

Speaking with Authority: Gender and Indigenous Politics in the Mount Polley Mine
Disaster

by

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BA., from Thompson Rivers University, 2016

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Abstract

This thesis explores the role of authority and how Indigenous people have been gravely impacted throughout the 2014 Mount Polley Mine Disaster. Through critical engagement of political theory, environmental racism, and Indigenous Nationhood, I offer an analysis of the disaster that asks: How do we construct, accept, and uphold notions of authority in the Mount Polley Mine Disaster? I answer this by conducting a discourse analysis informed by Kwakwaka'wakw geographer Sarah Hunt's *colonialscape*, Environmental historian Traci Brynne Voyles's *wastelanding*, and Italian philosopher Giorgio Agamben's spatiolegal concepts of the *state of exception* and *bare life*. To conclude, I will provide an alternative understanding of authority that is grounded in Indigenous feminist approaches that can better represent what authority should look like.

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Dedication

For my mother zagcheenAksht, the one who walks along the rivers edge, for those who walked there before, and those who will in the future.

Introduction

The first time I ever wrote about the Mount Polley Mining Disaster was in the third year of my undergraduate degree at Thompson Rivers University (TRU). I was taking a cross-listed history/political science course that focused on communism and the environment. This course had an online blogging component as a way to measure participation. This meant there was a certain amount of blog posts students had to do. One of them was to blog about some environmental issue locally, this could have been something covered in the news as well as events or talks given on campus. The idea was to encourage students to participate in and report back on local issues to everyone reading the blog. I seen a notice for a presentation on Mount Polley put on by the TRU law program and so I decided to go with my mom.

The speaker, Jacinda Mack (Secwepemc and Nuxalk), talked about the ongoing efforts to hold the government and the province accountable for the breach in the Mount Polley mine tailings pond, throughout she kept circling back to themes of accountability. My blogpost itself is very short and did not do much in terms of critically analyzing the colonial context from which this disaster emerged. Rather I just gave a short two-paragraph summary of how this disaster is a loss that cannot be quantified and that it exemplified the human population's destructive and unsustainable behaviour and then I linked a video that Mack had shown to kick off the presentation.¹ The most memorable

¹ Shiannamc. "The Mount Polley Mining Disaster Effects Presented By Jacinda Mack." *Wordpress*. March 3, 2015. <https://communismandenvironment.wordpress.com/2015/03/03/the-mount-polley-mining-disaster-effects-presented-by-jacinda-mack/?fbclid=IwAR28LtxOPIFVIwfNwBxw4uqB4-1pWFOLOLY1xWUPeCf2V7CUSSWzL1i0ICQ>

part of this evening is not captured in the blog post, but I can still remember it now. It happened when Mack played the video. The video itself was about the transboundary effects of the disaster on fishing (both commercial and traditional) and waterways that extend beyond the B.C. border into Alaska. Participants, non-Indigenous fishery workers and Indigenous people, talked about the issues that B.C. mines presented across borders. They hammered home the grim reality that they see no economic benefit but are still subject to all the environmental risk that will cascade if these other Northern mines fail like Mount Polley did.²

Midway through the video they roll footage of the breach itself, and it was devastating. I remember reading the news of the breach when it happened but, in photos and descriptions I could never get a sense of the scale. It just seemed like a lot. Truthfully it was a lot and it was incredibly overwhelming in that moment as one of the few Indigenous people sitting in a packed room hearing and seeing that footage of the disaster. I felt an intense sense of sadness and grief not only for the fish but also for my people. I come from a Nlaka'pamux community that sits on the confluence of two major rivers, the Thompson and the Fraser, so fishing is who we are. I remember fishing every summer, fishing spots are maintained and passed down through familial lines and everyone I knew would drop everything for 2-3 weeks in the summer to fish for our winter stores. However, the summer the breach happened many of those in my community, including my own family chose not to fish because we had no idea what the condition of the Fraser was post-breach. It is with these feelings that motivate this inquiry

² Salmon Beyond Boundaries, "Xboundary" February 9 2015. Vimeo. 6:13. <https://vimeo.com/119170132>

into the nature of authority and a lack of accountability in the disaster because the community I come from wonders this every time Mount Polley is mentioned in the news somewhere.

Chapter 1: Making Exceptional Space: Authorizing the State of Exception

Authority

The 2014 Mount Polley Mine disaster is the one of the worst environmental disasters in Canadian history. The disaster refers to the breach of over 21 million cubic metres of wastewater into the surrounding environment and waterways. This wastewater was left over from the processing of copper and gold ore in the central interior of British Columbia, and when it breached into the Fraser River system it caused untold harms to all living things in the area.¹ Despite these tangible harms caused, no fines have been levied and no charges have been laid against the Mount Polley Mining company years later,² leading us to ask: How do we construct, accept, and uphold notions of authority in the Mount Polley Mine Disaster? Authority's representation and recreation in the disaster is the central thread of this project because of the discursive and material reverberations it has throughout the settler state. In the process of making authority, what other voices are silenced? The question of authority as a concept and a practice constitutes a central theme in the study of politics and will be an organizing concept throughout this inquiry into the Mount Polley Mine Disaster.

Authority, as a concept, is primarily informed by Western political theory, which too often limits the notion of legitimate authority to a state level at the expense of

¹ Judith Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," *Corporate Mapping Project*. (August 2018), 6. https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2018/08/CCPA-BC_TailingsDamSpills.pdf

² Garth Lenz, "In Photos: The Canadian Mining Boom You've Never Seen Before," *The Narwhal*. October 20 2017. <https://thenarwhal.ca/photos-canadian-mining-boom-never-seen-before/>

individuals within that state, as seen in early contract theorists of the Enlightenment era. This results in a statist, or state-centric, emphasis in most theorists' political writings, where the limits of the state are discussed at length but the very legitimacy of the state itself, as the primary authoritative ruling structure, is not questioned or interrogated, as seen in the works of John Locke, Jean-Jaques Rousseau, and Thomas Hobbes.³ Following the work of contemporary scholars critical of social contract theory such as Yasmeen Abu-Laban and Abigail Bakan, Charles Mills, and Carole Pateman, I contend that the predominance of state-centric theory in political science more generally, and political theory more specifically, allows for the normalization of colonial and imperial imperatives to state formation.⁴ Indeed colonial and imperial expansion is seen as a necessary element in the development to modernization that, in turn, justifies rampant violence in the name of stability.⁵ Due to the tenuous conditions that states emerge from, they need to engage in a constant process of producing and legitimating their own authority;⁶ these conditions include establishing a government, political and economic

³ John Locke, *Second Treatise of Government*, ed. C.B. McPerson, Hackett Publishing Co., 1980); Jean-Jaques Rousseau, *The Social Contract and the Discourses*, trans. G.D.H Cole. (New York: Everyman's Library, 1993); Thomas Hobbes, *Leviathan*, ed. Marshall Missner (New York: Pearson Longman, 2008).

⁴ Yasmeen Abu-Laban and Abigail Bakan, *Israel, Palestine and the Politics of Race: Exploring Identity and Power in a Global Context*. New York: Bloomsbury: 2011; Charles W. Mills, *The Racial Contract*. Ithaca: Cornell University Press: 1997; Carole Pateman, *The Sexual Contract*. Stanford, Stanford University Press, 1988; Chris Andersen, "Métis": *Race, Recognition, and the Struggle for Indigenous Peoplehood*, Vancouver: University of British Columbia Press, 2014; Jodi Byrd, *Transit of Empire: Indigenous Critiques of Colonialism*, Minneapolis: University of Minnesota Press, 2011; Glen Sean Coulthard. *Red Skin White Masks: Rejecting the colonial politics of recognition*. Minneapolis: University of Minnesota, 2014; Eve Tuck and K. Wayne Yang, "Decolonization is not a metaphor," *Decolonization: Indigeneity, Education, & Society* 1. No. 1: 1-40.

⁵ Thomas Hobbes, *Leviathan*, ed. Marshall Missner (New York: Pearson Longman, 2008), 120-121.

⁶ Heidi Kiiwetinepinesik Stark, "Criminal Empire: The Making of the Savage in a Lawless Land," *Theory & Event* 19, no. 4 (2016). <https://muse.jhu.edu/article/633282>

expansion, and maintaining a monopoly on violence.⁷ The underlying (if downplayed) precarity of the state is significant for this project because it highlights the ways in which states are not as permanent and stable as they present themselves to be. Indeed, as political theorist Karena Shaw asserts “[states] must produce, and reproduce, their sovereignty, in part through convincing others—their citizens, other states, global institutions—of its existence and legitimacy”⁸ to ensure continual state supremacy.

The effect of this re/production is a discourse that naturalizes the state as integral for societies to flourish, which, I argue, is completely false or at the very least extremely limiting. Shaw states “we do not have sovereign states because they are inevitable or necessary, but because their inevitability and necessity have been produced; we’ve been and must continue to be convinced of them.”⁹ The state as a naturally occurring structure emerges from a deliberate and intentional move to make it so via a variety of venues. In particular, the construction of state necessity is intimately interwoven with the production and disciplining of what constitutes proper knowledge, thus creating a self-sustaining cycle that upholds statist notions of authority.¹⁰ Drawing attention to how these overarching claims to authority rely on and reproduce particularly problematic parts of

⁷ Robert H. Bates. *Prosperity and Violence*. (New York: W.W. Norton & Co Inc, 2001).

⁸ Karena Shaw. *Indigeneity and Political Theory: Sovereignty and the limits of the political* (London: Routledge, 2008), 39.

⁹ Shaw. *Indigeneity and Political Theory*, 39.

¹⁰ Shaw. *Indigeneity and Political Theory*, 59.

sovereignty allows us to question how they operate to constrain or undermine political possibilities for the futurity of Indigenous politics.¹¹

In settler colonies in particular, these notions of authority are continually challenged by Indigenous communities on that land, sometimes through other registers like jurisdiction discourse. This is significant because while authority can be unilaterally claimed from a top down assertion as noted in Hobbes writings¹², jurisdiction as the ongoing exercise of Indigenous law on their land changes the very substance of what we think authorizes law. Instead of dominion over, it is the ongoing presence and care for the land that gives Indigenous people's jurisdiction.¹³ Criminologist Shiri Pasternak identifies the source of contention between the state and Indigenous Nations as: "the conflict is over *the authority to have authority*."¹⁴ Pasternak asserts that it is through jurisdiction that we can question "how authority is established, exercised, and contested in settler colonies."¹⁵ This is particularly important for the Canadian context as much of the nation-state is understood by Indigenous folk to be built on the unceded and unsurrendered lands

¹¹ Shaw. *Indigeneity and Political Theory*, 59.

¹² Hobbes, *Leviathan*, 120.

¹³ Shiri Pasternak, *Grounded Authority: Algonquins of Barriere Lake Against the State* (Minneapolis, Minnesota: University of Minnesota Press, 2017), 4-5.

¹⁴ Pasternak, *Grounded Authority*, 2.

¹⁵ Pasternak, *Grounded Authority*, 3.

of Indigenous people.¹⁶ Indeed “the ongoing exercise of Indigenous jurisdiction over land, resources, and bodies on their homelands today reveals the continuity of this suspended space between settler assertions of sovereignty and the vitality of Indigenous territorial jurisdiction.”¹⁷ In light of these gaps between assertions of sovereign authority and actual jurisdiction on the ground, the 2014 Mount Polley Mine Disaster can be understood as a manifestation of this inter legal space identified by Pasternak, which as a term captures the tension between Canadian assertions of sovereignty and the multiplicity of Indigenous governance systems within their unique territorial spaces.¹⁸ When considering the scope of the disaster and the lack of care taken by the perpetrators of the breach, leading up to and following it, I identify the role that authority plays in reconstituting state structures that operate to further marginalize Indigenous Nations in their own territories. This project seeks to ask: How do we construct, accept, and uphold notions of authority in the Mount Polley Mine Disaster? In the process of making authority, what other voices are silenced, and with that, what are the effects on matters of governance?

To understand the ways that authority is constructed and maintained in the Mount Polley Mine Disaster requires a discussion of how notions of power and authority operate

¹⁶ A note on terminology. Throughout this project I use Indigenous people’s and Indigenous folk interchangeably as a more inclusive term. I also use it interchangeably with community’s to be recognizant of Indigenous people who may live outside of their home community who are also effected by the emotional, cultural, and economic impacts of the disaster. Furthermore, I sometimes use First Nations as this is the language that is most prevalent in the source material which I am pulling from. This is no way meant to exclude those Indigenous folk who are excluded by colonial laws surrounding status and blood quantum.

¹⁷ Pasternak, *Grounded Authority*, 4.

¹⁸ Pasternak, *Grounded Authority*. 7.

on a theoretical level first. Ojibwe-Nehiyaw scholar Joshua Whitehead acknowledges that theory is so fundamental to decolonial strategies but it is one that is made by and for the few. With this in mind, I seek to follow in their footsteps and “take theory, digest it, but then regurgitate it in a way that’s accessible” beyond the few with the privilege and access to these theories.¹⁹ In order to do this, I utilize a trio of theorists including Kwakwaka’wakw geographer Sarah Hunt, Environmental historian Traci Brynne Voyles, and Italian philosopher Giorgio Agamben. In particular I draw upon Hunt’s *colonialscape*, Voyles’s *wastelanding* and Agamben’s spatiolegal concepts of the *state of exception* and *bare life*.²⁰ Hunt and Voyles’s concepts meshed with Agamben’s iteration of state power articulated through these concepts serves as a foray into how sovereign authority extends into everyday life. This chapter gives a brief overview of environmental racism to ground the following discussion of my theoretical approach and how the three theories can be seen as tools to better understand the ways in which authority is being upheld through the disaster. Following the methods section, I will give an overview of Agamben’s state of exception and bare life, to then give a brief review of how Agamben’s work is utilized by other scholars in relation to Indigenous peoples in Canada and the United States. Understanding Agamben and how his theory has been applied to Indigenous contexts is necessary as I modify and expand the original definition and

¹⁹ Joshua Whitehead, Interview with Adrienne Keene and Matika Wilbur, “Indigiqueer,” All My Relations Podcast, podcast audio, April 3, 2019. <http://www.allmyrelationspodcast.com/podcast/episode/47547617/ep-6-indigiqueer>

²⁰ Giorgio Agamben, *State of Exception* trans. Kevin Attell. (Chicago: The University of Chicago Press, 2005); Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. (trans. Daniel Heller-Roazen. (Stanford: Stanford University Press, 1998).

structure of 'bare life' to critically assess the official coverage and documentation of the Mount Polley Mine Disaster, specifically in order to draw out how they reconstruct statist notions of authority in later chapters.

Why Mount Polley? Why Indigenous communities? Environmental racism

Prior to discussing the theories of Agamben, Hunt, and Voyles, the concept of environmental racism is necessary to justify the focus on Indigenous people's throughout this disaster, even though this disaster did also effect other non-Indigenous people's. I would like to make clear the intent behind focusing only on Indigenous communities and their experiences of the Mount Polley Mine Disaster; this event can and should be understood as a continuation of colonization, so understanding it as a colonial problem rather than any other kind of problem puts Indigenous people's experiences as the motivator for the project, rather than an afterthought. This engagement with theory and the framing as an ongoing colonial project is intentional, as I want the project to highlight the ways in which Indigenous folk are continually marginalized in their own spaces in the wake of environmental disasters. This focus necessitates the inclusion of environmental racism as a framing theory to bring all these things into focus.

Environmental racism is a concept that illuminates the nuances of environmental degradation in relation to marginalized communities. Simply put, "environmental racism...occurs whenever communities of color [sic] are disproportionately exposed to or

deliberately targeted for environmental harms.”²¹ These harms can be a whole host of things including, “polluted air, water, soil, changing climate, accelerating industrialism, and so on” that are “disproportionally born by racially and economically marginalized communities.”²² This concept is significant because it brings attention to the insidious parts of modern societies that operate implicitly to further marginalize Indigenous and Black communities. This means directing harm or otherwise disadvantaging marginalized communities by way of “preventing them from meeting their basic needs and rights related to employment, income, justice, housing, food security, and other resources.”²³ Ingrid R. G Waldron claims that solely focusing on individual cases of environmental injustice does not reveal the subtle racist ideologies that underpin the everyday operations of environmental policy in these governmental and social institutions.²⁴

Ultimately, environmental racism is state-sanctioned violence “perpetuated upon lands, bodies, and mind of Indigenous and Black communities through decision making processes and policies that have their roots in a legacy of colonial violence in Canada and other white settler nations.”²⁵ Indeed this form a racial and gendered violence is reconstituted in such a way that dehumanizes and bring harms to communities that are

²¹ Traci Brynne Voyles, *Wastelanding: Legacies of Uranium Mining in Navajo Country* (Minneapolis: University of Minnesota Press, 2015), 6.

²² Voyles, *Wastelanding*, 6.

²³ Ingrid R. G Waldron, *There's Something in the Water: Environmental Racism in Indigenous and Black Communities*. (Halifax: Fernwood Publishing, 2018), 5.

²⁴ Waldron, *There's Something in the Water*, 3.

²⁵ Waldron, *There's Something in the Water*, 37.

already vulnerable from ongoing colonization.²⁶ This process of environmental racism identifies what Waldron calls, a largely under-theorized issue wherein already marginalized populations are subject to environmental injustice because states and industries view them “as inferior, lacking in value, and therefore expendable and disposable.”²⁷ As I discuss later, building on my main theoretical interlocutors (Hunt, Voyles, and Agamben), this implicit assumption results in very serious consequences felt by Indigenous communities.

The primary theory I’ve identified as a quintessential example of authority in the Western canon is Agamben’s state of exception and bare life but as noted previously, his work is not easily applied to settler colonial contexts. Agamben’s concepts are useful however, for articulating how sovereign power extends into everyday life despite the gaps identified by secondary literature explored later. While we can dismiss some of the parts of Agamben that don’t take into consideration the full view of the issue, his work is still useful for the ever expanding nature of sovereign power in settler colonial states. Placing sovereign power in conversation with the tacit techniques of environmental racism sets the stage for how Agamben’s work can be expanded to be useful more contexts.

Theoretical approach: Constellations

The work that I do is based on piecing together disparate elements in the fields of Indigenous Nationhood, environmental racism, and political theory. A useful concept that

²⁶ Waldron, *There’s Something in the Water*, 5.

²⁷ Waldron, *There’s Something in the Water*, 9.

has informed this process is Nishnaabeg scholar Leanne Betasamosake Simpson's discussion of constellations. A constellation is a collection of stars that in Nishnaabeg thought create doorways to other worlds by working together to reveal theory, story, and knowledge both in the night sky and through time.²⁸ These constellations are place-based and land-based relationships that make up the foundation of Indigenous thought.²⁹ Simpson states that this why land-based practices generates Indigenous theory because for Indigenous folks "being on the land is a highly intellectual practice that is a living interaction between heart, mind, and movement."³⁰ From this we can see that constellations can only exist relationally, else wise they are just individual stars. Only through individual stars, thoughts, and people, coming together can they collectively create doorways to new ways forward.³¹ This understanding of relationality informs the ways in which I have envisioned the theories of Hunt, Voyles, and Agamben coming together to create a doorway into critically assessing the Mount Polley Mine Disaster.

With my own research, I wish to orient myself in a less individual-centred use of Agamben's bare life, and more towards an approach that can take into account the complex web of relationships that exist in Indigenous ways of knowing. My approach would maintain the overall theory of the state of exception and only modify the scope of what is considered 'politically relevant' life in Agamben's concept of bare life. I do see

²⁸ Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance*. (Minneapolis: University of Minnesota Press, 2017), 212.

²⁹ Simpson, *As We Have Always Done*, 213.

³⁰ Simpson, *As We Have Always Done*, 215.

³¹ Simpson, *As We Have Always Done*, 215.

value in the apparatus that the state of exception brings structurally to this project but bare life would need to be expanded to be applicable to the Mount Polley Mine Disaster. In order to achieve this, I will blend Sarah Hunt's *colonialscape*³² and Traci Brynne Voyles's *wastelanding*³³ with Agamben's concepts of the state of exception and bare life; this will enable me to address the gaps concerning the environmental and bodily impacts of bare life. In particular, I emphasize not only the impacts on Indigenous people but also their relationships with the land and waterways. Understanding Hunt's and Voyles's concepts will help make these connections more clear where Agamben's own theories have failed to do so. The state of exception and bare life make up the mindset that produces the material conditions that manifest in Hunt's *colonialscape* and Voyles *wastelanding*. This manifestation will help illuminate the ways in which authority is constructed, accepted, and upheld throughout the disaster.

Agamben's spatiolegal concept, called the *state of exception*, describes a complex topological process where the inside and outside of a political order become indistinguishable from each other, creating a zone of indistinction. The state of exception and bare life are enacted and maintained by law to produce these zones of indistinction, where individuals become no longer politically relevant or, at the very least, their lives are solely defined by biological existence with no guarantees of their quality of life. The sovereign ban constituted by the state of exception creates the category of bare life which "radically erases any legal status of the individual, thus producing a legally unnameable

³² Sarah Hunt, "Law, Colonialism and Space," in *Witnessing the Colonialscape: light fires of Indigenous legal pluralism*. (doctoral dissertation, Simon Fraser University, 2014).

³³ Voyles, *Wastelanding*.

and unclassifiable being.”³⁴ Agamben’s focus on the possessive individualism of Man means his work explicitly ignores race and gender dynamics that are serious determinants of being rendered bare life. In order to combat this limitation, I place his work in conversation with Hunt and Voyles who both explicitly centre gender and Indigeneity in their work regarding ongoing processes of colonization in North America. Through this, Agamben’s framework can be transformed into something applicable to the settler colonial context generally, and the Mount Polley Mine Disaster specifically, a disaster that occurred in what is colonially known as central British Columbia.

At first glance, there are many parallels between Agamben’s state of exception and bare life when read alongside Hunt’s *colonialscape*. The first similarity comes from the pervasiveness of the legal system in both thinker’s work. The legal system in Agamben and Hunt shapes all aspects of Indigenous lives, both explicitly and implicitly in Canada. The basis of Hunt’s concept is drawn from representations of landscapes, where “a particular physical space and its cultural overlay – may be understood as expressions of cultural, political and economic power which are central to local and national identities.”³⁵ In the same way that a landscape functions to create a complete view or image of a particular space, *colonialscares* operate similarly to create the appearance of Canada as somehow ‘true.’ In the process, these colonialscares cover other spatial relations and representations that existed prior to Canada.

³⁴ Agamben, *State of Exception*, 3.

³⁵ Hunt, “Law, Colonialism and Space,” 71.

With the *colonialscape*, Indigenous people were physically displaced as well as having their lands, the anchor of their “cultural, political and legal systems of meaning... rendered invisible or inconsequential.”³⁶ The colonialscape highlights the importance of land and waters to Indigenous knowledge systems and overall wellbeing in relation to law, and how that is not included in Agamben’s own theorization of bare life or the state of exception.

Similarly, Voyles’s concept, *wastelanding* prioritizes the material impacts of the conditions created by colonial mindsets of the colonialscape. Voyles states that “*wastelanding* takes two primary forms: the assumption that nonwhite lands are valueless, or valuable only for what can be mined from beneath them, and the subsequent devastation of those very environs by polluting industries.”³⁷ It involves remaking Native lands as settler home and it relies on the exploitation of environmental resources, as well as a deeply held belief of that land “as either always already belonging to the settler—his manifest destiny—or as undesirable, unproductive, or unappealing: in short, as wasteland.”³⁸ *Wastelanding* highlights the ways in which destroying the environment through mining does not just mean destroying the ecosystem. It also means to destroy everyone within proximity of these spaces, with the end result being a direct attack on Indigenous lands, bodies, and waters. *Wastelanding* not only destroys materially but it also “means to wasteland Navajo worldview, epistemology, history, and cultural and

³⁶ Hunt, “Law, Colonialism and Space,” 72.

³⁷ Voyles, *Wastelanding*, 10.

³⁸ Voyles, *Wastelanding*, 7.

religious practices.”³⁹ All of which are integral to the wellbeing of Indigenous people and have been since time immemorial.

Bringing together Agamben’s bare life with the colonialscape and wastelanding allows for a more inclusive window into Indigenous experiences with colonialism. By taking into account the ways in which colonial structures seek to suppress and destroy Indigenous relations to their environment, we can fully understand the impacts made by disasters like the Mount Polley Mine Disaster. Accounting for Indigenous experiences with colonialism through the colonialscape and wastelanding, means Agamben’s theory can better take account for the holistic experience of colonialism that includes environmental degradation and pollution of Indigenous lands, bodies, and waters.

The state of exception gives the sovereign the power to decide on which life can be killed with impunity which transforms “into the power to decide at which point which life ceases to be politically relevant.”⁴⁰ Coupled with Hunt’s colonialscape that suppresses Indigenous systems of meaning and, Voyles’s wastelanding that justifies the extraction of Indigenous lands and the unhindered pollution in Indigenous lands and bodies, creates a conceptual space wherein Indigenous kinship to the environment is no longer separate from their bodies. The constellation of ideas that emerges between the three concepts illuminate the colonial processes that render Indigenous communities, living in relative harmony, with vibrant ecosystems to bare life, bare land, and bare waters. This constellation includes their intertwined relations with lands and waters, a

³⁹ Voyles, *Wastelanding*, 11.

⁴⁰ Agamben. *Homo Sacer* 142.

relation that dates back to time immemorial, and produces spaces without history or meaning to justify their exploitation.

