An Indigenous community member stressed that it was “important for industry ... to say that they are employing Aboriginal people. ... Industry will always promise jobs to the First Nations for letting them go through and do the projects.”

As one example of the congruence now being forged between Indigenous peoples and industry, in 2012, Catherine Blackstock, the Gitxsan hereditary chief Geel, signed a one-year Exploration Access and Relationship Agreement with Atrum Coal, an Australian mining company. Atrum is investigating the anthracite coal development potential of the Groundhog project, a 220,000 square metre plot situated southeast of the Klappan River, within the traditional territories associated with *wilp* Geel. Through signing the agreement and providing job guarantees, Atrum was able to reconcile development with the exercise

of a form of Gitxsan territoriality. Describing the agreement, Gino D'Anna (quoted in *brr media* 2012, 0:58), Executive Director of Atrum Coal, stated, "We have ... been able to secure unencumbered exploration access with our First Nations stakeholders."

The agreement was both the product of and itself productive of new relationships of power in the traditional territories of Geel. The agreement established employment and education provisions to ensure members of *wilp* Geel would benefit from the development of their claimed traditional territory. Geel described a number of economic benefits that flowed from the agreement:

Last year we were able to put a number of our members to work and this year we hope to take on more responsibility in the camp operations. We received funding for our members to get training in drilling, first aid, geology and basic camp courses. We hope to continue to expand training to include camp management, expediting, cooking, archeology, and environmental [studies]. Our own ho[u]se [sic] members are the priority for employment but [we] also strive to hire other Gitxsan and local community members as needed. Any training the Wilps Geel members receive will be beneficial to employment opportunities with Atrum or in the mining field. (quoted in Turner 2013)

The agreement helped bring Indigenous people into development as workers. In this, education provisions presented the necessary accompaniment of employment provisions, as *wilp* Geel members required training for work in the minerals industry.

The linkage of elements of traditional Indigenous and corporate governance, embodied in an agreement between a hereditary chief and a minerals exploration firm, highlighted a reorientation in the pattern of colonial governance in British Columbia. Gitxsan students were now being trained through the specificity of their Indigeneity as *wilp* members connected to particular *lax'yip*. Training aimed to empower Indigenous students through not the eschewal but the embrace of their Indigeneity. This is a vital reversal: where prior policies sought to enfranchise Indigenous peoples rendering them part of the imagined undifferentiated mass of Canadian citizenry, new techniques of empowerment

sought to design routes of Indigenous peoples to become simultaneously more authentic and reconciled with resource development regimes.

Yet regimes of recognition worked to reconfigure the workings of Indigenous authority and the practices of Indigenous territorial governance. The agreement between *wilp* Geel and Atrum reflected changes in the way the *wilp* functioned within the horizontal network of Gitksan governance. While traditionally Gitksan governance occurred through a process of public witnessing and validation of formal agreements in the *yukw*, the agreement forged by the Gitksan *wilp* and Australian corporation remained confidential. The agreement was subject not to Gitksan legal traditions but rather those of state law guaranteeing contracts. *Wilp* Geel has not disclosed or discussed the agreement in the feast hall as the hereditary chief Geel (quoted in Turner 2013) suggested that she did not “believe this is the forum to bring up this business.” Instead the calculated convergence between corporate and Gitksan interests operates within a nascent domain of knowledge and practice connected to new governmental and disciplinary regimes. These regimes are not bound to a rigid construction of the conventions of tradition, Indigenous or colonial, but rather represent a composite formation aimed at the construction of worker subjectivities that are explicitly and uniquely Indigenous.

Beyond the desire for work, Indigenous peoples have also sought to ensure that industrial development respect their communities’ interests in their lands. This has resulted in the inauguration of new job categories aimed at monitoring the environmental and cultural effects of resource developments on Indigenous lands. Corporations have increasingly committed to create new jobs in environmental monitoring and reclamation work to ensure that respect for Indigenous traditions is integrated into the process of materializing development. Training Indigenous people to staff these positions necessitates the development of new transcultural forms of programming that inculcate students in methods of translating concerns based on Indigenous traditional knowledge into language cognizable by resource developers.

Placing Northwest Community College

The shifting politics of Indigeneity and education is particularly evident at Northwest Community College.⁸¹ Founded in 1975 as a regional college for the Northwest of British Columbia, Northwest Community College serves a geographic region of 102,247 square kilometres between the interior community of Houston, British Columbia and the coastal Island of Haida Gwaii. It is the college in British Columbia that serves the region with the largest proportional Indigenous population. In 2006, Indigenous people represented roughly 30 percent of the regional population of 71,815 people (BC Stats n.d.). Thirty-eight percent of the 2006 regional population aged 15 to 24 identified on the Census as Indigenous (Northwest Community College 2009/2010). Further, Northwest Community College functionally incorporates Tahltan communities north along Highway 37, which although officially defined as belonging to the region served by the Northern Lights College in the British Columbia Northeast lack effective road access to the Northern Lights College campuses. Thus the college region functionally overlays the territories of seven contemporary Indigenous peoples: the Haida, Tsimshian, Haisla, Nisga'a, Gitksan, Witsuwit'en, and Tahltan (Fig 18). Through its region of operation the college has nine distinct campuses, and the college works with twenty Indian bands (including the northern Tahltan bands off Highway 37), four post-treaty Nisga'a villages, two Nisga'a urban societies, four Indigenous urban friendship centres, four Indigenous education institutes, and the Metis Nation of British Columbia (Table 4 and Fig 19). The college estimates that Indigenous people make up about 44 percent of the student body (Northwest Community College 2013c).

Figure 18: Indigenous Nations in NWCC Region⁸²

From Northwest Community College,
First Nations Territory
Acknowledgment (website) (2013).

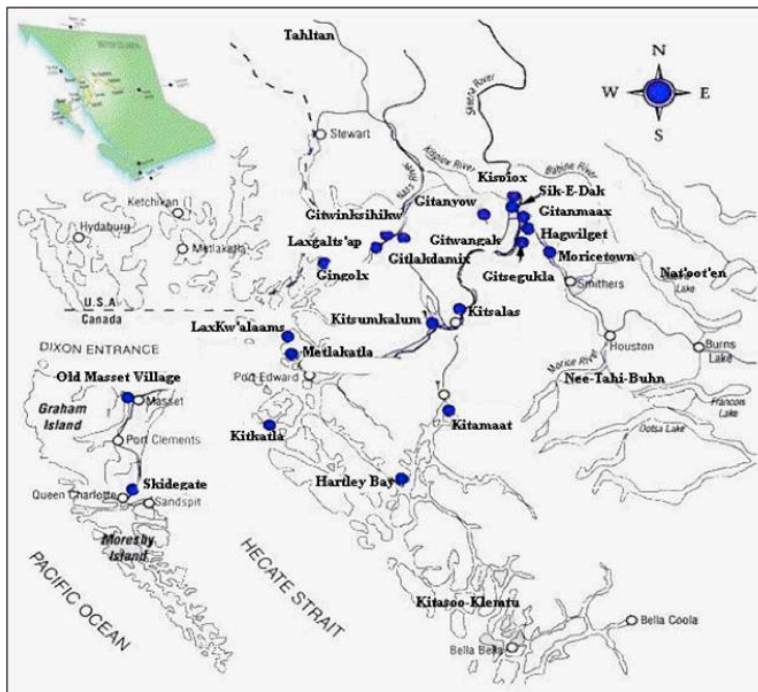
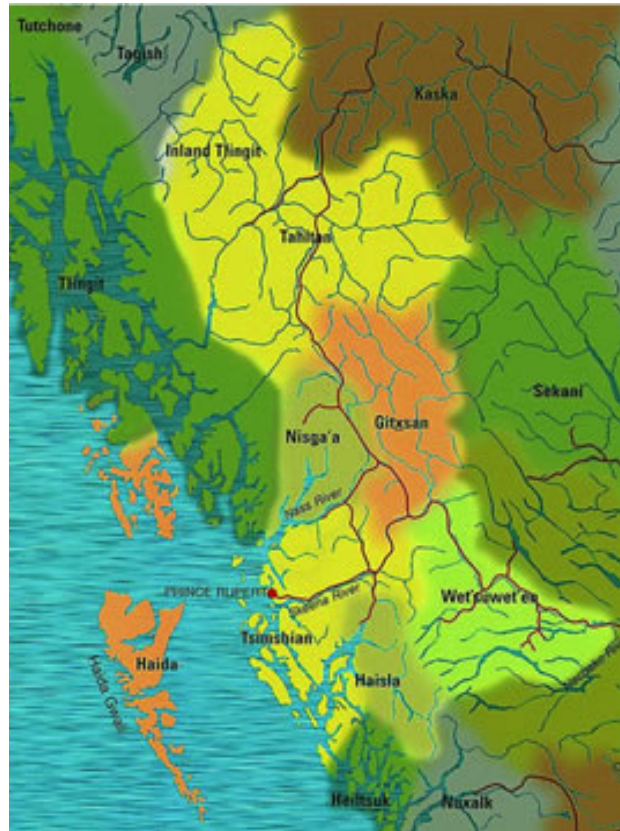


Figure 19: Bands in NWCC Region

From Northwest
Community College,
*NWCC Institutional
Overview* (2009), p. 1

Table 4: Indigenous Band Governments, Treaty Governments, Friendship Centres, and Educational Institutions in NWCC Region

Nation	Band Governments	Nisga'a Village Governments
Gitksan	Gitanmaax Band	Laxgalts'ap Village Government
	Gitanyow Band	Gingolx Band Council
	Gitsegukla Band	Gitlaxt'aamiks Village Government
	Gitwangak Band	Gitwinksihlkw Village Government
	Glen Vowell Band	
	Kispiox Band	Nisga'a Urban Locals
Witsuwit'en	Hagwilget Village Council	Terrace Local
	Moricetown Band	Prince Rupert Local
Tsimshian	Hartley Bay Village Government	
	Kitasoo Band Council	Urban Friendship Centres
	Kitkatla Band Council	Kermode Friendship Society
	Kitselas Band Council	Houston Friendship Centre
	Kitsumkalum Band Council	Dze L K'ant Friendship Society
	Metlakatla First Nation	Friendship House Association
	Lax Kw'alaams Band	
Haisla	Kitamaat Village Council	Indigenous Education Institutes
Haida	Old Massett Village Council	Wilp Wilxo'oskwhl Nisga'a
	Skidegate Band Council	Haida Heritage Centre (Kaay Llnagaay)
Tahltan	Iskut Band Council	Gitksan Wet'suwet'en Education Society
	Tahltan Band Council	Kitimat Valley Institute Corporation

Beginning in 1970s, the college developed partnerships with regional Indigenous communities and institutions to coordinate the effective delivery of programming to Indigenous populations. These relationships have evolved in concert with changes in the political organization of Indigenous communities and the development of Indigenous-controlled educational institutions. As Northwest Community College (2010, 6) reports, it “has established a variety of partnerships with communities, First Nations organizations and other education institutions to provide access to relevant education and training

opportunities throughout the region.” The college has working relations with regional Indigenous band, tribal, and treaty organizations. It also associates with Indigenous educational institutions through a variety of means from informal discussions to formal federation agreements with Indigenous-controlled institutions to work collaboratively to support Indigenous learning.

With the increased political recognition of Indigenous peoples in British Columbia in the mid-1990s, the college administration began to formalize consultative processes with Indigenous communities. In 1996, the Northwest Community College established, as an arm of college governance, the First Nations Council (Northwest Community College 2013a). The First Nations Council provides an avenue for direct consultation with Indigenous communities and institutions in the college region. Although the Council formally holds only advisory status, developing recommendations on educational issues grounded in the concerns and aspirations of Indigenous peoples, it has served as a vital node of communication between Indigenous peoples and the college. Feedback from the First Nations Council has been instrumental in shaping the strategic and operational planning of the college, particularly in the areas of student support, program promotion, curriculum design, cultural content, and program evaluation. Membership on the First Nations Council includes representation for all the regional Indian bands (including the Tahltan), the post-treaty Nisga’a government authorities, urban friendship centres, Indigenous educational institutions, as well as the college president, a member of the college board of governors, and the college First Nations access coordinators (Northwest Community College 2013b). The chair of the First Nations Council is the member of the College Board of Governors and ensures the input of First Nations Council is communicated to the board. Asked to evaluate the impact of First Nations Council, one of the Indigenous staff at the college said, “I think they’re definitely doing a good job. ... I think there’s a good relationship now, between the First Nations, and [we’ve] got the First Nations Council. ... They’re very involved.”

Through the 2000s, Northwest Community College extended its commitment to engage with Indigenous concerns through a series of strategic plans. Drawing inspiration from work in New Zealand/Aotearoa, by the mid-2000s the college was referring to this as a process reorienting the college from a “main-stream” framework “to one that is bicultural” (Northwest Community College 2007, 5).⁸³ The term was an unfortunate one for the context of Northwest British Columbia. In New Zealand biculturalism effectively forwarded the primacy of the relationship between the Indigenous Maori people and Pākehā (settlers) (for a review of the politics of nationalism, multiculturalism, and biculturalism in New Zealand, see, Pearson 2000; O'Sullivan 2007); however, in Northwest British Columbia there was not a single Indigenous group but many, and the term obfuscated the diversity of Indigenous peoples in the region. It also homogenized settler society. Nonetheless, under the rubric of biculturalization, the college underwent significant changes. A strategic plan instituted in 2005 initiated reforms in governance, community partnerships, educational programming, employee relations, the school environment, student support, and institutional planning (Northwest Community College 2005).

In interviews with college administrators and employees, the most frequently cited impetus for biculturalization was that the college needed to better serve the needs of a region that contained a large Indigenous population. For instance, one instructor said, “educators have a responsibility to the students, to community development, to building the capacity of people; and to do that, you have to recognize differences.” Another staff member argued that “if the ‘community’ college is supposed to serve the community” and the community was primarily Indigenous, biculturalization is “kind of a given that it’s how we should do it.” These rationales echoed the ones provided in official college documents.

As a result of our demographics, our history and our growing Aboriginal student population, we believe we have an obligation to become an institution that is authentically bicultural and are actively engaged in work which would see the realization of that goal (Northwest Community College 2007, 8).

However, in constructing an account of community needs, these needs were defined economically. For instance, the NWCC Institutional Accountability Reports for the provincial government regularly cited high local unemployment among Aboriginal peoples as a rationale for increased funding for targeted Indigenous programming. The 2011 Institutional Accountability Report argued that, “Major employers have stated they prefer to hire local personnel, particularly Aboriginal, and it is for that reason that the college seeks to expand its current complement of offerings in access programs, health, and technical and trades training” (Northwest Community College 2011, 19).

Reforms to recognize Indigenous peoples changed the content and delivery of educational programming at the college. New programs have been created to train Indigenous workers to meet local labour market opportunities and needs. An Indigenous art program offers students the opportunity to learn traditional forms of cultural expression, and an Indigenous culinary arts program integrates provincial culinary curriculum with a unique emphasis on Indigenous foods and cooking techniques. Ecological stewardship programs designed for Indigenous learners centre on training students in the bodies of ecological and traditional knowledge necessary to monitor the health of their traditional lands and waters. Indigenous business and administration programs equip students with the skills to work in a variety of settings including band administration, contributing to the future enhancement of their communities, while minerals industry programs support Indigenous learners to gain necessary skills to work in mining exploration, environmental monitoring and stewardship, and site reclamation.

There has also been an increasing shift to extend, relocate, or abandon the classroom. The use of remote technologies at the college increasingly enables Indigenous people in distant communities to pursue courses from their community. The college increasingly employed remote technologies to make school accessible for learners who have not traditionally been able to access education due to family responsibilities or transportation issues. Other programs sought to support students through either moving education onto the reserve, or creating field schools that took students onto the land.

Programs for adult learners to attain the skills necessary to enter the workforce or prepare for post-secondary programs are being delivered directly on reserves through partnerships with Indian bands and Indigenous education institutes. Based on a holistic approach to education, these programs seek to enhance learners' self-esteem, pride for traditional knowledge, culture, and language, as well as life and academic skills. Instructors are recruited collaboratively between the college and their First Nations partners, and the college provides the instructional funding while the community contributes the infrastructure and community resources. Local traditional knowledge and history are interwoven with academic knowledge, and often being on the land is used as a form of experiential learning for both academic and traditional teachings. Similarly the college has greatly extended the use of field schools, allowing students the opportunity to learn on the land.

The college has also initiated an employee education program to support the decolonization of teaching practices and improve college employees' understanding of Indigenous culture, traditions, and knowledge. Through professional education initiatives the college has crafted spaces for dialogues around the incorporation of Indigenous culture, traditions, and knowledge into post-secondary education, and begun to extend these conversations to other institutions doing similar work. College instructors indicated that their work at the college informed their awareness of Indigenous issues. Many instructors found their experience at the college transformative in terms of their understanding of the Indigenous community. One staff member described how before starting at the college, "I had no knowledge of First Nations, nor did I care. ... Certainly, I would have known about land claims and so on, but I would have had a, how shall I say this, a more redneck attitude." In the words of another, "I think [if] I hadn't been working here, I wouldn't have had the same amount of contact with people of an Aboriginal background, and therefore, my understanding of the various issues that they face would have been diminished." Employee education initiatives served to highlight the relationships that the college had

established with Indigenous communities, and encourage the further development of relationships rooted in an understanding of Indigenous communities and their traditions.

Feedback from Indigenous people, particularly through the First Nations Council, has been instrumental to developing more respectful student services. College documents repeatedly highlight the necessity of developing an ethics of care based in relationships of responsibility and reciprocity rather than the economizing logics of efficiency that govern dominant models of service transactions. Northwest Community College (2007, 30, italics in original) trumpets that it “is an institution that respects Aboriginal students for *who* they are and, strives to be *relevant* to their view of the world, offers *reciprocity* in their relationships with others and helps them increase *responsibility* over their own lives.” College protocol stresses the need for services to be attentive to the impacts of colonization on First Nations communities and Aboriginal learners, who continue to struggle with the legacy of colonialism, particularly residential schools and their intergenerational effects. To provide a supportive environment, the college works to balance academic learning and traditional teachings in the provision of educational advising, accessibility coordination, and learning support. To provide additional student support in personal and educational matters to Aboriginal students, the college created positions for First Nations access coordinators and Elders-in-residence (Northwest Community College 2010). First Nations access coordinators and Elders-in-residence provide Indigenous students with support to aid in their transition to the college system.

The college has also sought to extend recognition to Indigenous learners and communities in the school landscape and college promotional materials. Recognizing that histories and meanings are constructed, imposed and endure within school environments, the college has made distinct efforts to represent Indigenous peoples in the school. Posters on school walls highlight the importance of Indigenous students, and the college makes an active effort to recognize and promote events important to the local Indigenous community. Working together with First Nations Council, the school has commissioned totem poles at a number of the campuses, including the recently renovated Smithers

campus, which houses the School of Exploration and Mining. The poles recognize the importance of Indigenous peoples to the school. Finally, mapping the college within Indigenous geographies, promotional materials and the college website recognizing the Indigenous territories within which the school operates. The symbolic recognition of Indigenous peoples both in the physical and digital infrastructure of the school helped signify the cultural inclusion of Indigenous peoples in the operation of the college.⁸⁴

However, college documents note that the college extension of necessary student supports has been constricted by fiscal concerns. College administrators stressed that provincial funding formulas based on student enrolment numbers fail to account for the distinct needs of many Indigenous students. College funding applications to the provincial government stressed that, given the tremendous impact of colonization, there was an “incredible need for a network of services and supports at the college that the current funding levels scarcely touch” (Northwest Community College 2007, 31). Administrators argued that prevailing government formulas based on presumptions of translatability and interchangeability of students and programs hinder the development of a more flexible student-centred approach. The dual structure of college commitments to state funders and Indigenous communities are not easily reconciled, placing objectives to enhance student support in tension with directives to streamline students’ transition and adjustment processes and maximize efficiency. While the college lobbied the government for additional funds to support Indigenous learners, ultimately, as one college employee described, “whoever pays the piper picks the tune.”

Interviewing twenty-eight members of the college community, ten of whom identified as Indigenous, only two spoke out against biculturalism. A clear majority—particularly among administrators, none of whom disagreed with the trajectory of change—believed that the reforms to better serve Indigenous students and communities were beneficial to the interests of those individuals and communities. For instance, one college employee rationalized biculturalism as a necessary move to counter the racism that exists in the college and society.

I support it [biculturalism] because racism does exist at NWCC, and I believe one of our highest goals at the college is to do what we can to deal with that or minimize that. I think we do that by opening our eyes and ears to different perspectives, understanding different needs of our students. And I think we'll all be better for it if we could maybe set an example for other institutions.

Integrating recognition of Indigenous peoples thus served to reorder the politics of race from privileging whiteness to incorporate Indigenous difference.

However, it is worth noting that Indigenous visions for education and countering racism within the school and workplace have varied (Mills and McCreary 2006). In their demands for reforming adult education, the National Indian Brotherhood included instrumental appeals for training to enhance possibilities for Indigenous participation in the dominant economy, but also the creation of programming that included recognition of Indigenous language and traditions. However, stressing economic integration, the National Indian Brotherhood bracketed their demands for indigenizing education. They wanted Indigenous control over training for jobs in Indigenous workplaces, and Indigenous language and culture curriculum in basic adult education. However, in relation to vocational training for industry, they stressed the need to get skills for employment opportunities and to pressure industry to hire Indigenous people. Yet there have also been more radical calls to rethink the governing epistemes of education and recognize alternative relations to the world embedded within Indigenous ways of knowing and being (see, for instance, Battiste 2000; Kuokkanen 2007). While the college created space to recognize Indigenous traditions, and sought to integrate forms of recognition of Indigenous culture into new and existing programming, the governing approach to education within the province and in the college focused on effectively skilling students for work, a vision more resonant with that articulation of Indigenous education from the National Indian Brotherhood.

Moreover, many of the changes to support Indigenous students were limited by provincial penuriousness. In 2007, the province created Aboriginal Service Plan funding to

enhance educational institutions' engagement with Indigenous communities and institute new processes to monitor the success of targeting programming for Indigenous students. Through Aboriginal Service Plan funding, institutions received financial support to construct three-year strategic plans to increase "access, retention, completion and transitions opportunities for Aboriginal learners," as well as to improve "the receptivity and relevance of post-secondary institutions ... for Aboriginal learners" and to strengthen "partnerships and collaboration in Aboriginal post-secondary education" (Ministry of Advanced Education and Labour Market Development 2007, 1). Coincident with Aboriginal Service Plan funding, the Gathering Place capital funding program supported institutions to construct particular places on campus that would celebrate Indigenous culture and make school a more welcoming place for Indigenous students. Northwest Community College received significant funding enabling many of the initiatives described above. However, targeted funding arrangements masked the broader pattern of core funding reductions. As targeted funds expired, the college experienced large deficits as it transitioned off Aboriginal Service Plan funding. As a result, the college has been pressed into a financial crisis in which it has been forced into "restructuring and refocusing resources in an effort to eliminate duplication across departments and campuses and ... reducing the workforce" rather than extending services and supports (Northwest Community College 2012, 11). Thus, while the increased Indigenous influence over college governance reflected a shift from past colonial models, the emphasis on maximizing funding efficiencies and instilling work skills resonated with historical colonial ambitions. This economizing impulse continues to undergird contemporary approaches to Indigenous education.

Creating the School of Exploration and Mining

In 2004, the School of Exploration and Mining developed in response to regional labour shortages in the minerals industry in Northwest British Columbia, and the particular need to skill Indigenous workers to meet the employment commitments corporations were making to communities. The programming at the School of Exploration and Mining was

designed to train workers, and particularly Indigenous workers, to meet industry needs. The school was initially formed after a local mineral exploration association, the Smithers Exploration Group, approached Northwest Community College to partner in creating an industry training program. One of the Smithers Exploration Group's stated goals is to support a localization of the minerals industry, through training local people and hiring locally. Partnering with the college, the Smithers Exploration Group helped Northwest Community College establish Ganokwa Camp, a mock minerals exploration camp in the Babine Mountain Range outside Smithers. The Smithers Exploration Group owns the Ganokwa Camp site, as well as the camp gear. Each year the Smithers Exploration Group has a crew set up camp, renting the camp facilities to the college.

Describing the contribution of the School of Exploration and Mining to meeting local labour market needs, the former Dean of Continuing Education and Industry Training at Northwest Community College (quoted in NWCC 2008) stated, "These new programs will go a long way in helping address the critical shortage of skilled labour in the exploration and mining industry. ... They have been developed by the industry, for the industry, and will produce graduates with the requisite skills and hands-on experience required to begin work in the field." Corroborating this claim, an operations manager for a local exploration servicing company (quoted in Fox 2013, 1:00) stated, "Our experience with the School of Exploration and Mining has been primarily hiring their students. The skills that they teach are exactly what we need out in the field." As one of the staff at the School of Exploration and Mining described, "the skills they are learning in WEST [Workforce Exploration Skills Training] are the most hireable, the most needed, entry level skills in the exploration industry. There is nothing you are learning ... that is not needed out there as an actual job skill. ... You get all the certificates and hands on training." Similarly, Byng Giraud (quoted in Fox 2013, 1:20), Vice President of Corporate Affairs for Imperial Metals Corporation, described working with the School of Exploration and Mining as "actually a pleasure ... because they are genuinely interested in customizing their programs and their courses to our needs in industry." Industry partners have been key to supporting the development of

the School of Exploration and Mining, and continue to consult with college staff regarding their needs as potential employers.

More than simply providing generalized minerals industry training for Indigenous people, the School of Exploration and Mining aided industry in its efforts to interface with local Indigenous groups. The school maintained a student database on the basis of Indigenous geographies that enabled them to network students and companies on the basis of the traditional territories impacted by development. A manager for an exploration company described the human resources benefit of the college.

You can actually hire someone from the local First Nation that really has experience and understanding and an interest in being in the industry. It is magical. You can call the School of Exploration and Mining, ... say, 'Hey, we are starting up a project in this area, do you have students from this first nation?' The database is set up to filter by location and First Nation. ... So if you are looking for Witsuwit'en, Gitksan, or Tsimshian, [the school staff] can filter through the database by First Nation affiliation and say, 'Yeah we have had twenty students from that First Nation, and I can contact them and have them submit a resume to you.' It's a real solution.

Thus, a company could contact the School of Exploration and request that students from a particular community or nation apply to work with them. The school staff would then contact the appropriate students and invite them to apply to work for the company. In a situation analogous to how Kerry Preibisch (2010) describes Canadian agricultural workplaces managing labour through temporary migrant worker programs by hiring on the basis of particular ethnic or national traits, minerals industry employers use the information database collected by the college to shape the social composition of their workforce.

The programming at the School of Exploration and Mining is offered as a form of continuing education. This means the industry training provided at the school is not funded by the Ministry of Advanced Education. Early financial support for the School of Exploration and Mining was provided by the provincial Ministry of Energy, Mines and

Petroleum Resources. The School of Exploration and Mining is a cost-recovery program. The cost of every program the school delivers needs to be covered by either tuition, partnership with industry, or government grants. The school's principal sources of funding are provided by natural and human resource ministries of the provincial and federal governments, exploration and mining companies, and industry associations. Northwest Community College, as well as government and industry representatives, have explicitly articulated the School of Exploration and Mining as an investment in the human infrastructure necessary for minerals development.

Indigenous organizations have also linked with the School of Exploration and Mining. According to one of the college staff, "For the School of Exploration and Mining it was important that we were very conscious and worked with and were respectful of First Nations at a hereditary chiefs' office level." The school is situated on Witsuwit'en traditional territory, and the school maintains an active relationship with the Office of the Wet'suwet'en as the representative organization of the traditional chiefs. Elaborating the relationship between the School of Exploration and Mining and the Office of the Wet'suwet'en, that staff member described how "whenever we were making changes or had ideas we would always run them by [the staff of the Office of the Wetsuwet'en] ... for their input and insight. To make sure they were comfortable with what we were doing ... but also they often did have good insight and feedback."

However, while treaty and hereditary chiefs' organizations represent Indigenous political claims, the school also relies heavily on educational counsellors at band offices to access students and provide student funding. As explained by a School of Exploration and Mining staff member, "when it came time to recruiting students, helping getting students into programs—the marketing, the funding—that was done at a band level." Within the band, there is typically an employment/training coordinator, who is responsible for helping band members access employment and the training necessary to find employment. The School of Exploration and Mining would maintain regular contact with these band staff, both in the college region and also beyond. As the college program was unique, it drew

students to the college from Indigenous communities beyond the college region, particularly from the Central Interior and Northeast of the province. College staff would provide bands with information about training opportunities. According to college staff, the people who worked for the band were invaluable in supporting Indigenous students to be able to access education. “The biggest asset for marketing programs and assisting people into the programs were the ... training coordinators at the different bands,” claimed one of the School of Exploration and Mining staff.

A lot of the people that are taking these SEM [School of Exploration and Mining] classes [are] young adults that don't necessarily have a fixed address, staying at mom's one night, and auntie's another night ... living out of a grocery bag. ... There is a lot of people that are just terminally couch surfing. ... Education level is pretty low, ... they need some sort of support to access this stuff. ... [It helps] to know you could go down to the band office and talk to a particular lady and she'll help you fill out the forms, and she'll make sure you check everything off, and help you fax it away. ... If you have questions but you are pretty shy, you are guy ... with a grade seven education and you are thinking of going off to college, you are probably pretty scared to call the guy at the college and start asking questions. ... [The band staff] are there with their feet on the ground to help people through. ... It wouldn't happen without them.

Band staff informed band members about programs, but they also helped band members fill out their application for the college, and aided band members in applying for funding through the band, employment insurance programs, or other avenues.

In the intersection of economic strategies and educational policies, the governmental apparatus aimed at ensuring the security and well-being of the broader population connects to the particular disciplinary apparatuses of subjectification for work. As Foucault (2008) described, the workings of governmental strategies do not target individual subjects but aim to work on a population. Rather than seeking to control individual bodies, as is the case with disciplinary regimes, the art of government works to

foster the life of the population through the apparatuses of security. Byng Giraud (quoted in Fox 2013, 0:52), Vice President of Corporate Affairs with the Imperial Metals Corporation, rationalized School of Exploration and Mining on the basis of its contribution to the employment opportunities for graduates: “Right now it’s eighty plus percent chance that they are going to get a job in the occupation they’ve studied. What institution can say that.”

Further, funding regimes directed to particular populations, such as Indigenous people and the unemployed, function to nurture the resubjectification of marginalized populations as potential industrial workers through inducing and seducing enrolment within minerals industry training programs. For instance, the Reclamation and Prospecting program specifically targeted Indigenous youth and supported their training to work in industry. To access the program, as a School of Exploration and Mining staff person explained, one “needed to be a First Nations youth-at-risk. ... [There is] a narrow focus on who is allowed to access that training. Similarly, the Environmental Monitor Assistant Program and Workforce Exploration Skills Training program provided funding for students through the Canada-British Columbia Labour Market Agreement. This funding served to provide participants with access to training free of charge, but again targeted particular populations. The Canada-British Columbia Labour Market Agreement did not specifically fund Indigenous students but rather targeted those who had been outside of the labour market for a significant period of time and were unable to access employment insurance retraining funding. However, as a result of the low rates of labour market participation among Indigenous peoples in the region, this funding effectively supported Indigenous learners who had been historically excluded from the labour force. Through these funding initiatives, the School of Exploration and Mining was able to lower the significant financial barriers that often limit people. As one of the staff at the School of Exploration and Mining stated, being “free is a big part of [the] accessibility” of programs. Similarly, support through the band educational funding or direct industry sponsorship of a student’s studies served to foster the training of Indigenous industrial labourers.

As a constituent element of contemporary colonial governmentality, industry training served not only to discipline labourers but also to simultaneously foster the reconciliation of Indigenous populations with industrial development. Through both private and public investments in education, the college as a public institution was oriented to advance the political economic agenda of reconciliation, resecuring private investments in resource development. The form of tutelage provided through the School of Exploration and Mining served to choreograph programs of conduct for Indigenous students to achieve self-actualization through employment in industrial development projects. This tutelage aimed to transform Indigenous polities, reconfiguring conflicts over sovereignty and territory into problems about access to training and employment.

Educational programming at the School of Exploration and Mining focused on disciplining individual students, and particularly Indigenous students, so their capabilities could be effectively honed to work for industry. Describing the effect of the training students received through the college, an instructor at the school (quoted in Fox 2013, 1:55) summarized, “They [students] pick up a bunch of new skills and they are ready for the workforce.” At the School of Exploration and Mining, education focused on disciplining students to integrate them into systems of efficient and economic controls. As Foucault (1977) described in his classic work on disciplinary power, disciplinary technology in education functions to surveil and control the individual body through constituting perceptual grids and structuring physical routines. In the discipline instilled through educational programs designed for Indigenous peoples, economic and political imperatives are coupled. Discipline works to ensure not simply the development of skills, and thereby increases in productivity, but simultaneously the inculcation of obedience and thus the intensification of political subjection. However, reflecting the composite character of governmental rationalities, bringing together Indigenous aspirations with designs for resource extraction, the regimes of power-knowledge within disciplinary regimes of education foster the subjectification of Indigenous students as distinctly Indigenous minerals industry workers.

The School of Exploration and Mining has specifically targeted training Indigenous workers for the minerals industry. The director of the local minerals industry association (quoted in NWCC 2010, 5:15) described the school as “having a unique position [in] training First Nations, specializing in ... training at an entry-level ... for the industry.” For instance, the Mining Exploration Field Assistants (MEFA) was one of the initial programs offered at the school, providing an eight-day course to train students for entry-level work in minerals exploration. In the first three years it was offered, 270 students completed the MEFA program. The vast majority of the graduates of this program, over 90 per cent in 2007, were Indigenous students (NWCC 2008a). Across all programs, 70 per cent of the annual graduates from the School of Exploration and Mining are Indigenous (Northwest Community College 2007, 8). In eight years of operation, SEM has graduated over 900 students as field assistants, driller’s helpers, and exploration camp managers, as well as basic prospecting and reclamation workers.

Programming at the School of Exploration and Mining has aimed to discipline students’ bodies as potential minerals industry workers. Central to the techniques of subjectification used at the school is bringing students into the field. Students learn and live at Camp Ganokwa, a mock exploration camp that mirrors conditions at an actual industry camp. As Fraser Deacon (quoted in Fox 2013, 0:26), Manager of Human Resources for Geotech Drilling, states, “That seven week exposure to camp environment, you are not going to derive in an urban environment at another campus elsewhere in Canada.” The remote bush camp provides students with hands-on learning experiences to ensure students gain the necessary job skills. Students are taught in these simulated exploration camps to rehearse the activities and rhythms of camp life as well as work in the minerals industry. As one graduate (quoted in Fox 2013, 4:26) described, “In reality, what they are teaching you is confidence and knowing that you can do the job, knowing that your boss can rely on you.” Learners in the MEFA program learn skills such as: notetaking, GPS operation, grid layout, and rock sampling, as well as bear awareness and wilderness survival. Students in the drill core technician training practice: processing and handling

core boxes; operating and maintaining core-splitters; and observing, measuring, and recording information from diamond drill cores. Through having their bodies conditioned through exercise and the repetition of work-related tasks and being physically immersed in the Camp Ganokwa environment, students learn to internalize the subjectivities of minerals industry workers. Simultaneously, programming enables students to garner the necessary certificates, such as WHMIS (Workplace Hazardous Materials Information Systems), occupational first aid, chainsaw safety, producing work-ready labourers with all the necessary formal qualifications for entry-level work in minerals exploration.

But more than simply learning work tasks students learn to live together. The programming at the School of Exploration and Mining emphasizes the importance of teamwork. One graduate of the School of Exploration and Mining (quoted in Fox 2013, 4:00) described how the program changed him: “I used to be a pretty shoddy guy, and now I talk to everybody, I am friends with everybody. That all basically stemmed down from this program.” Indigenous team leaders who work alongside students serve to facilitate learning. The camp is structured to force students to learn to live in close proximity to people from different backgrounds.

They structure the camp, four guys to a tent. ... They purposively split all of the tent mates up, so everyone is from a different community. Every tent will have a mixture of First Nations and non-First Nations. ... They are not co-ed tents; there is men and women’s tents. But every other way they divvy them up so everyone is equally uncomfortable.

In the camp community, students learn the soft skills, such as conflict resolution, which are necessary to live in close quarters with others and yet at great distance from the rest of society.

Specializing in entry-level training for the minerals industry, the school was designed for students who may have struggled with traditional approaches to education, as well as drug and alcohol addiction and chronic underemployment. One School of Exploration and Mining graduate (quoted in Fox 2013, 1:47, 4:36) described the

transformative process involved in the education, constructing possibilities to transcend the constrained circumstances of the past.

I didn't really have much else going on in my life. No real job skills. No apprenticeship or anything, and I was just finding it really hard to get anywhere.

...

You know a lot of us come from difficult pasts and sometimes it seems like there is not going to be an end to that darkness. But regardless of what that past was, it doesn't define who we are and what we have to be for the rest of our lives. We can change our stories.