Expanding Agamben's framework to apply beyond the individual to include other forms of life (i.e. nature) illuminates two major aspects missing from his original theory. The first is how Indigenous webs of kinship extend beyond the category of the human to include natural features such as lands and waterways. The other is how this narrow colonial mindset is a necessary step to justify the logic that manifests in the systematic/systemic suppression of Indigenous ways of knowing and, the unfettered dumping of toxic materials into Indigenous lands, bodies, and waters. Hunt's *colonialscape* specifically helps highlight a portion of this process by addressing how Indigenous legal orders are actively suppressed by Canadian ones in order to justify the exploitation of Indigenous spaces. Voyles' *wastelanding* is necessary to understand the material effects of these mindsets that make spaces pollutable, and the arbitrary nature of the way these spaces are demarcated as pollutable or not. The narrowness of Agamben's theorization of bare life (and the state of exception that produces it) requires Hunt and Voyles' concepts to fully account for the full impacts of the disaster on Indigenous lands, bodies, and waters that are taken for granted in the official narrative.

With the inclusion of Indigenous connections to land and waterways into Agamben's state of exception and bare life, a fuller understanding of the scope of the Mount Polley Mine Disaster is able to come to fruition in this chapter. The lens created here acknowledges the radical legal and political erasure of Indigenous folk, with no guarantee of their quality of life, which includes their intimate relations with lands and

waters, a relation that dates back to time immemorial, and produces spaces without history or meaning to justify their exploitation.

Drawing out this aspect of bare life to include Indigenous relations with the environment, means Agamben's structural observations regarding the state of exception can be applied to more than individuals who are abandoned by the law. This theoretical lens helps illuminate how and why official reports are so inadequate in capturing the fullest extent of the disaster. For Indigenous communities along the waterways, the disaster was a catastrophic event with long lasting, unknown impacts on the rivers and fish, which constitute major lifelines of the people culturally, socially, and economically. To account for these kinship systems, the next section will give a more in depth discussion of Agamben's theory pulling the central concepts out through a close reading of his texts followed up with an exploration of the secondary literature that is relevant to conversations of colonialism, imperialism, and Indigenous peoples.

Agamben: the state of exception and bare life

Agamben's *Homo Sacer: Sovereign Power and Bare Life* (1998) and *State of Exception* (2005) are two separate texts written several years apart, but together they contribute to his broader political project of exploring the *state of exception*. I see the state of exception and bare life as two inseparable concepts, as two parts of a whole, because they inform and interact with one another to strengthen the absolute authority of the state. Simply put, Agamben's spatiolegal concept called the *state of exception* produces the phenomena of *bare life*. Agamben describes the state of exception as the expansion of

war time powers into the civil sphere, that also suspends individual civil liberties in the name of national security in times of emergency.⁴¹ Bare life, explained through the experiences of Jewish people in Nazi concentration camps located in WWII Europe, is where human beings are completely deprived of their rights that no atrocities committed against them could be considered a crime.⁴²

The state of exception is a complex topological process, where the inside and outside of a political order become indistinguishable from each other. This happens when the state issues a state of emergency that strips citizens of their individual rights, reducing them to the same status of those aliens or criminals taken into custody. The individual legal status's of all subject to the state is suspended for an undisclosed time into the future that eventually becomes the status quo on that society. Meaning for all those subject to the state, they become unsure if they are caught inside or outside the political order.⁴³ This act blurs the lines between a governance model that favours limits on state power and, a more authoritarian model creating the zone of indistinction between the two. Ultimately, "in time the two models end up merging into a single juridical phenomenon that we call the *state of exception*."⁴⁴ The zone of indistinction captures within it individuals who cease to matter politically meaning, hereby they can be killed without punishment or mourning; this existence outside of the realm deemed to be political is

⁴¹ Agamben, *State of Exception*, 5.

⁴² Agamben, *Homo Sacer*, 171.

⁴³ Agamben, *State of Exception*, 3.

⁴⁴ Agamben, *State of Exception*, 5

called bare life. Agamben's argument with the state of exception and bare life is that this exception to the political order has the danger to become the norm.

Agamben's theorizations are significant because they articulate the work of the state of exception as a foundational move within Western political history, whereby "Western politics first constitutes itself through an exclusion (which is simultaneously an inclusion) of bare life."⁴⁵ Political scientist, C. Heike Schotten argues that "this is precisely the analysis on which Agamben bases the exceptional character of sovereignty. Agamben argues that bare life is always included within the polis, albeit only by means of an exclusion—it is the exception to politics that simultaneously sustains and facilitates it."⁴⁶ Simply put, by excluding particular individuals or groups of people, the sovereign is simultaneously claiming (or including) them under their rule as bare life.

The normalization of the state of exception occurs very slowly over time. The exception, where bare life is located, "gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoe*, right and fact enter into a zone of irreducible indistinction." With this, Agamben illustrates how the exclusion of bare life simultaneously captures it within the political order, which ultimately constitutes the state of exception making "the hidden foundation on which the entire political system rested."⁴⁷ As a theoretical tool, the state of exception captures the expansive nature of sovereign power in the modern day.

⁴⁵ Agamben. *Homo Sacer*, 7.

⁴⁶ C. Heike Schotten. *Queer Terror: Life, Death, and Desire in the Settler Colony* (New York: Columbia University Press, 2018). 7.

⁴⁷ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 9.

The strength of Agamben's theory comes from the unique aspects of the theory that give it an enduring presence in the field. The 'exception's' subtle nature allows for it to become the norm in any given political context through a manipulation of the existing system. The exception does not break from the rule that governs society; rather, justified in times of emergency, the rule of law suspends itself to create space for the exception to emerge and maintain itself in relation to the existing political order.⁴⁸ This means "the state of exception is...not so much a spatiotemporal suspension as a complex topological figure in which not only the exception and the rule[,] but also the state of nature and law, outside and inside, pass through one another."⁴⁹ In this case, the dominant political order is stretched and twisted, but not transformed completely into something new, since it requires certain structural and institutional properties to maintain the illusion of a lawful, limited political system. In this zone of indistinction, called the state of exception, the sovereign maintains the authorization of its power given legitimately by the political order, but once in the zone, the original limits on power put in place by the system no longer apply. This constitutes the establishment of the state of exception.

The state of exception is maintained through very subtle and subversive actions to keep itself hidden making it stronger and impervious to backslides into previous iterations of society where their sovereign power is limited. It manages to do this without revealing its true nature to its' subjects and objects. As time goes on, in order to maintain power and authority the sovereign revisits and redraws the threshold of indistinction

⁴⁸ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 18.

⁴⁹ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 37.

continually, blurring the lines between outside and inside, between exclusion and inclusion, creating a fluid and mostly invisible determination of what life becomes excepted in law.⁵⁰ By revisiting these boundaries and making them less identifiable the sovereign is able to ensure that when they do cross the line into illegality, they can do so without any ramifications. It's important to note, in this discussion of law and illegality, that in the state of exception, the law does not mean justice; rather it is the will of the sovereign wrapped in the illusion of a 'just' legal system. Even though the sovereign has absolute power and authority over individuals, this does not necessarily mean that the state of exception is in a state of lawfulness or lawlessness. Rather, it is "a space devoid of law [where]...all legal determinations—and above all the very distinction between public and private—are deactivated."⁵¹ Furthermore, acts that take place in the state of exception "are neither transgressive, executive, nor legislative, they seem to be situated in an absolute non-place with respect to the law."⁵² Simply put, the law in the state of exception is only motivated by what the sovereign wishes to be seen as law; in this sense, state law is an empty letter creating a rule *by* law instead of a rule *of* law system. Even if state law is acknowledged to have an empty centre, these laws created by the sovereign still carry the full force of law in the state of exception.⁵³

⁵⁰ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 27.

⁵¹ Agamben, *State of Exception*, 50.

⁵² Agamben, *State of Exception*, 51.

⁵³ Agamben, *State of Exception*, 5.

The pervasiveness and staying power of Agamben's theory, I argue, comes from the fact that the state of exception, and the concept itself, are defined by a degree of vagueness. Agamben claims "in truth, the state of exception is neither external or internal to the juridical order, the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other."⁵⁴ A cursory glance might assume the state of exception to be a weak concept, precisely because it does not nail down a lot of specific elements required to operationalize this state. On the other hand, the argument can also be made that the theory does not diminish the power that the sovereign is able to wield, rather it illuminates it. The state of exception makes up this zone of indistinction where the sovereign's power and authority are able to concentrate and expand. It is this vagueness, that defines the state of exception, that captures the state of continuous unknowing of those excepted into bare life.

An essential element of the state of exception is the political space that it creates, namely bare life. As discussed earlier, the state of exception is not the chaos that precedes the order, but rather it emerges from the suspension of particular legal orders, wherein the sovereign still operates with the force of law. When someone is made into the state of exception, they are not simply excluded, for they are literally taken outside the political order by the sovereign committing a sovereign act.⁵⁵ Their exclusion does not mean that the sovereign ceases to exercise control over them. Their exception from the political

⁵⁴ Agamben, *State of Exception*, 23.

⁵⁵ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 17-8.

order is an act of that sovereign's authority to simultaneously abandon and bind the living to the law.⁵⁶ "The life caught in the sovereign ban is the life that is originally sacred—and, in this sense, the production of bare life is the ordinary activity of sovereignty."⁵⁷ This ordinary act of sovereignty has dire consequences for those confined to the station of *homo sacer* otherwise known as bare life. "*Homo sacer* (sacred man), [he] who *may be killed and yet not sacrificed*...[is] an obscure figure of Roman law, in which human life is included in the juridical order solely in the form of its exclusion (that is, of its capacity to be killed)"⁵⁸ The death or sacrifice of those designated to be *homo sacer*, an embodiment of bare life, are deigned to be deaths not worth mourning. By rendering the deaths of these individuals as insignificant, their lives are also deemed disposable, allowing for deplorable conditions to permeate the spans of their lives.

Agamben posits that human life that has been banned by the sovereign "is not... simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable." The lack of clarity within this space is particularly felt by those captured in it; indeed, from the perspective of the individuals banned, "it is literally not possible to say whether the one who has been banned is outside or inside the juridical order."⁵⁹ This contributes to the unclear understandings of the political order's

⁵⁶ Agamben, *State of Exception*, 1.

⁵⁷ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 83.

⁵⁸ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 8.

⁵⁹ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 28-9.

boundaries, understandings that are, in fact, made intentionally unclear through deliberate actions by the sovereign.

The insidious result of these indeterminate spaces is the simultaneous production and reduction of individual's lives into bare life. The state of exception creates the space where the concept of bare life can thrive, which then "radically erases any legal status of the individual, thus producing a legally unnameable and unclassifiable being."⁶⁰ This is one of the most significant aspects of this theory because when the sovereign enacts a state of exception and has the absolute power "to decide on which life may be killed without the commission of homicide,...this power becomes emancipated from the state of exception and transformed into the power to decide the point at which life ceases to be political relevant."⁶¹ The sovereign's 'exceptional' act of killing with impunity becomes accepted as part of the norm. This spatiolegal paradigm is what Agamben sought to uncover in his work on concentration camps, like WWII concentration camps and modern day detention centers like Guantanamo Bay. The enduring strength of Agamben's theorizations can be summed up here:

It is almost as if, starting from a certain point, every decisive political event were double sided: the spaces, the liberties, and the rights won by individuals in their conflicts with central powers always simultaneously prepared a tacit but increasing inscription of individual's lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves.⁶²

⁶⁰ Agamben, *State of Exception*, 3.

⁶¹ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 142.

⁶² Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 121.

In this quotation, Agamben identifies the double-edged sword that make up the basis of modern political orders: the simultaneous expansion of absolutist powers at the expense of individual liberty. This double move is significant because it shows the expansive nature of state power that individuals within, and claimed by, the state are subject to.

Aporia

Agamben's concepts can be applied to multiple contexts, but in this project I focus on the settler colonial context of Canada, and North America more broadly. The use of Agamben's work in these geographic areas helps elucidate the settler state's continual mistreatment of Indigenous peoples, which is not discussed in Agamben's own work. This section will be an exploration of some scholars who have examined the limitations of Agamben's theory as it relates to marginalized Black and Indigenous communities in North America.

The potential of Agamben's work is great. It can be applied to multiple contexts to highlight the ways the state is able to unilaterally exercise power. However, there are limitations to where his work can be translated. This may be in part because the scholars that take up Agamben's theory in their own work typically take a very specific view or case study that dictates what Agamben's theorizations are appropriate for; in particular, they either focus on geographic terms or the legal position of marginalized peoples in relation to the state, or use a combination of both categories to make their assessment. While useful, these approaches neglect the ways that Agamben can be used to highlight non-traditional spaces of exception, as my own investigation into the Mount Polley Mine

disaster seeks to do. Specifically bringing attention to the ways in which Indigenous communities, including lands, bodies, and waters are rendered politically insignificant to justify the pollution of them. This is meant to bring attention to the limits of Agamben's initial theorizations in regards to categories of race and gender. This section recognizes that each of these cases of Agamben's theory utilized in the secondary literature is transformative and, informs my own interpretation of his work that I developed earlier in relation to Hunt and Voyles.

As I discuss in more detail below, Professor of English and Gender Studies, Mark Rifkin takes a combined look at how geo-political struggles are intertwined with the legal determination of Indigenous peoples in or relating to the state of exception. Political scientist Kevin Bruyneel's focuses his exploration of Agamben's *homo sacer* through Métis leader Louis Riel as an exceptional, but necessary signifier of Canadian sovereignty. Rene Dietrich goes beyond the practical application of Agamben's theory, and instead questions the basis of Agamben's framework as anti-indigenous from the start. Similarly, African American Studies Professor Alexander G. Weheliye and Political Scientist C. Heike Schotten critique the ways in which bare life is based on the assumption that all subjects have been granted equal access to the category of the human. Both scholars reveal the shortfalls that Agamben's work carries in reproducing European exceptionalism, rendering invisible the crimes of colonization, conquest, and chattel slavery, crimes that have take place outside the bounds of Europe. All of these scholars pick up strands from Agamben's work on the state of exception and bare life, to breathe

life into various contexts that have been neglected in Agamben's original iteration of the concepts including how race, gender, the natural realm potentially fit into it.

One way of thinking through Agambenian thought is in relation to the geopolitical, seen primarily through Mark Rifkin's work. This is a very practical interrogation of the peculiarity of inside/outside when it comes to Indigenous people's relationality to both, settler assertions of jurisdiction and, inter legal forms of geographical space. Rifkin elucidates shows how Agamben's language of 'inclusive exclusion' is an apt explanation as to why Native people do not fit within existing legal structures in the United States, while maintaining that they should still fit under the jurisdiction of U.S. law as exceptional groups.⁶³ Rifkin states that "the production of national space depends on coding Native peoples and lands as exception" otherwise American sovereignty claims do not make sense.⁶⁴ This is an attempt to reconcile a national narrative that is built on the language of conquest while also acknowledging the continual existence of Indigenous tribes and nations that have not been erased from that land.

Thus, by categorizing Native populations as exceptional, the U.S. government is able to justify their authority over them, "rendering them external to the normal functioning of the law but yet internal to the space of the nation."⁶⁵ In times where significant gaps appear in the U.S. logics of law, the U.S.'s inclusive exclusive claims to

⁶³ Mark Rifkin, "Indigenizing Agamben: Rethinking Sovereignty in Light of the "Peculiar" Status of Native Peoples," *Cultural Critique* No. 73 (2009): 90. <http://www.jstor.org/stable/25619838>

⁶⁴ Rifkin, "Indigenizing Agamben," 95.

⁶⁵ Rifkin, "Indigenizing Agamben," 98.

sovereignty over Native populations appears to allow any legal and political questions to be resolved without undoing the geopolitics of the settler state.⁶⁶ Continual efforts “to locate and outline Native cultures occurs against the background of unquestioned settler-state jurisdiction,” which simply reinforces the idea that Native populations in the U.S. are simultaneously “both exceptional and as collections of individual domestic subjects.”⁶⁷ In this particular article, Rifkin argues that if we take into account the failure to capture Native peoples fully in the zone of indistinction, this “opens the state of exception to the possibility of self-determination, in which Indigenous polities cease to be axiomatically enfolded within the ideological and institutional structures of the settler-state.”⁶⁸ Here, Rifkin’s highlights the reductive and productive nature of Agamben’s state of exception as a spatiolegal paradigm. In my assessment, Indigenous folk are both limited and potentially empowered through Rifkin’s use of the exception. They are rendered external to the U.S. context while still being captured within the American legal system and subject to the state’s decisions. At the same time, Rifkin notes that Native people in the U.S. are not fully subsumed within the zone of indistinction, so there is potential for Indigenous folk to use this failure to be captured by the state, to their advantage.

Rifkin continues on this line of thinking in another article titled “On the (geo)politics of belonging: Agamben and the UN Declaration of rights on the Indigenous

⁶⁶ Rifkin, “Indigenizing Agamben,” 106.

⁶⁷ Rifkin, “Indigenizing Agamben,” 105.

⁶⁸ Rifkin, “Indigenizing Agamben,” 115.

peoples.” Rifkin utilizes Agamben’s theory to discuss the U.S. government’s classification of Indigenous peoples and their lands as exceptions, while still subject to their sovereign power, highlighting a tension between settler jurisdiction over Indigenous people and the legal geography of tribal sovereignty present in the U.S. Rifkin says “the state seeks to resolve this running legitimacy crisis by, in various ways, repudiating the existence of Indigenous polities as ‘distinct peoples.’”⁶⁹ This categorization illuminates how the state is ill-equipped to deal with the notion of Indigeneity since Agamben’s (and the state’s) assumptions are that the only way to peoplehood is through the state, when in reality Indigenous nations have long existed outside/beyond Western state formations.⁷⁰ However, when looking at the geopolitical aspect, the “‘zone of indistinction’ suggests this is precisely the situation faced by Indigenous peoples, whose territories remain claimed as part of the ‘domestic’ space of the states that enclose them.”⁷¹ This is a zone of indistinction because Indigenous people are made exceptions to the law on their own lands. In other words, my contention is that while Agamben’s theory works geopolitically, it does not work as well when confronted with the notion of Indigeneity-without-the-vehicle-of-statehood because Indigeneity is not limited to state recognition for their distinct status of peoplehood. Rifkin’s work moves through the apparatus of the state to discuss how Indigenous existence poses a unique disruption of colonial notions of

⁶⁹ Mark Rifkin, “On the (geo)politics of belonging: Agamben and the UN Declaration on the Rights of Indigenous Peoples,” *Settler Colonial Studies* (6)4 (2016): 341 <https://doi.org/10.1080/2201473X.2015.1090527>

⁷⁰ Rifkin, “On the (geo)politics of belonging,” 343

⁷¹ Rifkin, “On the (geo)politics of belonging,” 346

state jurisdiction. In this way, Rifkin illuminates that the apparatus of the state is not a concept that holds up when put into conversation with Indigenous Nations because they precede and exist beyond the concept of statehood.

The major interventions that I am taking from Rifkin's articles is that the state of exception is both reductive and productive, while also recognizing the limitations the state of exception may have when dealing with Indigenous people's because they exist beyond settler concepts of statehood. Both of these elements lead into Bruyneel's use of Agamben that operates similarly in relation to producing and justifying settler statehood.

In the context of Indigenous politics, Agambenian political thought has also been explored through the discursive realm, seen in Kevin Bruyneel's article on Métis leader Louis Riel.⁷² Focusing primarily on the Canadian context, Bruyneel discusses how Riel as *homo sacer* or as bare life operates on the discursive level to produce and express Canadian sovereignty. Bruyneel argues that Riel is continually reproduced as exceptional but still internal/integral to the Canadian political order.⁷³ The treatment of Riel, noted in Bruyneel's work, articulates how in the Canadian context Riel is simultaneously, revered and disciplined, on a regular basis as a way to signal the strength of Canadian claims to sovereignty. Bruyneel's article highlights how *homo sacer* can be used to understand the importance of Riel's story to maintaining Canadian sovereignty and political identity as legitimate.⁷⁴ Through this exploration, Agamben's work has been used to show how the

⁷² Bruyneel, "Exiled, Executed, Exalted: Louis Riel, Homo Sacer and the Production of Canadian Sovereignty,"

⁷³ Bruyneel, "Exiled, Executed, Exalted," 714.

⁷⁴ Bruyneel, "Exiled, Executed, Exalted," 727-8.

exception forms the norm, meaning that the exception is not simply an exclusion for no reason, but rather, is an exclusion with a purpose that bolsters the dominant political order's notions of authority as resolved, even if it is not. Thus, while Rifkin might in one instance say that the state of exception has limited use when it comes to Indigenous people's because they predate and exist outside of settler statehood,⁷⁵ there are still instances identified by Bruyneel where this limitation is the reason the exception works in the first place. The political order's claims of authority are seen as legitimate even though they are not, because the existence of exceptions are internal and integral as proof that Canada has absolute authority. This echoes Rifkin's other use of Agamben that identifies how the state of exception is both reductive and productive, it reduces pre-existing political orders and produces settler colonial states as the ones in control but the constantly shifting nature of Agamben's zone of indistinction also allows for Indigenous people's to use this in creative ways to challenge the state. These defining elements of Agamben's work analyzed by Rifkin and Bruyneel highlight the role that his theory can play in defining authority in spaces that are contentiously claimed in settler colonial states. It operates as a way to work around inconsistencies of authority that Indigenous people's present when confronting the colonial state, which is useful for understanding the way that the state and corporation in the Mount Polley mine disaster are able to shift accountability away from them whilst maintaining their authority as reputable entities.

The third main engagement of Agambenian thought with Indigeneity has been through various other scholars that view Agamben's framework as significantly

⁷⁵ Rifkin, "On the (geo)politics of belonging,"

insufficient in various areas. In particular they view his work as too focused on notions of ‘The West’ and Eurocentric notions of peoplehood and statehood, which does not account for the plurality of Indigenous experiences in North America. These critics of Agamben show that there is so much that sits beyond the theory’s ability to even comprehend and explain. Rene Dietrich, for example, examines the inherent limits of Agamben’s theory when it comes to applying it to the colonial context. Dietrich examines the extent to which Indigenous polities are wholly unrecognizable “political formations to the universalized paradigms of European political thought..., which then enables the constitution of settler states and the subsequent biopolitical production of Indigenous peoples as depoliticized populations or cultures.”⁷⁶ He claims that Agamben remains “invested in the European, Western, or classical notion of what constitutes politics, particularly what kind of life possesses the potential of a political life.”⁷⁷ By remaining committed to Western notions of what constitutes politics, Agamben recreates the category of ‘the human’ “based on racist, sexist, classed, ableist, speciesist biases.”⁷⁸ Further, Dietrich continues, Agamben’s western lens narrows his frame of politics such that he recreates hierarchies that express only one kind of polity: settler colonies. Dietrich explains, that this is done through the assumption of Western supremacy, that naturalizes the notion of hierarchies of politics. These hierarchies place Western notions of politics as sufficiently developed, sophisticated, and ultimately, civilized when compared to non-

⁷⁶ René Dietrich, “The Biopolitical Logics of Settler Colonialism and Disruptive Relationality,” *Cultural Studies & Critical Methodologies* Vol 17, No. 1 (2016): 68. DOI: 10.1177//1532708616638696

⁷⁷ Dietrich, “The Biopolitical Logics of Settler Colonialism and Disruptive Relationality,” 69.

⁷⁸ Dietrich, “The Biopolitical Logics of Settler Colonialism and Disruptive Relationality,” 70.

western polities. These are the only polities that can claim absolute legitimacy, and in doing so, affirm the idea that there is only one way to form polities that explicitly exclude Indigenous societies – namely to “extend authority over Indigenous lands and peoples and thus establish settler colonial rule.”⁷⁹ Dietrich concludes, that such a systemic mode of displacement is present in Agamben’s theory, and is made possible if all forms of religion, spirituality, governance and sovereignty that are deeply entrenched in Indigenous polities - which include all forms of life and land - are deliberately ignored.⁸⁰

Similar to Dietrich, Alexander G. Weheliye critiques Agamben’s emphasis on possessive individualism which assumes that every individual has the same amount of opportunity to participate in the world, free of interruptions. Weheliye observes that Agamben’s imaginations of bare life seek to transcend notions of race, religion, nationality, or gender, in an attempt to transcend social and political markers by assuming that these categories have no bearing on whether one is more or less likely to be made into bare life.⁸¹ The issue with this, according to Weheliye, is that “these discourses also presume that we have now entered a stage in human development where all subjects have been granted equal access to western humanity and that this is, indeed, what we all want to overcome.”⁸² However, this is not the case; the category of the human is still continually denied through notions of race, religion, nationality, and gender, as noted by

⁷⁹ Dietrich, “The Biopolitical Logics of Settler Colonialism and Disruptive Relationality,” 70.

⁸⁰ Dietrich, “The Biopolitical Logics of Settler Colonialism and Disruptive Relationality,” 71.

⁸¹ Alexander G. Weheliye. *Habeas Viscus: Racializing assemblages, biopolitics, and black feminist theories of the human.*(Durham: Duke University Press, 2014), 34.

⁸² Weheliye. *Habeas Viscus*, 10.

Weheliye.⁸³ Weheliye does not take issue with the configuration of concentration camps as the basis of Agamben's framework, but they do question the assumption that these death camps constitute both the end point and the site of origin of the exception.

Weheliye questions this limitation because the state of exception is constituted through both the modern world as well as its relationality to chattel slavery, colonialism and Indigenous genocide as the basis of modern politics.⁸⁴ By rendering these global processes of domination as not formative and integral to the state of exception ultimately, contributes to the notion of European exceptionalism.

This line of critique is further questioned by C. Heike Schotten, who points out how these Agambenian notions of exception are actually the rule (rather than the exception), from the perspective of the colonized. Schotten states this perspective is due to the global processes of colonialism and imperialism that were basically the state of exception on a much larger scale, whereby the exceptional character of European sovereignty is actually the rule for those subject to their conquests.⁸⁵ In a similar vein as Weheliye, Schotten points out a continual refusal to include crimes of humanity as exceptional beyond the bounds of Europe. Effaced are the "crimes that are considered serious, definitive, and epoch-making only when visited upon other, retroactively Europeanized populations."⁸⁶ This problematic notion of Western exceptionalism

⁸³ Weheliye, *Habeas Viscus*, 34.