The school programming sought to remake students through instilling the value of personal discipline. Individualized bodily control and discipline operates to make the problem of colonialism and marginalization one of marginalized bodies, and thus subject to remedy through changes to those bodies rather than the colonial regimes. Thus, as traditional knowledge studies worked to enframe Indigenous traditions to enable their integration into resource governance, training regimes worked to discipline individuals to facilitate the incorporation of those students into industrial labour processes. Individualized routines that make the body ready for labour market gloss over why Indigenous populations live in poverty, as though it is a personal experience and not a socio-political one.

The students recruited to participate in the School of Exploration and Mining are regularly people with multiple barriers to educational success. As one of the School of Exploration and Mining staff described, "some of the stuff they learn that is the most valuable is ... the need to actually wake up in the morning and have breakfast and have a routine and something they are working toward." As funding often requires students have been out of the labour force for years, students often struggle with maintaining a regular schedule.

The idea that everyone gets up early in the morning, is ready for work, is not hung over, they got to bed on time, and they had enough sleep, they take care of

themselves, they are healthy and well-fed, and they are going to go out there and work their hardest every day—it's kind of dream.

For some of the students, even having regular meals, and “a reason to get up before noon,” is a novelty. School discipline, as Foucault (1977) described, aligned students' dispositions, inculcating normalized ways of acting. A graduate (quoted in Fox 2013, 3:43) described how the program helped her reorient herself in her life: “Before I came here I didn't know where I was going to go with my life. I just felt so lost and I didn't have any much education and I didn't know where to go. But now seven weeks later, I know where I am going to go.” The school helps students develop a structure and organization to their life. According to a graduate (quoted in Fox 2013, 3:59), “It drastically changed my life.” Another graduate (quoted in Fox 2013, 2:15) argued, “This camp helped me gain the confidence to go out there constantly camp after camp, and say yes to these jobs.” The programming at the School of Exploration and Mining served to construct possible futures for marginalized people who had previously felt lost.

But inculcating a sense of purpose and direction into students' lives, the school works to produce the particular subjectivity of the Indigenous minerals industry worker. Stephanie Forsyth (quoted in NWCC 2007a), the former college president, stated, “an important feature of this initiative is that curriculum will be developed and delivered in collaboration with First Nations leaders and educators to ensure that the culture and tradition of First Nations is learned in concert with technical skills.” Laurie Sterritt, Founding Executive Director, BC Aboriginal Mine Training Association (quoted in Fox 2013, 1:33) argued, “Their focus on adapting training programs to their learners is a really key success factor.” Sterritt (quoted in Fox 2013, 3:10) continued to suggest that “the school has done an outstanding job of responding to the needs of the industry; but I also think they have done an outstanding job of responding to the needs in the communities.” As one of the staff described in an interview, the curriculum in the entry-level programs at the School of Exploration and Mining “is a balance between what the industry needs and what the students are going to do successfully.”

Camp life created a supportive environment to begin to develop Indigenous students' capacities. While the camp helped train students to meet industry needs, the camp environment also provided necessary supports to Indigenous students. For economically disadvantaged students, the camp was vital to enabling them to access education, as many of them would not have been able to afford to move to Smithers and pay for room and board or rent an apartment. Further, the lack of affordable housing and the racial discrimination in the housing market made it exceptionally difficult to low-income Indigenous people to access housing in Smithers. As one School of Exploration and Mining staff member described, moving to Smithers "is just not an option" as if the students had the skills and organization to set that up, "they would probably have a job and they wouldn't need the WEST [Workforce Exploration Skills Training] program."

Within Camp Ganokwa, in addition to the support provided by team leaders and instructors, there was also an Indigenous elder on staff. The Camp Elder oversaw a culture tent, in which students could gather in the evenings and learn about the local Indigenous traditions. Students learned about Witsuwit'en or Gitksan traditions, the different clan crests and their significance. As one Camp Elder (quoted in Fox 2013, 2:51) described, "My role ... is to help them learn about the local artists, the designs they have, the colours we use." As there was no television in camp, students would often spend their evenings working on a traditional vest that they could wear for graduation. However, in talking about clan identities and crest symbols, the Camp Elder created space for students to discuss their orientation to their identity, as well as address any sense of cultural disconnect they might feel. But the camp elder also served a more basic and yet fundamental role. An Indigenous team leader (quoted in NWCC 2009) explained, "It was not always easy for the students to be away from home, learning about an industry they weren't very familiar with. Having someone to turn to on a personal level really seemed to help." The Camp Elder stayed with the students in camp, providing counselling and support in a culturally-appropriate manner and also providing cultural guidance for many of the students. As one of the college staff described, it was important "for a lot of those students

to have someone neutral who they can go talk to. ... It's a well-respected position in camp." The culture tent was a space to decompress, and to feel safe. It created a space for students to enunciate their anxieties or frustrations, and reconcile themselves with their identity within the space of industrial education. Thus, the Camp Elder (quoted in Fox 2013, 3:01) explained, "The main thing that I want to teach the students is respect. Respect yourself, respect the land you are on, respect to your culture."

The School of Exploration and Mining, through immersing students in both the remote wilderness and Indigenous culture, proposed to reintegrate Indigenous students into a version of their Indigeneity while integrating them into the culture of the minerals industry. The former Dean of Continuing Education and Industry Training at Northwest Community College (quoted in NWCC 2008c), explained that:

Coming out and being back in nature, and having elders available or having an opportunity to think about who you are and where you come from, is an important element to maturing ... and making choices in your life about who you are and where you want to go and what your role is relevant to your community. That is a particularly important thing for First Nations.

The Dean suggested that School of Exploration and Mining programming enabled Indigenous students to explore "industry in the context of their culture."

Addressing Indigenous students' sense of alienation from nature and their cultural identity through industry training, the School of Exploration and Mining aims to foster the transformation of Indigenous students into Indigenous minerals industry workers. The school's programming attempts to turn disaffected Indigenous students into empowered Indigenous minerals industry workers through exposing Indigenous students to the wilderness and Indigenous culture in the context of minerals exploration work. Through this particular and in many ways peculiar form of Indigenous cultural revitalization, the training at the School of Exploration and Mining aims to form the basis for new relationships between Indigenous people and the minerals industry. Spending time on the land, hiking up mountains and learning to use a GPS, and relaxing in the evenings with an

Indigenous elder, programming at the School of Exploration and Mining is designed to facilitate the integration of Indigenous people into the industrial development of their traditional territories. Through this training, an Indigenous population is established not simply as a labour force but also as a collectivity dependent on industrial development for its economic security.

Conclusion

I have examined the convergence of industrial development and Indigenous empowerment in minerals industry training. Focusing on the School of Exploration and Mining at Northwest Community College in northern British Columbia, Canada, I have emphasized the integration of the apparatuses of security and discipline in constructing industry education programs that offer routes to secure both Indigenous well-being and greater certainty for investors in minerals development. Through industry training that prepares Indigenous peoples for employment in resource development projects functions to establish a common ground between, on one hand, Indigenous desires to realize greater control over their lives, as well as a share of the benefits of the development of their territories, and, on the other hand, industry's aspirations to secure access to the resources they aim to exploit. However, the education programs at the School of Exploration and Mining did not simply inculcate Indigenous peoples into colonial orientations to the land, but selectively integrated elements of traditional Indigenous subjectivity within employment training. Programming at the School of Exploration and Mining served to discipline students as potential labourers in minerals exploration activities. But more than this, the school belonged to a broader apparatus of security acting upon the Indigenous population, fostering a positive linkage between the development of a resource economy of Indigenous traditional lands and Indigenous well-being.

In this chapter, I traced how the lineage of Indigenous mobilization against earlier articulations of colonial development has been incorporated into emerging composite forms of governmentality, involving not only state agencies but also corporate actors and

Indigenous political authorities. Contemporary governance is thus constituted through the entwining of strategies for industrial development and Indigenous empowerment. Composite governmental strategies recast Indigenous critiques of dominant historical approaches to development, marshalling a new relationship between industrial and Indigenous concerns to create the social license for new developments. The new relationship between Indigenous peoples, corporations, and the state has reconstituted the challenge Indigenous jurisdiction presented to colonial development projects in the late twentieth-century into a series of problematics related to integrating Indigenous people as subjects within contemporary industrial development.

CHAPTER 7

Conclusion

This dissertation has examined the relationships between Indigeneity and colonialism in a region at once territorialized as the British Columbia northwest and Gitxsan *lax'yip* and Witsuwit'en *yin tah*. I have examined how the Northwest Interior is a negotiated frontier. I have argued that colonialism and Indigeneity cannot simply be understood in terms of horrendous oppression and heroic resistance, but must be recognized as interlinked in multitudinous relations. Colonial and Indigenous forms of authority, territoriality, and subjectivity have become entangled, reconfiguring both colonial and Indigenous regimes. However, colonial and Indigenous regimes overlap and entwine without ever becoming reducible to a singularity. Rather they constitute a multiplicity of authorities, territorialities, and subjectivities. There is an extensive web of relations between various agents, including judges and hereditary chiefs, corporate traditional knowledge facilitators and researchers affiliated with Indigenous lands departments, development proponents and Indigenous dreamers, educators and industrial labourers. The entanglement of colonialism and Indigeneity presents a dynamic assemblage capable not simply of articulating relationships between these myriad actors but also producing new configurations and possibilities.

While my study has focused on relations of the Gitxsan and Witsuwit'en people to colonial power, through the specificity of these relations I have sought to say something about the broader entanglements of colonial power with Indigeneity. I argue the declaration and definition of a set of Indigenous traditions external to colonial relations is always at play in those relations, in the form of regimes of recognition and regulatory inclusion/exclusion, as well as continuous battles over the definition of Indigeneity. I have sought to elucidate a careful account of the unique elements of Gitxsan and Witsuwit'en

political traditions, including distinct traditional forms of authority, territoriality, and subjectivity, and the ways in which these traditions have both challenged colonial regimes and been incorporated into their reinvention. Recognition of Indigenous traditions by colonial authorities has been productive of new forms of knowledge and new configurations of power. Gitxsan and Witsuwit'en concerns have been increasingly incorporated into state and corporate designs for developing not only a resource periphery but also lands registered as Gitxsan *lax'yip* and Witsuwit'en *yin tah*. As Indigenous traditions have been incorporated into colonial strategies to develop Indigenous traditional territories, development strategies have reshaped Indigenous traditions. New processes of engagement with colonial regimes are constituting new futures for Indigenous people and new avenues to secure a livelihood within contemporary developments on traditional Indigenous territories.

Theoretically and methodologically, recognition of an interactive ontological pluralism has informed my approach. To register the contemporaneity of colonialism and Indigeneity, I adopted a parallax view of conventional attempts to encode a defined condition of Indigenous being. From one angle, I have examined the colonial exercise of distinct yet interpenetrated modalities of sovereign prohibition, disciplinary prescription, and governmental regulation. Colonial sovereign power works to suspend processes of Indigenous political becoming beyond defined limits; disciplinary power normalizes particular forms of Indigenous being; governmental regulation works to both minimally protect a geography of Indigenous traditions and to foster emergent processes of Indigenous becoming congruent with the ontology of capitalist development. Responding to Indigenous demands, colonial regimes have been remade, altering the responsibilities associated with colonial forms of authority, the processes of territorial governance, and the operations of regimes of subjectification.

However, registering that Indigeneity is not bound to colonial frames, I have been able to recognize different trajectories of Indigenous becoming in the present, endlessly opening spaces of negotiation. Forms of Indigenous territory and subjectivity that remain

unreconciled with colonial regimes of discipline and governmentality constitute a foundation for Indigenous authorities to advance new jurisdictional claims that problematize those of the colonial sovereign. The spaces of negotiation and the demands for recognition produced through Indigenous activism have worked to call forth new colonial strategies of engagement. Through the dissertation, I demonstrate how relations between Indigeneity are punctuated by moments of resistance but also reconciliation. I argue this double movement has been configured through the interaction and imbrication of colonial regimes of authority, territoriality, and subjectification with those of Indigenous peoples. I suggest the cycle of contestations and convergences remains necessarily inchoate, endlessly emerging to constitute the present.

Resource extraction is thus regulated not simply through state interventions into the domain of political economy to secure the circulation of goods, but also through the interpolation of Indigenous concerns into resource governance. This has resulted in the entwining of Indigeneity and colonialism, and the constitution of composite strategies to both secure regimes of resource extraction and ensure Indigenous well-being. An emergent regime of knowledge associated with Indigenous tradition has served to condition development, providing protections for Indigenous traditions in the interstices of development, albeit within a framework of resource governance that continues to prioritize mobilizing resource flows over protecting Indigenous territories. Further, the governmental apparatuses regulating development has required industry to integrate Indigenous peoples into industrial labour processes. Disciplinary regimes train Indigenous workers to participate in industrial development projects. The contemporary integration of Indigenous labour finds echoes the earlier reliance of colonial economies on Indigenous labour in the fur trade, but also in early resource economies.

However, the crafted convergence of Indigeneity with strategies for resource extraction has not placed questions of sovereignty in abeyance. The conjoining of colonial development and Indigenous empowerment remains a fragile assemblage constituted on the basis of a selective recognition of Indigenous claims. The concatenation of Indigenous

regimes of knowledge and practice within colonial regimes of subjectification relies on screening out articulations of Indigeneity that are incommensurate with colonial plans for industrial development. This excess Indigeneity, I argue, remains both a foundational exception—that which must be excluded to permit the existence of the settler colonial polity—and the latent possibility for exceeding the limit condition of circumscribed colonial development strategies. As development plans aim to traffic resources from and through Indigenous territories, Indigenous peoples continue to raise questions regarding who possesses the sovereign authority to decide the course of development on their traditional lands. Asking after the absent presence of Indigenous sovereignty begs the question of the constraints of crafted strategies of convergence and continues to open spaces of negotiation in which new formulations of power-knowledge can be articulated. Thus, there was no simple succession in which new governmental power supplants or finally settles older sovereign frames. Indigenous challenges to the prerogatives of colonial sovereignty and assertions of Indigenous sovereignty continually disrupt efforts to secure colonial regimes of development through an association with a (narrowly defined) articulation of Indigenous interests.

Thinking through the Gitxsan and Witsuwit'en Encounter

Through this research, I have sought to demonstrate the imbrication of colonial power with Indigenous strategies of resistance and self-determination that work both against and alongside colonialism. To understand the multiplicity shaping development as a process of emergence, I thus focus attention on the dynamics of colonial power and Indigenous response. I approach these terms relationally, examining this relation not as an oppressive totality but rather as productive contest. This is not to deny the violence of colonialism, but to recognize the integral role that Indigeneity plays in configuring, contesting, but also coalescing colonial forms of power. I argue that colonialism inevitably relies on practices of recognizing and reconciling its practices with Indigenous others.

This perspective runs counter to standard liberal politics, which call for greater forms of governmental recognition to address colonial injustices. This critique runs parallel to Glen Coulthard's critique of the politics of recognition. Coulthard (2007, 439) argues, as the politics of recognition continue to constellate around the presumption of underlying colonial sovereignty, the contemporary politics of recognition maintain profoundly asymmetrical relations, ironically reproducing the "configurations of colonial power that Indigenous peoples' demands for recognition have historically sought to transcend." Drawing upon Fanon (1967), Coulthard argues in order to challenge the structural and subjective relations of domination, colonized peoples must wage an anti-colonial struggle, creating not demands for reconciliation but instead articulating self-knowledge beyond colonial frames. In a congruent argument in this dissertation, I have suggested that reforms to colonial regimes occur not as a result of simple state beneficence but rather the ways in which Indigenous articulations in excess of the terms of colonial engagement necessitate changes in the relationship between Indigeneity and colonial power.

In conceptualizing these relations, my principal resource has been the work of Michel Foucault—a writer whose contribution so deeply influences my work and writing that citation every point of inspiration would be nigh impossible as near every word bears his imprint. Foucault theorized power was not a thing but a relation, constituted through problematizations, calculations, and interventions. Further he recognized power as productive. Rather than simply oppressing, power linked to particular kinds of knowledge producing apparatuses through which the gestures, behaviours, ideas, and discourses of people are determined, controlled, oriented, modeled, regulated, and secured. Subjectification refers to the process of configuring subjectivity through these apparatuses. Analogously, processes of territorialization relied on bureaucratic technologies of power to map, inventory, surveil, and order relations to a geography produced as an effect of processes of territorialization. Moreover, the ordering of knowledge of subjects and geographies imbricates to the formulation of particular kinds of authority. However, the processes of constituting subjects, territories, and authorities are multitudinous, resulting

in overlapping processes of political becoming that interact, negotiating spaces of contestation but also convergence. Theorized relationally, power cannot be seen as a possession belonging to a single entity or collective. Power relations established on the basis of entrenched hierarchies can achieve greater degrees of stability, approximating relations of domination, but the possibility of resistance (as well as collaboration) is immanent within these relations.

I began this dissertation with a sweeping historical survey, covering two hundred years in the Gitksan and Witsuwit'en encounter with colonialism. In this necessarily abbreviated history, I focused not on the individual figures or a precise chronology of events; instead, I elucidated an account of the changing forms of authority, territoriality, and subjectivity on Gitksan and Witsuwit'en territories. I charted a genealogy of the plural regimes of power-knowledge ordering Gitksan and Witsuwit'en life. Highlighting the shifting forms of power-knowledge associated with the governance of Indigenous life, I depicted four stages of the Gitksan and Witsuwit'en encounter. I described first Gitksan and Witsuwit'en society prior to contact, and then how the fur trade began to build a catalogue of knowledge enabling the imposition of colonial regimes of control. The formation of the colonial state corresponded with the installation of a system of oversight and tutelage that contained Indigenous life and worked to constrain Indigenous geographies to enable colonial forms of development. However, a resurgence of Indigenous resistance beginning in the late 1960s and early 1970s created new spaces of negotiation, reasserting their ancient territorial claims and unsettling the functioning of a colonial regime of territorial management aimed at facilitating resource extraction. Rather than simply suggesting a form of rupture that displaces older power relations, I argued that each of these stages worked through various lines of continuity; older regimes of authority, territoriality, and subjectification were never entirely displaced by the arrival of new forms. A complex weave developed in which new forms of authority, territory, and subjectivity overlay but continued to be interpolated by older ones.

Thus, I argued that Indigenous traditions continued to matter not simply as residue, but an active force in the constitution of contemporary Canadian politics. I began the body of my dissertation with an account of the traditional regimes ordering Gitksan and Witsuwit'en life. I did this not to define an Indigenous authenticity that must be recovered to achieve decolonization; I rather aimed to highlight the Indigenous forms of authority, territory, and subjectivity that continue as active traditions through colonialism, and which, as a result of the trajectory of Indigenous resistance, accrue increasing significance within colonial regimes today. Providing a gloss of the key features of Gitksan and Witsuwit'en political traditions, I emphasized the centrality of the house group as a source of identity and a mediator of relations. House groups, ruled by a constitutional lineage of hereditary names, structure Gitksan and Witsuwit'en traditional life; house membership served to define the territorial rights of individual members of Gitksan and Witsuwit'en society, as well as those of their children and their spouses. Relations between a house group and its hereditary lineage, and between that lineage and its territorial holdings, are publicly performed before the broader community of house groups at a feast. In the feast hall, other houses and clans witness the conduct of the hosts' business and validate their claims to identity, territory, and authority.

The initial period following contact formed the basis for the constitution of new colonial forms of authority, the inscription of new concepts of territory, and conditions the emergence of new regimes configuring Indigenous subjectivity. The initial post-contact period is often celebrated as an era of reciprocity and collaboration par excellence in Canadian history (see, for instance, Fisher 1992a [1977]). Among the Gitksan and Witsuwit'en, the authority of hereditary chiefs was not abrogated by the fur trade, and Indigenous forms of authority, territoriality, and subjectivity shaped the operation of fur trade in the Northwest Interior. However, the trade and the missionaries that followed it also began to introduce nascent regimes of discipline and economic government to Indigenous lives. The introduction of both the fur trade and missionary system constructed new regimes for collecting and ordering knowledge, establishing the colonial apparatuses

of power-knowledge to begin to calculate strategies for intervening into Indigenous lives. Further, in mapping the territories they encountered, fur traders and missionaries contributed to the claim of colonial dominion over that space and helped establish the territorial knowledge necessary to assert effective control and more efficiently manage programs of resource extraction. Developments through this proto-colonial period prefigured the formalization of colonial regimes through the processes of state formation that followed the establishment of the colony of British Columbia in 1858 and its subsequent confederation within the Canadian dominion. But they also prefigured later regimes of reconciliatory recognition, which similarly employed Indigenous labour and recognized Indigenous geographies within processes designed to facilitate resource extraction.

The establishment of direct colonial political rule, first as a British colony and then subsequently as a settler colonial state, served to increase the subjection of the Gitksan and Witsuwit'en people to colonial legal regimes. There were a series of prominent conflicts through the late-nineteenth-century. Beginning a long tradition of using direct action to assert their political claims vis-à-vis colonial interlopers, in 1872 Gitksan people blockaded traffic on the Skeena River to protest the destruction of the village of Gitsegukla by a fire set by mining prospectors. Colonial officials negotiated a settlement, recognizing the Gitksan demands for compensation; however, the constructive legal pluralism of this resolution would soon yield to a bitter conflict of laws, as Indigenous peoples sought to follow their traditions while colonial legal orders sought to define appropriate conduct. The colonial government steadily increased the subjection of Indigenous people to disciplinary and regulative forms of power. Gitksan and Witsuwit'en territorial claims were transmuted into the constrained geographies of colonial reserve policies that constricted Indigenous peoples to reserves and reterritorialized Indigenous lands as open for development. Indigenous traditional forms of governance through the feast were banned, as was the legal pursuit of Indigenous land claims. While the Gitksan and Witsuwit'en people continued to conduct feasts and maintain their traditional identities and territorial claims, these

activities were forced underground. Through the *Indian Act*, colonial authorities introduced new forms of band governance under the administration of the federal Department of Indian Affairs and Northern Development.

In the 1960s and 1970s, a contemporary Indigenous resurgence emerged in response to efforts to shift Indian policy from a regime of exclusion to the integration of Indigenous peoples within the Canadian body politic. Liberalizing the exclusions that previously defined Indigenous existence, removing the bans on Indigenous land claims activity and traditional political activities, the colonial government sought to integrate Indigenous people more fully into Canadian citizenship. However, as they gained access to legal rights, Indigenous peoples began to increasingly use these rights against a settler colonial society. Indigenous peoples fought against assimilation policies that proposed the annulment of recognition of Indigenous (or Indian) status in Canada, and the Indigenous peoples of the Northwest Interior began to reassert their long-unresolved territorial claims. Indigenous political resurgence was productive of new relationships between Indigeneity and colonialism.

In one of the most significant events opening the era of Indigenous political resurgences, the Gitksan and Witsuwit'en hereditary chiefs boldly advanced their claims to ownership and jurisdiction over the traditional territories in the *Delgamuukw* case. This strategy of advancing Indigenous claims through the courts sought to use the forms of colonial law imposed upon Indigenous peoples against the colonizing power. However, in attempting to leverage the Canadian courts against the provincial government, the Gitksan and Witsuwit'en hereditary chiefs had to reckon with the authority of Canadian courts, and recognize, at least within the context of the courtroom, the authority of those courts to decide their case. The hereditary chiefs thus submitted themselves to the forms of power-knowledge that organized courtroom practice. Yet, this move was strategic. The hereditary chiefs went to court to challenge the norms governing the courts. In the courtroom, the Gitksan and Witsuwit'en hereditary chiefs systematically breached the conventions of court evidentiary procedure. On the witness stand, the Gitksan and Witsuwit'en hereditary chiefs

shared stories and sang. They opened the box that contained the richness of their forms of authority and traditions of territorial governance for the court.

Their box was full, and its contents overflowed the categories governing the court. Initially the trial court and the provincial court of appeal eschewed recognition of Gitksan and Witsuwit'en political performances in excess of the bounds of colonial juridical frames. The trial court and British Columbia Court of Appeal issued decisions ripe with racist calumny. However, the challenge of Gitksan and Witsuwit'en performances were not simply disciplined in accordance with the norms of court procedure. Rather the Gitksan and Witsuwit'en hereditary chiefs' strategic appeal to colonial juridical authorities and simultaneous breach of the conventions of colonial legal process provided an incitement to reform the governing legal order. The provocation of the Gitksan and Witsuwit'en performances in the courts travelled to the Supreme Court of Canada, where it found resonance in a decision that overturned the original trial court decision. In their decision, the Justices of the Supreme Court recognized the validity of Indigenous oral traditions as a source of evidence before the courts. Moreover, the court articulated a doctrine of Aboriginal title within the contemporary Canadian common law, although the justices could not decide on the question of Gitksan and Witsuwit'en title due to errors in the way evidence was handled at trial. The court transliterated Gitksan and Witsuwit'en claims into the codification of a doctrine of Aboriginal title.

The Supreme Court of Canada decision in *Delgamuukw* significantly reordered colonial legal doctrine with regard to Indigenous peoples. Lines of continuity continued to flow through this rupture in colonial regimes designed to disavow Indigenous territorial claims. The court's decision still reproduced the underlying sovereign authority of the colonial state. However, the court's recognition of the salience of Indigenous traditions to the practice of Canadian law, worked to signal a shift from regimes of colonial prohibition towards new governmental techniques of reconciliation. Rather than simply entrenching a colonial right to decide the course of development, the Supreme Court of Canada decision in *Delgamuukw* worked to encumber colonial authorities with new requirements to

account for Indigenous concerns in their decision-making regarding developments on Indigenous lands.

The example of traditional land use mapping further elucidated the emergence of new techniques of engaging with and reconciling Indigenous traditions with development through establishing regimes of recognition. Traditional use and occupancy studies emerged in relation to the problem of different regimes of territorial knowledge, and the need to establish processes translating the impacts of industrial development projects on Indigenous peoples into terms legible to colonial authorities. Traditional use and occupancy studies contributed to the development of discursive frames to accounting for Indigenous traditional use in resource governance. I argued the lineage of the form of power-knowledge associated with traditional use emerged in efforts to challenge the exclusion of Indigenous traditions from consideration in industrial development. The development of techniques of representing Indigenous traditions enabled consideration of Indigeneity in the form of traditional use in resource governance.

I argue that alongside legal victories the developing forms of knowledge associated with traditional use and traditional knowledge studies worked to constitute new domains of knowledge interfacing with the forms of power-knowledge related to the political economy of the nation-state. Traditional use and occupancy studies created forms of power-knowledge that served to constitute Indigenous traditions as part of a domain of political ecological knowledge that serve to calculate limited interventions into the regulation of economic activities to protect the traditional interests of Indigenous peoples. Indigenous peoples continue to strategically employ the opportunities associated with the inclusion of traditional use and occupancy studies in resource governance. The Aboriginal traditional knowledge research collaborations between Enbridge and Indigenous communities offered communities an opportunity to strategically work to protect sites of cultural significance and advance their interests through industrial development. Knowledge of the impact of development on traditions, and possible avenues to moderate development impacts, worked to configure the emergence of new regimes of regulation

that sought to secure a space for the continuation of Indigenous traditions in the interstices of development.

However, the integration of studies that codified Indigenous traditions within conventions of a traditional use mapping also functioned to constitute new forms of power-knowledge that enframed Indigenous life. Thus, not only were development activities constrained, so were the terms of recognition of Indigenous geographies. The frames of traditional land use studies became a form of epistemic incarceration; Indigeneity was encased with a construction of tradition that continually relegated Indigeneity to the past. The inclusion of a constrained Indigeneity served to legitimate industrial development through incorporation of dissident voices. As Nancy Fraser (2009) discusses in relation to feminism, strategic engagement with the critics of earlier forms of capitalist development has served to revitalize and relegitimize the emergence of new forms of capitalist development. Moderate gestures effected a concern for Indigenous tradition without questioning the ultimate effect of development or the legitimate authority to decide the course of development. Thus, techniques of translating Indigenous territorial knowledge to challenge colonial power were incorporated back into the apparatus of its deployment.

As demonstrated by the Witsuwit'en involvement in the Enbridge Joint Review Panel hearings, Indigenous peoples continue to strategically participate in governmental processes without accepting their limitations. Rejecting the incarceration of Indigenous traditions within delimited notions of tradition and the constraint of Indigenous interests in the future to questions of employment, Witsuwit'en hereditary chiefs continue to assert claims to authority to decide the course of development on their territories. Thus, Indigenous performances can be understood to work against the colonial captures operating in the inclusion of Indigenous knowledge in resource governance. Indigenous assertions include a range of articulations, ranging from independent submissions of written land use and occupancy reports that refuse colonial containments, to performances based on traditional Indigenous legal discourse, and new movements stretching Indigenous responsibilities to the land to reterritorialize the broader geographies of development.

Indigenous testimony in a government review hearing should be understood not simply as pleadings before colonial authorities, but also as enactments of a legal pluralism, configured within the interactional and yet distinct registers of colonial and Indigenous legal orders. Hereditary leaders speak before a colonial government authority but simultaneously can be heard to assert an independent will to decide. I argue that sovereignty needs to be understood not as a uniform and intentionally deployed force, but instead as a fragmented attribute produced not only by the state but also by the Indigenous Others that state sovereignty seeks to exclude. Indigenous demands in excess of the terms of state recognition continue to problematize colonial regimes of governance and forms of authority. The difficulty always remains that in asserting claims to Indigenous territories and jurisdiction, Indigenous peoples present knowledge incommensurate with colonial discourse and thus potentially beyond consideration by colonial authorities. There is a double movement through which the assertion of Indigenous counter-claims before colonial authorities simultaneously burdens the exercise of colonial sovereignty while consolidating the authority of colonial agents to define the recognized content of Indigeneity.

Beyond simply contesting who gets to determine the course of development, colonial and Indigenous authorities have sought to negotiate the terms of Indigenous inclusion in contemporary development projects. Indigenous peoples have struggled not simply to maintain a residue of tradition in the present, but moreover to secure an Indigenous future. In accordance with these political demands, new regulatory devices construct future Indigenous empowerment not in traditional land-based activities but integration into industrial development activities on their traditional land base. Industrial job guarantees now function as reconciliation devices, on the one hand, working to regulate development to ensure that Indigenous people are among its beneficiaries, and on the other hand, inducing Indigenous participation within and support for industrial development. This initiative has a dual impetus, serving to secure industrial development

from Indigenous protest while simultaneously offering to secure the well-being of the Indigenous population through employment in industrial development.

The establishment of the new governmental regimes to secure Indigenous futures in industry interlinks with the construction of new disciplinary regimes aimed at the subjectification of Indigenous people to work in industry. In this way, education programs that train Indigenous people to participate in the industrial labour force operate in continuity with the lineage of industrial training at Indian Residential Schools. Under this new disciplinary regime, rather than simply denying Indigeneity, a culturally modified form of capitalist subjectification works through a seemingly reconciliatory form of industrial training and inclusion. Thus, industrial livelihoods on traditional Indigenous lands serve as the new avenue through which Indigenous subjects are schooled to aspire to secure a livelihood. Rather than a war in the woods, there is a push towards collaboration in the field camp.

While there is no need to demonize or call for an end to educational programs targeting Indigenous people, if we are to fully examine the contemporary politics of colonialism underwriting neoliberal development in the Northwest Interior, it is critically important to understand how the symbiosis of indigenized industrial activity relies on calling forth particular imaginations of Indigeneity. The terms contouring the convergence of Indigenous empowerment with industrial development centre on a form of naturalized colonial market governance. Articulations of Indigenous tradition that constitute an irruption into or counterforce to the regimes of knowledge and practices associated with industrial development remain an illegible or prohibited excess within colonial frames. Thus, the question of who possesses the sovereign authority to decide, and to prohibit particular kinds of activity, remains a salient one, even as new regimes of reconciliation and recognition become integral to processes of development. The emergence of new disciplinary and governmental regimes that incorporate Indigenous peoples never finally suspends the question of Indigenous sovereignty, which constantly returns to the scene of its colonial exclusion.

Toward a Relational Account Indigeneity, Colonialism, and Development

While this dissertation has centrally featured the politics of resistance and reconciliation, resource extractive development has served as the backdrop against which these relations are staged. The imbrication of Indigeneity and colonialism presents important implications to how the politics of development are theorized. A full analytic treatment of development in relation to my insights about the imbrication of Indigeneity and colonialism is beyond the scope of this dissertation, and remains a trajectory for future research. As a preliminary program for that work, I want to close this dissertation with a discussion of the significance of the findings in this dissertation for an analysis of development.

Through this dissertation, I have sought to suggest that the processes governing development are not singularly colonial but composite. Thus, development should not be understood as simply a result of a colonial will. Rather it is constituted through the multiple circuits patterning relations between Indigeneity and colonialism, including not only the constraints of resistance but also paths of conductivity. Thus, development has been contoured within a topography of Indigenous political claims as well as the more conventional colonial drives to accumulate wealth through the appropriation of nature. As a result, one of the central implications of this dissertation is that the materialization of development should not be approached as simply a product of a colonial agenda or project. Although settler colonialism relies upon and reproduces particular logics of development, Indigenous peoples interject their own political projects to mobilize or block particular courses of development. Indigenous interventions have served to modify, reform, and even offset colonial development strategies, playing an important role in contouring the topography of actually existing development.

Through investigations into different initiatives and forms of collective action related to courtroom litigation, traditional use research, resource governance, and education, I have diagramed how new relationships are being forged and contested through diffuse networks. These relationships, while often acting to constrain or condition political projects along particular avenues, have not simply acted to repress Indigeneity.

Instead through constituting spaces of negotiation between Indigeneity and colonialism, contemporary power relations have been productive, even as they remain oppressive. Reformed colonial regimes have served to open avenues to recognize and revivify different forms of Indigenous authority, territoriality, and subjectivity. Conversely, Indigenous peoples have worked to levy conditions on development to secure their interests in the instantiation of new development projects on Indigenous territories. This research contributes to constructing a more nuanced understanding of the network of relationships that are shaping not only interactions between Indigenous peoples and colonial authorities, but also cascade out to shape the emergent qualities of development. Recognizing the imbrication of colonial and Indigenous goals in the materialization of development enables extension of core theoretical insights from this dissertation to an analysis of how development is contoured by local political encounters.

Development has been a central keyword of twentieth-century political economy and social policy that has valence in a variety of registers. Approached broadly in terms of its linguistic and etymological roots, development can be understood as the conceptual linkage of an ontology of unfolding presence with progressive temporality. Development is thus best understood not as a thing but rather a condition of emergence. As Joel Wainwright (2008, 6) describes, development refers “to a particular ontological quality that is expressed through the process of unfolding.” This sense of the term presented development as the process through which the innate characteristics or essence of a given entity become apparent. In the mid-nineteenth-century authors began to conceptually link development to emerging theories of evolution, adding to the concept associations with a progressive sense of the unfolding of history.

However, development also represents a collection of projects or practices in which willful agents participate in an active process to bring forth or expand latent potential or capacities. As Wainwright (2008, 6–7) describes, development is not simply a natural process of unfolding but also “refers to a force that tutors a change in something or a course of events.” In this sense, development entails intervention by a willful power to

bring forth the advancement of an entity or trajectory of events in line with its inherent capacities. The relations producing development in this sense can be understood as the expression of what Tania Murray Li (2007, 4) describes as “the will to improve.” The expression of this will is enacted through a governmental field of power that has included politicians and government officials, missionaries and foreign foundations, hereditary chiefs and conservationists, community organizations and credit institutions, lawyers and technical experts, as well as the subject populations targeted for various forms of improvement. Enacted through this diffuse network of relations, enticing and inducing subjects’ participation, the will to development structures a field of possible actions. Development schemes thus, as Tania Murray Li (2007, 5) describes, work to extend and modify colonial power by rendering the advancement of colonial strategies “the natural expression” of relations between people, and people and the environment.

This is particularly problematic where the deepening of capitalist relations is presented as the singular rationality of development. In settler colonialism, the extension of capitalist relations—and its core accumulative imperatives—has particularly come to stand as development. Capitalist development was constituted as the prerequisite logic of settler colonial state, as Western nations relied upon notions of development to delineate their sovereignty from the non-sovereignty of colonized peoples throughout Western empires. Colonial discourse equated development with an industrial and trading economy, and presented Indigeneity as a condition external to the modern industrial and trading economy. Presenting Indigenous peoples as underdeveloped, colonial discourse rationalized intervention into Indigenous territories and communities as necessary to improve both Indigenous lands and people (Spurr 1993).

As Raymond Williams (1983 [1976], 103) notes, notions of development and improvement linked the imagination of “lands in which ‘natural resources’ have been insufficiently developed or exploited” and of economies and societies yet to advance through the appropriate “stages of development,” to a rationality expounding the necessity of intervention. Within England, the term improvement initially referred to the processes

of constructing a profit through bringing wasteland into cultivation. However, through the eighteenth-century improvement became a keyword of capitalist development, expanding in definition from the processes associated with the enclosure of common or waste land, garnering a broader meaning associated with processes of social and moral uplift (Williams 1983 [1976], 160–161). In the colonial context, the elision of colonized representations of socio-natural relations enabled colonial authorities to rationalize interventions ranging from the implementation of regimes of resource extraction to improve the land to the establishment of systems of colonial oversight of colonized populations to paternally instruct them in development.