⁸⁴ Weheliye. *Habeas Viscus*, 36.

⁸⁵ Schotten. *Queer Terror*, 25.

⁸⁶ Schotten. *Queer Terror*, 26.

ultimately demotes other historical injustices like colonization, chattel slavery, and Indigenous genocide and dispossession, that have built the very basis of Western sovereignty that Agamben claims to be investigating.⁸⁷ Mohawk scholar Audra Simpson notes that “one does not have to dwell exclusively in the horror of a concentration camp to find life stripped bare to cadastral form, ready only for death in a biopolitical account of sovereignty. This is structural, not eventful, like many others.”⁸⁸ Schotten and Simpson’s assertions that we do not need to look to the West to find examples of exception show how Agamben’s theoretical tools are narrowly applied. Schotten also critically positions Agamben’s theory in relation to Indigenous peoples, and how they refuse Agamben’s transcendental use of ‘the human’ as a category. Schotten argues that to reduce Indigenous folks to bare life, to see them as people(s) who are able to be killed but not sacrificed is not applicable because this does not capture the threat that they pose to settler society. Indeed “Natives’ existence is more than mere fodder for the killing or letting die; rather, their existence is a mortal threat to the coherence, meaning, sovereignty, stability, and persistence of the settler state.”⁸⁹ This is an important disruption to the ways that Agamben cannot capture within it the threat that Indigenous folk present to white settler colonial societies. If Indigenous folk fit neatly into Agamben’s state of exception, they would not pose a threat to the state, regardless of where they fit within it. However, since the state has so much anxiety surrounding

⁸⁷ Schotten. *Queer Terror*, 26.

⁸⁸ Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham: Duke University Press, 2014), 154.

⁸⁹ Schotten. *Queer Terror*, 63.

Indigenous folk in settler colonies – precisely because their presence indicates that the state’s assertions of sovereignty are not fully resolved - they are deemed a threat and therefore a disruption to the naturalization of state authority.

Dietrich, Weheliye, and Schotten all look into the original iteration of Agamben’s theory, critically questioning the underlying determinants of the state of exception and bare life, that actively work to preclude Indigenous peoples from the inquiry. They do this by naming gender and race as significant silences within the original theory that need to be present, especially as I want to use Agamben in my own work, which attempts to centre these exact categories in my investigation of the Mount Polley Mining Disaster.

Through an investigation into the secondary literature on Agamben, there are many gaps identified in his original work. These shortfalls can be largely summed up as being rooted in Eurocentrism. Despite these limitations, Agamben’s work has been taken up in ways that add to my own analysis. Rifkin’s works use the state of exception to discuss the peculiar position of Indigenous people in the U.S., both geographically and as distinct polities operating through and against the state. Similarly, with his use of the state of exception and *homo sacer*, Bruyneel discusses the unique ways in which Indigenous individuals are persecuted and included solely to bolster Canada’s claims of sovereignty. Dietrich’s critique rightfully points out that Agamben’s theory leaves out all of the aspects of Indigenous polities considered integral to their worldview, for example, like what kind of life is considered life in Indigenous communities, is largely missing from the original theorization. Agamben does this by leaving plant and animal life outside the political realm. Weheliye and Schotten critique the Western exceptionalism that makes up

the basis of the concepts as a whole. Both Rifkin articles and Bruyneel's piece accept Agamben's limited definition of political life (i.e. limited to individual people). They engage with the state of exception and bare life to debate whether or not Indigenous peoples and their experiences can be better understood with Agamben's ideas. Dietrich, Weheliye, and Schotten, on the other hand, acknowledge the limitations of Agamben's theory, which is built on Western notions of possessive individualism. In other words, marginalized groups that do not fit within the definition of whiteness or maleness are not included in the category of the human. Dietrich is the only scholar in these grouping that critically engages with relations outside of the human being, to include other webs of relations like natural life and animal life, which is what my own work intends to build on throughout this project. In this thesis, I draw on these perspectives to highlight some of the nuances that add critical layers to my use of Agamben in relation to Hunt and Voyles. The interventions discussed in this section will allow for a more thorough interrogation of how authority presents itself in the context of the Mount Polley Mine Disaster.

Chapter outline:

This first chapter has been the theoretical grounds for the following chapters. It has introduced the concept of authority and how I have come to understand it, as a central theme, in not only political theory but in the field of Indigenous Nationhood as well. The theme of authority serves as the organizing thread that connects and motivates the constellation of Hunt's colonialscape, Voyles's wastelanding, and Agamben's state of exception and bare life. The second chapter is a disaster overview, focusing on the details

of the disaster itself to show the true impact of the breach. In the process, this chapter will highlight the ways in which authority is being constructed in the official documentation of the disaster. Paying particular attention to how the disaster narrative is deliberately told to remove both, corporate and government, obligation to Indigenous communities in an effort to maintain control over their authoritative narrative. Looking further into state structures of authority, the third chapter looks further into the ways that authority operates at different registers (jurisdictional, legal, and delegated), to maintain state power despite all their failings displayed throughout the breach. In the final chapter, I shift to look at authority on the ground that has been carried out primarily by Indigenous women in community. This final chapter will outline specifics of how Indigenous women have done this by grounding current Indigenous feminist literature on land. Finally, concluding with a primary takeaway about Indigenous challenges of state authority represented through my concept, the spill. The spill is metaphorical and physical representation of the disaster, as well as the ways in which the state tries and often fails to capture and contain Indigenous systems of governance within the overarching colonial structure. It is important to note that the scope of this project is limited by what could be achieved in this amount of space. I recognize that bringing in a more critical lens to examine the heteropatriarchal norms present in the structural critiques, especially in the second and third chapters, would have made the project more comprehensive. While there is an emphasis of this gendered critique in the final chapter, this thread could have been stronger throughout. With this in mind, my future work will build on the foundations of

this thesis, with goals of being more attentive to issues of heteropatriarchy as a major facet of the Mount Polley Mine Disaster narrative.

Chapter 2: Wastelanding the Waterways:
The Mount Polley Mine Disaster through the Lens of Bare Life, ‘Colonialscape’, and
‘Wasteland.’

Introduction:

This chapter will analyze the 2014 Mount Polley Mine Disaster that occurred in central British Columbia, Canada, through a discursive analysis of reports generated in the months and years following the Tailings Storage Facility (TSF) breach. The six reports consulted for this investigation were compiled by the Canadian Government, the B.C. Ministry of Energy and Mines (MEM), the Wilderness Committee, the First Nations Health Authority (FNHA), Amnesty International, and the Corporate Mapping Project.

This chapter aims to analyze the state sponsored narrative that emerges from these reports – a narrative that specifically emphasizes the importance of state and corporate accountability, to then reduce the problem to specific technical or human made failures that led to the breach. This chapter will lay the groundwork that will be taken up throughout the remainder of this project to illuminate how the disaster narrative is deliberately constructed to remove both, corporate and government, obligation to Indigenous communities whose lands they occupy and pollute. This removal of accountability and reinforcement of state authority is achieved by delegating industry oversight and regulatory practices from ministries of government to corporations themselves, resulting in an event such as this where fault can easily be shifted from one organization to another as a method of distraction. Ultimately, I will argue that this process of delegation allows blame to be shifted from one institution to another, creating opportunity for slips in accountability for the overall disaster and its lasting impacts. This

process of delegation occurred immediately following the disaster and has been maintained since. It has been maintained by the tight control of the information regarding the disaster by the state, I assert in this chapter that this has been done with the aim to maintain statist narratives of authority surrounding the disaster in order to make the state look less at fault.

Highlighted at the conclusion of this chapter will be the ways in which Indigenous communities of various nations, including Tsihlqot'in, Secwepemc, St'at'imc, and Nlaka'pamux, had their way of life altered in perpetuity as a result of the Mt. Polley Mine Disaster and, the overt lack of legal redress they experienced in the time following. In doing so, this chapter will unpack the ways in which the colonial project, through this event, actively works through environmental racism to depict Indigenous peoples as invisible. Also rendering their homelands and waters as uninhabited, or at least unimportantly inhabited, to further colonial conceptions of authority over Indigenous peoples. As noted by Ingrid R. G Waldron, focusing on isolated cases of environmental injustice does not allow for the hidden racist ideologies that underpin policy in governmental and social institutions to be revealed.¹ With this in mind, I will be looking at how the structural elements of environmental racism intersect and intervene throughout the events leading up to the event as well as throughout.

To examine this process of delegation by both the state and the company in tandem, I will be using a constellation of theories to reveal the ways in which Indigenous

¹ Ingrid R. G Waldron, *There's Something in the Water: Environmental Racism in Indigenous and Black Communities*. (Halifax: Fernwood Publishing, 2018), 3.

lands, bodies, and waters are rendered pollutable. These theories introduced in the introductory chapter of this thesis are Sarah Hunt's *colonialscape*,² Traci Brynne Voyles' *wastelanding*,³ Giorgio Agamben's state of exception,⁴ and bare life.⁵ This theoretical lens helps illuminate how and why official reports are so inadequate in capturing the fullest extent of the disaster. For Indigenous communities along the waterways, the disaster was a catastrophic event with long lasting unknown impacts on the rivers and fish, which constitute major lifelines of the people culturally, socially, and economically.

To demonstrate the relevance of these theoretical connections, I will first give an overview of the disaster itself, to show how invisible Indigenous folks are made into colonial subjects. Following this, there will be a section dedicated to discussing the specific mechanisms that failed (the constant lack of beaches and too much water-like liquid in the tailings pond), leading to the breach. The next section will address the fact that there was an inadequate emergency response plan and how this aggravated the severity of the situation even more. These more 'clinical' sections of the chapter are necessary to understand the sequence of events that, throughout, did not discuss the direct impacts of the disaster on Indigenous communities. This is not merely a descriptive account of the disaster, but also a way to note who is made absent in these accounts.

² Sarah Hunt, "Law, Colonialism and Space," in *Witnessing the Colonialscape: light fires of Indigenous legal pluralism*. doctoral dissertation, Simon Fraser University, 2014.

³ Traci Brynne Voyles, *Wastelanding: Legacies of Uranium Mining in Navajo Country*. Minneapolis: University of Minnesota Press, 2015).

⁴ Giorgio Agamben, *State of Exception* trans. Kevin Attell. Chicago: The University of Chicago Press, 2005.

⁵ Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. (trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 1998.

These reports manage to do this by avoiding making connections between the disaster itself, racism, and structures of colonialism, which is a result of the colonial narrative of control that is being prioritized by the state. Once this understanding of the disaster is fully unpacked, the remaining portions of the chapter will be dedicated to a discussion of these points cumulatively, drawing out their disastrous effects on Indigenous communities in detail, while also drawing out the themes of authority at play throughout.

What is the Mount Polley Mine Disaster?

In the early hours of August 4th 2014, the dam containing tailings at the Mount Polley copper and gold mine in interior British Columbia, failed. This was the first catastrophic mine failure in B.C's long history.⁶ Over the course of 16 hours, the breach released over 21 million cubic metres of wastewater and mine tailings into the surrounding environment and waterways. Tailings is the term used to describe chemical-laden waste rock left over from the ore processing cycle. Once these rocks are extracted from the earth they are milled to separate ore from marketable minerals, leaving large amounts of waste rock, that are then ground down to sand that mixes with water to make slurry that is piped into a tailings pond.⁷ These ponds vary in size but can become massive structures that look more like lakes that are square-kilometres in size. These massive structures are only held in place by earth dams in mountainous valleys that can reach as high as 300

⁶ Amnesty International, "A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada," p. 3 https://www.amnesty.ca/sites/amnesty/files/FINAL_May%2024_Mount%20Polley%20briefing.pdf

⁷ Judith Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," *Corporate Mapping Project*. (August 2018), 6. https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2018/08/CCPA-BC_TailingsDamSpills.pdf

metres, and are extremely volatile the larger they become.⁸ This is exactly what happened in the Mount Polley Mine Disaster.

The outflow of tailings from the Mount Polley tailings pond decimated the surrounding forested area as huge volumes of mining waste were deposited into the Quesnel Lake, "...one of the deepest lakes in the province, and introduced a turbidity plume of tailings slurry to the lake."⁹ In transit, the tailings bulldozed wooded areas and transformed an existing stream from 5 meters to 100 meters in width, eventually depositing mining waste into the lake which had served as a salmon spawning watershed since time immemorial.¹⁰ The 2016 Mount Polley Mining Corporation's post-breach report on environmental impact assessment stated, "that most of the trees in the "halo" zone died as a result of suffocation from the deposited tailings sediment."¹¹ The trees that were not mowed down by the initial breach were coated in such a thick layer of tailings slurry that their roots could not absorb nutrients and so, they suffocated. The reason for such a voluminous outflow of tailings was partially due to the prolonged response time by the company caused by the absence in staff from the statutory holiday (BC Day).¹²

⁸ Derrick Penner. "How tailings dams work" Vancouver Sun. August 12 2014. <http://www.vancouversun.com/technology/tailings%2Bdams%2Bwork/10102756/story.html>

⁹ Investigation Report of the Chief Inspector of Mines. "Mount Polley Mine Tailings Storage Facility Breach," *Ministry of Energy and Mines: Mining and Mineral Resources Division*. (November 30, 2015), 13. http://mssi.nrs.gov.bc.ca/1_CIMMountPolley/BCMEM-report-3_04-web.pdf

¹⁰ Earthworks et al. "Post-Mount Polley Tailings Dam Safety in Transboundary British Columbia," Wilderness Committee. (March 2016), 2. <https://www.wildernesscommittee.org/sites/all/files/publications/2016%2003%2022%20Post-Mount%20Polley%20Tailings%20Dam%20afety.pdf>

¹¹ Amnesty International, "A Breach of Human Rights," 4.

¹² Investigation Report of the Chief Inspector of Mines. "Mount Polley Mine Tailings Storage Facility Breach," 110.

On August 5th, the day following the breach, officials did not know if the spill had been contained, or if the tailings were still moving down the creek. This lack of knowledge resulted in a complete ban on water use and consumption on all waterways near the mine including, Quesnel Lake, Cariboo Creek, Hazeltine Creek and the entire Quesnel and Cariboo rivers systems that lead right to the Fraser river.¹³ According to the investigation report generated by the Chief Inspector of Mines, released on November 30th, 2015, over a year later, the initial dam failure began around 11:40 pm the night before. By 12:50 am on August 4, the crest of the dam was eroded and by 1:08 am, major flow and power loss occurred at the site. The dam continued to erode throughout the night and well into the afternoon, finally abating by approximately 4:00pm on August 4th. The report emphasizes that the rapidity of the failure circumvented any possible corrective actions to repair the dam or breach before the Perimeter Embankment (PE) failed completely.¹⁴ The main take away from the report is that “the failure of the dam took place suddenly, without any warning signs. The failure of the embankment is what led to the breach of the dam, which became uncontrollable in less than two hours[,]”¹⁵ causing the mine to cease operations completely and attempt to stabilize the situation. After the disaster, the owner of Mount Polley Mining Corporation (MPMC), Imperial

¹³ “Mount Polley Mine's tailings pond breach of five million cubic metres of contaminated waste called 'massive environmental disaster’” National Post. August 5 2014. <https://nationalpost.com/news/canada/mount-polley-mines-tailings-pond-breach-of-five-million-cubic-metres-of-contaminated-waste-called-massive-environmental-disaster>

¹⁴ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 109.

¹⁵ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 13.

Metals Corporation, estimated that between 21 and 25 million cubic metres of discharge was released in the breach, including 10 million cubic metres of unprocessed water stored in the tailings storage facility (TSF),¹⁶ resulting in the Mount Polley Mining Disaster being deemed the largest mine waste spill in Canadian history.¹⁷ Surrounding watercourses, such as Polley Lake and Quesnel Lake were gravely impacted by the debris flow which made its way into recreational and drinking waters.

Public confidence in industry and government oversight following the breach was severely shaken.¹⁸ Furthermore, this disaster was made even more distressing because of its perceived unexpected nature. The public perception of mining practices within Canada prior to the disaster seemed to assume a certain level of capacity to safeguard the public from industry failures. Even when the reports uncovered longstanding elements of industry neglect, they did nothing to downplay the suddenness of the failure in the public's mind. The damage was so incomprehensible that the public did not know how to react outside of shock and despair. The public was shaken because this dam should not have failed by any means. It was a modern dam engineered and supervised by reputable engineering companies in a supposed First World country. "In fact, some said (prior to Mount Polley) that a dam with these characteristics could not fail."¹⁹ Yet it did.

¹⁶ Investigation Report of the Chief Inspector of Mines. "Mount Polley Mine Tailings Storage Facility Breach," 13.

¹⁷ Earthworks et al. "Post-Mount Polley Tailings Dam Safety in Transboundary British Columbia," 2.

¹⁸ Investigation Report of the Chief Inspector of Mines. "Mount Polley Mine Tailings Storage Facility Breach," 13.

¹⁹ Earthworks et al. "Post-Mount Polley Tailings Dam Safety in Transboundary British Columbia," 2.

Following the disaster, there were multiple investigations conducted that were meant to look at the root causes of the disaster to ensure long term measures of prevention could be taken. These reports from various bodies (including the Canadian Government, The Provincial Ministry of Energy and Mines, the Wilderness Committee, the First Nations Health Authority, Amnesty International, and the Corporate Mapping Project) construct a narrative that identifies the causes of the disaster but, still excludes the broader impact of the breach on Indigenous communities, including those located within the immediate site (Secwepemc and Tsilhqot'in) and those located downriver (St'at'imc and Nlaka'pamux). On the surface, this oversight might seem unintentional, and overall insignificant, but it is important to note that the neglect of Indigenous communities is pervasive, particularly when it comes to resource extraction in British Columbia.

I argue that this exclusion is a continuation of a structural narrative that seeks to erase the severity of harm felt by Indigenous people; and the narrow scope presented in the initial reports undermines Indigenous relationships to land and water and, how these relationships are perpetually disrupted by ongoing acts of colonialism in the form of resource extraction. Identifying the root causes of the disaster is important, however for these investigations to focus mostly on the root cause, not only sidelines Indigenous concerns following the disaster but also the political climate that led to the disaster in the first place. Recognizing these moves to shift attention away from Indigenous communities' concern is important to keep in mind throughout the next few sections that summarize the issues regarding design failure and inadequate emergency action

immediately after the breach. The reduction of Indigenous concerns to purely biological facts that are deemed to be race-neutral without concern for their cultural and social needs as well, is a clear mechanism of bare life which is reinforced over and over in these reports. Bare life makes individuals so legally insignificant, that their deaths are not worth mourning. If this finality of their lives is defined this way, the conditions of their lives, including their cultural and social wellbeing, are seen as insignificant in the eyes of the state. This is a product of bare life.

Design Failure

In the Independent Expert Engineering Investigation and Review Panel's report, four potential factors were identified as causes for the tailings breach, all of which erased or downplayed colonial and Indigenous discourses at work. The first three, human intervention, overtopping, piping and cracking, were all eliminated leaving the final factor, foundation failure as the primary reason for the cause.²⁰ The conclusion reached was that the embankment collapsed due to foundation failure, and other factors like too much waste water and lack of beaches in the pond ultimately led to the breach. From the outset of the investigation, it was made clear that the foundation was far weaker than it should have been, which was immediately evident on the ground following the breach. Due to the foundation acting in a weaker manner than originally anticipated in design, a major focus in the investigation was an attempt to account for the design's role in the

²⁰ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach" *Government of Canada*. (January 30, 2015), ii. <https://www.mountpolleyreviewpanel.ca/sites/default/files/report/ReportonMountPolleyTailingsStorageFacilityBreach.pdf>

failure itself.²¹ From the outset of the report emerges a very narrow focus on the disaster, leaving out broader impacts of the disaster on the environment and communities located in close proximity to areas affected. This has been one of the ways that authority has operated in creating a very narrow narrative that focuses on one aspect of the disaster, while simultaneously ignoring the communities directly impacted.

In their investigations, a finding that the Independent Panel found most troubling was the failure to utilize appropriate interpretations to regularly assess the silts and clays that made up the foundation. Instead, it was always assumed that the materials that made up the foundation were sound, with no actual attempts made to understand their stress history. The Panel also found that even if the foundation was sound to begin with, as time went on it may have weakened as increasing loads on the dam grew higher and higher.²² The onus was on the company to ensure regular inspections of the foundation, which, clearly they were not undertaking. In operation here, we see how the company, over time, did not see any problem with maintaining the status quo in the tailings storage facility conditions.

With the faulty design in place, problems of a lack of due diligence continued to arise and regular dam maintenance was not undertaken. The design of the tailings storage facility was constantly dealing with rising mine waste water and the corresponding development plan which aimed to expand the pond to marginally stay ahead of the rising

²¹ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach," 12.

²² Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach," 76.

water. It was imperative that the dam be raised to keep up with the rising water levels, but at the same time the material scarcity for building it was always hindering that upkeep. Eventually, something had to give, resulting in structural inefficiencies like “oversteepened dam slopes, deferred buttressing, and the seemingly ad hoc nature of dam expansion that so often ended up constructing something different from what had originally been designed.”²³ The uncertain and incremental nature of the expansion process and the constraints under which it was carried out, caused those in charge of design to lose sight of the most basic element of building a dam: foundational stability. The Perimeter Embankment, where the breach occurred, was able to reach a staggering height of 40 metres with an unbuttressed slope.²⁴ In short, adequate assessments of the embankment foundation were not conducted on the Perimeter Embankment because “there was an assumed degree of certainty that the foundation soils were dense and strong, which was not supported by a robust understanding of the foundation characteristics.”²⁵

There were multiple opportunities to reassess the foundation soils either in response to Government inspectors or in drillcore records, but these chances were never taken - either they went unnoticed, ignored, and/or were discounted.²⁶ This neglect was

²³ Independent Expert Engineering Investigation and Review Panel. “Report on Mount Polley Tailings Storage Facility Breach,” 75.

²⁴ Independent Expert Engineering Investigation and Review Panel. “Report on Mount Polley Tailings Storage Facility Breach,” 75.

²⁵ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” p. 6, 156.

²⁶ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 156.

shown in the report generated by the Independent Expert Panel, which looked in detail at the nine stages in which the tailings storage facility was built over several years. Each stage was characterized by progressive expansion and throughout each stage, concerns over stability remained a regular element of each of the reports generated.²⁷ The company here cannot claim ignorance, only negligence because, as the report emphasizes, the common thread throughout each stage was recommended to be remedied almost immediately, but clearly the company never bothered to address these concerns. Furthermore, the bodies aimed at mine oversight that generated these reports to begin with did not follow up on their recommendations to address the concerns over the structural soundness of the pond.

In fact, as early as stage two, which spanned from 1998 to 2000, problems with the tailings pipeline system arose when it came to maintaining the required tailings beach, which meant water was in direct contact with the embankment in some places.²⁸ In tailings ponds, beaches are integral to maintaining the strength and stability of the embankment that keeps the tailings from breaching the pond. If the mine waste water comes into direct contact with the embankment, it begins to wear down the wall and weakening it over time, which was what eventually happened. The early signs of a dam failure were present from very early on in the development of the pond however, they were never adequately addressed nor was the company ever punished for their continual

²⁷ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach," 52.

²⁸ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach," 55.

negligence. Over the next decade, more attention was brought to the fact that the dam itself did not have adequate structural support through a memorandum and a report conducted by BCG Engineering Inc., a consulting company, which were released June 18th and July 25th 2013 respectively. Both drew attention to the fact that, even though the Mount Polley tailings storage facility was not meant to be operated as a water-retaining dam, it effectively was. This means that the pond was in direct contact with the embankment, with only a small zone of tailings or waste rock between,²⁹ overall compromising the stability of the embankment that led to the breach.

For years, the dam stayed marginally ahead of the rising water, but on May 24th, 2014, mere months before the disaster, the water caught up, causing some seepage flow. Following the seepage, rigorous oversight and construction succeeded in raising low areas of the embankment perimeter, restoring the containment integrity of the dam.³⁰ Following this incident, it was decided that the existing buttress on the Main Embankment would be raised and, a new buttress would be added to the Perimeter Embankment which would have included what would become the area of the breach. Ironically, this construction stage ten buttress was scheduled for construction in late 2014 or early 2015; had it been in place prior to the August 3rd 2014 breach, the dam would have survived.³¹

²⁹ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach," 72.

³⁰ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach," 72.

³¹ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach," 73.

It is important to note that the structural failure of the embankment alone did not cause the breach. The structural weakness paired with the conditions of the tailings pond – which had insufficient beaches caused by too much tailings water – caused the eroding of the embankment which led to the breach.³² The lack of tailings beach development along the Main and South Embankments were flagged in an inspection done in 2010 following stage 6 of the expansion of the dam. In these reports it was noted that an above water beach was an essential requirement of the design and without it the tailings storage facility was considered a “Departure from Approval”. The inspector at the time ordered that a beach be “re-established as soon as possible in this area to meet the design objectives.”³³

The importance of these beaches cannot be understated. Beaches in tailings storage facilities are formed by spigotting tailings from the dam crest, creating sludgy barriers in between the embankment and the tailings pond. They perform multiple functions, including the structural support of the embankment’s components and of course, providing a buffer to contain the supernatant water if the embankment should fail. According to the report, regardless of the facility, the aim should be to have a smaller pond and larger beaches to serve as viable barriers to a potential dam breach. The functional aspect of these beaches is that they can mitigate the impacts of a potential failure of the embankment thus serving as risk management in the operation of a tailings

³² Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 157.

³³ Independent Expert Engineering Investigation and Review Panel. “Report on Mount Polley Tailings Storage Facility Breach,” 65.

storage facility. Throughout the time that the Mount Polley Mine was operating, design documents regularly called for the establishment and continual maintenance of these beaches along all embankments of the tailings storage facility.³⁴ It is clear that these calls went unheard or at the very least, ignored by the operators at Mount Polley. The decision to ignore the recommendations by the engineering company shows the level of negligence Imperial Metals regularly practiced. Clear lines of criminality are established throughout the report and despite this, Imperial Metals manages to emerge from this narrative without their guilt made clear.