However, as peoples across the globe have encountered capitalist projects of development, a critical international literature on development has emerged. Conventionally there has been a bifurcation of the literature on development in the Global South from dynamics within the claimed boundaries of settler colonial nations of the Global North. However, borrowing a phrase from Amar Bhatia (2012, 131), Indigenous peoples can be understood as the “South of the North,” the colonized “Fourth World” (see also, Manuel and Posluns 1974; Hall 2005, 2010). Cast in terms of questions of development, Canadian discourse around reconciliation is reframed from parochial or even national concerns to register international valences of the relations under discussion. While my dissertation has focused on local negotiations between Indigeneity and colonialism, Karen Engles (2010) has demonstrated how many of the central considerations of this dissertation—Indigenous claims to control over tradition and territory, the dilemmas that have faced efforts to achieve legal recognition of Indigenous claims, and the transmutation of Indigenous concerns from the realm of political economic assertions to cultural differences—find echoes throughout the Americas at the international level. Thus, more than a capstone to the dissertation, development serves as a bridging concept laying the foundation for the further internationalization of my argument in future work.

The discourse of development was expanded and reformulated in the wake of decolonization struggles across the African, Asian and Latin American worlds in the mid-

twentieth-century. With the end of formal political rule of many former colonies, a new discourse of development emerged, promulgated by global financial institutions. Development policies became mechanisms of control just as pervasive and effective as forms of direct political rule, equating progress with a deepening of capitalist relations (Escobar 1995). Although poverty and hunger spread through the imposition of structural adjustment programs, the normalization of development *qua* capitalism led to a proliferation of techniques to extend the economization of life. In a series of provocative studies, critiques of dominant forms of development have challenged how impoverished people and environments became objects of knowledge and targets of power under the gaze of experts (Ferguson 1990; Escobar 1995; Rahnema and Bawtree 1997; Mitchell 2002; Wainwright 2008). Critics exposed how international institutions and aid agencies first problematized poverty and underdevelopment and then rationalized a series of interventions on the basis of their problematization of the condition of underdevelopment (Rittich 2004). While these interventions failed on their own terms, exacerbating rather than alleviating poverty, they also worked to suspend politics and render development a technical question. Post-development critiques provocatively reopened the question of development, exposing how uneven global power relations deepened in the name of development.

But despite their incisive critiques, post-development studies nonetheless reconsolidated the object of their critique. By presenting development as a singular and monolithic form of power, post-development scholars denied the multiplicity of development practices and stripped development of any sense of contingency. Rather than situating their critique within the nuance of particular places with their specific political and economic contexts, post-development theorists have tended to project particular orthodoxies regarding capitalist development as the universal embodiment of development. On this basis, post-development theorists reject development as something we must not want. As Vinay Gidwani (2002) has convincingly argued, development is neither inherently oppressive nor liberatory, and understanding its effects requires careful

analysis of the particular circumstances in which development projects are enacted. Rather than simply presuming development possesses a self-evident or transparent character, Gidwani (2002, 5) suggests it should be broached as “a placeholder concept” for a broader package of both orthodox and heterodox development discourses and practices.

Although various development projects are certainly rationalized as improvements for the many while enriching only a select population, it is vital to note that development is not solely a veil for colonial processes of accumulation through dispossession. While colonialism can be understood as a project that aspires to dominate the social field and totalize being in terms of a particular set of exploitive and appropriative relations, this political aspiration must be recognized as contingent and necessarily inchoate in its materialization in the ontic world. As Oliver Marchart (2007) argues in his post-foundational examination of politics, attempts to foreclose the political within a set sphere of the possible are infinitely deferred by acts of becoming that interrupt attempts to totalize life and continually reopen the constitution of the modern. There is thus no singular logic of becoming, no ultimate ontological foundation, but rather an ontological pluralism in which various contingent productions attempt to mark out the boundaries of ontic life. It is thus necessary to recognize the pervasiveness of the formulation of capitalism *qua* development, and the epistemic and ontological violence occasioned as capitalist development projects institute particular regimes to render the world intelligible and shape the conduct of life, without rendering such projects the totality of development.

Development projects are materialized in the overlap and entwining of different wills to improve. While the will to improve often interlinks with processes of capitalist becoming, it is not singularly reducible to such processes. Nor is the will to improve solely an impulse engaged by the agents of colonialism. It is, as Patricia Wood and David Rossiter (2011, 410) describe the will to power more generally, an impulse engaged by a wide range of individuals and collectives who aim to determine, discipline, and govern the chaos of the world so as to render possible its intelligibility and improvement. The will to improve is multitudinous, situated in the particularities of specific times and places, and enacted

relationally, both working in concert and competition with other wills to power. I thus conceive of development not as a steady or uniform accomplishment but rather a process in which various interventions fit within emergent processes of becoming, born of the entanglements of colonial modernity and Indigenous traditions and continuing to bear them.

Colonial strategies to install a particular ontology of development remain necessarily inchoate, and Indigenous contestation of the knowledges and practices of development continually serve to condition, counterbalance, and remake these knowledges and practices. The story of the world cannot be told as the story of colonial development alone, as Thomas King (1990) reminds us. Rather than an articulation of universal reason or an instantiation of the relentless logics of capitalism, development projects have had very particular and often very unequally distributed effects. If colonial designs have been inscribed over Indigenous geographies, the traces of Indigeneity remain on the palimpsest. The geography of development continues to be constituted through the interrelationships between an alternately contestant and concatenated heterogeneity. Registering the necessary multiplicity of spaces constituted through Indigenous and settler colonial processes of becoming effectively channels a fuller recognition of the simultaneous coexistence of Indigenous orders with their own trajectories and stories to tell.

Recognizing the possibility inherent in the existence of a simultaneity of stories of development opens analysis to new theoretical vistas. Eschewing the intellectually dishonest foreclosure of history to a single path, opens the possibility of recognizing new potential within interactional spaces. While complicating narratives of political engagement and resistance, this dissertation is motivated by the strong belief that such a complication of political intervention is worth the gamble. The processes of interaction or exchange between Indigenous and colonial orders can be co-optive, but they can also disrupt the dominant paradigm, and it can potentially exhibit both co-optive and disruptive elements at the same time. While such a reality is certainly apparent to activists and leaders engaged in anti-colonial and anti-capitalist struggle, such a nuance is too often lost

in the critical work of the academy. Rather than simply juxtaposing colonial power and Indigenous peoples, it is necessary to recognize that Indigenous peoples adopt complex strategies not only to challenge governing approaches to development, but also to articulate an Indigenous will to improve. Reflecting this complexity, it is necessary to both assay attempts to capture Indigeneity within the colonial order and analyze the emergence of linkages concatenating Indigenous peoples with colonial regimes in new, potentially empowering and radically disrupting ways.

Gitxsan Glossary

adaawk – An oral history of a particular *wilp* or house, which served as a marker of the identity, authority, and territorial claims of that *wilp*. The oral histories of a *wilp* typically traced the lineage of the *wilp* through various migrations and narrated the original encounter between that *wilp* and the spirit of the land.

amnigwootx – The permission granted to children of male members of a *wilp*, while the father is alive, to access the territories of their father's *wilp*.

antamahlaswx – Stories that form part of a commonly held intellectual heritage. Stories that anyone may tell.

dax gyet – The authority of a *wilp* with relation to its territories. This authority is embodied in the figure of a *simoogit* or *sigidim haanak'a*.

guks yi 'ooksxw – A shame feast held to restore the honour of a hereditary title and his or her *wilp*, when an individual title holder brought shame to his or her name and *wilp*.

guks heldim guutxws – A feast held to restore the face of a *wilp* when a conflict or dispute in which another party was believed to be at fault had brought upon the *wilp*.

halayt – A person who is able to access spirit power and exercise that power to heal others.

haldawgit – A person who is able to access spirit power but exercises that power to harm others.

hla ga kaaxhl simoogit – A person who holds a ranked name in a *wilp*. Often translated to English as a wing chief.

lax'yip – Territories, associated with a particular *wilp*.

naxnox – Supernatural force, spiritual power.

p'teex – Clan.

sigidim haanak'a – Female hereditary chief, the head of a *wilp*.

simoogit – Male hereditary chief, the head of a *wilp*.

wilp – House, the central institution in Gitksan society through which a kinship group exercised authority over its distinct *lax'yip* and interfaced with the broader network of house groups in the region.

yukw – Feast. The feast is the venue through which houses formalize their political affairs. The transfer of hereditary titles, and their associated responsibilities for particular territories, the declaration of land usage rights, the establishment of marriages, and the formalization of trade alliances occur in the feast hall. The feast is hosted a particular *wilp* who wants to conduct business. Related lineages help the host *wilp*. Unrelated *wilp* attend the feast as guests and witness and validate proceedings. The host provides witnesses with gifts in recognition of their validation of feast business.

yuugwilatxw – Permission to access and use a territory extended to the spouse of a *wilp* member.

Witsuwit'en Glossary

balhats – Feast. The feast is the venue through which houses formalize their political affairs. The transfer of hereditary titles, and their associated responsibilities for particular territories, the declaration of land usage rights, the establishment of marriages, and the formalization of trade alliances occur in the feast hall. The feast is hosted by the houses associated with a particular clan. The houses, *yikh*, of other clans attend the feast as guests and witness and validate proceedings. The host provides witnesses with gifts in recognition of their validation of feast business.

bi kyī ya ggi at'en -- Permission to access and use a territory extended to the spouse of a *yikw* member.

dinī ze' – Male hereditary chief, the head of a *yikh*.

diyini – Traditional healer.

ggilulhēm – Secret society of traditional healers.

hibi nidiztic – A person who holds a ranked name in a *yikw*. Often translated to English as a wing chief.

kaneyedli' – A shame feast held to restore the honour of a hereditary title and his or her *yikw*.

kungax – The performances associated with the crest and identity of a *yikh*. Literally translated as trails of song, the *kungax* consist of performances that demonstrate the unique identity of a *yikh*.

lhooniltsas – A feast held to restore the face of a *yikw* when a conflict or dispute in which another party was believed to be at fault had brought upon the *yikh*.

nec'idilt'ës – The permission granted to children of male members of a *yikw*, while the father is alive, to access the territories of their father's *yikw*.

sinelh – Spirit song. Performed only by people of high rank. Sung to sanctify proceedings.

ts'akë ze' – Female hereditary chief, the head of a *yikh*.

yikh – House, the central institution in traditional Witsuwit'en society through which a kinship group exercised authority over its distinct *yin tah* and interfaced with the broader network of house groups, *yikh*, in the region.

yin tah – Territories, associated with the jurisdiction of a particular *yikh*.

Notes

Note on Terminology

¹ While Rigsby was tendered as the expert witness in the *Delgamuukw* trial on the Gitksan language, and principally responsible for the orthography of the Gitksan language employed through the trial, he was not the sole linguist whose work was implicated in the court word lists. Jay Powell also developed an orthography of Gitksan with an alphabet distinct from although significantly overlapping that of Rigsby. The standardization of the Gitksan language for the purposes of the *Delgamuukw* litigation primarily relied on Rigsby's work, but the evidence of Neil Sterritt Jr. at trial indicated that a limited degree of hybridization of Rigsby and Powell's work may have occurred in composing the over 1,600 terms included on the court word lists (*Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 133 1988, 8245).

² The most comprehensive resource for the Gitsenimx̱ language is the FirstVoices (n.d.) Gitsenimx̱ online dictionary, coordinated by Art Mathews in the village of Gitwangak. Useful glossaries are also available in P. Dawn Mills' *For Future Generations: Reconciling Gitksan and Canadian Law* (2008, 13–21), and Kenneth B. Harris and Frances M. P. Robinsons' *Visitors who Never Left* (1974, 132–138).

³ In addition to collaborating with Rigsby, Kari also conducted research with Hargus. The court was provided with the report co-authored by Rigsby and Kari but also research notes Kari had prepared in dialogue with Hargus. As an expert witness, Kari was subject to cross-examination on both research collaborations, as well as previous work he had conducted independently in the village of Hagwilget (see, for instance, *Delgamuukw v. the Queen* BCSC Trial Proceedings vol. 179 1989).

⁴ While James Kari is one of the preeminent scholars of Athabascan or Dené languages, his principal work has been on Athabascan-speakers in New Mexico and Alaska. His PhD dissertation from the University of New Mexico focused on Navajo phonology (Kari 1973). Garland Publishing subsequently published this work as the book *Navajo Verb Prefix Phonology* (Kari 1976). After completion of his PhD in 1973, Kari moved the University of Alaska, first with a post-doctoral position and subsequently a tenure-track appointment. He conducted work among the Witsuwit'en in the mid- to late-1970s, but this never developed beyond a nascent program of study. He published little on the Witsuwit'en (beyond his report with Rigsby for the *Delgamuukw* case, the only work of Kari's on Witsuwit'en linguistics that I have been able to locate is the Alaskan Native Language Archive file of material from his 1978 fieldtrip to Hagwilget (Kari 1978)). Aside from his expert testimony in the *Delgamuukw* case, Kari appears to have only publicly spoken on the subject of Witsuwit'en linguistics twice: once at the Annual Meeting of the Smithers Indian Friendship Centre in 1988 and then in

1996 collaborating with Hargus in a seminar presentation on the lexical comparison of the Ahtna and Witsuwit'en-Nedut'en languages (Kari 1988; Kari and Hargus 1996). In contrast, Hargus has steadily built upon her initial studies in the 1980s, becoming the leading academic authority on Witsuwit'en linguistics.

⁵ Despite requests from the community, Hargus has yet to produce a practical dictionary of Witsuwit'en. She has, however, produced an academic study of Witsuwit'en linguistics, addressing the phonetics, phonology, and morphology of the Witsuwit'en language (Hargus 2007). Another valuable resource is a recent Witsuwit'en culture and history textbook, produced by School District #54, which includes a six page glossary of Witsuwit'en terms using the Hargus orthography (Morin 2011, 341-346). The FirstVoices Wet'suwet'en website, constructed in concert with the Witsuwit'en Language Authority, also serves as a vital linguistic resource (FirstVoices and Witsuwit'en Language Authority n.d.).

Introduction

⁶ I am indebted to Berger's (1977) report for the original inspiration for the title of this thesis. However, my particular conceptualization of the frontier borrows heavily on the work of revisionist Western historians such as Patricia Limerick (1987), who described the entanglement of white frontier histories of progress with those of Othered Indigenous peoples. Following such scholarship, I argue frontier development must be understood in its entanglement with relations to Indigenous peoples whose lives have and continue to be dramatically altered by the impacts of development.

⁷ The concept of keywords here is of course borrowed from Raymond Williams (1983 [1976]). Nearly forty years ago, Williams first published his influential work on keywords. In his study, Williams (1983 [1976]: 24) disavowed the effort to purvey "a neutral review of meanings." Instead, he proclaimed it was necessary to study the vocabulary that "has been inherited within precise historical and social conditions and which has to be made at once conscious and critical" (Williams 1983 [1976]: 24). The mission for Williams involved grasping how particular conceptions interlinked with the politics configuring particular debates. The term keyword served as a figurative expression, evoking how an examination of particular contested, even contradictory terms, could unlock a set of political relations. Thus, to understand a keyword, it must be placed in context, situated within the set of relations that conferred meaning upon the term. Failing to ascertain the context configuring the meaning of a concept risks obfuscating the political contours of the argument in which one is engaged. As Richard Howitt (2011, 83) points out, theorizing the discourses of resource management requires "careful consideration of, and debate about what keywords [in resource management] mean, [and] how they reflect different understandings in different groups from different vantage points." Different ways of framing key concepts work to render particular issues legible and subject to intervention.

⁸ Of course, it also bears mentioning that the post-colonial condition of many countries that have ostensibly decolonized politically continues to be contoured by neocolonial relations (Sartre 2001), and ongoing forms of colonial cultural and political domination (McClintock 1992; Shohat 1992; Dirlik 2002). Thus, as Stuart Hall (1996) describes, the affixation of post- to the terms colonialism serves to mark not the temporal distinction of the colonial period from the present, but rather than aspirational politic of a body of scholarship aimed at moving analysis beyond colonialism.

⁹ There has been some debate regarding the origins of the term Indian, a derivative of the Spanish term *Indios*. Authors such as Peter Mattiessen (1992 [1984], 3) have claimed that the term actually reflects not geographic confusion but an imagination of Indigenous peoples as antediluvian. However, as Robert F. Berkhofer (1979) argues, the terms Indies, derived from the Sanskrit name of the Indus River, was in wide usage with reference to the lands of Southeast Asia and islands to the east, and the application of the term Indian likely derives from the simple fact that Columbus mistook his position when he encountered islands off the coast of the Americas.

¹⁰ Various comments by Foucault have been marshaled to reading his account as one of the supersession of new modern forms of power, displacing the seemingly antiquarian relations of feudal sovereignty. For instance, in *History of Sexuality Vol. I*, Foucault (1978, 89) argues that scholars must “cut off the head of the king.” This regicidal call has often been read as the inauguration of a post-sovereignist paradigm. However, I interpret Foucault’s call as one that seeks to move analysis beyond the singular rationality of the juridical state without abandoning an analysis of sovereignty per se.

¹¹ As a legal theorist, Agamben has typically focused on legal questions. However, Agamben did not simply focus on law, but fixated on a juridical model of sovereign power. Agamben’s simplistic juridical conception of power is particularly evident in his deployment of geographic metaphors. Agamben constructs the camp as exemplar of the space of exception. However, in Agamben’s work the camp is not a differentiated space, there is no segmentation of the ordering of life within the camp, and no liminality to its borders. Rather the boundary of the camp is simply a line that may be crossed, as political existence is differentiated from bare life. As Thomas Lemke (2011, 59) writes, “His attention is directed solely toward the establishment of a border—a border that he comprehends not as a tiered or graded zone but as a line without extension or dimension that reduces the question to an either-or.” Fixated on the sovereign power to suspend rights and render life bare, Agamben fails to engage the biopolitical processes of making life, of differentiation, of normalization, of regulation. Instead, he maintains a morbid fascination with the construction of states of exception that establish the foundation of an apparatus of death. The power of making life that was so central to Foucault’s thinking is thus too often elided in Agamben’s work.

In analyzing the exclusionary workings of the incorporation of subjects within law as bare life, Agamben's analysis is hindered by a focus on centralized forms of regulation. In Agamben's work, for the law to become effective, it requires an authority that is capable of deciding whether to suspend the application of its law. Focusing on the Nazi state as the exemplar of the biopolitical society, Agamben establishes the fundamental biopolitical relation as one of death orchestrated by the apparatuses of a centralized state and not a relation of life organized through capillary networks including not only state agencies but also corporations, community organizations, and individual subjects. But while the Nazi state is biopolitical, it does not absolutize biopolitics but rather sovereign power over bare life in the figure of the Jew (Ojakangas 2005, 22). Using the Nazi state as the paradigmatic example of the workings of sovereignty, Agamben empties sovereignty of much of its complexity of practice. He reinstates a model of power as a centralized relation, understating the multiplicity of force relations operating in society (Neal 2004). This is a marked contrast to Foucault's efforts to demonstrate that the sovereign is not an autonomous agent who simply possesses the authority to render decisions. Agamben's discussion of sovereignty thus works to reproduce absolute spatialities and normalizes "precisely that juridical perspective and that binary code of law that he so vehemently criticizes and whose disastrous consequences he so convincingly illustrates" (Lemke 2011, 63).

¹² At the most basic level, legal pluralism refers to the existence of multiple legal systems within a region. Legal pluralism is considered to particularly salient within former colonies in which the law of the colonial authority exists alongside traditional Indigenous legal systems (Galanter 1981). The pluralist approach in law has tended towards recognizing and celebrating legal difference and looking to mediate conflicts through reconciling competing norms, and creating processes to determine which legal order can legitimately assert their norms in a given situation (Berman 2007). The conventional literature on legal pluralism presents pluralism as unfolding relationally. This literature, however, suffers from a number of deficiencies. First, there is a tendency towards essentializing legal orders, particularly traditional ones. Second, jurisdictional conflict is understated and pluralism is often presented as a condition of incorporated multiplicity. Legal pluralists often resonate as advocates of decentralizing law. However, to understand the value of decentralizing law, the terms of interaction between legal orders need to be analyzed. To de-essentialize legal pluralism, I examine how Indigenous and colonial legal orders operate as distinct yet interpenetrate systems of norm, influencing each other without ever becoming reduced to a singularity.

¹³ These studies were independent contracts separate from my PhD work. I did not work on any of the studies reviewed in this dissertation.

¹⁴ "Weapons of the weak" is, of course, a gesture to James C. Scott's (1985) classic study of the peasant villagers of Malaysia, and their everyday forms of peasant resistance.

Indigeneity and Colonialism: A Northwest Interior History

¹⁵ It should be noted that for the defects of its colonial apologetics, Morice's (1978 [1904]) history did breach several conventions of standard early histories. Morice's text was tremendously methodologically innovative for its period, entwining Indigenous oral history and textual records. Further, although Morice, an Oblate missionary, failed to disclose the extreme brutality of missionary practice, he did expose the violence that accompanied the fur trade.

¹⁶ There has been significant debate within the anthropological and archaeological literature on the particular forms of Indigenous social organization that preceded contact. Some early anthropologists, such as Marius Barbeau (1930), suggested the cultural development of the Indigenous peoples of the Pacific Northwest was itself a modern development induced by the wealth bestowed to Indigenous communities through the fur trade. Others, such as Franz Boas (2002), positioned Indigeneity as only authentically pre-existing colonialism, and focused on salvaging the remaining fragments of what they imagined to be a vanishing culture. Indigenous traditions, however, neither suddenly appeared nor vanished; rather they remained in a dynamic continuity, changing through time while maintaining a connection to past practices. Although it is likely not possible to definitively state the impacts of the introduction of European trade goods, as well as diseases, on Indigenous cultural traditions and systems of political organizations, ethnographers have accumulated a series of traces of Indigenous traditions. Aware of the risks associated with locking Indigenous traditions to an a timeless notion of cultural authenticity, I begin with a discussion of pre-contact Indigenous traditions not with the intent of cataloguing a static definition of authentic Gitksan and Witsuwit'en traditions, but with the aim of articulating the distinct Indigenous systems of authority, territoriality, and subjectivity which subsequently interfaced with and morphed through exchanges and contests with colonial power.

¹⁷ The aid of the map here is intended to generally orient the reader. However, it should be noted that colonization shifted the alignment of linguistic, cultural, and political groups, and this contemporary map of Indigenous polities does not exactly mirror the historical geography of linguistic, cultural, or political communities. Groups such as the Ts'ets'aut have disappeared as distinct communities, and are no longer represented on the map. In other cases, colonial attempts to delineate Indigenous communities, alongside the political organization and mobilization of Indigenous communities themselves, have inscribed boundaries between historically connected cultural and linguistic communities. The traces of this history of boundary-making has been inscribed on the First Nations Peoples of British Columbia Map, often over and against research on Indigenous peoples. For instance, the Nedut'en, whose territories correspond to Babine Lake (the long lake east of the area marked Wet'suwet'en on the map), are included on the map as part of the Dakelh

community. This is contrary to Nedut'en assertions of their identity as a distinct people, but also cultural and linguistic work that demonstrates they are more closely aligned with the Witsuwit'en than the Dakelh people.

¹⁸ As I mentioned in the Note on Terminology at the opening of this dissertation, to a significant extent language standardization in the Northwest Interior has still not occurred. Communities continue to debate which dialect represents the definitive account of their language, while academics debate the relations and boundaries between dialects and languages.

¹⁹ In another example, research indicates that the distinction between the Dunne-za (Beaver) and Sekani linguistic communities may be a divergence of dialects rather than languages, and moreover that some of the communities typically classed as Dunne-za speak a dialect more closely related to Sekani than to the dialect spoken in other Dunne-za communities (Randoja 1990).

²⁰ Hargus credits the unpublished research of Hank Hildebrandt and Gillian Story with first differentiating the Witsuwit'en-Nedut'en language from the closely related Dakelh language on the basis of what they referred to as the "Babine vowel shift" (quoted in Hargus 2007, 5). However, Hildebrandt and Story simply argued the Nedut'en divergence from Dakelh dialects "is greater than has been suspected," only implicitly suggesting that the Nedut'en might speak a distinct language from the Dakelh people (quoted in Hargus 2007, 10). In their hedged differentiation, Hildebrandt and Story echoed the early work on the Dakelh and Nedut'en languages by the Oblate missionary, Adrien Gabriel Morice (1932), who suggested that the grammatical, terminological, and morphological peculiarities of the language spoken by the Nedut'en may be sufficient to make it a distinct Dené dialect.

²¹ These stories differed from the stories that comprised the *adaawk*, which was an exclusive possession that could only be told by particular people.

²² It should be noted that while these terms clearly distinguish between male and female, they do so on the basis of the name and its lineage rather than the specific chief who currently holds it. Thus, in practice, the gender of the holder of a particular gendered chiefly name may not necessarily always accord with the gender of his or her name. In such instances, the gendering of the name supersedes the gendering of the holder, and the title holder is publicly regarded as possessing the gender characteristics associated with the name.

²³ When a house subdivided, typically a *hla ga kaaxhl simoogit* left the *wilp* to head a new *wilp*, taking a subset of the *wilp* names and *lax'yip*.

²⁴ Slaves came under the dominion of a house group as a result of raiding, debt repayment, or gifts, but lacked the rights of membership.

²⁵ Subsequent to the establishment of Oregon territory, the Hudson's Bay Company reorganized its system of governing the fur trade, unifying its departments into a single unit known as New Caledonia that encompassed the lands that would become British Columbia.

²⁶ The joint Witsuwit'en-Nedut'en band was known as the Hagwilget Indians. This titling was particularly ironic as the village of Hagwilget or Tsë Cakh was actually excluded from the band. The Commissioner allocated the lands associated with the Hagwilget village site to the Gitksan band of Gitanmaax (Morin 2011, 272). Through a series of revisions in reserve and band affiliations, Hagwilget would become an independent band from Gitanmaax, and the Witsuwit'en-Nedut'en band would split into distinct bands, respectively known as Moricetown and Lake Babine.

²⁷ The exception to this trend of concentrating on-reserve band population has been Skin Tyee and Nee-Tahi-Buhn, bands with small populations spread across multiple reserves.

²⁸ Uncha Lake 13A is listed by Aboriginal Affairs and Northern Development Canada (2008) as split between Skin Tyee and Nee-Tahi Buhn.

²⁹ Conventionally conflict of laws refers to the situation in which there are relations across different legal jurisdictions, and there is a concomitant question regarding within which jurisdiction legal issues be addressed (for a recent review of the state of the literature on conflict of laws, see, Michaels, Knop, and Riles 2008). This has typically been conceived as the domain of private international law; however, recent dialogue between the literature on conflict of laws and theories of legal pluralism has begun to open consideration to the ways in which non-state legal orders can become engaged within a conflict of laws (see, Berman 2005, 2007).

Renunciation to Reconciliation: The *Delgamuukw* Case

³⁰ The abbreviated name of the case varies in the various decisions, at times reported as *Delgamuukw v. the Queen* and also *Delgamuukw v. British Columbia*. Noting this discrepancy, I will simply abbreviate the case as *Delgamuukw*. However, in my citations I vary the title as reported in the cited documents.

³¹ The orthography of names continues to be dynamic as linguistic conventions are standardized. *Delgamuukw* was initially spelled *Delgam Uukw* in court documents but eventually altered to *Delgamuukw*. *Gisdewe* was spelled *Gisday Wa* in the court case, but altered to *Gisdaywa* (the orthography of his name still used in association with the Office of the Wet'suwet'en); however, as discussed in the Note on Terminology, I use the Hargus (2007) system, which further modifies the spelling to *Gisdewe*.

³² Following the publication of *In the Spirit of the Land: Statements of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia 1987-1990* (Joseph and Muldoe 1992), the majority of the

opening statement has often been attributed to Delgamuukw, as it was in that text (see Muldoe 1992, 7–9). However, reviewing the trial transcripts, the opening statement was actually made in close collaboration between Delgamuukw, on behalf of the Gitksan hereditary chiefs, and Gisdewe, on behalf of the Witsuwit'en hereditary chiefs, with the chiefs alternating speaker by paragraph.

³³ Early critics particularly challenged the colonial logic undergirding the trial court decision, and Justice McEachern's disregard of Gitksan and Witsuwit'en evidence and normalization of colonial jurisdiction (Miller 1992a; Cassidy 1992; Asch and Bell 1993; Mills 1994a; Culhane 1998; Sparke 1998). Simultaneously the publication of the supporting evidence to the Gitksan and Witsuwit'en case provided a counter-point to the ethnocentrism of the court (Gottesfeld, Mathewes, and Johnson Gottesfeld 1991; Ray 1991; Galois 1993; Mills 1994b; Daly 2005). The release of the Supreme Court of Canada decision in 1997 altered the discussion of the *Delgamuukw* case, eliciting a sustained discussion of the possibilities attending the emergence of a new doctrine of reconciliation (Lawrence and Macklem 2000; McLachlin 2003; Overstall 2004; Penikett 2006; Slattery 2006, 2007). However, a series of critical interventions exposed the residual colonial reasoning undergirding the Supreme Court of Canada decision in *Delgamuukw* (Borrows 1999; Monture-Angus 1999; Metallic and Monture 2002; Christie 2005). According to these authors, while the Supreme Court of Canada Justices had recognized validity of Indigenous knowledge as a form of evidence and codified the concept of Aboriginal title, they continued to disregard the base Gitksan and Witsuwit'en claims to ownership of and jurisdiction over their traditional territories. Returning to the rich record of trial transcripts, a series of recent publications have begun to elucidate the complexity of the Indigenous regimes presented to the court in the *Delgamuukw* case to construct an Indigenous framework for reconciliation (Mills 2005; Mills 2008; Napoleon 2009).

³⁴ A *voir dire* represents a form of trial within a trial in which courts within the tradition of British common law conduct a hearing within the larger trial related to a particular issue related to the admissibility of evidence or standing of a particular witness. Justice McEachern released two written *voir dire* decisions during the *Delgamuukw* trial related to the admissibility of the evidence of the Gitksan and Witsuwit'en hereditary chiefs.

³⁵ Sats'an was spelled Satsan in the *Delgamuukw* transcripts. Herb George also maintained his usage of the orthography from the court in a number of publications which bear the name Satsan, including his chapter in Frank Cassidy's (1992) book from which I quote.

³⁶ Further, while critical scholars did not pen defences of McEachern's reasoning, Robert Paine (1996) and John Cove (1996) took issue with the way the Gitksan and Witsuwit'en strategy of centring the evidence of the hereditary chiefs rendered academically-credentialed expert witnesses supporting appendages to the

hereditary chiefs' position rather than independent sources of knowledge. Without condoning the obvious ethnocentrism of McEachern's judgment, these critics questioned whether drafting academic researchers into the role of partisans for Indigenous frameworks had not in fact undercut the quality and thus utility of commissioned studies.

³⁷ *Wos* was spelled *Woos* in the *Delgamuukw* transcripts.

³⁸ Courtroom process followed a distinct set of procedures that isolated evidence from the social context of its emergence. Robin Ridington (1992, 14–15) recounts an incident that occurred in what he refers to as his ethnographic fieldwork in Vancouver Courtroom 53, in which the lawyers debated the meaning of the testimony of Alfred Joseph, Witsuwit'en hereditary chief Gisdewe. As one of the plaintiffs who provided testimony at the beginning of the trial, Gisdewe had used the word trapline to refer to the territories from which he harvested furs. He explained these territories belonged to his house. The provincial lawyers had returned to the transcript of his testimony, arguing that his use of the word trapline was indicative of his deference to the provincial ministry responsible for issuing trapline registrations. They argued it was "an admission that his people had relinquished their Aboriginal title and had submitted to the authority of provincial government regulation" (Ridington 1992, 14). This reading of his words was of course against the general tenor of his evidence, which focused on his understanding of the system of territorial stewardship that operated through the house system. Ridington recounts how as the lawyers debated the meaning of his words, Gisdewe sat in disbelief in the gallery. Despite his presence, he was never invited to clarify his utterances on the witness stand, and instead the interpretation of his words was compartmentalized from engagement with his person.

³⁹ *Lilukhs* was spelled *Lilloos* in the *Delgamuukw* trial; *Mikhlikhlekh* was spelled *Maxlalex*.

⁴⁰ McEachern provides a threefold justification for his dismissal of the validity of the oral histories of the Gitksan and Witsuwit'en hereditary chiefs. First, he challenged the reliability of Indigenous oral histories. While some chiefs validate their *adaawk* in the feast hall, McEachern criticizes that this is not universally the case, highlighting how in many instances the histories were seldom shared outside the house group, limiting their reliability. Second, McEachern argues, "the *adaawk* are seriously lacking in detail about the specific lands to which they are said to relate" (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 150–151). As the hereditary chiefs advanced their claim not as a general territorial claim as Gitksan and Witsuwit'en peoples but a series of particular claims to individual territories held by distinct house groups, McEachern finds that many *adaawk* and *kungax* lack the specificity necessary to advance the particular claim the Gitksan and Witsuwit'en hereditary chiefs aim to make. Finally, McEachern criticizes the plaintiffs for seeking to authenticate their oral histories with reference to

anthropological literature, particularly Will Robinson and Walter Wright's (1962) *Men of Medeek*, and Marius Barbeau's unpublished manuscripts on oral histories of the Tsimshianic language group (now partially published as an anthology of the stories collected by Barbeau and William Beynon (1987a, 1987b)). McEachern's criticism here is first that these collections do not attend to the territorial knowledge the hereditary chiefs purport to be central to the *adaawk*, and second that these collections "are sprinkled with historical references making them suspect as trustworthy evidence of pre-contact history" (*Delgamuukw v. British Columbia BCSC Reasons for Judgment* 1991, 151). McEachern particularly rejects the inclusion of "guns, moose, The Hudson's Bay Company and other historic items" as things the Gitksan and Witsuwit'en only encountered after contact and thus signs of their stories being inauthentically Indigenous (*Delgamuukw v. British Columbia BCSC Reasons for Judgment* 1991, 151). Indigenous peoples are thus caught within a double bind. To be authentic Indigenous oral histories must be pre-historic, and thus unverifiable bodies of myth. To be verifiable they must present evidence that can be corroborated by the written record, which pollutes the oral histories with colonial influences thus rendering them inauthentic.

⁴¹ McEachern suggested that the fact Gitksan and Witsuwit'en people sought to construct collective claims through their territorial research rendered the results of that research suspect. In addressing the issues involved in the court's treatment of the Gitksan and Witsuwit'en evidence, neither Sparke nor Culhane focus on the territorial affidavits. However, the affidavits provide a particularly poignant example of the aporetic position of Indigenous communities before the court who in attempting to call into question the putative neutrality of regimes colonial territoriality and jurisdiction are consistently positioned beyond the pale. Given the McEachern's vociferous complaints throughout the trial, and throughout his reasons for judgment, about the length of the trial, one might suspect McEachern would favour the affidavits as a method of abridging the process of taking direct evidence on the stand. Indeed, as discussed above, this was the initial rationale for introducing the affidavits. However, McEachern simply dismisses the relevance of these affidavits in his judgment. In an inexcusably patronizing tone, he writes, "I accept that the plaintiffs have done their very best in this endeavour, and that these affidavits constitute the best evidence they could adduce on this question of internal boundaries. Unfortunately, the task seems to have been too much for them" (*Delgamuukw v. British Columbia BCSC Reasons for Judgment* 1991, 746). McEachern rationalizes this disregard on the basis that the affidavits are unreliable. If the courtroom testimony lacked particularity, McEachern argues the territorial affidavits are too particular, presenting information that cannot be verified by the wider community. Further, they lack trustworthiness because they are not the product of impartial, objective research but rather politically motivated work associated with the Gitksan and Witsuwit'en effort to contest the land rights and

jurisdiction of provincial government. McEachern particularly took issue with the fact the preparation of the territorial affidavits drew heavily on research Neil Sterritt had been engaged with for over a decade in a highly politicized context. McEachern wrote, “there has been much intense discussion within the Indian communities about the collection of this information for land claim purposes. This deprives the process of the objectivity which would have added confidence to it” (*Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 747). Restated, the Gitksan and Witsuwit’én evidence cannot be trusted because it is produced through a context of struggle against colonialism.