The lack of beaches was not simply caused by outright neglect on the part of the company, rather, it was caused by the presence of too much water-like liquid in the ponds. This was because this tailings dam was being operated as a water-retaining dam, which it was not.³⁵ The accelerated mining activity coupled with the temperatures of central British Columbia meant that there was always a fight to keep the water levels in the tailings pond under control. Engineering companies were paid to inspect and develop reports on mining activity were responsible for identifying these issues and making recommendations. In turn, the workers at the TSF were responsible for enacting these recommendations, which were clearly not done. Furthermore, adequate beaches could not be continuously maintained due to the surplus of supernatant water in the tailings storage facility because an adequate water management plan did not exist. As such, the

³⁴ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 143.

³⁵ Independent Expert Engineering Investigation and Review Panel. “Report on Mount Polley Tailings Storage Facility Breach,” 72.

Mount Polley Mining Corporation failed in management of the water balance with long term commitments to planning, including site integration, effective treatment, discharge plans and permits. Furthermore, there were no qualified individuals responsible for water balance, and the company did not fully consider the risk associated with the surplus of the water that had been building up since the mine re-opened in 2005.³⁶ One report claimed that “the lack of beaches can be attributed directly to the chronic growth of surplus supernatant water as well as shortcomings in tailings deposition. Surplus water submerges beaches, reducing their role in buffering the embankment from the pond.”³⁷ These two factors together represent the single cause of the breach, the initial release of excess water and tailings over the crest of the dam furthered the erosion and caused a complete breach of the dam over the night of August 3rd and, early morning of August 4th.³⁸

Thus, the structural integrity of the tailings storage facility was not adequately maintained by the company. The weak foundation, too much water, and lack of consistent buffer in the form of beaches in the pond led to the breach, meaning that the Company was inherently at fault as it was their responsibility to mind these things. It is important to note that these various factors were not the only failure by Imperial Metals Corp. in the overall incident. Even though these reports were narrow in their focus, there is clear line

³⁶ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 7.

³⁷ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 145.

³⁸ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 131.

of criminality the company has crossed. By the investigations' own standards there is enough evidence here to hold the company responsible for long term neglect yet they are not. In fact, the most dramatic part of the Chief Inspector of the Mines report was the announcement of no charges against Imperial Metals despite their overt lack of actions in promoting mine and TSF safety.³⁹ This demonstrates the ways in which resource extraction industries are valued to such a level that environmental degradation, potential health, biodiversity, and traditional food source concerns are not weighed fully before the Chief Inspector the Mines, the governing position meant to protect the interests of all effected by the mining industry, makes their decisions. With this state instituted position choosing to not hold the parties responsible for their extended history of neglect, there emerges a clear indication of how both the state and the company have the same interests in bolstering extractive industry above public safety. The lack of responsibility from both the state and the company is part of how settler colonialism and Agamben's bare life are reproduced throughout this disaster.

The drive for resources and the deeming of some forms of life to be not significant enough for consideration are clearly shown through the decision of the Chief Inspector of the Mines to not press charges. This is due to how inherent the company's actions of profit over environmental and human concerns have been to settler colonial provinces like British Columbia since the birth of the colony. Here we see how colonial statist notions of authority are maintained at the explicit expense of Indigenous perspectives. The limit of Indigenous voice in this consideration speaks to the mindset

³⁹ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,"³⁷.

that the state has when it comes to the experiences that should factor into these decisions. Furthermore, the institutions's obvious lack of long term planning only deepens as the disaster narrative turns to focus on the emergency plans that are meant to protect public safety but did no such thing in this disaster.

Lack of Recourse

Following the catastrophic breach of the dam, the Mine's Emergency Response Plan (MERP) fell short on all fronts, which contributed to the overall structural inadequacies of the whole operation. The deficiencies of the emergency response plan are not directly tied to the dam failure, but they significantly impacted the ability of the Mount Polley Mining company staff to respond to the disaster.⁴⁰ Thus, this aspect of the disaster must also be accounted for in this section. The presence of a proper emergency plan not only would have indicated forward thinking but also would have demonstrated that the company took seriously Indigenous connections to lands and waters that their industry was encroaching upon. Instead, the emergency response actions taken following the failure was not guided by any emergency process or document because these plans were not developed to prepare the mine for a disaster of this magnitude. The events challenged the mine employees to react to a situation they were in no way prepared for, materially or immaterially, meaning they had no plan in place nor any tools needed to guide their

⁴⁰ Investigation Report of the Chief Inspector of Mines. "Mount Polley Mine Tailings Storage Facility Breach," 110.

response.⁴¹ According to the report compiled by the Chief Inspector of the Mines, an effective Mine Emergency Response Plan requires full work site integration and designated persons to have listed in a chain of command. It was evident in these reports that the Mount Polley Mine disaster did not have this in place because of the lack of an immediate and effective response. This was exacerbated by the fact that the breach occurred at a time with the least site supervision, “in the early morning hours in the middle of a long weekend, when most of the management staff, and many employees, were not only off duty but unreachable.”⁴² Thus, employees that were on site at the time of the breach reacted to the best of their ability given the lack of emergency response plan.

The underlying cause of this ad hoc response was due to the fact that the Mining Emergency Response Plan (MERP) was wholly inadequate to deal with the scope and size of the breach and, the plan they did have was out of date. Furthermore, no one had been identified for its use, or had been trained on how to use it. This lack of risk management paints a damning picture of neglect on the part of Imperial Metals. Indeed, the MERP did not include any information on emergencies involving tailings storage facilities, instead, referring the reader to the Operation, Maintenance, and Surveillance Manual (OMS), which was equally opaque and did not serve as a helpful emergency reference in this situation. No mentions of downstream warnings, nor were there any

⁴¹ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 112.

⁴² Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 160.

practice drills of the plan that was required by the company itself. Thus, “This situation points to a broader need for more effective emergency planning, including inundation studies and disaster table-top exercises, at mines across the Province; training, including practice drills; and for MERPs that are actually effective in guiding response to events.”⁴³

This contributes to the point that, despite commonly held assumptions of stability and preparedness the public may have held prior to the disaster, the response exposed the deficiencies the company had overall. As a necessary defence that would have helped mitigate the scope of the disaster, these plans were not present and where they were present, they were wholly inadequate to protect not only Indigenous and non-Indigenous peoples but also the lands and waters that Secwepemc, Tsihlot’in, St’at’limc, and Nlaka’pamux communities rely on so dearly. It is important to note that these inadequate response plans are not exceptional actions that just so happened to be missing but, rather, they are deliberate displays of state authority actively creating the conditions of legality and illegality out of which bare life is produced.

Too Little, Too Late

The company, as well as the state, both bear responsibility for their ill-preparedness for this disaster. Their claims to having operational authority in the realm of extractive industry are not met with the ability to actually respond to the Mount Polley Mine Disaster in an efficient manner. In my assessment, the reports construct a narrative that

⁴³ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 160.

can be described as “too little, too late,” as there were future plans for preventative measures but, they were never implemented in a meaningful manner. From the beginning, the dam raising proceeded incrementally with the expansion of the tailings storage facility, which was usually driven by impounding storage requirements only planned for the year ahead. These short term fixes only increased the chance of a dam breach as the years went on. The lack of long term planning in expansion, resulted in more reactive, than anticipatory, planning and construction which resulted in inadequate “water balance or water treatment strategy, and the overtopping failure that nearly resulted. Moreover, the related absence of a well-developed tailings beach violated the fundamental premise of the design as a tailings dam, not a water-storage dam.”⁴⁴ This was compounded by the mining companies complete lack of emergency response plan if a breach were to happen, and it did, resulting in many undesired impacts for all stakeholders in the area. According to the Investigation Report of the Chief Inspector of Mines, the primary undesired outcome of the breach of the Perimeter Embankment was the release of approximately 21-25 million cubic meters of tailings, interstitial water, supernatant process water, and construction debris into the environment, detrimentally impacting the watercourses from Polley Lake, Hazeltine Creek and Quesnel Lake.⁴⁵ The undesired consequences of this contamination of the breach is claimed to have negatively impacted the environment, the

⁴⁴ Independent Expert Engineering Investigation and Review Panel. “Report on Mount Polley Tailings Storage Facility Breach,” 75.

⁴⁵ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 152.

mining industry, First Nations, and the citizens of British Columbia as a whole.⁴⁶ This mine should not have failed with the reputable company and engineering firms working on it; but it did, “depositing most of the waste into Quesnel Lake, a large salmon spawning glacial lake in the watershed below the tailings dam.”⁴⁷ Ultimately, this put in danger the current and future fish populations that Indigenous communities in the area and downriver rely on for economic, social, and cultural wellbeing.

Accountability?

In 2017, Imperial Metals, the owner of Mount Polley Mining Company was cleared to fully resume operations; one of the reasons cited was because since the spill, the Company “has spent more than \$70-million on remediation and restoration work, including the planting of about 30,000 trees and shrubs to repair damage caused by the spill.”⁴⁸ This dollar amount already surpassed the initial projected amount announced immediately after the disaster in 2014, which was \$67.4 million.⁴⁹ The propagation of reclamation narratives that downplayed the cost of cleanup, merely fostered the notion that this scant restoration was somehow equal to the damage and harm done by the breach. Immediately following the disaster on August 18 2014, the Province announced

⁴⁶ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 156.

⁴⁷ Earthworks et al. “Post-Mount Polley Tailings Dam Safety in Transboundary British Columbia,” 2.

⁴⁸ Ian Bailey, "Mount Polley mine still at risk for future tailings breach: analyst," The Globe and Mail, August 4, 2016 accessed April 12, 2017,

⁴⁹ Gordon Hoekstra. “Imperial Metals pegs Mount Polley clean cost at \$67 million,” National Post. November 17 2014. <http://www.nationalpost.com/m/imperial+metals+pegs+mount+polley+cleanup+cost+million/10389778/story.html>

an agreement to provide \$400,000 in funding to Xat'sull First Nation to cover cleanup and administrative costs incurred following the incident; however this funding quickly ran out.⁵⁰ The province also provided \$50,000 to the Likely Chamber of Commerce, the town located closely to the site, but residents and business owners complained that the amount was inadequate because it worked out to a scant \$143 per person. In 2015, Ugo Lapointe, the Canada program coordinator for MiningWatch Canada expressed concerns over the lack of detailed assessments of costs and damages the year after the disaster, calling the provinces lack of doing so, a huge failure to the local environment, communities, and businesses, as well as First Nations' right and livelihoods in the immediate area. This led Lapointe to ask, "Who will ultimately compensate and pay the bill for all of those damages? The persistent blanket of silence on this issue is very worrisome."⁵¹ While assigning these dollar amounts is important for dealing with the financial needs of the communities impacted, these dollar amounts are seemingly decided arbitrarily, and fail to address the broader implications that the disaster may have had in longterm efforts concerning waterway reclamation and restoration of natural features that were polluted as result of the breach.

While these concerns went unaddressed, the company focused their attention on launching a lawsuit in the B.C. Supreme Court "alleging negligence and breach of

⁵⁰ A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada,"p. 7 https://www.amnesty.ca/sites/amnesty/files/FINAL_May%2024_Mount%20Polley%20briefing.pdf

⁵¹ Carol Linnitt. "“They’re Getting Away with It”: Locals Say No Blame Means No Compensation for Mount Polley Mine Spill Victims," The Narwhal. August 9 2015. <https://thenarwhal.ca/they-re-getting-away-it-locals-say-no-blame-no-compensation-mount-polley-mine-spill/>

contract by two engineering firms involved in the design and monitoring of the ill-fated tailings operation;”⁵² as such, they shifted the blame of the disaster from their company to the engineers responsible for inspecting their mines, fully ignoring the fact that engineers are not responsible for implementing the recommendations they make to the company in the first place. This action on the company’s behalf lends credence to the argument that Bill Bennett, then B.C. Minister of Energy and Mines, made when he proclaimed that there had been significant changes made to how mining is undertaken and overseen in B.C.⁵³ Bennett’s statement assumes that the Mount Polley Mine Disaster has served as an educational experience, and that in itself serves as enough for the B.C. Government’s peace of mind.

Thus, the B.C Government wholly disagrees that having the Commission of Public Enquiry [sic] look into the Province’s mining industry serves the taxpayers of B.C at all. Bennett’s comment immediately frames holding the company responsible in financial terms rather than environmental terms, removing the far flung impacts of the disaster on the environment and, the communities tied to the environment from the equation. In fact, Bennett went so far as to claim that a public enquiry into “such a process would be demonstrably redundant.”⁵⁴ Bennett claimed in a letter, that the government of the day “has accepted all recommendations of the Expert Panel that

⁵² Ian Bailey, "Mount Polley mine still at risk for future tailings breach: analyst," The Globe and Mail, August 4, 2016, accessed April 12, 2017,

⁵³ Judith Lavoie, "B.C. Rejects Request for Inquiry into Mining Practices," DeSmog Canada, April 11, 2017, , accessed April 17, 2017, <https://www.desmog.ca/2017/04/11/b-c-rejects-request-inquiry-mining-practices>.

⁵⁴ Lavoie, "B.C. Rejects Request for Inquiry into Mining Practices,"

looked into the Mount Polley disaster and [the] recommendations made by the Auditor General.”⁵⁵ However, Calvin Sandborn, Environmental Law Centre legal director disagrees. The submission made by the ELC demonstrated that the government had failed to implement the recommendations regarding the mine disaster and thus, no lessons have been learned from this disaster at all.⁵⁶

The actions of the company and the B.C. Minister acting on behalf of the B.C. Government, demonstrate clear efforts by both industry and the state to distance themselves from being accountable for the larger impacts the disaster. The narrative constructed through these actions, represented in official reports, allows them to make these moves to shift the blame away from them quite easily, while still maintaining their place of authority in decision-making processes. The narrative established in the official reports explored earlier, were so narrowly focused on structural inadequacies that any movement forward based on them can be done without holding state or industry accountable. Furthermore, remedies already pursued by Imperial Metals (i.e. tree planting) were explicitly focused in the immediate area of the breach that experienced the first rush of the tailings impacts. This approach may be considered admirable, but upon further reflection, the implications of this decision closes off any discussion of the impacts of the disaster on the waterways in the area and beyond. In effect, this action by the company overshadowed the idea that the waterways impacted are also a part of their obligations following the disaster. The exclusion of the waterways is indicative of how

⁵⁵ Lavoie, "B.C. Rejects Request for Inquiry into Mining Practices,"

⁵⁶ Lavoie, "B.C. Rejects Request for Inquiry into Mining Practices,"

the company and government overlooked the role of Indigenous communities in the aftermath of the disaster, as most First Nations reserves in BC are located along a major waterway.

What about First Nations communities impacted?

Bringing in the voices of First Nations communities has been minimal in the reports and follow ups done in more recent years. The First Nations Health Authority's (FNHA) report was the only one, initially, that focused explicitly on the damages sustained by First Nation communities downstream, whereas the others only mention First Nations in passing or as a foil to highlight the negative qualities that came from the disaster. Later the reports compiled by Amnesty International and Judith Marshall, through the Corporate Mapping project, would take up a more meaningful lens to meaningfully include impacts felt by Indigenous communities. These reports would not come until 2017 and 2018 respectively. The reports (aside from these and the FNHA implicitly) regularly relegated Indigenous communities and concerns to a place separate from settler society, a clear technique of the state of exception. In the process, these reports treated Indigenous communities as almost synonymous with the natural realm, and thus their use here is not an attempt to understand their loss as a consequence of settler actions but rather, show that there has been damage done to them by the disaster.

Indigenous communities end up becoming passive recipients of environmental degradation, and that compromises their significance to the reports. As a foil, Indigenous experiences are used more to enhance the ecological narrative of the disaster, rather than

an experience of this disaster that is devastating in its own right. Instead Indigenous communities are only used here as stand-ins for exceptional treatment; at once their trauma highlighted most starkly but at the same time completely denied justice on every level, whether it is their land stolen, their access to water alienated, and their rights to environmental justice completely erased. Throughout these reports Indigenous communities are not engaged with as authorities on their own lands and waters, instead they are extracted from for their experiences of the disaster to build up a de-politicized narrative that the state can use to bolster their legitimacy.

The damage caused by the breach is akin to the experiences of the Heiltsuk Nation with regard to the oil spill caused by the Nathan E. Stewart tanker. The oil spill that directly put Heiltsuk livelihood at stake elucidates the ways in which Agamben's theorizations can be used to understand the how some spaces are delineated from protected to polluted. Heiltsuk councilor Jess Housty summed up the experience quite well in a published interview. Housty claims that for people not in the immediate "sacrifice zone", outside the community it was just another media story that showed a brief snapshot of a tragic event from a remote place. This is another example of the ways in which Indigenous experiences of disasters caused by resource extraction are used salaciously in the media to create a tragic environmental narrative, but are still kept at a healthy distance from settlers and their centres of government. This distancing can be seen as a function of the state of exception, where Indigenous experiences are claimed by the state but at the same time they are denied justice for their losses. They are included in settler society solely by their exclusion.

In the Heiltsuk oil spill, settlers were able to consume the disaster narrative without experiencing the loss that the disaster truly represented. However, “For locals, the spill lives on in myriad ways, with authorities still feeling the effects of a months-long drain on already strapped financial and human resources, and fishers unable to harvest manila clams and other species that may have been contaminated.”⁵⁷ For First Nations peoples living off the land, the oil spill in Bella Bella and the Mount Polley Mine disaster in central B.C. were not only environmental disasters. They hit communities in a much more obstructive way. As Housty recounts, “It was an environmental disaster, yes, but it was also a social and cultural and spiritual and economic disaster—something that affected the entire fabric and identity of our community.”⁵⁸ The comprehensive impact of the oil spill off Heiltsuk shores elucidates how many of the First Nations communities all along the Fraser River felt as they experienced the disastrous effects of the breach and the tailings tearing through the waterways downstream. The comprehensive elements of these disasters cannot be fully understood by the design of Agamben’s state of exception and bare life alone. Together these two concepts draw an arbitrary line between direct impacts on people and impacts on the disaster, and the ways in which those impacts reverberate back into Indigenous communities specifically. Environmental impacts cannot be separated from the effects they have on the environment that Indigenous people rely on for cultural, social, and economic means.

⁵⁷ Fraser Los, "The Lingering Legacy of the Nathan E. Stewart," *Hakai Magazine*, April 10, 2017, , accessed April 12, 2017, <https://www.hakaimagazine.com/article-short/lingering-legacy-nathan-e-stewart>.

⁵⁸ Los, "The Lingering Legacy of the Nathan E. Stewart,"

The spill flooded Polley Lake, Hazeltine Creek and Quesnel lake and, in the process, land and water systems that sustained salmon habitat since time immemorial were destroyed. “The Northern Secwepemc people, on whose territory the mine was located, lost land, livelihoods and traditional uses integrally linked to the land.”⁵⁹ Quesnel lake was not only an important source of drinking water and spawning grounds for one-quarter of B.C.’s sockeye salmon but also fed directly into one of the province’s major watersheds, the Fraser River, effectively expanding the potential areas of contamination to much of the Interior’s waterways.⁶⁰ Meaning, the impact of the disaster not only extends far beyond the immediate area of the breach, but also far beyond environmental concerns as Indigenous livelihoods, cultural practices, and community cohesion is dependent on fishing throughout these waterways.

The timing of the mining disaster could not have occurred at a worse time for Indigenous communities. The breach occurred at the start of the annual salmon fishery season, which is vital to Indigenous peoples throughout the province for both economic and cultural reasons. This untimely event immediately raised fears about eating fish from the potentially contaminated waterways. Secwepemc elder Jean Williams said, “The loss of the salmon for us as Secwepemc people is a matter of life or death for our culture. Can our salmon survive this devastation?” Williams’s comment highlights the unknown state of the waterways following the disaster. Their sentiments were echoed by Musqueam First Nation’s Chief Wayne Sparrow who “called the interior territories the “incubators”

⁵⁹ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 11.

⁶⁰ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 55.

of the eggs that will eventually become salmon and feed downstream Indigenous communities.” These comments simultaneously highlight the importance of the waterways to Indigenous peoples all over the province, as well as the mutual understanding of, and deep grief over, the unknown impacts on lands, bodies (human and non) and waters felt by Indigenous communities from the Interior to the Coast.⁶¹

Despite most of these reports acknowledging the importance of fish for Indigenous communities, there is no mention of studies or monitoring the long term impacts of the disaster on fish populations by the company or any of the government bodies responsible. To not acknowledge fishing and the waterways as an intrinsic part of Indigenous identity for multiple communities, while providing no resources or supports, is another function of colonial erasure as there is no state or corporate interest taken in these Indigenous communities’ quality of life following the pollution of their major food source. This speaks to the degree of suppression that Indigenous communities experience that is present in their everyday lives. For Indigenous folks and their primary source of traditional food to be made insignificant, it becomes clear that there is no conceptual space in the settler colonial imaginary for connections between access to food, health, and cultural and economic wellbeing. It also precludes any acknowledgment of the fish themselves and their quality of life. They are truly reduced to a legally unremarkable being. At a certain point for settler colonial governments, Indigenous connections beyond the human become no longer politically relevant. In the case of the fish populations that

⁶¹ Amnesty International, “A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada,” 5.

sustain many, if not most, communities from the coast to the interior, are included only by their exclusion from the structure that supposedly protects them. Their “inclusive exclusion” (as Agamben references it) reinforces the narrative that impacts on Indigenous communities and their webs of kinship beyond the category of human are only useful in proving a tragic environmental narrative that ultimately, will not change the structure that allows the pollution of Indigenous lands, bodies, and waters.

By contrast, The First Nations Health Authority generated a report on the health impacts the disaster felt by First Nations communities downriver of the breach. The FNHA report aimed to focus on direct health impacts felt by Indigenous communities following the disaster. Going into the communities they had not anticipated how central fish and fishery practices were to Indigenous communities on the river, especially for more than health and sustenance related reasons. The report conveys the feelings of intense loss that many communities felt as a result of the breach. “For First Nation communities, especially for those in rural and remote areas, the consumption of traditional food is directly linked to positive health outcomes. Not only is traditional food a fundamental source of nutrients, the collection of traditional food also provides social and cultural benefits for individuals, families and communities”⁶² This is true in the specific case of the seven communities represented by the Lillooet Tribal Council (LTC). Despite the fact that LTC communities are 200km south of the dam failure site, the centrality of the Fraser River and salmon to their livelihoods, culture, social cohesion and

⁶² Janis Shandro, Mirko Winkler, Laura Jokinen, and Alison Stockwell. “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” *First Nations Health Authority*. (January 2016), p. 22. <http://www.fnha.ca/Documents/FNHA-Mount-Polley-Mine-HIA-SSP-Report.pdf>

overall community health, was still negatively impacted by the disaster.⁶³ Fishing on the Fraser River is an ongoing and integral part of many First Nations communities like those represented by the LTC since time immemorial, and thus constitutes a major part of their lives not only culturally, but also economically, and nutritionally.

Culturally it is a celebratory occasion that provides the opportunity for community gatherings that assist community cohesion and, the maintenance of collective community values. The acts of fishing, processing and preserving are all integral to how elders share their knowledge of cultural practices with youth. Furthermore, economically and nutritionally, salmon is a critical food source for LTC members which is compounded by the fact that with low incomes, many in the community cannot afford to buy alternative foods from grocers and nor do they have access to a local substitute.⁶⁴ This existence is the story for many remote communities that rely yearly on having “freezers and cupboards stocked with frozen, dried and canned salmon for the months until the next fishing season.”⁶⁵ This disaster pushed the St’at’imc Nation to call for urgent steps to be taken to protect the Fraser River system from even further degradation.⁶⁶ The disaster and lack of recourse by the government and company are perfect examples of the

⁶³ Shandro et al, “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” 24.

⁶⁴ Shandro et al., “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” 24.

⁶⁵ Amnesty International, “A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada,” 6.

⁶⁶ Amnesty International, “A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada,” 6.

ongoing impacts of colonialism, and the threat that they pose to Indigenous lives, political authority and cultural practices, to this day.

In addition to Indigenous concerns over waterway health and fishery practices, immediately following the breach, Indigenous communities near or with access to the Fraser River experienced intense emotional trauma associated with a lack of information on the disaster. The feeling of trauma and loss was exacerbated by the lack of reliable information in the fallout of the breach from trusted sources. The uncertainty of the health of the fish, and the Fraser River, led many First Nations communities to cease or reduce salmon fishing during the 2014 run, and in some cases also in the 2015 run.⁶⁷ While this was a difficult decision for many, the constant concern over the overall health of their food source was important to know before feeling comfortable consuming salmon again. Indeed, the need for information on the Mount Polley disaster, propelled many community members from various communities (LTC included) to travel at their own expense to Likely B.C., the town closest to the breach to attend information meetings organized by the company or the B.C. Ministry of Environment.”⁶⁸ Even so, these meetings did little to put First Nations minds at ease, as they were not tailored to deal with their specific concerns over salmon health and downriver impacts on Indigenous culture, community, or economies.

⁶⁷ Shandro et al., “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” 50-51.

⁶⁸ Shandro et al., “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” 29.

A major technique that contributed to creating bare life is in the way that information pertaining to the breach is controlled and released by those investigating it. The way that this information is kept and released speaks to the structural power the state of exception, where an institution determines the scope and gravity of the spill ensuring those subjected to that information are kept in a zone of unknowing. Indigenous folks know that they are negatively impacted by the disaster, but to which degree is still in question. The general approach to ignore Indigenous concerns, over the overall wellbeing of the fish and the waterways, is a function of bare life because there is little to no consideration of the emotional and spiritual effects of the spill. There is no consideration of the way that Indigenous life is lived. There is no account of the actual circumstances in their lives. This is reinforced by the lack of information aimed directly at Indigenous folks. This reiterates how little the general population knows and cares about Indigenous ways of life that rely on these waterways for wellbeing in more ways than one. In the initial months following the breach there was a lack of data which propelled Indigenous people to travel north to the information gatherings following the disaster, but this lack of information changed into the opposite problem of too much information later on, according to the FNHA report. Even if the information is supposedly readily available, the inaccessibility of it all keeps the severity of the situation and the impacts in their home communities relatively unknown until it manifests on the ground, and in the waters, potentially years or decades later.