McEachern’s reasoning with regard to the territorial affidavits was challenged by the Supreme Court of Canada. Writing for the majority of the Supreme Court of Canada, Justice Lamer argued that McEachern “erred in his treatment of the territorial affidavits filed by the appellant chiefs” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 102). The Supreme Court of Canada particularly articulated three problems with McEachern’s framing of the issue. First, elements of oral histories will relate to particular knowledge held by particular families and thus not necessarily known by all members of the general Canadian community. While the claims made in the territorial affidavits might be contested, and the knowledge contained within them unverifiable by outside sources, this is the nature of Indigenous claims. As Lamer wrote for the majority, “claims to aboriginal rights, and aboriginal title in particular, are almost always disputed and contested. Indeed, if those claims were uncontroversial, there would be no need to bring them to the courts for resolution” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 106). Second, the court challenged McEachern’s historical amnesia, suggesting a primary reason why Indigenous communities have long been discussing strategies for posing Indigenous claims is not a grand conspiracy to invent a claim but an effect of the provincial government’s long-standing effort to suppress their claims. “It would be perverse, to say the least, to use the refusal of the province to acknowledge the rights of its aboriginal inhabitants as a reason for excluding evidence which may prove the existence of those rights” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 106). Third, the Supreme Court of Canada recognized that McEachern’s reasoning in dismissing the relevance and reliability of the territorial affidavits placed Indigenous communities in a double bind. In order to be admissible to court, Indigenous traditions need to be an active discussion in the community to create a widespread awareness of the territorial knowledge on which claims are based. However, if there is too much discussion in the lead-up to litigation, the territorial claims may be dismissed because of suspicions that they have been plotted as a strategy to defraud the government. “The net effect may be that a society with such an oral tradition would never be able to establish a historical claim through the use of oral history in court” (*Delgamuukw v. British Columbia* SCC Decision 1997, para 106).

⁴² As discussed in chapter two, Gitxsan and Witsuwit'en people had access and usage rights to lands belonging to another clan on the basis of spousal relationships and on their patriline, particularly during their father's lifetime. Spousal rights are referred to as *amnigwootx* and *nec'idilt'ës* by the Gitxsan and Witsuwit'en respectively; patrilineal rights are referred to as *yuugwilatxw* and *bi kyi ya ggi at'en* respectively.

⁴³ Wigidimsts'ol was spelled Wigetimschol in the *Delgamuukw* transcripts; Gguhlat was spelled Goohlaht; Simuyh was spelled Samooh. Namoks is spelled Namox.

⁴⁴ The introduction of capitalism to the region drastically changed the political economy of feasting (Overstall 2013). Traditionally, a cohort of house members was required to accumulate the wealth necessary to host a feast. The introduction of new opportunities for Gitxsan and Witsuwit'en people to accumulate wealth in the capitalist economy, through waged or salaried labour, as well as investment and business ownership, enabled individual house members to provide the income to meet house obligations in the feast hall. This made it possible to sustain far smaller houses, but also left houses reliant upon particular individuals, their health, and their ability to escape the vagaries of the market economy.

⁴⁵ Against the arguments of Bartolome de las Casas and Franciscus de Vitoria, McEachern counterposes the position of eighteenth-century Swiss jurist Emerich de Vattel. One of the founders of international law, Vattel was an apologist for empire, and rationalized colonial expropriations as necessary developments to improve the land (Anghie 2004, 270–271). Indeed Vattel explicitly rationalized genocidal policies of extermination.

The cultivation of the soil ... is an obligation imposed upon man by nature. The whole earth is designed to furnish sustenance for its inhabitants; but it cannot do this unless it be cultivated. Every Nation is therefore bound by the natural law to cultivate the land which has fallen to its share. ... Those peoples ... who, though dwelling in fertile countries, disdain cultivation of the soil and prefer to live by plunder, fail in their duty to themselves, injure their neighbors and deserve to be exterminated like wild beasts of prey. ... Thus ... while the conquest of the civilized Empires of Peru and Mexico was a notorious usurpation, the establishment of various colonies upon the continent of North America might, if done within just limits, have been entirely lawful. The peoples of those vast tracts of land rather roamed over than inhabited them. (Vattel quoted in Anghie 2004, 270–271).

While McEachern elides Vattel's justification of genocide, in which those who fail to cultivate the land "deserve to be exterminated like wild beasts of prey," he approvingly quotes Vattel's rationalization of the colonial usurpation of Indigenous lands.

It is asked whether a nation may lawfully take possession of some part of a vast country in which there are none but erratic nations, whose scanty population is incapable of occupying the whole? We have already observed, in establishing the obligation to cultivate the earth, that these nations cannot

exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their unsettled habitation in those immense regions, cannot be accounted a true and legal possession, and the people of Europe, too closely pent up at home, finding land of which the Savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it and to settle it with Colonies. The earth, as we have already observed, belongs to mankind in general, and was designed to furnish them with subsistence. (Vattel quoted in *Delgamuukw v. British Columbia* BCSC Reasons for Judgment 1991, 206)

McEachern suggests Vattel's position has been accepted in American jurisprudence in the Supreme Court decision in the 1823 case *Johnston v. M'Intosh*, penned by Justice Marshall, and subsequently incorporated into the 1887 *St. Catherine's Milling* case in Canada.

⁴⁶ At trial, counsel for the Gitksan and Witsuwit'en hereditary chiefs consisted of Stuart Rush, Peter Grant, Louise Mandell, Michael Jackson, Murray Adams, Stanley Guenther, Leslie Pinder, Michael Fleming, and David Paterson. At the British Columbia Court of Appeal, the plaintiffs' representation remained largely intact; there were no additions and only Stanley Guenther and Leslie Pinder were no longer listed as counsel at the first level of appeal. At the Supreme Court of Canada, the collectives of Gitksan and Witsuwit'en hereditary chiefs elected to have independent counsel. The Gitksan hereditary chiefs representation, from the firm Rush, Crane, Guenther & Adams, maintained a line of continuity with the original trial lawyers. The Witsuwit'en hereditary chiefs changed lawyers, employing the corporate law firm Blake, Cassels & Graydon.

⁴⁷ Though the domestication of Gitksan and Witsuwit'en sovereignty in the court's reasons for judgement, at least in part, is an effect of the Gitksan and Witsuwit'en legal strategies and the particular ways in which they brought matters before the court.

⁴⁸ The colonial doctrines espoused by the court were also in evidence in the Supreme Court's handling of the question of jurisdiction, which had been transmuted to that of self-government before the court. The Supreme Court had already addressed the matter of Aboriginal self-government in the 1996 *R. v. Pamajewon* case. In *Pamajewon*, two Ojibwa bands, Shawanaga and Eagle Lake, had sought to pass laws enabling high stakes gambling on their reserves. As these laws were not validly enacted under the *Indian Act*, the bands had sought to justify them as an exercise in their inherent right to self-government. In responding to the case, the Supreme Court of Canada held that rights to self-government, if they existed, could not be framed in excessively general terms. Rather the court redirected self-government to the tests established in earlier Aboriginal fishing rights cases, particularly *R. v. Van der Peet*. Aboriginal rights were required, according to *Van der Peet*, to have existed prior to contact and been an integral part of an Aboriginal people's distinctive culture. Thus, while the Ojibwa gambled prior to contact, the court ruled that their gambling was not at a

large enough scale, nor was it an integral part of the distinct culture of the Ojibwa community. According to the Supreme Court, it was not adequate to simply assert that a collective possessed decision-making authority, and justify self-government as the exercise of that authority. As the Gitksan and Witsuwit'en hereditary chiefs had sought to advance a claim to self-government generally (as a claim to jurisdiction), the court suggested the hereditary chiefs had not presented their case in a manner cognizable to the court as a form of Aboriginal self-government (although they did not issue a final determination on the claim again due to McEachern's mishandling of the evidence).

⁴⁹ The Supreme Court of Canada found first that the jurisdiction over Aboriginal peoples, and thus the jurisdiction to extinguish the rights Aboriginal peoples, lay with the federal government. The province did not have the authority to legislate or suspend the status of Aboriginal peoples. Second, the court found that provincial laws of general application—which were not aimed specifically at the extinguishment of Aboriginal rights—could not have the effect of extinguishing Aboriginal rights. While provincial laws which single out Indians for special treatment cannot be made as they are *ultra vires* (beyond their powers) and invade federal jurisdiction, provincial laws of general application do apply *proprio vigore* (by its own force) to Indians and Indians lands; however, these laws cannot extinguish Aboriginal rights. Only laws with clear and plain intent can extinguish Aboriginal rights, and this intentionality necessitates that at the moment of a purported extinguishment provincial law becomes *ultra vires*. Third, the court addressed a convoluted argument in which the province sought to argue that a section of the *Indian Act* that incorporated provincial laws provided an opening through which provincial laws could have sovereign domain over Indians. The court rejected this argument. Refusing the province the possibility of suspending Aboriginal rights, the Supreme Court necessitated the province negotiate with the Gitksan and Witsuwit'en hereditary chiefs. However, if this effective limitation of the sovereign authority of the provincial Crown, forcing it to enter into governmental negotiations with Indigenous peoples, is the celebrated legacy of the Supreme Court's judgment in *Delgamuukw*, it must simultaneously be noted that the court maintained colonial sovereign authority through its reasons. In fact, though the *Delgamuukw* decision has been celebrated as a diminution of colonial sovereign power, in explicitly incorporating a domesticated doctrine of Aboriginal title, colonial sovereignty was not only maintained through the alternation of its duties but extended to reach into new domains of life.

⁵⁰ While my principle interest in the subsequent chapters rests in the ways in which a doctrine of reconciliation diffused out from the courts, it is worth noting that the concepts of reconciliation within the court were subject to substantial debate. The discussion of reconciliation in relation to the question of Aboriginal rights significantly precedes *Delgamuukw*, originating with the 1990 Supreme Court of Canada decision in *R. v. Sparrow*, which first interpreted the meaning of the constitutionalization of Aboriginal rights

in 1982 elucidating a doctrine of reconciliation. This doctrine was reworked through a series of cases in 1996. That year *R. v. Van der Peet* articulated the test for identifying and defining Aboriginal rights (as distinct from the test for Aboriginal title delineated in the *Delgamuukw* decision), and *R. v. Gladstone* addressed the justification of infringements of Aboriginal rights. As McNeil (2003) notes, through this generation of decisions, the Supreme Court of Canada led by Chief Justice Lamer framed reconciliation as a process of balancing Indigenous peoples' prior occupation of the land with the processes of colonial settlement and development. Lamer penned decisions that rationalized infringement of Aboriginal rights on the basis of colonial economic concerns. McNeil argues this understanding of reconciliation conflicted with that of *Sparrow* and a line of reasoning maintained by Justice McLachlin through a series of dissenting opinions, holding that reconciliation is best achieved through negotiation and treaty-making. The *Delgamuukw* decision, however, followed the lineage of Lamer's earlier Aboriginal rights decisions. Thus, reconciliation of Aboriginal title with colonial territorial interests involved balancing settler economic interests with Aboriginal title claims, and justified a wide range of infringements (McNeil 2003). This framework undoubtedly aided the diffusion of reconciliation processes beyond the bound of treaty processes to include a variety of venues.

⁵¹ Both the province and the federal government made a commitment to negotiating settlements to Indigenous claims in the wake of the McEachern ruling. However, the McEachern judgment had severely undermined Indigenous peoples' position in any negotiations that might proceed (Mills 2008, 72-73). Achieving the concession that land claims should be negotiated at the moment in which Aboriginal legal claims had been annulled presented a rather pyrrhic victory.

Indigeneity on the Page: Use and Occupancy Studies

⁵² Further, as there is a multiplicity of place, the movements of knowledge involve not simply movements between places on the map, but also the movements between knowledge ordered on the map and other regimes of ordering territorial knowledge. Traditional use and occupancy studies, transliterating Indigenous territorial knowledge into colonial cartographic discourse, are constructed through a heterogeneous assemblage. Through efforts to translate knowledge from Indigenous orders into new forms, Indigenous and colonial forms of knowledge are entangled without becoming reducible to a singularity.

⁵³ There were, of course, precursors to contemporary research on Indigenous land use. Frank Speck (1915), for instance, produced ethnographies of Algonquian hunting territories. However, in contrast to the political impetus of contemporary research, this research had its origins in an academic interest in salvaging a record of Indigenous cultures undergoing drastic change. Speck's research helped spawn a substantial debate about

the origins of private property regimes among Indigenous peoples, and whether property system preceded or resulted from colonial encounters. In highlighting the existence of Indigenous systems of territoriality, anthropologists began to create the foundation for future research backing Indigenous territorial claims.

⁵⁴ In the Yukon, Northwest Territories, and Nunavut, political changes further led to Indigenous peoples being included on review panels. This change, however, has not occurred in the British Columbian provincial north and thus remains tangential to the particular relationships under examination in this dissertation.

⁵⁵ While Moricetown and Hagwilget bands retain the closest relationships with the hereditary chiefs, there remain complex relationships between the bands and the hereditary chiefs' office. The historic patrilineal determinations of Indian status and band membership have greatly complicated the relationships between bands and the traditional forms of Witsuwit'en identity associated with the *yikw*. Approximately half the membership of the Hagwilget band is Gitksan according to matrilineal determinations of identity (Daly 2009). Thus, the Hagwilget band, responsible for services on reserve but also for representing the interests of off-reserve band members, enacts complex relationships with other Gitksan and Witsuwit'en authorities, including not only the chiefs' offices but also different organizations that have been created to provide more culturally appropriate services. The complex, plural relationship of Hagwilget band to Gitksan and Witsuwit'en identity is evident in the way it partners with Gitksan organizations to provide certain services and Witsuwit'en organizations for other.

⁵⁶ A majority (65%) of Skin Tyee Band members lived off-reserve, while five members (which accounted for 3% of the band population) lived on the reserves associated with other bands.

⁵⁷ Constraints mapping is simply the process of mapping limits to development, the places that development cannot go.

⁵⁸ Witsuwit'en people traditionally use large cottonwoods for the construction of canoes.

⁵⁹ Among the designated Skin Tyee reserves, the 2006 Census identified three as populated. Skins Lake Indian Reserve No. 16B, on the northwest shore of Uncha Lake, is the most populated. In 2006, it had 26 people distributed among seven dwellings (Statistics Canada 2007b). Uncha Lake Indian Reserve No. 13A, on the north shore of Uncha Lake, near the west end, had 16 people among eight dwellings (Statistics Canada 2007d). This population was, however divided between Skin Tyee and Nee-Tahi-Buhn, which split jurisdiction over the Uncha Lake Indian Reserve No. 13A. Tatla't East Indian Reserve No. 2, at the western end of Francois Lake, had one dwelling with 5 people (Statistics Canada 2007c). Skins Lake Indian Reserve No. 16A, $\frac{3}{4}$ mile southeast of Octopus Lake which is 2 miles south of Francois Lake, is listed on the census as having two dwellings (Statistics Canada 2007a). However, no population was enumerated there. Two reserves affiliated with Skin Tyee were not enumerated on the 2006 census, Western Island Indian Reserve

No. 4 and Skins Lake Indian Reserve No. 15. One of the regional census takers I interviewed indicated that Skin Tyee's population had centralized to the more closely co-located reserves, and some of the more distant reserves such as Skins Lake Indian Reserve No. 16A and Skins Lake Indian Reserve No. 15 were unoccupied despite the presence of buildings on reserve (Wall 2013).

⁶⁰ In a recent lecture, McNeil (2013) has made an analogous point regarding the deterritorialization of the concept of Aboriginal title with an emerging reconceptualization of the construct as a site-specific attribute rather than a general territorial claim. He argues in *Delgamuukw* the Supreme Court of Canada conceptualized Aboriginal title through the combination of principles derived from the common law and Indigenous title and included recognition of Indigenous systems of governing the land. In contrast, the courts have more recently narrowed the doctrine of Aboriginal as related to site-specific usage regimes (as opposed to governance systems) through Supreme Court of Canada 2005 decision in *R. v. Bernard* and the British Columbia Court of Appeal's 2012 decision in *William v. British Columbia*.

⁶¹ As the Office of the Wet'suwet'en continues to use a variation of *Delgamuukw* orthography, their spelling of C'inegh Lhay Yikh or House of Many Eyes is Ginehklaiyex (as seen on the territorial map).

⁶² The Office of the Wet'suwet'en continues to use variations of the *Delgamuukw* spelling of Tsa Kën Yikh or Beaver House. On this map, it is spelled Tsa K'ex Yex. In *Delgamuukw* it was spelled K'a K'en Yex in the commission evidence of Florence Hall, who then held the hereditary title Kw'is (spelled Kweese at trial) as head of that house (*Delgamuukw v. the Queen* BCSC Commission Evidence of Florence Hall vol. 1 1987). The name of the particular territory represented, spelled Nalhdzi Tezdli Bin by the Office of the Wet'suwet'en, has umlauts added over some of the vowels in the Hargus system, which presents the territory as Nelhdzī Tëzdlī Bin.

⁶³ The Office of the Wet'suwet'en continues to spell Insggisgī, or Where It Lies Blocking the Trail, as was done at trial in *Delgamuukw*: Anaskaski.

⁶⁴ The Office of the Wetsuwet'en spelling of Këyikh Winīts or House in the Middle of Many is Keexwinits; they also don't include the umlauts that are present in the Hargus spelling of Bī Winī.

⁶⁵ The Office of the Wetsuwet'en spelling of Cas Yikh or Grizzly House is Cas Yex.

⁶⁶ The Office of the Wet'suwet'en continues to use multiple spellings of Tsa Kën Yikh or Beaver House. On this map, they have spelled it Djakanyex. They also don't include the umlaut in the spelling of Talhdzī Wiyez Bin.

⁶⁷ The Office of the Wetsuwet'en spelling of Yikh Tsawilhggis or Dark House is Yextsowilkas. They don't include the umlaut in the spelling of Talbīts Kwah.

⁶⁸ The Office of the Wetsuwet'en spelling of Sa Yikh or Sun House is Tsaiyex.

⁶⁹ In *Delgamuukw*, the Supreme Court of Canada did not rule on the Gitksan and Witsuwit'en claim to self-government. Writing for the majority Chief Justice Lamer explicitly stated, "rights to self-government, if they existed, cannot be framed in excessively general terms" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 170). At the Supreme Court of Canada, counsel for the Witsuwit'en hereditary chiefs, solicitors from the business law firm, Blake, Cassels & Graydon, conceded that at trial the Witsuwit'en had advanced the right to self-government in very broad terms, and therefore in a manner not cognizable within the frames of the Canadian jurisprudence. However, despite issuing a number of discouraging remarks in the decision regarding general claims to Aboriginal self-government, the court did leave space open for arguments for Indigenous self-government or decision-making on Aboriginal title lands (McNeil 2007). Although the Supreme Court of Canada declined to address the issue of self-government or Indigenous jurisdiction in *Delgamuukw*, Lamer did state that Aboriginal title is communal and the Aboriginal community has decision-making authority over its Aboriginal title lands. The court recognized "aboriginal title originates in part from pre-existing systems of aboriginal law" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 126). Moreover, Lamer noted, "aboriginal title encompasses within it a right to choose to what ends a piece of land can be put" (*Delgamuukw v. British Columbia* SCC Decision 1997, para 168). In accordance with such a reading, Justice Williamson of the British Columbia Supreme Court in *Campbell v. Attorney General of British Columbia, Attorney General of Canada, and the Nisga'a Nation* found that Indigenous communities possess a constitutionally guaranteed right to Aboriginal title in its full form, "including the right for the community to make decisions as to the use of the land" (*Campbell v. British Columbia* 2000, para 137). Staff of the hereditary chiefs' office picked up this thread, in association with their understanding of Witsuwit'en law, to advance their case to continued jurisdiction.