The FNHA report states that by 2016 when it was published, “community leaders are now overwhelmed by a large volume of technical and other reports, which they find

difficult to assess in terms of validity and trustworthiness.”⁶⁹ The inaccessibility of the documents alienated First Nation communities, and in many cases the reports do not even cover the impacts that these community members are experiencing, focusing instead on the design failures that caused the breach, and sidelining the health of the rivers and fish.

Another major issue when attempting to understand these reports was that they were not readily available or easily accessible online. According the Amnesty International’s report, there were at least four different websites that provided information and updates on the mine disaster. These were the Ministry of Environment, the provinces Mineral Exploration and Mining site, the Ministry of Energy and Mines Information site and finally, the Imperial Metals site. If people were seeking information they would have to sift through these four websites to find updates. The difficulties that arose when doing so were varied. For example, the person looking into these reports had to know keywords, as well as titles of reports and, they would also have to have a working knowledge of industry jargon to fully understand them. Amnesty International also states that documents that were once available in the last two years have been archived or moved to other sites that make it harder for members of the public to access. Indeed, the bureaucratic nightmare that these websites pose to the public, and Indigenous folks in particular, who are just trying to understand this disaster cannot be understated. This lack of access contributes to the conditions of bare life, where information is immediately coded as only appropriate and accessible for those who have a certain level of

⁶⁹ Shandro et al., “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” 26.

understanding of industry jargon, internet websites, and overlapping pools of information in different institutions. This information is compiled and stored in places where institutions and people within those institutions can paternalistically make decisions on behalf of Indigenous people for their own good. Indigenous people are not politically relevant enough to be in control of, and have agency within the information that concerns them the most. These issues do not include the fact that in central B.C., internet service is often slow and many homes lack computers or internet connections to begin with. Residents have asked the province to create a single, user-user-friendly site with updated information but that has yet to come about.⁷⁰

Furthermore, when these reports do provide information to the public, they are more likely to cater to settler society and their limited concerns following the disaster. One example of this is when it comes to water, more specifically, drinking water which leaves out First Nations concerns around waterway wellbeing, as well as fish health.⁷¹ A stark example of this shows up when the FNHA study discusses the impacts felt by a settler community located close to the mining breach site. This town called Likely was the only non-Indigenous community to participate in their study and their participation revealed some an interesting divergence in community concerns following the disaster. The differences in Indigenous and non-Indigenous worldviews emerged quite starkly in this report. The report claims, “while respondents in Likely also raised concerns over

⁷⁰ Amnesty International, "A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada," 13.

⁷¹ Shandro et al., "Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report," 49.

health impacts and increased community conflict linked to the incident, their concerns focused on the safety of water for drinking, household, and recreational use. Conflicts emerged in Likely between groups where one group was satisfied that the data presented no significant long-lasting water-based impacts. This was in stark contrast to the other groups, comprised primarily of Indigenous folks, who continued to worry about the long-term serious impacts on the waterways effected.⁷² This is a clear indication that the quarrels of Likely residents are much different for the First Nations communities included in the study and, probably for many of the other communities that were also impacted but not interviewed. The concerns of Likely residents dissipated once they were assured that water for drinking, household, and recreational use was fine following the disaster. Thus the concerns of Likely residents differ greatly from First Nations communities who rely on waterways in a completely different capacity than non-Indigenous communities do.

As such, the reports generated could not have adequately comprehended the trauma experienced by First Nation communities along these waterways, illuminating how public perceptions of on-reserve health is very often limited to drinking water when that is not the case for First Nations communities who rely on the river for cultural reasons as well. Yet these reports are somehow supposed to account for the experiences of not only settlers impacted by the disaster, but Indigenous communities as well. It is not that Indigenous and non-Indigenous concerns cannot be addressed simultaneously in the

⁷² Shandro et al., “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” 49.

same report; however, an issue arises when non-Indigenous or settler concerns are taken as the baseline for inquiry that immediately forecloses any opportunity for meaningful engagement of Indigenous concerns that extend beyond those of settlers. This colonizing approach contributes to the continual erasure of Indigenous legal and political formations that existed on the land and in the waters since time immemorial. Furthermore the limited resources that many Indigenous communities possess means that they are unable to fund research that would centre their own narratives, instead of other parties trying to clumsily fit Indigenous folk into narratives that are clearly not focused in their wellbeing beyond their victim status.

What are the mechanisms at work here?

In this chapter, I have attempted to show how the reports and the immediate narrative of the Mount Polley Mine Disaster have been constructed to make Indigenous communities external to their own tragedies, drawing on Hunt's colonialscape, Voyles's wastelanding, and Agamben's theory of bare life and the state of exception. While Indigenous communities have been the most impacted by this disaster, they do not comprise the main focus of investigation in these documents and, when they are included, they are included solely in their inclusive exclusion, which is a clear manifestation of the state of exception and bare life. Furthermore, public outcry has done little to begin the process of assessing the impacts this breach has had, and will continue to have, on already marginalized rural First Nation communities along the Fraser River. Agamben's lens of state of exception and bare life reveals many things about mechanisms that the settler

state and corporations use to maintain simultaneous authority and distance in this disaster. These mechanisms manifest in the expressions of colonial power identified by Sarah Hunt's colonialscape and Traci Brynne Voyles's wastelanding. Understanding the material impacts of this disaster in the context of communities along the waterways requires a more grounded approach that comes from these concepts.

Hunt's work on the colonialscape provides a much-needed lens to understand the lack of action or remedy for First Nations communities impacted by the Mount Polley Mine disaster, despite overwhelming amounts of evidence in place. Hunt posits that representations of landscapes can be understood as expressions of cultural, political, and economic power, which are central to the formation of local and national identities.⁷³ Hunt points to the ways in which a particular image of land helps create a sense of imagined community crucial to displacing and suppressing already existing forms of community that existed prior. From this concept of landscapes, "colonialscares, then, might be understood as representations of the space now called 'Canada', which perpetuate and manifest particular (colonial) expressions of power." Thus, just as landscapes function to create a complete view or image of a particular space, colonialscares operate similarly to create the appearance of Canada as somehow 'true'.

In the process, these colonialscares cover other spatial relations and representations that existed prior to Canada, most significantly Indigenous ones.⁷⁴ Hunt's concept is necessary to account for the active process in which Indigenous

⁷³ Sarah Hunt, "Law, Colonialism and Space," 71.

⁷⁴ Sarah Hunt, "Law, Colonialism and Space," 72.

understandings of lands and waters are suppressed by the state and industry to create Indigenous people and their connections to nature as bare life. Indigenous connections to land, waters, and the life that lives within these spaces are reduced to biological fact with no other concerns over their quality of life and overall wellbeing in the wake of the disaster. The suppression of Indigenous landscapes and laws in the aftermath of the Mount Polley Mine Disaster created space wherein settler colonial mechanisms of replacement could thrive.⁷⁵ These spaces wherein Indigenous landscapes and laws are suppressed can be understood partially as a manifestation of Agamben's state of exception and the production of bare life, where Indigenous connections to lands and waters are rendered unnamable. Indeed, settler colonial attempts to destroy-to-replace manifest in the erasure of fault of the disaster itself, rendering the suffering of First Nations communities marginal once again.

The colonialscape displaced Indigenous peoples by imagining the land through the map or grid wherein Indigenous cultural, political, and legal concepts of meaning were rendered unimportant or invisible. The resulting material effects according to Hunt are dire. Indeed, "Rather than speaking of a bend in the river as connected to a particular ancestor or story, that place where land meets water became merely one part of the larger whole of Canadian lands opened up for ownership, exploration and settlement."⁷⁶ The experiences of Indigenous communities in these reports are perfect examples of how Indigenous connections to lands and waters are included to prove a point while still being

⁷⁵ Patrick Wolfe, "Settler colonialism and the elimination of the native," *Journal of Genocide Research* 8, no. 4 (2006): 390. <http://dx.doi.org/10.1080/14623520601056250>

⁷⁶ Sarah Hunt, "Law, Colonialism and Space," 73-74.

rendered inconsequential in the broader narrative of the disaster beyond their shock value.

Despite the fact that a multiplicity of communities' cultural integrity was at risk, only one report (FNHA) was produced on the subject that took it into consideration as their central object. This affirms the fact that when convenient to the settler colonial imaginary, anywhere and everywhere is *terra nullius*, empty lands open for extraction. Hunt affirms that this is the story of northern B.C., where "as pipeline routes, fracking, and other extraction are shown to be occurring on unused or uninhabited lands. Indigenous resistance to this development has made visible the ways that the lands are actually in use and are inhabited by Indigenous nations, although it may fail to 'matter' within legal processes."⁷⁷ By rendering First Nations landscapes inconsequential, the violation of them becomes permissible in the eyes of the settler state, which sees these lands as not in use or valued as they are. This manifested in the inclusive exclusion of First Nation communities in the main parts of the reports, and ensured that industry and government do not feel any obligations to them. A clear manifestation of the state of exception's mechanism that creates bare life and produces Indigenous communities as non-political spaces for the purpose of exploitation.

The imagining of northern B.C. as *terra nullius* is a logic of colonialism to create a particular understanding of said space. This limited understanding of space ultimately leads to processes of wastelanding of the landscape and the waterways present in the Mount Polley Mine Disaster. In order to understand Voyles's concept of Wastelanding, a

⁷⁷ Hunt, "Law, Colonialism and Space," 74.

definition of environmental racism is important. Environmental racism “occurs whenever communities of color are disproportionately exposed to or deliberately targeted for environmental harm.”⁷⁸ Social injustices, just as the social injustice done to First Nations communities by this breach, are the result of the ways in which power is exerted over resources and the ways in which these power structures construct knowledge about landscapes.⁷⁹ In the case of Mount Polley, understandings of landscapes were reconstructed to remove certain elements of Indigenous connections to land, to lessen the impact that these communities faced as a result. This fracturing of Indigenous experience following the disaster, is a mechanism of the state of exception to reduce the importance Indigenous concerns overall. This reflects how the state reduces their prospects of life to basic biological terms, making no attempt to understand their quality life whatsoever.

This reduction of Indigenous life was furthermore reinforced with the perpetual proclamations throughout the reports which claimed that no lives were lost, and that there were no deaths or injuries resulting from being in the direct path of the breach.⁸⁰ In this case, the life forms outside of the category of human, including plant and animal lives that Indigenous people’s rely on for their livelihood, are deemed inconsequential and therefore, not worthy of noting their loss. This inherent assumption that there were no victims in the immediate aftermath of the breach, completely leaves out the slow violence and destruction of the tailings moving through the waters, being absorbed by the fish that

⁷⁸ Voyles, *Wastelanding*, 6.

⁷⁹ Voyles, *Wastelanding*, ix.

⁸⁰ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 156.

First Nations communities subsist on. At a certain point, connections that Indigenous people have with natural features such as land and water, and with living beings, such as fish in the river, become erased in the eyes of the law. This effectively produces an unnamed and unacknowledged element of Indigenous identity that is not considered in the investigation on the effects the disaster had. The assumption that no lives were harmed immediately discounts the validity of the relationships Indigenous folk have beyond the narrow focus of individual lives, parsing off portions of Indigenous identity to engage with whilst leaving others out. There is also a reduction of the lives of the fish and other lifeforms that live in the river that were also directly in contact with the contaminants of the breach, to bare life.

To further complement the analysis of how Indigenous life is made into bare life, and how colonialsapes are deployed against Indigenous peoples, I turn to Voyles's concept of wastelanding. It is important to point out that wasteland is not only meant to connote a particular kind of landscape, which is why it is applicable to the Mount Polley situation. The "wasteland" is a racial as well as a spatial signifier that makes a particular environment, and the bodies inhabiting that environment, pollutable. Making wastelands is not only reliant upon Euro-American distaste for arid deserts, but rather wastelands can also be constructed out of the most abundant or lush landscapes that to the settler imaginary are "just so much waste of space"⁸¹, which includes green forested areas and in this case, waterways that run throughout the province.

⁸¹ Voyles, *Wastelanding*, 9-10.

Wastelanding is “one of these feats of ontological magic, wherein racialized lands are made to seem uninhabited or unimportantly inhabited, [to be] represented as worthless and then—abracadabra., hocus-pocus—systematically stripped of their material and ideological wealth.”⁸² There are no consequences for damaging these now ‘unimportant’ areas, whether they are First Nations communities, rural reserves located along the river, or the river itself. The requirement of actual desert or arid landscapes are not necessary because “Wastelanding reifies—it makes real, material, lived—what might otherwise be only discursive.”⁸³ This construction of certain space as wasteland is what allowed for companies like the Mount Polley Mining Company to justify their exploitation of copper and gold resources under the ground in the first place. Furthermore, the lack of accountability afterwards shows how these spaces are still considered wastelands. Indigenous spaces, including lands bodies, and waters, have clearly been violated beyond belief, and the lack of consequences for the ones responsible reconstitutes the notion that these spaces are nothing more than dumping grounds. The result is that

wastelanding is a discourse-made-material through the degradation of targeted environments and their human and nonhuman denizens. It is through this process that even verdant landscapes— or non-lush places that are nonetheless aesthetically pleasing or otherwise fitting for American environmentalist affect— can be rendered pollutable, and desertscapes embraced as protectable. The referent of wastelanding is inconsistent; the outcome is not.⁸⁴

⁸² Voyles, *Wastelanding*, 10-11.

⁸³ Voyles, *Wastelanding*, 10.

⁸⁴ Voyles, *Wastelanding*, 15.

The outcome here has dire consequences for Indigenous people whom rely upon the health of the Fraser River, and yet there are still no tangible consequences being felt by those at fault. Whether it be the in the province's lack of oversight, the company's lack of assurance that the conditions that led to the breach were prevented, or the engineers in charge of design that failed to take into consideration the natural features of the landscape that contributed to the failure. Here we see a manifestation of the endless cycle of development that needs "wastelands from which resources are increasingly extracted and where (often toxic) waste is increasingly dumped."⁸⁵ Raw materials for products must come from somewhere and the toxic waste must go somewhere and it is environmental privilege that made this discursive process marginal, worthless, and ultimately pollutable.⁸⁶ As this case has shown, the toxic tailings were dumped into the Fraser River system, an integral source of cultural, spiritual, and economic wellness for Indigenous peoples and their non-human kin.

Conclusion

Even though the reports on the cause of the mining disaster mention Indigenous people briefly throughout as one of the primary groups impacted, they are never fully explored in the bulk of the reports with the exception of the one put together by FNHA, which centres the narratives of the Lillooet Tribal Council in St'at'imc Nation, and later the Amnesty International and Corporate Mapping reports which both attempted to have

⁸⁵ Voyles, *Wastelanding*, 9.

⁸⁶ Voyles, *Wastelanding*, 9.

Indigenous experiences as a pillar of their investigations. The exclusion of First Nations community's specific impacts in reports conducted by the Chief Inspector of the Mines and the Independent Expert Engineering Investigation and Review Panel can be seen as quite deliberate, meaning the framing of the official reports and the narrative that emerges leave Indigenous communities with little official documentation of their struggles in the wake of the mining disaster. This shows how the whole handling of this situation is operating to bolster the state's authority throughout the disaster. The findings and the framings of the official reports operates to create *the* authoritative narrative that shifts the attention away from the state and the company despite overwhelming evidence that they are at fault.

This narrative creation is significant because these regulatory bodies, and the reports they produce, carry institutional weight in their findings following the disaster. The reports announced with the blessing of the government (i.e, Chief Inspector of the Mines and the Independent Expert Engineering Investigation and Review Panel) one would expect them to have findings that will have some consequence attached since they were carried out by public officials and independent experts in the interest of the public. On the other hand, the reports compiled by FNHA, Amnesty International, and Judith Marshall through the Corporate Mapping project carry significant findings surrounding Indigenous community concerns but as institutional bodies that the government of B.C. or Canada owe no obligation to, their concerns tend to go unheard. This is technique of the state of exception and bare life because Indigenous concerns are immediately cut out of frame from the beginning. Indigenous concerns cannot be meaningfully identified and

addressed if they are excluded so fully from the outset of the investigations that have an accountability function built right in.

The voices of Indigenous folks are explicitly excluded from the main investigations of the disaster and, the investigations that do not have the capacity to hold the perpetrators responsible are the ones naming the specific violences felt by Indigenous communities. So the main investigations with the accountability function built right in, are the ones making decisions on when to hold the people responsible for the disaster, but since they do not hold Indigenous voices at their core, they would never fight for justice for these Indigenous communities. In short, Indigenous experiences are included only in their exclusion from the central aspects of the reports done with the blessing of the Provincial and Federal government.

Voyles claims that “the exclusion of others is not compatible with meting out justice for those communities, precisely because it is constituted on and through their exclusion...By extension, industrialized capitalism cannot function without designating landscapes pollutable.”⁸⁷ This description constitutes the very conditions that the Mount Polley mine, and the company running it, thrive upon. Corporate injustices against the First Nations that make up many of the communities along the Fraser River do not constitute a punishable offense, because these areas are simply seen as unimportant and mostly uninhabited wastelands.

Present throughout the reports mentioned above, the colonialscape reveals the ways in which the mine is constructed as an integral part of the landscape in the area,

⁸⁷ Voyles, *Wastelanding*, 26.

because it contributes to economic development of the region. Furthermore, this naturalization of the mines in B.C., coupled with obvious negligence of the operators of the mine, were then not questioned as a wholly bad practice; rather the disaster was presented as something that can be learned from for future development. This framing of the disaster as a learning experience was done without consultation or consideration of First Nations communities that were gravely impacted by the mine's tailing storage facility breach. This becomes another instance in the disaster's aftermath that precludes any engagement with communities about the lasting impacts of the disaster. It has been decided for Indigenous folks, that their experience of the disaster was worth the lessons that industry and governments learned, despite the fact that they were the ones who experienced the worst parts of it. Though this is unthinkable to those heavily dependent on the Fraser River for the maintenance of their existence, it is the reality of the situation now. The watercourses damaged, and the life sustaining parts of it, are then made into something not worthy of protection or justice in the minds of the colonial imaginary. In contrast, for First Nations people, water more generally and fish more specifically, cannot be understood as only a part of nature or a small part of their diet that can be substituted with other food from the grocery store. It is much bigger than that. As one participant claimed in the FNHA report, "We live on fish, this is who we are."⁸⁸ But this fact does not contribute to the discourses coming from the B.C. Government or the company itself.

⁸⁸ Shandro et al., "Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report," 12.

Thus, wastelanding is a fully colonial project that in action renders valuable resources extractable, and bodies in the zone of sacrifice, as pollutable .⁸⁹

The reason behind this is because, through the process of wastelanding, the settler colonial logic is premised on the belief that anything ‘wasteland, discursive or material, cannot be considered sacred to anyone. Thus, through the settler colonial logic, wastelands cannot be claimed, they cannot be seen as having history, nor can they be tangibly seen as a home to anyone. “Instead, to wasteland a space is to defend the notion that the land is, always has been, and always will be “empty except for Indians”’: to mark it and make it, ultimately, sacrificial land.”⁹⁰ Land, in other words, is naturalized by the colonialscape as *terra nullius*, a blank slate even when First Nations people are already present. The Mount Polley Mine disaster was a mine that should not have failed, but it did. This was a disaster that should not have gone without holding someone accountable, but it has.

This chapter has shown through these theoretical concepts how the colonial process of delegation- accountability works in the benefit of both the state and the corporations including Mount Polley Mining Company, subsidiary company of Imperial Metals, to render these massive institutions not at fault. It has done so in such a way that allowed the state and the company to control the narrative that depicts them as not at fault. The immediate and longterm coverage of this disaster that was drawn upon for this chapter show a consistent approach to Indigenous experiences of the disaster that actively

⁸⁹ Voyles, *Wastelanding*, 25.

⁹⁰ Voyles, *Wastelanding*, 26.

seek to lessen the impact of the disaster on Indigenous communities. It is important to note that the use of the exception, in this disaster, does not always mean outright neglect of Indigenous peoples; rather this neglect can show up as the continual delegation of responsibility and accountability elsewhere, rather than an absolute refusal to engage. So while broader calls for state and corporate accountability are juggled between the two, grounded impacts of the disaster continue.

Chapter Three: ‘Business as usual’: The long and the short of state-industry collusion in British Columbia through the Mount Polley Mine Disaster.

Introduction:

The previous chapter looked at the immediate and long-term material impacts of the Mount Polley tailings pond breach. In this chapter, I continue the aim of investigating the ways that the structural elements of deregulation and destruction, from the disaster, continue to marginalize Indigenous communities . To do so, this chapter shifts to look at the discursive aspects¹ of the disaster that, contribute and form, the material aspects. Next, I identify registers of politics that show how hegemonic notions of authority are constructed, accepted, and upheld in the Mount Polley Mine Disaster, specifically looking at how these colonial constructions suppress the Indigenous voices in the process. I show how the discursive aspects of the disaster are just as important as the material impacts they create. This is because the mindset that governs resource extraction processes in corporate and state spaces allow for both the state and the company to escape accountability, as seen in the 2014 breach. This occurs while simultaneously bolstering the state’s claims to authority throughout. Regarding the structural processes of environmental racism, Waldron, warns against looking at certain cases in isolation because it does not allow for the implicit racist ideologies that motivate policy in

¹ Discourse in this context is meant to focus on the official rhetoric that is used by both the state and the company to justify their actions. The use of the term discourse in this chapter is not aimed at disconnecting the rhetorical aspects from the material conditions of the disaster. Rather, I seek to show the role of that rhetoric in bolstering state authority which in turn informs and creates the material conditions on the ground.

institutions to be revealed.² While this project is focused solely on the Mount Polley Mine Disaster, I draw upon Waldron's approach to assess the various registers of authority mobilized in different branches of the state to get a holistic picture of how authority in these spaces operates separately but, in conjunction with each other. With this in mind, this chapter is not organized chronologically, rather it is organized by register of authority that I identify as significant expressions of state power overruling the public interest and Indigenous concerns following the breach.

In doing so, this chapter elucidates how presumed authority operates in a particular way to marginalize Indigenous concerns and, continue the degradation of their lands and waters. Canada's authority, as a nation-state, requires constant legitimation, and authority can mean many different things; but, in this chapter my use of 'authority' means Indigenous peoples are subjected to state control. We can see through an assessment of state actions (at the federal and provincial level) following the disaster, that the state continually claims or presumes sole authority at different registers. In particular, I identify three registers of state-driven authority: *jurisdictional authority* that allowed the dumping into Quesnel lake; *legal authority* that dismissed the court cases against the company and, *delegated authority* that allowed for regulatory capture to take hold. Throughout this discussion, the ways in which the state constructs, upholds, and maintains authority is shown to be maintained by exercising and operationalizing it at different registers. I will continue to use the constellation of theories developed and

² Ingrid R. G Waldron, *There's Something in the Water: Environmental Racism in Indigenous and Black Communities*. (Halifax: Fernwood Publishing, 2018), 3.

utilized in previous chapters that illuminate both, the suppression of Indigenous legal orders via *terra nullius*, noted by Hunt's colonialscape and Agamben's state of exception and bare life and, the unfettered pollution of Indigenous spaces, as detailed by Volyes's wastelanding.

Disastrous projections for the future:

As discussed in the previous chapter, the Mount Polley Mining Disaster is depicted as a tragic story of, too little, too late. From the very beginning the necessary upgrades that would have prevented the disaster only proceeded when absolutely necessary and, often done at the very last moment possible. Making the company's responses more reactive than anticipatory, indicating very little in the way of long-term planning or execution of day to day operations.³ Indeed, the reports indicate that in addition to the direct structural failure of the perimeter embankment, there were also a number of defences that were defeated or wholly not present to begin with. A defence is intended to intervene, or break, a causal change essentially mitigating or preventing the outcome of the disaster. These failed defences include "site investigations that were not conducted with sufficient detail, requests by the Regulator for information or clarification that were discounted, adequacy of site supervision and risk identification, missing procedures, misplaced confidence,

³ Independent Expert Engineering Investigation and Review Panel. "Report on Mount Polley Tailings Storage Facility Breach" *Government of Canada*. (January 30, 2015), 75. <https://www.mountpolleyreviewpanel.ca/sites/default/files/report/ReportonMountPolleyTailingsStorageFacilityBreach.pdf>

mistaken belief, and organizational voids in key management areas.”⁴ All of these missing defences, with a lack of long-term planning, on top of how complex tailings damn systems, that are already unforgiving on their own, led to the Mount Polley Mine Disaster. The proper functioning of a tailings storage facility is “contingent on consistently flawless execution in planning, in subsurface investigation, in analysis and design, in construction quality, in operational diligence, in monitoring, in regulatory actions, and in risk management at every level. All of these activities are subject to human error.”⁵ Tailings dam systems, even in their best maintained states, are heavily dependent on everything running smoothly, which did not occur in this case. Add to it the myriad of other failures the company allowed, it is a miracle that this disaster did not occur much sooner.

One of the most striking aspects of the disaster was the longterm predictions that were made based on this the disaster’s conditions. The 2015 Independent Expert Engineering Investigation and Review Panel stated, if the activities of the tailings damns in British Columbia remain the same, and the past actions of these companies carry on into the future, there will be on average “two failures every 10 years and six every 30” emphasizing that business as usual in the mining industry cannot under any circumstances continue.⁶ This statement illuminates the necessity of industry wide

⁴ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” *Ministry of Energy and Mines: Mining and Mineral Resources Division*. (November 30, 2015), 6. http://mssi.nrs.gov.bc.ca/1_CIMMountPolley/BCMEm-report-3_04-web.pdf

⁵ Independent Expert Engineering Investigation and Review Panel. “Report on Mount Polley Tailings Storage Facility Breach,” 119.

⁶ Independent Expert Engineering Investigation and Review Panel. “Report on Mount Polley Tailings Storage Facility Breach,” 119.

reform, in addition to holding the parties responsible accountable both politically and legally.

Despite this seemingly clear understanding of the negative impacts caused by the disaster, Imperial Metals was cleared to resume restricted operations in July 2015⁷ and then full mining operations in June 2017. By 2017, the company had more than “70-million on remediation and restoration work, including the planting of about 30,000 trees and shrubs to repair damage caused by the spill.”⁸ In addition to that, the company also launched a lawsuit in the B.C. Supreme Court alleging negligence and breach of contract against two engineering firms, regarding the design and the monitoring of the pond itself.⁹ In doing so, the company was attempting to shift the blame for the disaster unto anyone but themselves. Whilst making moves to offload accountability for the disaster to anyone else, the MPMC quietly obtained a license to dump wastewater from their operations into Hazeltine Creek and Quesnel Lake, essentially continuing the pollution that they started with the breach. This is the issue that will be discussed first.

The spill in multiple parts: jurisdictional authority

⁷ Judith Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” *Corporate Mapping Project*. August 2018. p. 36. https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2018/08/CCPA-BC_TailingsDamSpills.pdf

⁸ Ian Bailey. "Mount Polley mine still at risk for future tailings breach: analyst." *The Globe and Mail*. August 4, 2016. Accessed April 12, 2017. https://beta.theglobeandmail.com/news/british-columbia/mount-polley-mine-still-at-risk-for-future-tailings-breach-analyst/article31269473/?ref=http%3A%2F%2Fwww.theglobeandmail.com&utm_source=twitter.com&utm_medium=Referrer%3A%2BSocial%2BNetwork%2B%2F%2BMedia&utm_campaign=Shared%2BWeb%2BArticle%2BLinks&service=mobile.

⁹ Bailey "Mount Polley mine still at risk for future tailings breach: analyst."

In the wake of the mine disaster, where state authority was clearly undermined by their lack of ability to respond to the breach, the state needed to shift to other registers of authority to bolster their image of control. The first register of authority that is looked at is jurisdictional authority of the state, which refers to the practical authority granted to a particular legal body responsible for proper administration and care of a particular area. More specifically, this section will be looking at how the state quietly mobilizes jurisdictional authority through delegation as a way to continue the pollution of Quesnel Lake, the first body of water that the tailings pond dumped into before entering the Fraser River. The state here used their jurisdictional authority as a regulator of the mining industry to allow for the dumping of effluent wastewater into Quesnel lake.

The Mount Polley tailings storage facility breach and spill was such a shock to the public, and the imagery from the spill of mining wastewater into pristine waters and surrounding wooded areas elicited a visceral reaction from the public at the time. This continuation of the initial spill, just on a smaller and, more drawn out scale illuminates the limitations of colonial understandings of life. The colonial view of what is life, or at least what is life that has value in a settler society, is limited to humanity as, independent from and superior to, nature. This limited understanding of life and what constitutes being, makes it so the state along with the corporations involved can make longterm decisions that put multiple forms of life at risk without considering the ramifications of their decisions. This mindset is made evident when their decision making processes do not consider the broader impacts of these decisions on natural cycles, such as fish

reproductive cycles that need to be protected and, not compromised further by dumping in the lake.

The lens developed previously continues to help uncover the ways the state dismisses Indigenous concerns while simultaneously reinforcing their claims to authority on stolen land. By holding central the webs of kinship that go beyond the category of the human, this alternate lens highlights the ways that Indigenous lands, bodies, and waters are rendered insignificant lives and therefore are pollutable. By using my theoretical constellation as a lens, the interconnectedness of life, between human and non-human, and the interconnectedness of waterways, can illuminate the true impacts of the decision to allow the dumping of wastewater into the lake, to be revealed. By extension, the structural aspects of the disaster are also illuminated through Hunt's and Agamben's theorizations showing how the dumping into the lake is continuing the pollution of the lake and the suppression of Indigenous laws that seek to prevent this environmental degradation.

Despite pending investigations at the time that could have led to criminal charges, in the summer of 2015, the MPMC was given permission to temporarily dump tailings into an abandoned mine pit, where the water was treated to remove contaminants before being dumped into Quesnel Lake.¹⁰ The MPMC was given a year to submit a long-term plan that outlined their tailings management strategies. Six months later, in December 2015, the mine pit that was being used for temporary storage of tailings was in danger of overflowing, pushing the company to make a decision on their next plan of action. This

¹⁰ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 36.

led to the government issuing the company a short term water discharge permit into Quesnel Lake to release the pressure building in the abandoned mine pit.¹¹ This buildup and spillover is integral the extraction industry; Voyles's identifies this expansive process in her concept of wastelanding where "the treadmill requires "wastelands" from which resources are increasingly extracted and where (often toxic) waste is increasingly dumped."¹² After all, "raw materials for products... must come from somewhere, and toxic waste must go somewhere"¹³ In this case, potentially toxic wastewater is being dumped directly into Quesnel Lake, which connects to a larger network of waterways in central British Columbia. This action, and the provincial government allowing it to occur, is a perfect example of not only wastelanding but also Agamben's state of exception and bare life, where Quesnel lake's ecosystem is reduced to bare existence by the overarching structures of power (i.e. the provincial government and the company) with no legal protections in place to stop it.¹⁴ This environment, and those Indigenous communities closely interconnected with it, are subject to the full force of the law, without any forms of accountability going upwards to protect them from being rendered politically insignificant.

The company continued to make waves when they proposed to permanently discharge effluent into Quesnel Lake. Local residents claimed that the company was

¹¹ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 36.

¹² Traci Brynne Voyles, *Wastelanding: Legacies of Uranium Mining in Navajo Country* (Minneapolis: University of Minnesota Press, 2015), 9.

¹³ Voyles, *Wastelanding*, 9.

¹⁴ Giorgio Agamben, *State of Exception* trans. Kevin Attell. (Chicago: The University of Chicago Press, 2005), 3.

piling on the pollution they already caused with the initial spill. With this proposal the MPMC was hoping to make the temporary authorization to dump into the lake, a permanent solution to waste water management following the disaster.¹⁵ In response to this, local resident and consultant, Richard Holmes stated that no one really knows the full impact of the disaster on the fish in the lake and yet “[t]hey continue to dump excess water from the site into the lake not knowing the full impact of what they've already done.”¹⁶ Here is a clear example of wastelanding and bare life at work, where environments that hold great significance to Indigenous food sovereignty (fish) are rendered marginal, worthless, and pollutable.¹⁷ In the process, the fish themselves are defined as bare life that ceases to be politically relevant for the state’s consideration. They, and by extension Indigenous folks who rely on fish for survival, have become bare life.¹⁸ This lack of care about the overall health of the lake demonstrates their continued lack of commitment to post-breach clean-up following the disaster. Public concerns over the health of the water and fish in the lake only deepened when the B.C. Ministry of Environment quietly granted MPMC permission to drain mining water directly into Quesnel Lake as an acceptable long-term water management plan, only three years after

¹⁵ Mark Hume. “Mount Polley waste water discharge in Quesnel Lake worries residents,” *The Globe and Mail*. December 15 2016. <https://www.theglobeandmail.com/news/british-columbia/mount-polley-waste-water-discharge-in-quesnel-lake-worries-residents/article33342506/>

¹⁶ Hume. “Mount Polley waste water discharge in Quesnel Lake worries residents,”

¹⁷ Voyles, *Wastelanding*, 9.

¹⁸ Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. (trans. Daniel Heller-Roazen. (Stanford: Stanford University Press, 1998), 142.

what is considered the worst mining disaster in Canadian history.¹⁹ Critics argue that the new wastewater discharge permit gives license to the company to continue their pollution of the lake.

Nikki Skuce, project director for Northern Confluence, an initiative based out of Smithers that aims to improve land-use decisions in B.C.'s salmon watersheds, states that the permit really adds insult to injury because MPMC still hasn't cleaned up the initial spill which is still visible in the lake.²⁰ Skuce claims that on the surface, dumping treated wastewater into the lake seems not so bad, but in digging deeper to what the company was asking for in the discharge permit, it was a massive increase in the amount of heavy metals they can release into the lake. Skuce posits that "[t]hey come up with this plan and it's to continue pollution, to allow for long-term pollution to go into Quesnel Lake."²¹ Provincial Environment Minister Mary Polak told CBC, the decision was weighed carefully by neutral civil servants based on science that confirmed that draining the treated water into the lake was much less riskier than draining it into the river.²² This brings up multiple concerns. For one this assumes that the waterways are not interconnected as they are. This assumption is formed under the incorrect notion that treated wastewater will make its way into Quesnel Lake and remain there, instead of

¹⁹ Carol Linnitt. "B.C. Quietly Grants Mount Polley Mine Permit to Pipe Mine Waste Directly Into Quesnel Lake," *The Narwhal*. April 17 2017. <https://thenarwhal.ca/b-c-quietly-grants-mount-polley-mine-permit-pipe-mine-waste-directly-quesnel-lake/>

²⁰ Linnitt. "B.C. Quietly Grants Mount Polley Mine Permit to Pipe Mine Waste Directly Into Quesnel Lake,"

²¹ Linnitt. "B.C. Quietly Grants Mount Polley Mine Permit to Pipe Mine Waste Directly Into Quesnel Lake,"

²² Yvette Brend. "Approval of Mount Polley mine waste dumping irks critics," *CBC News*. April 18 2017. <https://www.cbc.ca/news/canada/british-columbia/mount-polley-mine-waste-water-quesnel-lake-1.4074233>

working its way into the rivers via the creeks that flow from the lake, further polluting them with toxic materials. The other concern, is that this question is framed in such a way that dumping is the only option going forward, and shutting down mining activities until this can be resolved properly is not even considered. Furthermore, throughout all of these discussions the colonial occupation and extraction of Indigenous lands and waters are not at all acknowledged. Nor are Indigenous legal orders that have been continually suppressed via the imposition and maintenance of colonial legal orders that cover Indigenous ones like a blanket.

A MPMC spokesperson claims that public concerns over water quality are misleading because the wastewater is treated. They assert that the public assumption that the water is a slurry of mud and silt, is incorrect. The spokesperson reiterates that the wastewater is absolutely not toxic because the solids in the water settle on the bottom of the tailings pond, allowing the water on top to be moved to another facility where it is treated again. They even go as far to say that “most mines in the world are very envious of our water quality,” said Steve Robertson, Imperial Metals spokesperson, who called the aftermath of the Mount Polley mine breach an “environmental success story.”²³ Ultimately the decision to allow the discharge of mine waste into the lake has eroded hopes that the province will fulfill any promises made to return Quesnel Lake to pre-disaster conditions.²⁴ Returning to the theme of jurisdictional authority, otherwise known

²³ Brend. “Approval of Mount Polley mine waste dumping irks critics,”

²⁴ Amnesty International, “A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada,” 19. https://www.amnesty.ca/sites/amnesty/files/FINAL_May%2024_Mount%20Polley%20briefing.pdf

as the practical authority, that an administrative body has specifically to ensure proper management of certain areas, has not been carried out here. Instead the province chose to green light the continued dumping into the lake despite public concerns over the issue, and did so without knowing the full extent of the damage caused from the initial spill.

The decision to allow the company to continue to pollute the lake, and the waterways that flow from the lake, without consideration of the long-term effects, is outright negligent. Revealed through the constellation of Hunt, and Voyles, and Agamben's concepts is the colonial mindset at work continuing to make Indigenous spaces disposable and pollutable because it is both a racial and spatial signifier that makes an environment and the bodies within it insignificant.²⁵ The endless cycle of development needs wastelands, to extract and dump toxic waste.²⁶ This is exactly what this lake has become in the wake of mining practices in central British Columbia. This rampant polluting is only made worse by the continued (implicit and explicit) protection that this company receives, preventing various legal cases from being brought against them, lending credence to the notion that the settler state (in all its' branches) serve the interests of corporations, at the explicit expense of Indigenous communities. In this way, the suppression of Indigenous legal orders identified by Hunt's colonialscape and the rendering of Indigenous spaces pollutable in Voyles's wastelanding, are shown to be integral to maintaining colonial domination and authority over Indigenous lands, communities, and waters. The effect of this facade is the state authorizing the dumping of

²⁵ Voyles, *Wastelanding*, 9.

²⁶ Voyles, *Wastelanding*, 9.

mining wastewater into waterways already vulnerable following the initial breach, continually ignoring the potential effect this would have in the community, and in the waterways.

Polluting with impunity: legal authority

The second register of authority, that the state bolstered to reassert their image of control is, legal authority. This section will discuss the legal cases that were launched and dismissed by the provincial government regarding the Mount Polley Mine Disaster using the constellations of theories utilized previously, to show another register of assumed authority by the state. Canada claims legal authority, through the courts, to dismiss lawsuits in ways that discount Indigenous authority to self-govern according to their own legal traditions. This is one way in which the state continues to construct, uphold, and maintain their claims to authority, on and over, Indigenous communities. By utilizing legal authority, settler colonial institutions are assuming the authority to make these decisions, while simultaneously bypassing their responsibility to provide public protection from environmental harms. Even through, in reality, they provide little-to-no protection from environmental degradation, as observed in the Mount Polley Mine Disaster. Drawing from Hunt, Voyles, and Agamben, this section shows the ways that these legal cases were handled operates on the assumption that Indigenous spaces, and connections to lands and waters physically make up the geographic space of Canada. However, the webs of kinship that animate these spaces are not significant aspects that need to be taken into consideration when these state decisions are made. In doing so, the

state still holds the power to issue decrees that carry the force of law²⁷ which is then used to empower and enforce colonial conceptions of space, resulting in the erasure of Indigenous legal orders.²⁸

This erasure and suppression of Indigenous legal orders played out in February of 2015 when Bill Bennett, British Columbia's Minister of Energy and Mines at the time, introduced Bill 8. This bill became the *Mines Amendment Act*, the official state response to the disaster. This legislation was enacted on March 25th 2016, which stipulated some conditions of fines and penalties that can be imposed within a three-year period, or at the recommendation of the Chief Inspector of Mines, which will become significant later. Specifically, with this act, "penalties of \$1,000,000 can now be sought, up from the previous level of \$100,000; and the maximum jail term was raised from one to three years."²⁹ This piece of legislation set the rather narrow parameters in which the Mount Polley Mining Company, and their parent company Imperial Metals, could be brought to justice. It is important to note that these changes were introduced early 2016, leaving less than a year for criminal charges to be laid under the new three year provincial deadline of August 4th 2017. Unfortunately, the three-year deadline, under provincial law, passed in 2017 with no charges laid by the ongoing official investigations left the provincial threshold for charges that could only be fulfilled by the Chief Inspector of the Mines's

²⁷ Agamben, *State of Exception*, 5.

²⁸ Sarah Hunt, "Law, Colonialism and Space," in *Witnessing the Colonialscape: light fires of Indigenous legal pluralism*. (doctoral dissertation, Simon Fraser University, 2014), 66.

²⁹ Amnesty International, "A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada," 10

investigation. With the provincial charges deadline passed, the next deadline that needs to be met is August 4th, 2019 under federal law. This is due to the five-year window imposed to lay charges under environment and fisheries laws. It is important to note that this new deadline leaves very little time for charges to be laid, as of writing this in July 2019.³⁰ There were two attempts in the three years following the disaster to press charges under the provincial laws, but neither of them were successful in being picked up by the Crown. Throughout these official discussions, the state's legal systems are held up as the only venue for justice, expressly framing the possibilities for resolution within the state's purview, lending credence to Agamben's state of exception, wherein the law is primarily motivated by the sovereign's interests.³¹ Meaning the laws passed might infringe on individual's rights in favour of maintaining the image of control by the state. In the case of Mount Polley, the different parts of the state, including the legislative and judicial branches, are opting to continue the suppression of justice for the breach through legal means. This is because the only alternative, of admitting negligence or acknowledging the jurisdiction of Indigenous legal orders, would undermine Canadian state notions of authority.

The first public-interest private prosecution against the Mount Polley Mining Corporation, and the province, was filed by Mining Watch Canada in October 2016.

These charges were motivated by the general frustration over the fact that the Crown had

³⁰ Gordon Hoekstra. "Clock ticking for environmental charges as Mount Polley dam failure hits four-year mark," Vancouver Sun. August 3 2018. <https://vancouversun.com/business/local-business/clock-ticking-for-environmental-charges-as-mount-polley-dam-failure-hits-four-year-mark>

³¹ Agamben, *State of Exception*, 51.

not released results of the criminal investigation or laid any charges to date. To extend Agamben's concept of bare life further, my analysis shows that this case was supported by two articles in the Federal *Fisheries Act* that prohibits serious harm to fish and the deposit of pollutions into fish-bearing waterways; this brings attention to the ways in which non-human lives are also being rendered sacrificial lives deemed politically insignificant.³² Voyles highlights this as part of the logic of settler colonialism, that deems certain lands and waters, as wastelands because they are "empty except for Indians."³³ The organization alleged that the spill was caused by the negligence by both the Mount Polley Mine Corporation and the province. However, in March of 2017, the Provincial court, ancillary of the state, granted a stay of proceedings citing that this case was not in the public's best interest to pursue charges. Their reasoning was because there was already an investigation going on by three different organizations (B.C. Conservation Officer Service, Environmental Canada, and Fisheries and Oceans Canada).

At this point, the Crown gave no indication that they would wrap up the investigation and press charges by the three year statute of limitations in August of 2017.³⁴ Here is a clear example of Hunt's colonialscape, where the law is representing a certain view of the land that reinforces underlying power relations which simultaneously, naturalize settlement and hide Indigenous ways of knowing the lands and waters.³⁵

³² Agamben. *Homo Sacer*, 142.

³³ Voyles, *Wastelanding*, 26.

³⁴ Amnesty International, "A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada," 10

³⁵ Hunt, "Law, Colonialism and Space," 72.

Amnesty International reached out to the provincial Minister of Environment on March 31st 2017, where they stated that the investigation is ongoing. “Despite investigating for more than two years, no charges have been laid nor have the investigations’ findings been made public. In fact, the Province is not required to publicly release the findings.”³⁶ The lack of results at this point in time is concerning, but what is even more worrisome is that even if the investigation were complete, the provincial government is not required to release their findings to the public, thereby creating a huge gap in the public record of the disaster. As noted by Hunt, “colonial law can be used within any space – urban, rural, reserve, non-reserve – to create a space where violence against Indigenous people has no witness.”³⁷ This is the exact dynamic being recreated here as the state withholds the information they may have, that might be of great importance to Indigenous communities. Simultaneously, they may not have much information at all but since they are not required to release it, public record is wholly in the hands of the state.

As the three-year deadline approached in August of 2017, it seemed that the province was not going to press charges against the company. CBC reported the day before the deadline that there will be no provincial charges for a tailings dam collapse. The Environment Minister, George Heyman said there was still a possibility for the company to be held accountable through federal laws, as there was still time before the federal deadline. Minister Heyman further emphasized that this disaster should not have occurred to begin with and that it must never happen again. He seemed optimistic that

³⁶ Amnesty International, “A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada,” 9.

³⁷ Hunt, “Law, Colonialism and Space,” 75.

under the Federal *Fisheries Act* charges were still in play and the penalties associated are significant enough.³⁸ The evidence of this investigation was collected under the provincial *Emergency Management Act* and the federal *Fisheries Act* which will be considered by the Public Prosecution Service of Canada if charges were to be pursued.³⁹ This lack of clarity is representative of how Canadian law, through the colonialscape, is culturally-specific and power-laden when it comes to how it is used to further marginalize Indigenous concerns following the disaster.⁴⁰ Hunt notes that Canadian law operates explicitly on these material conditions of violence directed at Indigenous communities. It is through this violence that the state becomes knowable and so, this violence is integral to the maintenance of the state.⁴¹ This results in Canadian law furthering the erasure of Indigenous relations on the land and in the waters, by continually delaying and withholding information, such as the status of the investigation. This is done to downplay the impacts that this disaster on the waterways and landscapes that Indigenous communities rely on.

With time running out on the three-year deadline former Xat'sull First Nation Chief, Bev Sellars filed a private prosecution. "Citizens can pursue private prosecution if they believe an offence has been committed, but in B.C., the Crown can decide not to

³⁸ Camille Bains. "No B.C. charges in Mount Polley dam collapse as federal investigations continue," The Canadian Press/CBC. August 3 2017 <https://www.cbc.ca/news/canada/british-columbia/mount-polley-investigation-ndp-1.4233234>

³⁹ Bains. "No B.C. charges in Mount Polley dam collapse as federal investigations continue,"

⁴⁰ Hunt, "Law, Colonialism and Space," 67.

⁴¹ Hunt, "Law, Colonialism and Space," 72.

proceed if they believe there are no reasonable prospects of conviction.”⁴² Sellars with the support of some advocacy groups laid 15 charges under the *B.C. Mines Act* and the *BC Environmental Management Act*.⁴³ Sellars pointed out that even on the basis of public record, there were grounds for the Mount Polley Mining Company to be charged for violating B.C. environmental laws. Sellars alleged that MPMC violated conditions of its operating permit and sections of the *Environmental Management Act* and the *Mines Act*. Sellars launched the case with enough room for the province to step in and enforce their own laws.⁴⁴ Three different options could have happened once Sellars filed charges. The first, and the most ideal outcome, was that the province takes over the charges and prosecutes the company. The second middling outcome was that the Province could have allowed Sellars to continue the private prosecution through which Sellars would have required support through crowdfunding. The least ideal outcome, and what happened, was that the Province could take the private prosecution away from Sellars and stay (drop) the charges.⁴⁵

On January 30th 2018 the prosecution service announced that they decided to stay the action put forward by Sellars. After reviewing the allegations, the prosecution decided that the material provided did not meet the standards necessary to carry the case

⁴² “Province halts private prosecution against Mount Polley tailings spill,” CBC News, January 30 2018. <https://www.cbc.ca/news/canada/british-columbia/bev-sellars-private-charges-mount-polley-stay-of-proceedings-1.4511305>

⁴³ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 59-60.

⁴⁴ West Coast Environmental Law. “Mount Polley disaster escapes BC law because of government policy on private prosecutions” (February 15 2018). <https://www.wcel.org/blog/mount-polley-disaster-escapes-bc-law-because-government-policy-private-prosecutions>

⁴⁵ West Coast Environmental Law. “Mount Polley disaster escapes BC law because of government policy on private prosecutions”

forward.⁴⁶ Sellars' reaction to this claim that there was not sufficient evidence that met their standards, was shock. She stated "I don't understand how they can say there wasn't enough evidence," Sellars said. "Anyone can go out there or look online and see there was a spill. And there were consequences of the spill." Following the news that the private prosecution was dropped, Sellars expressed even more worry that like the provincial case, no federal charges will be laid in time.⁴⁷ Further entrenching the unequal colonial power relations established and maintained through the Canadian legal system noted by Hunt's colonialscape that continues to shape all aspects of Indigenous life because this violence is integral to maintaining the settler nation.⁴⁸

Premier John Horgan prior to the announcement that Sellars' private charges were stayed, reiterated the sentiment that all British Columbians were mortified that so much time has passed with no tangible consequences for the most horrific mine disaster in the province's history.⁴⁹ Horgan had remained hopeful that charges would be laid at the provincial level with Sellars' case but with the announcement that the charges were dropped, these hopes were dashed. Following this announcement, officials claimed that the prosecution service is continuing to work with the federal government to identify possible violations of the *Fisheries Act*, which falls under the five-year deadline for

⁴⁶ Gordon Hoekstra. "B.C Government stays charges in Mount Polley private prosecution," Vancouver Sun. January 30 2018. <https://vancouversun.com/business/local-business/b-c-government-stays-charges-in-mount-polley-private-prosecution>

⁴⁷ Carol Linnitt. "It's Official: No Provincial Charges for Mount Polley Mine Spill, One of Largest Environmental Disasters in Canadian History," The Narwhal. February 3 2018. <https://thenarwhal.ca/it-s-official-no-provincial-charges-mount-polley-mine-spill-one-largest-environmental-disasters-canadian-history/>

⁴⁸ Hunt, "Law, Colonialism and Space," 67.

⁴⁹ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 60.

charges to be laid.⁵⁰ This reinforces the state's supremacy through colonial law that simultaneously, binds and abandons, the living to absolutist conditions of law.⁵¹ Drawing on the constellation of Hunt, Voyles, and Agamben, it is clear how Canadian law is being utilized as the sole source of law, actively suppressing Indigenous law as an option for redress. This legal suppression, noted by Hunt's colonialscape, is mobilized as a means to continue the pollution of Indigenous spaces, noted by Voyles's, thus abandoning Indigenous communities to a zone of indistinction wherein they do not know whether they are going to have justice for this disaster.

In January 2018, when they announced the stay of Sellar's charges, the B.C. Environment Ministry stated that the joint investigation by the Provincial Conservation Officer service and federal officers continues, but no other information was released regarding their investigation. Environment Minister spokesperson David Karn conveyed that both levels of government (provincial and federal) are deeply committed to completing the investigation within the federal statute of limitations. Karn also noted that penalties can be much more significant under federal jurisdiction through the federal *Fisheries Act* when compared to the penalties under provincial jurisdiction.⁵² This seems to indicate that there may be some very firm consequences felt by MPMC but there is still

⁵⁰ "Province halts private prosecution against Mount Polley tailings spill," CBC News, January 30 2018. <https://www.cbc.ca/news/canada/british-columbia/bev-sellars-private-charges-mount-polley-stay-of-proceedings-1.4511305>

⁵¹ Agamben, *State of Exception*, 1.