⁷⁰ Playing off the distinction that Rousseau makes between writing and speech, Derrida suggests that the supplement of the text is not simply an addition to orality but exists in an ambivalent and irresolvable relationship with it. Thus, the supplement at once works through the action of accretion, as "a plenitude enriching another plenitude," and of substitution, coming to stand as proxy for the thing itself (Derrida 1997 [1976], 144).

Sovereignty's Returns

⁷¹ The song was originally composed by Sue Alfred, *hibi nidiztic* in the Tsayu holding the name Wilat, and two of her daughters, Dolores Alfred and Marjorie Dumont, both also Tsayu members. I was kindly provided with a copy of the song lyrics and their English translation by staff of the Office of the Wet'suwet'en at the Burns Lake hearing of the Joint Review Panel.

⁷² It should of course be noted that the registries of National Energy Board and Canadian Environmental Assessment Agency are not the only archive of the occurrences in the hearings. Witsuwit'en people continue to encode their own records of events in various ways. Witsuwit'en people still disseminate knowledge through the feast system. Moreover, adapting traditional practices of publicly disseminating information to new social media technologies, Witsuwit'en people have made extensive use of Facebook to share a record of events.

⁷³ The *Haida* case centred on the use of an area of land which provincial government of British Columbia had territorialized under a tree farm license and which the Haida people simultaneously claimed title. Haida title had not been cognized by the state, either through treaty or legal adjudication, and in 1999 the provincial government unilaterally decided to transfer the rights associated with the tree farm license to the logging company, Weyerhaeuser. As they had neither consented to nor been consulted regarding this transfer, the Haida decided to file suit to set the transfer aside. At trial level, the court found that while a moral duty to negotiate existed that this was not a legal obligation binding the actions of the provincial government. This decision was, however, reversed by the British Columbia Court of Appeal, which found both the government and the company possessed a duty to consult the Haida people. The Supreme Court of Canada upheld the finding of a colonial sovereign duty to consult, but overturned the British Columbia Court of Appeal on the matter of corporate duties. According to the court, the duty to consult does not extend to third parties and cannot be delegated.

⁷⁴ There is an interesting and informative contrast here between international and domestic Canadian legal constructs. The Canadian duty to consult in part mirrors the international standard of free prior and informed consent established in the United Nations *Declaration on the Rights of Indigenous Peoples*. However, the parallel is only partial, as the doctrine of duty to consult recognizes a state obligation to engage Indigenous peoples without consideration of Indigenous consent. As my friend Amar Bhatia noted in conversation, Canadian Aboriginal law around consultation creates requirements for good faith engagement without an Indigenous right to withhold consent, circumstances analogous to offering unions the opportunity to participate in good faith bargaining but denying any authority to back their negotiating position by withdrawing consent (the right to strike).

⁷⁵ The official transcript on the Burns Lake hearing opens with Frank Alec's comments following the "opening ceremony" in which Witsuwit'en *dinī ze'*, *ts'akē ze'*, and *hibī nidiztic* sang their rejoinder to Enbridge's proposal.

Learning to Share: Indigenizing Industrial Education

⁷⁶ As discussed in previous chapters, Gitksan and Witsuwit'en peoples advanced recognition of regimes of Indigenous authority within the courts and resource governance processes. Indigenous practices of asserting their jurisdiction on the ground, instituting blockades to impede resource developments that did not have their support, supplemented the strategy of legal and technical mobilization (Glavin 1990; Blomley 1996). These actions effectively exerted a regulative pressure on industrial economic activity, disrupting the financial planning and development schedules of resource industries.

In the 1980s, a few cases involving Indigenous blockades ended up advancing to the British Columbia Court of Appeal, most significantly *MacMillan Bloedel Ltd. v. Mullin* in 1985 and *Westar Timber Ltd. v. Gitksan Wet'suwet'en Tribal Council* in 1989. In the *MacMillan Bloedel* case, Justice Seaton, writing for the majority, determined that circumstances justified granting an interim injunction while the issue of an Aboriginal claim was addressed. The *MacMillan Bloedel* case involved logging on Meares Island. In that case, the Ahousaht and Tla-o-qui-aht people sought to prevent logging on Meares Island to protect that place as an irreplaceable cultural resource. The British Columbia Court of Appeal recognized the uniqueness of Meares Island to the local Indigenous people. While counsel for MacMillan Bloedel argued that granting an interlocutory injunction to prevent logging on Meares Island would trigger cascading injunctions throughout the province and result in disastrous economic losses to employees, forest companies, and the province, the majority of the British Columbia Court of Appeal found "that to prevent or postpone logging on Meares Island will not have a significant economic impact" (*MacMillan Bloedel Ltd. v. Mullin* 1985, para 77). The court determined, due to the cultural importance of the area under development, the potential impacts on Indigenous territories in the case outweighed the economic impacts of postponing development. "If logging proceeds and it turns out that the Indians have the right to the area with the trees standing, it will no longer be possible to give them that right. The area will have been logged. The courts will not be able to do justice in the circumstances. That is the sort of result that the courts have attempted to prevent by granting injunctions" (*MacMillan Bloedel Ltd. v. Mullin* 1985, para 71). Two propositions clearly flowed from the decision. First, injunctions to protect Indigenous connections to their claimed territories while they pursue land claims should not impair the economic health of the province or logging company. Second, injunctions may nonetheless be granted with respect to particular important Indigenous sites.

As access to injunctions was governed by a requirement to ensure the security of non-Indigenous economic interests, Indigenous injunctions against development remained relatively rare. In effect, they were limited to circumstances in which relatively marginal economic developments, from the standpoint of

industry and the provincial economy, threatened particular areas of high cultural import to Indigenous peoples. In the *Westar* case, this delimited framing of the scope of Indigenous injunctions was reaffirmed. The Gitksan sought to protect an area of their claimed traditional territory in the Shedin Watershed north of the Babine River from logging by Westar Timber. The British Columbia Court of Appeal recognized the Shedin Watershed as also possessing unique characteristics that made it worthy of interim protection. Justice Esson defined Indigenous interest in terms of pre-contact connections to the landscape, and, on the basis that the Shedin Watershed “remains pristine in that has not been changed by white settlement,” determined it worthy of protection (*Westar Timber Ltd. v. Gitksan Wet’suwet’en Tribal Council* 1989, 21). Esson wrote, “It is an area ... where it is feasible to contemplate the Gitksan continuing in the same relationship to the land which they enjoyed before the coming of the whites” (*Westar Timber Ltd. v. Gitksan Wet’suwet’en Tribal Council* 1989, 21). Further, the court found an interlocutory injunction would not significantly economically impair Westar’s interests. Thus, so long as significant economic interests do not bar granting interlocutory relief to Indigenous claimants, the British Columbia Court of Appeal determined that interim injunctions with respect to particular sites with unique qualities may be granted by the court even if it suspends the established legal rights of a third party.

However, the most recent jurisprudence on injunctions to be foreclosing the legibility of blockades as a court-recognized strategy for Indigenous peoples to defend their lands. Two cases are illustrative of the transition from the case law of the 1980s to the present: *Behn v. Moulton Contracting Ltd.*, and *Hagwilneghl v. Canadian Forest Products Ltd.* The *Behn* case, called *Moulton Contracting Ltd. v. Her Majesty the Queen in Right of the Province of British Columbia* at trial, involved the Behn family from Fort Nelson First Nation in Treaty 8 territory. The Behn family believed there was inadequate consultation regarding logging operations on their trapline, rendering development activities unlawful. To assert their interests, the family set up camp on the trapline, thereby effectively interfering with logging operations in the area. The *Hagwilneghl* case, called *Canadian Forest Products Ltd. v. Sam* at trial, involved the Sam family, members of the Witsuwit’en yikw C’inegh Lhay who had sought to protect a portion of the traditional territory under the authority of their matriarch Kela (Mabel Crich). The Sam family had sought assurances that they would be notified and consulted before development would occur on their territory. When they discovered the government had approved logging and ignored its earlier commitments to the family, they established a blockade to protect their territory.

Both cases were subject to rulings at the British Columbia Court of Appeal in 2011, and the *Behn* case was further subject to a ruling by the Supreme Court of Canada in 2013. Collectively the court decided in these cases that the Indigenous groups in question had pursued extra-legal remedies, as the Indigenous

protesters set up blockades rather than initiating judicial review proceedings on the basis of faulty consultation. The courts determined both cases to reflect an abuse of process. Employing blockades now represented a remedy in excess of Canadian legal processes (regardless of its status within Indigenous legal orders). The court refused to countenance the establishment of a blockade as a legitimate remedy. Thus, in a bitter twist of irony, the advance of Indigenous strategies of legal activism has effectively begun to colonize the other domains of Indigenous self-defence. The development of the Canadian jurisprudence related to Aboriginal rights has advanced the law to the point of suspending legal recognition of the legitimacy of pursuing the option of direct action strategies external to the domain of Canadian law. Such strategies increasingly become subject to either criminalization or financial regulation through civil suits for damages related to economic disruption (Pasternak, Collis, and Dafnos 2013).

⁷⁷ In fact, government parsimony played a significant role in the push to decentralize the administration of Indigenous education funding. In the 1970s, the programs to provide funding for Indian and Inuit post-secondary education were “available to virtually all eligible students” (Standing Committee on Aboriginal Affairs and Northern Development 2007: 4). Indigenous enrolment rates in the period were low, limiting the cost of the program. However, a series of changes in the 1980s threatened to greatly elevate costs. Greater numbers of Indigenous people were accessing education, and changes to the *Indian Act* were greatly expanding the recognized Indian population. Prior to 1985, the government has instituted a form of sex-based discrimination, removing the Indian status of Indian women who married out, wedding non-Indian men. A 1985 amendment to the *Indian Act* altered the status provisions, enabling women who had married out and their children to reclaim status on the Indian registry (Kirkness 1987). This of course increased the status Indian population, with over 100,000 women and their children, or 17% of the registered Indian population, regaining status by 2000 (Furi and Wherrett 2003). Further elevating the costs associated with these increases to the population eligible for student financial assistance, the post-secondary attendance rates of Indian women regularly doubled those of Indian men (Lanceley-Barrie 2001). As Megan Furi and Jill Wherrett (2003) document, “Between 1985-1986 and 1989-1990, the number of Bill C 31 students rose from 446 (4% of the program) to 3,562 (19% of the program). Over the same period, expenditures on Bill C 31 students increased from \$0.9 million to \$27.9 million.” The devolution of the administration of education funding to Indian bands after 1989, thus coincided with, and to an extent served to veil, a series of reforms aimed at controlling the cost of Canadian government obligations with regard to Indian student funding.

Through devolving funding decisions to band control, the Canadian government was able to offload decisions about which Indigenous individuals to strip of financial support. Alongside the 1985 amendment of the *Indian Act* to recognize the status of Indian women who married out, the government also introduced new

language enabling bands to determine their own membership. Thus, Indian women who married out and their children could regain Indian status without necessarily gaining access to membership. As an exercise of self-determination, Indian bands could take control of their membership lists and determine which status Indians would be included to their community as members and thus gain access to funding and services (Furi and Wherrett 2003). Subsequently the Canadian government, in 1989, replaced the Post-Secondary Educational Assistance Program with the Post-Secondary Student Support Program (PSSSP). The new program allowed Indian bands and Inuit governments to apply for administrative control over the allocation of student funding supports. PSSSP introduced strict annual funding limits for each band and removed numerous categories of eligible expenses such as daycare. The program required that bands employ a clear system to prioritize and defer applications, but enabled communities to determine their own priorities. Through the early 1990s, Indian bands and Inuit governments also took over administration of a second program, entitled the University and College Entrance Preparation Program, aimed at supporting learners to upgrade their qualifications and gain admission to post-secondary education. These changes enabled Indian bands to control funding decisions while reducing eligibility to student support. Thus, the new policy framework rendered Indian governments the authority responsible for determining which funding applicants to reject (Lanceley-Barrie 2001). The federal government gesture to recognize Indigenous self-determination thus worked to control the costs of services to Indigenous peoples.

⁷⁸ Following the creation of the college system in British Columbia, the province allocated funding on a case-by-case basis. However, in the mid-1980s, the province restructured college funding, basing the allocation of dollars on the number of full-time equivalents (FTEs) within each program. As an early attempt to systematize accountability in an audit technology, FTE determinations served to financially reward schools with high enrolments and punish those with less efficiency in course delivery with funding reductions. These early initiatives to marketize education funding models prefigured later changes to come through the 1990s, as the British Columbia government again restructured education. In the 1990s, as the federal government drastically reduced transfer payments for provincially administered programs, the province again sought to develop new formulae to maximize the efficiency of adult education expenditures. Particularly, the British Columbia government restructured the FTE system to be calculated overall as opposed to program-based enrolments. The change aimed to enable institutions expanded flexibility in adapting to shifting demand for different forms of programming. While the government reduced core funding, it simultaneously expanded targeted funding pools. The targeted funding served to both offset core funding reductions and direct institutions towards stated educational objectives, such as fostering Indigenous inclusion within training regimes.

⁷⁹ Of course, it is important to note that particular sets of colonial relations produced the purportedly non-traditional character of Indigenous industrial labour was produced. As discussed briefly in chapter two, Indigenous people actively participated in the early resource economies of what would become British Columbia (Knight 1978; Galois 1993; Lutz 2008; Carlson 2010). Yet, as John Sutton Lutz (2008) discusses, changes in the labour market and regulatory environment worked to exclude Indigenous labour market participation. Indigenous people experienced exclusion from the wage economy as the technology reduced the necessary labour force and immigration decreased the need for Indigenous labour. Simultaneously, regulatory restrictions worked to suppress subsistence economies. The state extension of social welfare programs to include Indigenous people around 1970 worked alongside these other historical processes of change to increasingly relegate Indigenous people to a state of welfare dependence.

⁸⁰ The report on a regional minerals development strategy was commissioned by the Omineca Beetle Action Coalition (OBAC). Led by a Board of Directors consisting of the Northern Interior region's Mayors and Regional District Chairs, OBAC was formed in 2005 with funding from the provincial government to develop sustainable development and resiliency plans for the region in the wake of the pine beetle epidemic. The mountain pine beetle had devastated the region's forests and necessitated changes in the regional economic development strategy. The first economic development strategy released by OBAC was the *Minerals and Mining Sector Strategy* (DPRA 2008).

⁸¹ Researching the politics of the college has been a relatively enduring interest of mine. As mentioned in the introduction, the Northwest Community College has been the backdrop of much of my life. My mother worked at the college, and I taught at the college in the university transfer and adult basic education programs before leaving the college to pursue my PhD studies. After starting my PhD, I initiated a research project in collaboration with Suzanne Mills studying how unionized instructors at Northwest Community College were engaging with initiatives to indigenize the school through increasing the relevance of programming for local Indigenous peoples and developing avenues to incorporate Indigenous peoples into college governance (Mills and McCreary 2012, Forthcoming). Approaching my own PhD research, I built upon the foundation of this earlier research, examining the imbrication of regimes of industrial training and Aboriginal empowerment. I published a preliminary version of some of this work, vested specifically in the literature on the variegated nature of neoliberal reforms (McCreary 2013). This chapter extends and reformulates that argument, approaching the School of Mining not as a primarily neoliberal venture but as a composite formation that integrates colonial designs to train a labour force for extractive industries with Indigenous desires to improve the condition of their lives through gainful employment.

⁸² This First Nations Territorial Acknowledgement map includes recognition of the Inland Tlingit. Like the Tahltan, the Inland Tlingit in Northern British Columbia are formerly part of the Northern Lights College region but link to other college regions following modern transportation geographies. With communities in the area of Atlin and Tagish Lakes, the Inland Tlingit are located in the extreme Northwest corner of British Columbia and can only be reached by road via the Yukon. Thus, rather than travelling south, as the Tahltan do, the Inland Tlingit tend to travel north to the Yukon to access services. The map includes them as an Indigenous nation of Northwestern British Columbia, but the Inland Tlingit have not been formally or functionally integrated into Northwest Community College governance activities. Indeed, the text of the territorial acknowledgement provided by the college excludes the Inland Tlingit, only listing seven Indigenous nations served by the institution (Northwest Community College 2013d).

⁸³ In drawing a straight line from New Zealand to the British Columbia north, I am significantly simplifying the complex itinerary or the term bicultural. In Canada, of course, biculturalism had an early career negotiating between the British and French communities. In the 1960s, the Royal Commission on Bilingualism and Biculturalism investigated the state of biculturalism in Canada and produced recommendations “to develop the Canadian Confederation on the basis of an equal partnership between the two founding nations” (Robertson 1967, 173). Embedded in the imaginary that Canada developed as the result of the merger of the British and French colonial regimes, this notion of biculturalism silenced the role of relations between settlers and Indigenous peoples in the creation of Canada (Borrows 2002; Saul 2008). The notion of multiculturalism emerged, again as Canadian state doctrine, as an effort to articulate a broader politics of inclusion that sought to recognize difference beyond the two imagined founding nations (Taylor 1994; Kymlicka 1995). Elijah Harper, however, provided the most potent challenge to the elevation of the French and English as the twin founding colonial sovereignties of Canada, holding an eagle feather and standing alone in the Manitoba legislature to block a process of constitutional reform that failed to recognize Indigenous peoples within the dominion (Turpel and Monture 1990). In contrast, the concept of biculturalism in New Zealand centred relations between Indigenous peoples and settlers, or in local parlance Maori and Pākehā. It was this concept of biculturalism that was employed in college policy, inspired by the then college president’s PhD research based in Deakin University in Australia.

⁸⁴ For each of the seven campuses the college recognizes the nation, clan, or house whose territory the college is operating. This includes: the Haida and Haisla in relation to the Haida Gwaii and Kitimat campuses, respectively; the Tsimshian Ganhada clan and Laxibuu in Prince Rupert and Terrace, respectively; the Witsuwit’én Gidimt’enyu and Likhsilyu clans in Smithers and Houston, respectively; and finally the Gitksan house of Nikat’een (which the college mistakenly identifies as a clan) (Northwest Community College 2013d).

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