⁵² Gordon Hoekstra. "20 months remain to lay charges in Mt. Polley mine dam collapse," Vancouver Sun. January 12 2018. <https://vancouversun.com/business/local-business/20-months-remain-to-lay-charges-in-mt-polley-mine-dam-collapse>

no guarantee that this will happen, leaving Indigenous folks and the general public in limbo.

The implications of the B.C. Prosecution Service taking over the charges against MPMC to then simply drop the case is astounding. These implications echo my constellation which highlights the overarching colonial structure that is simultaneously suppressing Indigenous law to continue the pollution of Indigenous spaces. In particular, the services' policy regarding the charge assessment standard, determines whether or not criminal charges are in the public interest, are heavily weighed by whether or not the service can prove the charges fully. Part of the decision making in this process has to assess if Crown prosecutors could successfully prosecute the company under B.C. laws. The Prosecution Service choosing to drop the charges, seems to be indicative of doubts in their ability to successfully prosecute MPMC. The only other possible answer for their decision is that they are of the opinion that it was not in the public interest to prosecute MPMC for the largest mining disaster in recent Canadian history. "Either result is disturbing."⁵³ Particularly when some charges laid seem like they would be so obvious to the observer. West Coast Environmental Law states that one of the charges laid simply required evidence that there was a spill and that this spill released contaminants into waterways without being treated first. It does not take much more than a google search to find public record of the spill in the form of images and raw footage taken in the

⁵³ West Coast Environmental Law. "Mount Polley disaster escapes BC law because of government policy on private prosecutions"

immediate aftermath of the breach.⁵⁴ In the end, the Crown prosecutors did not think they could successfully prosecute MPMC which lends credence to the notion that B.C.'s laws for environmental protection are so weak that the largest, most impactful, and well-documented mining disaster in Canadian history, does not violate them enough to warrant the province picking up the case.⁵⁵ Regardless, Indigenous issues throughout the disaster are continually excluded from the initial framing of the investigations, so they will continue to be suppressed as a result, speaking to the ways colonialsapes cover Indigenous representations of land, creating a colonial image of Canada that is legitimate and just.⁵⁶ Indeed this remaking of Indigenous lands and waters into worthless spaces except for what can be extracted from them, requires a deeply complex construction of land and waters as always already belonging to settlers, and not Indigenous Nations themselves.⁵⁷ Thus allowing for Indigenous ways of knowing to be stripped or suppressed by the colonial mindset that then leads to Indigenous relations to these spaces as failing to matter within settler colonial legal processes.⁵⁸ Even though Indigenous Nations have had their landscapes and waterways changed forever, this does not factor into the state's decisions to pursue justice for this disaster.

⁵⁴ Cariboo Regional District. "Mount Polley Mine Trailings Pond Breach" Filmed August 2014. Youtube video. 36:58 [August 4 2014]. https://www.youtube.com/watch?time_continue=6&v=M1YgX2jXnpA

⁵⁵ West Coast Environmental Law. "Mount Polley disaster escapes BC law because of government policy on private prosecutions"

⁵⁶ Hunt, "Law, Colonialism and Space," 72.

⁵⁷ Voyles, *Wastelanding*, 7.

⁵⁸ Hunt, "Law, Colonialism and Space," 74.

Throughout this decision-making process, the supremacy of colonial law is being upheld at the expense of the various Indigenous laws that this disaster violated. Continually, this disaster is spoken about in relation to provincial or federal courts but there is no mention of the Indigenous lives and legal systems that exist in the lands and riverscapes that the disaster directly violated. This particular moment in the Mount Polley Mine Disaster shows the ways in which law is not neutral, but from an Indigenous perspective is instead an incredibly power-laden and imposed concept.⁵⁹ In the colonialscape, Indigenous spatial relations are covered and suppressed by colonial ones, at once stripping away the cultural, political, and legal systems that anchor Indigenous communities to place and, simultaneously replacing their systems with ones that create the appearance that Canada is legitimate.⁶⁰ In the process, physical features, like rivers and areas surrounding them, that have multiple layered meanings to Indigenous communities built up over thousands of years are systematically reduced to “merely one part of the larger whole of Canadian lands opened up for ownership, exploration and settlement.”⁶¹ From the original imposition of the mine, right up and through the breach, there has been a long process of this suppression, rendering Indigenous legal systems invisible in their own lands and waters despite their ongoing presence since time immemorial.

⁵⁹ Hunt, “Law, Colonialism and Space,” 67.

⁶⁰ Hunt, “Law, Colonialism and Space,” 72-4.

⁶¹ Hunt, “Law, Colonialism and Space,” 73-4.

By taking into consideration colonialscape, wastelanding, and the state of exception all together, this constellational lens can uncover seemingly ad hoc actions by the state for what they really are, namely structural effects of the settler colonial mindset that seeks to eliminate Indigenous peoples and their political structures in the interest of maintaining their supposed dominion over land. As Patrick Wolfe states in his work, “Whatever settlers may say— and they generally have a lot to say—the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory. Territoriality is settler colonialism’s specific, irreducible element.”⁶² Indeed, the drive for dominion over territory may not always be for settlement as originally argued in Wolfe’s work but still the exploitation of land and the elimination of the native remains central to the settler colonial logic of elimination displayed in this disaster. Indeed this land-centred project utilizes a wide variety of tactics with the intent to eliminate Indigenous societies, where the operations to achieve this “are not dependent on the presence or absence of formal state institutions or functionaries.”⁶³ This logic of elimination no matter the means underpins colonial legal systems that are imposed on Indigenous communities, lands, and waters. Through the constellation of Hunt, Voyles, and Agamben, it is shown that the colonial legal system in Canada requires the suppression of Indigenous legal systems and the dumping of toxic materials into spaces that Indigenous communities rely on for subsistence and overall cultural wellbeing, in order to maintain the facade of sovereignty. The imposition of the Canadian legal system

⁶² Patrick Wolfe, “Settler colonialism and the elimination of the native,” *Journal of Genocide Research* no. 8 vol 4 (2006): 388.

⁶³ Wolfe, “Settler colonialism and the elimination of the native,” 393.

ensures that discussions of justice and holding one accountable comes to one arena only, and that is through the colonial court system that does not question the basis of Canada's illegality. The Canadian structure, no matter how ad hoc it appears, operates to further not only the pollution of Indigenous spaces, but also the continued the suppression of Indigenous legal orders, and the eventual elimination of Indigenous societies overall. As shown in this section, the state continues to claim legal authority despite the fact that the state has taken no decisive measures to hold the Mount Polley Mining Corporation and their parent company Imperial Metals, accountable. The state exercises and operationalizes authority at this register as a way to distract from their very inactive role since the disaster first occurred in 2014. In order to fully understand the deadly intent of the state's actions following the disaster, the role of the state, and their various bodies of governance must also be discussed in relation to another register of authority located in the practice of regulatory capture.

Regulatory Capture is the rule of law in B.C.: delegated authority

The previous two sections show the state acting through the language of authority at two other registers. In allowing the dumping to continue into the lake and the staying of the legal cases against the company by the provincial courts, show how the provincial and federal governments of Canada operate on de jure notions of authority instead of de facto ones. The process of regulatory capture shows that there has been a breach of trust in these figures of authority who claim to be operating in the public's interest to guarantee safety but in actuality is not.

The government failure of regulation oversight, known as regulatory capture, decries the corruption of regulatory bodies that advance the interests of the industry they are charged with regulating, resulting in injury to public interest. This section will give an account of how regulatory capture has made the disaster worse and reveals some telling aspects of institutional corruption. Throughout this section, attention will be brought to the longstanding nature of the symbiotic relationship between government and extractive industry that definitely played into the Mount Polley Mine Disaster. While regulatory capture is particularly insidious and poses a major threat to everyone in the province, it still does not fully consider the settler colonial drive to obtain and exploit land in the interest of the capitalist colonial state. This means Indigenous communities will continue to be subject to the worst aspects of the disaster. Even though Canadian authority is not directly supported by the third register of delegated authority in regulatory capture, I contend that even through authority is being shifted elsewhere, the provincial and federal governments are able to maintain the image of control. The perception of control is just as important in settler colonies where control needs to be affirmed at every possible opportunity. On the register of delegated authority, it becomes clear how the state has shifted the role of regulator to the industry itself, resulting in a loss of perspective and responsibility when it comes to safety regulations. The effect of regulatory capture means that the image of authority held by agents of settler colonialism remains intact through the opacity of bureaucracy and delegation.

Regulatory capture means that regulatory structures are compromised and serve the interest of the corporations at the expense of the public. On the ground, this means

that communities and spaces that are warranted protection are placed in vague spaces of either outright sacrifice or uneven/sporadic protection. Agamben's work illuminates the ways that Indigenous spaces are rendered as such in the aftermath of the Mount Polley Mine Disaster. Agamben's zone of indistinction refers to a space where the structures of inside and outside a political order are blended into each other, producing an unnamable space. In this zone of indistinction/the state of exception, the notions of inside and outside a political order, blend together to make spaces devoid of law.⁶⁴ Therefore, acts that take place in the state of exception "are neither transgressive, executive, nor legislative, they seem to be situated in an absolute non-place with respect to the law."⁶⁵ In this paradigm, being 'inside' law means protection, being the 'outside' of law means being abandoned to bare life, all at the whim of the sovereign. The state of exception, makes inside and outside a polity less definite by transforming definite boundaries between inside and outside into a grey area of spatiolegal limbo.⁶⁶ In other words, when someone or something is excepted, they are not simply excluded, they are literally taken outside the political order, while still being bound to that political order and subject to their laws.⁶⁷ One might argue that citizens of British Columbia are left in the same zone of indistinction where they are constantly told that charges will be laid against parties responsible but there is no time frame identified for when this would occur. However,

⁶⁴ Agamben, *State of Exception*, 50.

⁶⁵ Agamben, *State of Exception*, 51.

⁶⁶ Agamben, *State of Exception*, 23.

⁶⁷ Agamben. *Homo Sacer*, 17-8.

since they are still covered and protected by other state laws, they do not fit within the state of exception the way Agamben uses it. The application of Agamben to this situation really only works when focusing on Indigenous communities because they have been historically marginalized and continue to have their inherent rights denied by the state. So it is important to note that the effects of regulatory capture are felt primarily by Indigenous communities, while they are consistently not centred in the state and third party analyses concerning it.

The lack of focus on regulatory issues was brought to the fore in the wake of the Mount Polley tailings pond breach. A week and a half after the breach on August 15th 2014, the B.C. government announced an independent panel to investigate the collapse of the perimeter embankment. The panel included engineering experts but did not include specialists with expertise in regulatory oversight, which received a lot of pushback from critics. At the time, B.C. Mines Minister Bill Bennett defended this limited perspective, claiming that engineers have experience conducting forensic investigations of dam failures as well as being capable of assessing government oversight mechanisms. Bennett claims that because they are engineers, they engage with government regulations on a daily basis, so who better to conduct these investigations? Bennett insisted that “It all comes down to the design, construction and the maintenance of the dam.”⁶⁸ This was decidedly not true and would become subject to the B.C. Auditor General’s report on mining regulation in the province.

⁶⁸ Gordon Hoekstra. “B.C. announces independent inquiry into Mount Polley pond spill,” National Post. August 15 2014. <http://www.nationalpost.com/m/announces+independent+inquiry+into+mount+polley+tailings/10128091/story.html>

Around the time of the tailings storage facility breach in August of 2014, B.C.'s Auditor General Carol Bellringer, was already in the process of investigating whether or not the provincial government and enforcement mechanisms for the mining industry was adequate enough to protect the environment. The context for this investigation emerged when the Auditor General identified the need to ensure there was protection of the environment regardless of what stage any mine was in B.C. This audit was still in progress when the Mount Polley Mine Disaster occurred, which led to the Auditor General to shift their perspective to give their full attention to the disaster aftermath.⁶⁹ In light of the Mount Polley mine breach the Auditor General's office felt it necessary to review Ministry of Energy and Mine's performance as the regulator for the mining site. They noted the same issues in the Mount Polley file as they did province wide throughout the audit: "too few resources, infrequent inspections, and lack of enforcement."⁷⁰ This is a clear example of delegated authority, where the state has placed the responsibility of monitoring and regulating, back on industry who continuously choose profit over safety.

In May 2016, the Auditor General's overall findings were that "almost every one of [their] expectations for a robust compliance and enforcement program within the MEM (Ministry of Energy and Mines) and the MoE (Ministry of Environment) were not met."⁷¹ The report identified a key issue that seemed to be overlooked in other reports on

⁶⁹ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," p. 30.

⁷⁰ Carol Bellringer, Auditor General of British Columbia, "An audit of compliance and enforcement of the mining sector," *Office of the Auditor General*. May 2016. p. 4. <http://www.bcauditor.com/pubs/2016/audit-compliance-and-enforcement-mining-sector>

⁷¹ Bellringer, Auditor General of British Columbia, "An audit of compliance and enforcement of the mining sector," 3.

the disaster. This is because “the audit devoted particular attention to compliance and enforcement at Mount Polley, focusing not on the mechanics of *how* the dam failed but *why*.”⁷² With this lens, the investigation was able to identify key structural elements that created the conditions that led to the disaster. By looking at the structural elements and the conditions they create, the audit revealed how the “Ministry of Energy and Mines did not ensure construction and operation of the tailings dam according to approved design, nor did it ensure that MPMC rectify the design and operational deficiencies” even though they were aware of them. The most significant recommendation made by the audit, in addition to a number of smaller ones, called for the establishment of a unit that dealt with compliance and enforcement outside of the MEM with a specific mandate to protect the environment.⁷³

Their main recommendation to the government to remove compliance and enforcement programs from the Ministry of Energy and Mines was because it conflicted with their role to promote mining development. This report posits that the framework of having both in the same ministry creates a conflict that cannot be reconciled. This separation is incredibly important because compliance and enforcement by an independent body is the last line of defence against environmental degradation and to ensure public safety. In the realm of mining regulation, business as usual cannot continue.⁷⁴ If business as usual were to continue, colonial views of place become even

⁷² Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 37.

⁷³ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 37.

⁷⁴ Bellringer, Auditor General of British Columbia, “An audit of compliance and enforcement of the mining sector,” 4.

more dominant and as a result, Indigenous space is deemed worthless and therefore pollutable.⁷⁵ By holding colonialsapes as the proper representation of land, Indigenous peoples cultural, political, and legal systems of meaning are continually made invisible. This results in physical places that carry significance to Indigenous communities being flattened into plots of land that make up Canada. This image is maintained and these simplified understandings of land are not allowed to be anything more in the Canadian legal imaginary. This is of course intentional as a way to undermine and erase Indigenous cultural, political, and legal presence on the land and in the waters.⁷⁶

The audit stated specifically the MEM's compliance and enforcement program is severely limited resulting in the ministry being deficient in carrying out most of the regulatory activities. These activities include creating guiding documents, doing inspections, monitoring data provided by corporations like MPMC and, of course enforcing non compliance. This means that the ministry required to monitor and protect the general public in the event of a mining disaster lacks the basic resources, training, and tools necessary for doing so. More significantly the MEM does not coordinate the limited compliance and enforcement activities with those of the Ministry of Environment. On top of this the MEM has never publicly reported on their own effectiveness of their regulatory oversight framework. An example of this is where the "MEM has estimated that its financial security deposits for major mines are under-secured by more than \$1.2 billion, yet the ministry has not disclosed this to the public or to legislators, or

⁷⁵ Voyles, *Wastelanding*, 9.

⁷⁶ Hunt, "Law, Colonialism and Space," 73.

communicated the potential risk this poses.”⁷⁷ This is incredibly concerning and yet unreported until after the disaster.

Under the existing legislation and policies in B.C., mining companies are supposed to be fully responsible for environmental protection and reclamation of their sites. They are expected to demonstrate a long-term vision for the future operation and closure phases of mines and ensure that they will be effective. In component with this, “it is government’s role to ensure that the activities undertaken by the mine operators are protecting the environment.”⁷⁸ Thus the audit concluded that the MEM’s framework of compliance and enforcement of the mining sector are wholly inadequate province-wide, which led to the Mount Polley Mine Disaster.⁷⁹ Without reform, the industry itself poses a major risk to the health and safety of the environment, as well as the general public because these approaches are built on the assumption that nonwhite lands (wastelands) are valueless save for what can be extracted from them.⁸⁰ It is this logic that requires the systemic suppression of Indigenous ways of knowing where Indigenous people are made to “fail to fully occupy, claim, or govern: their lands, their homes, their bodies” in ways that matter to settler colonial legal processes.⁸¹ Indeed, this production of Indigenous peoples as deficient and incapable of governing, which is a direct result of colonialism

⁷⁷ Bellringer, Auditor General of British Columbia, “An audit of compliance and enforcement of the mining sector,” 41.

⁷⁸ Bellringer, Auditor General of British Columbia, “An audit of compliance and enforcement of the mining sector,” 39.

⁷⁹ Bellringer, Auditor General of British Columbia, “An audit of compliance and enforcement of the mining sector,” 41.

⁸⁰ Voyles, *Wastelanding*, 10.

⁸¹ Hunt, “Law, Colonialism and Space,” 74.

and capitalism, is mobilized tactfully to undermine Indigenous authority in their own lands and over their own people. As a result, the state is able to maintain itself as the source and practitioner of sovereign authority in this country.

The investigation and report from the Auditor General elicited an incredibly strong reaction from the Ministry of Energy and Mines, who stated:

“We do not accept that mere appearances are sufficient to warrant the act of removing compliance and enforcement from MEM. No one is more aware of the need to find the appropriate balance between promotion and regulation of mining in ministry decision-making than those who are asked to do so on a daily basis. It is the legislative framework in BC that drives compliance and enforcement activities not the organizational structure.”⁸²

This denial of a conflict of interest is a feeble attempt to deny that there is a structural collusion between state and industry interests. The MEM insists in this letter that the failure of the Mount Polley tailings storage facility was not a result of a lack of compliance and enforcement, but rather was one of subsurface soil characterization dating back to when the pond was designed and built.⁸³ This shifted the blame back to the engineers and away from the provincial government. The ministry respectfully counters that when considering the Mount Polley tailings breach, it was never a question of the number of ministry staff on the ground, the number of inspections made, or in the

⁸² P. 2. https://news.gov.bc.ca/files/Government_responds_to_OAG_report_An_Audit_of_Compliance_and_Enforcement_of_the_Mining_Sector.pdf?WT.cg_n=Hootsuite

⁸³ P. 5 and 7. https://news.gov.bc.ca/files/Government_responds_to_OAG_report_An_Audit_of_Compliance_and_Enforcement_of_the_Mining_Sector.pdf?WT.cg_n=Hootsuite

increase of professional reliance instead of governmental ones.⁸⁴ The report from the Chief Inspector of the mines affirms the notion that the regulator has an important role but does not take responsibility for design or construction carried forward by design engineers. “By necessity, the Regulator must defer to the technical expertise and experience of the designer, who is, in turn, regulated and overseen by their professional association”⁸⁵ While this deference to expertise is not questioned in the previous reports, this does not mean that issues of enforcement are not worthy of the investigation undertaken by the Auditor General. Indeed, it is difficult to deny that there is an issue of compliance and enforcement when you take into consideration the broader history of regulatory capture in the history of this province.

The steady deregulation of the industry in B.C. history is, in fact, a central issue that led to the breach of the tailings storage facility at the Mount Polley dam. Furthermore, the MEM’s denial of a conflict of interest reifies the idea that the state still has control. The image of control that MEM hoped to maintain is immediately broken once the Auditor General identifies them as the institutional body responsible. In this move, the state both claims and denies authority - in that they claim authority (to giving licences) and then deny authority (when it comes to claiming accountability for what happens as a result of giving the license). The MEM’s denial only further proves that this issue is something that needs more attention now more than ever.

⁸⁴ P. 7. https://news.gov.bc.ca/files/Government_reponds_to_OAG_report_An_Audit_of_Compliance_and_Enforcement_of_the_Mining_Sector.pdf?WT.cg_n=Hootsuite

⁸⁵ Investigation Report of the Chief Inspector of Mines. “Mount Polley Mine Tailings Storage Facility Breach,” 163.

Ultimately, the Mount Polley disaster simultaneously exposed the overt weakness in B.C.'s mining regulatory framework and the vulnerabilities of both Indigenous and non-Indigenous face, as a result. The disaster left the public deeply shaken and completely extinguished any perception that the province has the ability to regulate and rectify environmental harms. The disaster also brought to the forefront fears about corporate interests overtaking human and environmental rights.⁸⁶ The disaster revealed just how poorly equipped the province is to prosecute corporate crimes under current mining regulation, which raises many concerns over corporate capture in B.C. and further makes visible the ways in which the province does not actually have authority because of their breach of trust. Indeed, questions remain regarding why prosecutors have yet to press charges under the Environmental Management and Federal Fisheries Acts.⁸⁷ An explanation that emerged explaining the topic is regulatory capture. Regulatory capture occurs when regulation oversight by a government body is influenced (directly or indirectly) by the private industry subject to regulation. Capture involves lobbying, political contributions, and revolving doors between government and corporate leaders. It also pushes forth "a narrative that blurs the distinction between corporate interests and what is genuinely in the public interest."⁸⁸ This narrative places the health and success of this industry at the centre of the public's attention, pushing environmental and human

⁸⁶ Amnesty International, "A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada," 19.

⁸⁷ Amnesty International, "A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada," 19.

⁸⁸ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 10.

right concerns to the margins. This process of capture can both emerge from and create weak mining laws and lack of oversight. By drawing on my constellation of thinkers throughout this project, all of this is shown to be built on the overarching colonial structure that sees Indigenous law as inconsequential as a means to justify the dumping of toxic waste into Indigenous spaces reinforcing the notion that in Canada, a settler colonial nationstate, authority always means Indigenous peoples are subjected to colonial authority.

Furthermore, this process of colonial extraction is accelerated by the boom and bust structure in the world economy. Marshall's report discusses how leading up to 2013, a year prior to the disaster, the MPMC "simultaneously intensified production levels and cut costs. The result: mining with fewer safeguards, up to and including filling tailings ponds beyond their designed capacities and reducing inspections and safety measures."⁸⁹ This is a cyclical process that the mining industry goes through as the industry experiences growth and setbacks. In a boom period, companies work quickly to increase productivity resulting in "often hastily issued permits, fast-tracked investigations, problematic design and construction of dams, and inappropriate "cookie cutter" designs to take advantage of the boom prices."⁹⁰ All of this took place following decades of provincial policy that favoured privatization, deregulation, downsizing, and cuts to social spending that date back to the mid-70's. The mantra of economic growth and job creation actively catered to the demands of private investors like mining companies. The end

⁸⁹ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 21.

⁹⁰ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 25.

result being that mining interests taking priority over public interest,⁹¹ creating a space where an environment and the bodies that inhabit it become pollutable wastelands.⁹²

Historically, mineral and coal mining have been vital to B.C.'s economy, which over time has led to many major transnational mining corporations to take advantage of the industry safe environment created by the lax laws for their headquarters.⁹³ As noted by Hunt, the colonialscape operates explicitly to further these kinds of legal stress points because it is put to work to reproduce colonial relations where settler society can continue to prosper culturally, politically, and legally.⁹⁴ This is encouraged by the legislation that protects mining corporations and their interests. According to the B.C. Mines Act, financial securities are decided by the Chief Inspector of Mines, who estimates the potential reclamation costs for clean up when the mine eventually shuts down and then negotiates the actual amount with the company. So the province does not set the prices itself, rather they decide set an estimate and then negotiate with the corporation how much that corporation will have to pay, which is ridiculous. The province's decision to rely on policy the discretion of the Chief Inspector instead of a firm law to decide whether or not a security deposit is required, when it is due and the overall amount is backwards and allows industry to set the standards for operation.⁹⁵ While the state has

⁹¹ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 44.

⁹² Traci Brynne Voyles, *Wastelanding: Legacies of Uranium Mining in Navajo Country* (Minneapolis: University of Minnesota Press, 2015), 9.

⁹³ Marshall, "Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold," 15.

⁹⁴ Hunt, "Law, Colonialism and Space," 74.

⁹⁵ "A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada," 3.

the authority to make these rather critical decisions they continue to delegate it to the an extremely irresponsible industry that places profit over safety. A partial explanation for this kind of short-sighted policy has to do with the long history of mining operations in B.C.

The province's free-entry mining laws were established more than 150 years ago during the 1850's gold-rush era. These laws were created hastily (usually) by miners themselves to ensure unfettered access through the right of free entry. This was a major part of the strategy to settle the colony which were fairly sparsely populated at that point.⁹⁶ This era is significant to how we think about the extractive industry in this province because as Voyles's notes, while we might think of colonialism as primarily manifesting in extractive processes, this is not the only way to think about it. Settler colonialism adds more complexity because it involves making home in a land that is already home for Indigenous folks. This form of extraction requires a construction of land that is already belonging to the settler and is already seem as "undesirable, unproductive, or unappealing: in short, as wasteland."⁹⁷ This is the context that settled this province, as shown by the mining laws created, that remain to this day.

Speaking more specifically about the role of authority that the province continues to claim by suppressing Indigenous ones, the official process for staking a claim is incredibly easy. If you are 18 years old, have 25 dollars and access to a computer you can

⁹⁶ Nikki Skuce. "B.C.'s 150-Year-Old Mining Laws Are Absurdly Outdated. Guess Who Benefits From That?" The Narwhal. January 28 2017. <https://thenarwhal.ca/b-c-s-150-year-old-mining-laws-are-absurdly-outdated-guess-who-benefits/>

⁹⁷ Voyles *Wastelanding*, 7.

stake a claim almost anywhere province-wide. These free-entry laws authorize mineral exploration and development all over the province with few areas that are exempt like parks, under existing buildings and at certain archaeological sites. Not only are Indigenous people displaced in the process, but their cultural, political, and legal systems are completely ignored and in place of them the Canadian colonialscape covers them.⁹⁸

Through free entry mining exploration can take place in over 82 percent of the lands in B.C. and this has not evolved with environmental and societal norms. This alienation of land through the authority of the province is incredibly harmful and woefully underacknowledged. Essentially, mining gets a free pass from zoning bylaws and land-use plans that are otherwise rather strict in other industry sectors.⁹⁹ Claims can be staked and developed in valuable ecological areas, on First Nations' traditional territories and even in people's private property, remaking Indigenous land into a settler home over and over again.¹⁰⁰ Resulting in mines that are proposed in areas where they can have a massive negative environmental, social, and economic impacts with the costs externalized on other land users and industries that rely on the environment to remain undisturbed like tourism and fishing.¹⁰¹ This is because miners in B.C. are free to stake and develop claims in watersheds that are important for drinking water sources and fisheries. Any areas that are incompatible for mining are still open to claims no matter the

⁹⁸ Hunt, "Law, Colonialism and Space," 73-4.

⁹⁹ Nikki Skuce. "B.C.'s 150-Year-Old Mining Laws Are Absurdly Outdated. Guess Who Benefits From That?"

¹⁰⁰ Voyles, *Wastelanding*, 7.

¹⁰¹ Fixing System Failures in BC's Mining Regulation: The Urgent need for Judicial Inquiry. P.57. http://www.elc.uvic.ca/wordpress/wp-content/uploads/2017/03/2016-03-02-MiningPublicInquiry_2017Mar8.pdf

circumstance.¹⁰² An unfortunate side effect of this free-entry law is that it puts extraneous costs on taxpayers to force government to step in and stop mining for environmental or social reasons. This has been such an issue in other jurisdictions that they have modernized their mineral tenure system to better protect stakeholders like private landowners, First Nations, and other communities that might be impacted. They did this specifically to stop the free-entry mining system to better protect communities and allow for the protection of environmentally sensitive areas from mining.¹⁰³ However, this is not the case in B.C. Thus, when it comes to mining in B.C. it is truly open for business. This is another example of how colonial law, even ones that go against the public interest, can be used to create spaces where violence against Indigenous folk and their kin has no witnesses.¹⁰⁴

These laws represent the historical justifications for mining but they have also been helped along by more recent moves by the B.C Provincial Government under Premier Christy Clark. While Clark was Premier, she was critiqued widely for taking donations from private sector corporations. While B.C. was not unique in refusing to impose such tight limits on donations from corporations, they were unique because the big donors to Clark's party often appeared to benefit financially from their donations. This included multiple industries but most importantly, it included the parent company of

¹⁰² Fixing System Failures in BCs Mining Regulation: The Urgent need for Judicial Inquiry. P.59. http://www.elc.uvic.ca/wordpress/wp-content/uploads/2017/03/2016-03-02-MiningPublicInquiry_2017Mar8.pdf

¹⁰³ Fixing System Failures in BCs Mining Regulation: The Urgent need for Judicial Inquiry. P. 14. http://www.elc.uvic.ca/wordpress/wp-content/uploads/2017/03/2016-03-02-MiningPublicInquiry_2017Mar8.pdf

¹⁰⁴ Hunt, "Law, Colonialism and Space," 75.

the MPMC, Imperial Metals.¹⁰⁵ It was especially a concern because B.C. had no limits on political donations. As such, wealthy donors are able to donate copious amounts of money to influence the government here. Critics of the former leader of the conservative British Columbia Liberal Party claim that the government of the day transformed their democracy into a lucrative place of business dominated by special interests and produced a climate that allowed mining interests to prevail.¹⁰⁶ This is a clear example of how delegated authority came about, where the province claims to have authority to continue the pollution of the waterways following the disaster, but are still able to disavow responsibility when it comes to being accountable. This process was enabled directly when the province became less independent from industry through regulatory capture. In this way, the province is able to maintain the veneer of authority without having to be accountable for the consequences of that authority because it has been delegated to another institution. The end result of this shifting of accountability and diverting of authority to ‘somewhere’ is represented by Hunt’s colonialscape as phenomena of both embodied and rhetorical representations of violence that creates the spatial-legal space of Canada.¹⁰⁷

Specifically, in January 2014 months before the dam collapse, then Premier Christy Clark, addressed the Association for Mineral Exploration British Columbia where she was not only extending the \$10 million tax-credit program for the mining industry in

¹⁰⁵ Dan Levin. “British Columbia: The ‘Wild West’ of Canadian Political Cash,” The New York Times. January 13 2017. <https://www.nytimes.com/2017/01/13/world/canada/british-columbia-christy-clark.html>

¹⁰⁶ Levin. “British Columbia: The ‘Wild West’ of Canadian Political Cash,”

¹⁰⁷ Hunt, “Law, Colonialism and Space,” 72.

B.C., she also promised to review the provincial Environmental Assessment Office to make it more effective and efficient for mining corporations. Clark described the office as cumbersome and “told her corporate audience: “I think over the years, the environmental assessment process has gotten so long, so difficult and so complex that communities, proponents, can’t get a yes, can’t get a no.”¹⁰⁸ Clark’s intention is clear: quick and easy access to the minerals across the province. In the year following the disaster with active investigations of the disaster underway, the Premier announced further support for mining by establishing a new Major Mines Permitting office. On top of this, Clark set aside an additional \$6 million to speed up turnaround times for decision making processes. From these actions, in the context of the Mount Polley breach, the B.C. government no longer seen their role as defending public interest. Rather they were far more interested in serving the mining industry as best they could.¹⁰⁹ This corrupt process finally came to an end under the current B.C. Premier John Horgan, when he fulfilled his campaign promise to ban corporate and union political donations in provincial and municipal elections in November 2017. This ban successfully cut off a large stream of money flowing from mining corporations and other extractive industry groups, but the damage has been done in the case of the Mount Polley Mine Disaster.¹¹⁰

The ban of monetary donations do not go beyond the surface level to change the structures of authority that were shifted over many decades. The underlying conditions of

¹⁰⁸ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 45.

¹⁰⁹ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 46.

¹¹⁰ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 60.

colonialism and capitalism remain unchanged as the driving processes in which the whole mining industry is built on. Looking closer at the register of authority here, delegated authority, we see how it has been mobilized in a particular way to allow the state to maintain the image of control while still claiming through delegation that they are not the ones at fault for the disaster. Thus, regulatory capture is a very clear example of this delegated authority because it is through the weakened regulation and oversight in the mining industry in British Columbia that this dispersal of authority has happened. It has done so subtly over time that allowed for the preservation of the legitimacy the state being in control has remained in tact. The dominant political order has been stretched and twisted in such a way that transformed into something new while no one was looking, generating more for the sovereign.¹¹¹ As shown throughout this section, this subtle and continuous expansion of authority is an essential aspect of colonialism because it through concepts like colonialsapes and wastelanding, they reinforce underlying power relations which naturalize settlement and extraction at the same time it renders invisible Indigenous ways of knowing on the land and through the waters.¹¹²

Conclusion:

Discussions of deregulation and regulatory capture are incredibly important, but neither of these processes considers their relationship to ongoing acts of colonization in British Columbia. The issue of land who has authority on that land is never question, it defaults

¹¹¹ Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 37.

¹¹² Hunt, "Law, Colonialism and Space," 72.

to the assumed sovereignty of British Columbia and Canada as a whole. The ongoing dumping into Quesnel Lake after the disaster without consultation of the local population and Indigenous communities that rely on that body of water, reinforces the notion that settler governments do not need to check in with Indigenous communities regarding their own lands and waters. It also reinforces the idea that Indigenous spaces are not worthy of care because the dumping into the lake is a blatant continuation of the initial pollution from the disaster, just in smaller increments. The ongoing dumping coupled with the staying of the lawsuits against the company reinforces the suppression of Indigenous legal orders throughout the province. Finally, regulatory capture, while a major issue still does not question the illegal occupation of Indigenous lands throughout British Columbia.

All together these three manifestations of ongoing colonization show that colonial acts of overt and deliberate neglect are durable and flexible to withstand time, and show up again and again throughout this disaster. In conclusion, the lack of recourse throughout this disaster and following it, sets a dangerous precedent that makes dumping in the lake acceptable in ways that allows for the pollution of Indigenous spaces to continue unhindered. It also justifies the continual suppression of Indigenous legal orders and highlights that ongoing deregulation and regulatory capture are a part of the colonial project to open up Indigenous lands for exploitation, whatever the cost.

This chapter displayed the ways in which settler colonial institutions assume and seek to enact absolute authority over all, but from the perspective of Indigenous governance, this authority is unfounded and provides little to no protection from

environmental degradation. This form of authority only succeeds in reconstituting state structures that continue the marginalization of Indigenous Nations in their own lands and waters. These three registers of authority are displays of authority that are built and supported by continually making Indigenous community concerns exceptional. This shows that the places where the public normally look to for authority and justice are not the ones that we should be looking to in this disaster because the state's claims to authority over these lands is not backed by grounded practices of care that are needed in this disaster.

Indigenous communities are shown as exceptional to the normative ideas of public safety because their experiences with the disaster are shallowly explored throughout the whole narrative. Due to this continual marginalization throughout this narrative, their lands, bodies, and waters are made into spaces that are unimportantly occupied, therefore, open for the dumping of toxic materials in their homes. This is done institutionally by actively suppressing Indigenous legal orders but also more discursively making Indigenous world views, epistemologies, histories, cultural practices disposable.¹¹³ Ultimately, what I have attempted to show in this chapter and throughout the others is that looking to state and its' various branches (executive, legislative, and judicial) for justice because they claim to have authority of Indigenous lands, bodies, and waters is not the proper venue because their claims to sovereignty over these lands is not

¹¹³ Voyles, *Wastelanding*, 11.

as strong as Indigenous jurisdiction that is animated through everyday acts of care on the land and waters by Indigenous communities.¹¹⁴

¹¹⁴ Shiri Pasternak, *Grounded Authority: Algonquins of Barriere Lake Against the State* (Minneapolis, Minnesota: University of Minnesota Press, 2017), 4-5.

The Spill: Authority, Gender, and Environmental Justice

Introduction:

The aim throughout this project has been to analyze what it means when assertions of authority are made on occupied Indigenous lands and waters by state actors, including regulatory bodies and the corporations themselves. The notion of authority, understood in the Western tradition, requires particular actions to be taken by the state for their claims of authority to acquire and hold meaning, thus different parts of the state continually operationalize control to govern and extract resources from Indigenous lands, resulting in more environmental degradation. As shown through the study of the Mount Polley Mine disaster this form of authority just doesn't work to provide any protection for the environment or Indigenous communities. The most significant actions that have been taken to protect the environment and communities in the wake of the disaster have been led by Indigenous women and two-spirit/queer folk. This trend is indicative of a larger, disrupted history of Indigenous women and their roles in governance over their lands, which has been explained thoroughly by Indigenous feminists as the reason why settler colonial violence has taken aim at Indigenous women specifically.¹ This chapter will

¹ The subfield of Indigenous feminist literature is growing fast so any exclusions here are not intentional or meant to disparage or dismiss the important work that is being done by Indigenous feminist scholars everywhere. The primary Indigenous feminist scholars I've drawn upon here are: Isabel Altamirano-Jiménez "Introduction: Women and Knowledge," *Living on the Land: Indigenous Women's Understanding of Place*. Edmonton: Athabasca University Press, 2016; Rachel Flowers, "Refusal to Forgive: Indigenous women's love and rage." *Decolonization: Indigeneity, Education & Society* Vol 4. No. 2: (2015); Sarah Hunt. "Law, Colonialism and Space," in *Witnessing the Colonialscape: light the intimate fires of Indigenous legal pluralism*. 58-80. Simon Fraser University 2014. summit.sfu.ca/system/files/iritems1/14145/etd8317_SHunt.pdf; Rauna Kuokkanen, *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender*. New York: Oxford University Press, 2019; Audra Simpson, "The State is a Man: Theresa Spence, Loretta Saunders and the Gender of Settler Sovereignty," *Theory & Event* 19, no. 4 (2016). <https://muse.jhu.edu/article/633280>; Heidi Kiiwetinepinesik Stark, "Criminal Empire: The Making of the Savage in a Lawless Land," *Theory & Event* 19, no. 4 (2016). <https://muse.jhu.edu/article/633282>.

discuss this land body connection being made in Indigenous feminist literature departing from the lenses utilized in previous chapters (i.e. Hunt's colonialscape, and Voyles's wastelanding, and Agamben's state of exception and bare life), whilst still maintaining general themes from each thinker to open up a discussion of how we can reorient our thinking of authority in the Mount Polley Mine disaster that is grounded in the spaces they are in.

This project has looked at the various places that authority lies and how it is constructed through the Mount Polley Mine disaster, that lead to particularly harmful material conditions (i.e. the extraction of raw materials and the dumping of toxic waste the produce in already vulnerable communities).² Through the constellation of Hunt, Voyles, and Agamben, through a lens of environmental racism, this project has revealed the ways in which state power and authority extend into the everyday experiences of Indigenous peoples, as explained in chapter one. The way that authority has been constructed in the disaster occurred at various levels. First it was through the use of narrative as discussed in chapter two, this was done by creating and maintaining an authoritative narrative of the disaster through the release of limited information at first. This was further supported by the release of official reports that narrowed the focus on investigation that excludes Indigenous people's experiences from the disaster. Building on this, the third chapter looks into structures of authority that have allowed the state to continue to operate despite its failings throughout the disaster overall. In particular, the

² Traci Brynne Voyles. *Wastelanding: Legacies of Uranium Mining in Navajo Country*. (Minneapolis: University of Minnesota Press, 2015), 9.

different registers of authority (jurisdictional, legal, and delegated) all played a role in furthering a colonial narrative of competence and legitimacy despite evidence that showed otherwise.

Unfortunately in settler colonies, Indigenous spaces are the spaces that become subject to these displays of authority that resulted in toxic deposits. The Mount Polley mine is located on Secwepmc territory and the closest communities impacted by the collapse were the Xat'sull (Soda Creek) First Nation and the T'exelc (Williams Lake) Band.³ This sacrifice zone, however, was not limited to the immediate area because the tailings pond breached into the Fraser river system via Quesnel Lake, impacting other communities from other Nations further down the river including the St'at'imc, Nlaka'pamux and beyond. Throughout this account we see how “questions over land are central, and clashes with mining companies are frequent.”⁴ Continually, the coverage of the disaster attempts to downplay the seriousness of the spill, despite the fact that it is well documented that there is a 10-metre layer of tailings sediment on the bottom of Quesnel Lake, near the mouth of Hazeltine Creek where the breach fed into these bodies of water. This deposit of tailings sediment has yet to be removed and, responses from both government and industry continue to represent the spill as an irregularity in an

³ Judith Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” *Corporate Mapping Project*. August 2018. p. 50. https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2018/08/CCPA-BC_TailingsDamSpills.pdf

⁴ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 50.

otherwise uneventful mining industry.⁵ As noted by Sinxt scholar (of the Colville Confederated Tribes) Dina Gillo-Whitaker, industrialism has played a central role in consolidating and asserting power over Indigenous Nations by forcing them onto undesirable plots of land. She further notes that “it was no small irony when some of those perceived “wastelands” were later found to contain valuable substances coveted by energy and new technology sectors, presenting what would be simultaneously a blessing and curse for the nations.”⁶ This, as I have argued in previous chapters, resulted in the systematic suppression of Indigenous legal orders, pollution of Indigenous spaces, rendering Indigenous life and their interconnected webs of kinship, politically irrelevant. Indeed, the role that industry plays in maintaining settler colonial notions of authority at the explicit expense of Indigenous communities cannot be overstated.

Community response:

The Mount Polley case study has shown that the intersection between environmental change, Indigenous socioeconomic conditions and, Indigenous health is a nexus that cannot be separated, especially because they are all vulnerable when it comes to industry ‘slip-ups’ like this one. Indeed, “increased vulnerability is primarily due to ongoing adverse cultural impacts of colonialism and subsequent assimilation practices endured for

⁵ Norah Bowman, “Our Economy Walks on the Land”: Secwepemc Resistance and Resilience After the Imperial Metals Mt. Polley Tailings Storage Facility Breach,” *Canadian Review of Comparative Literature* Vol 44. 1 (2017): 26. <http://doi.org/10.1353/crc.2017.0001>

⁶ Dina Gillo-Whitaker, *As Long As The Grass Grows: The Indigenous Fight for Environmental Justice, From Colonization to Standing Rock*. (Boston: Beacon Press, 2019), 54-5.

more than 150 years.”⁷ Over half a century of intensive resource development throughout B.C. has limited the areas that traditional, life-sustaining, cultural activity can take place. It has become harder and harder for Indigenous people to exercise their inherent rights to harvest wild foods, hunt and fish, and practice their customs in their homelands, uninterrupted by disasters like the Mount Polley tailings storage facility.⁸

In response, some Secwepemc communities have taken action in an attempt to protect their inherent rights to practice their subsistence economy and the traditions that go along with it. In particular the breach spurred the Northern Secwepemc te Qelmuw Leadership Council, made up of four northern Secwepemc communities, to compel a policy document in response. The document titled “Northern Secwepemc te Qelmuw Mining Policy” was publicly released December 1st 2014. Jacinda Mack, mining coordinator for the Shuswap Tribal Council, claimed that the policy was not about shutting down mining completely. It is more about holding the four operational mines in Secwepemc territory to higher standards. Creating a policy was a good way to make them safer, more accountable, and more engaged with local Indigenous communities.⁹ Chief Ann Louie of the T’exelc (Williams Lake) Band stated that “The impetus for [this policy] was the cumulative effect of more than 150 years of bad mining practices and devastating

⁷ Janis Shandro, Mirko Winkler, Laura Jokinen, and Alison Stockwell. “Health impact assessment of the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report,” *First Nations Health Authority*. (January 2016), p. 22. <http://www.fnha.ca/Documents/FNHA-Mount-Polley-Mine-HIA-SSP-Report.pdf>

⁸ Amnesty International, “A Breach of Human Rights: The Human Rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada,” 4.

⁹ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 57.

impacts on First Nations in BC. For years we warned that the Mount Polley dam was a disaster waiting to happen and we were ignored.”¹⁰ This document goes beyond what the B.C. government requires from mining companies, highlighting the lack of institutional safeguards throughout the while mining industry. In particular, part of this mining policy requires corporations to pay for the leadership council to conduct their own environmental review of any incident or proposal. More specifically, this policy requires full consultation through Environmental Assessments, which allow the Northern Secwepemc te Qelmuw Leadership Council to remain in control of the scope and nature of assessments to ensure proper protection from future mishaps. It also gives them the freedom to refuse these kinds of projects if they deem it too risky, which is significant.¹¹ With this comes the authority to accept or deny applications independent of non-First Nations authorities.¹² These acts on the ground are incredibly important in terms of what local Indigenous communities can do to continue to assert in their homelands. They have done so during this entire process and, will continue to do so into the future.

Most recently, the cleanup efforts made by the company have been addressed by Jacinda Mack. Four years after the disaster in 2018, the whole cleanup has been called a misnomer. Instead of a proper clean up, according to Mack, “All they did was re-engineer. Everything is still in Quesnel Lake, Polley Lake, in the forest. And they say it

¹⁰ Marshall, “Tailings dam spills at Mount Polley and Mariana: Chronicles of Disasters Foretold,” 57.

¹¹ Northern Secwepemc te Qelmuw Leadership Council, “Northern Secwepemc te Qelmuw Mining Policy,” *Northern Shuswap Tribal Council*. November 19, 2014. pp. 12-14. http://northernshuswaptribalcouncil.com/?page_id=765

¹² Jerome Turner. “After Mount Polley: ‘This is Indigenous Law’,” *Ricochet*. February 7 2015. https://theyee.ca/News/2015/02/07/After_Mount_Polley_Indigenous_Law/

would be more disruptive to try to remove the tailings. But if those tailings were filled with gold, they would find a way to remove those tailings.”¹³ These observations from Mack shows some of the frustration that many have in the company’s lack of effort. when it comes to being accountable for their actions.

In February of 2015, there was a community meeting in Williams Lake with local Indigenous and non-Indigenous community members, along with a few research organizations and government officials to give an update on the disaster. Speaking for Imperial Metals was an environmental scientist Lee Nikl. He spoke about the pre-breach and post-breach effects of plant and aquatic life, concluding that reclamation and restoration were inevitable because Imperial Metals’s cleanup was thorough. As Nikl’s presentation went on, more and more community members stood up with questions.¹⁴ The questions asked were about the effect of the spill on yearly hunting and fishing in the areas surrounding Quesnel lake. These questions were asked repeatedly, highlighting a great concern that locals had regarding the post-breach environment. Nikl stated that the fish would be available to eat, but there was no mention of how the breach effected the non-aquatic life (i.e. mammals, flora, and fauna) in the surrounding the area. Reportedly, mammals were supposed to be a part of a future reclamation process but neither Imperial Metals or the B.C. government officials could provide a sense of where or when this would take place. The claims that Imperial Metals (IM) were unable to study non-aquatic

¹³ James Wilt. “What happens if Imperial Metals goes bankrupt?” The Narwhal. August 27 2018. <https://thenarwhal.ca/what-happens-if-imperial-metals-goes-bankrupt/>

¹⁴ Bowman, “Our Economy Walks on the Land,” 27.

life were met with immediate skepticism and fear for a lack of follow through on the part of the government. The community just wanted to know if their food was safe.¹⁵ In the end, "Nikl acknowledged the design flaw, and called the event a "disaster," but did not assume IM was legally or morally responsible for the breach."¹⁶

The fact that the Imperial Metals representative repeatedly dismissed the questions and concerns of locals regarding deer and bears is a clear example of strategic avoidance utilized to sidestep acknowledging the title of the area they just polluted.¹⁷ Local Indigenous folk know that as long as the company can continue to hold community meetings that give the impression that they are listening, they will continue to extract and pollute, unimpeded.¹⁸ The exploitation and poison of these waterways can only proceed with conscious and strategic dispossession of Indigenous lands and waters. Norah Bowman, a scholar that worked closely with the communities surrounding Williams Lake observed that "ecocide and genocide do not occur together by happenstance; rather, extractivism requires dispossession of people from people and life from life."¹⁹

The aftermath of the spill continued to defy expectations in October of 2018, when the Narwhal did a story about the spill four years after the initial breach highlighting the continued neglect of the area. When they arrived, the reporters expected

¹⁵ Bowman, "Our Economy Walks on the Land," 28.

¹⁶ Bowman, "Our Economy Walks on the Land," 27-8.

¹⁷ Bowman, "Our Economy Walks on the Land," 30.

¹⁸ Bowman, "Our Economy Walks on the Land," 30.

¹⁹ Bowman, "Our Economy Walks on the Land," 31.

a wasteland but that was not what they got, rather it was a bounty. To the unexperienced eye, the scenes they came across seemed natural and resilient. A local by the name of Kim Goforth's interjected stating, "We see it every day, how much nature fights back," he says. "It does heal. But there's only so much nature can undo." With that, Goforth points out Hazeltine Creek, a creek that had millions of dollars spent on it reforming it back into a stream, concluding that "the landscape looks neat and groomed, but years later, very little actually grows here"²⁰ speaking to the lingering impacts of the spill even four years later.

Goforth also pointed out that the mine still has not paid any fines for the breach, and they were allowed to discharge effluent in the lake even though the effects of doing so were understudied. Furthermore, even though the terms of the permit state that the effluent or mining wastewater must be treated, the company has been found to not follow this at least three times in 2018.²¹ "The B.C. Ministry of Environment confirmed that in a single month, the company was caught three separate times — exceeding maximum levels for dissolved aluminum, total copper and dissolved cadmium"²² all of which are toxic to local fish populations. The company continues to break these terms but still has not been met with any circumstances despite the six advisories and two warnings that

²⁰ Christopher Pollon. "Yearfour: Tracing Mount Polley's toxic legacy," *The Narwhal*. October 24, 2018. <https://thenarwhal.ca/year-four-tracing-mount-polleys-toxic-legacy/>

²¹ Pollon. "Yearfour: Tracing Mount Polley's toxic legacy,"

²² Christopher Pollon. "Lake interrupted," *The Narwhal*. October 27, 2018. <https://thenarwhal.ca/lake-interrupted/>

“may lead to prosecution” but nothing has happened yet as the practice has no teeth.²³ Ultimately the company could be on the hook between \$150,000 and \$8 million if the B.C. Conservation Officer Service, the Department of Fisheries and Oceans, and Environment and Climate Change Canada decide to press charges.²⁴ If Imperial Metals is charged, however, it will not change much beyond the narrow scope that the investigations surrounding the disaster itself. Most notably, Indigenous communities are likely going to continue to be ignored despite how central they are to this whole narrative. Even if the company itself is charged, the settler colonial state will still manage to maintain their structural authority that will always put Indigenous folks at risk due to the logic of elimination that undergirds the settler colonial state’s drive for territoriality.²⁵

In an attempt to bring more attention to this disaster, Jacinda Mack travelled to multiple post-secondary institutions in the province to educate people on the scale of the disaster. Former Chief Bev Sellers of Xat’sull First Nation continually spoke to media about the lack of action on behalf of the both the company and the provincial government. Kanahus Manuel organized a group of women to camp outside the gates of the Mount Polley mine to call for the closure of the mine on unneeded Secwepemc territory.²⁶ These women are all Indigenous and are operating on whatever level they can do protect their homes from further degradation, whether it is through action on the

²³ Pollon. “Lake interrupted,”

²⁴ Pollon. “Lake interrupted,”

²⁵ Patrick Wolfe, “Settler colonialism and the elimination of the native,” *Journal of Genocide Research* 8(4), (2006): 388.

²⁶ Bowman, “Our Economy Walks on the Land,” 32.

ground, interviews with media, or giving talks in university halls to hold the company to account when the government would not. It is primarily Indigenous women like Bev Sellars, Jacinda Mack, and Kanahus Manuel acting at various registers for the futurity of their communities. It is for this reason that Indigenous girls, women, and two-spirit/gender non-conforming folks are, and historically have been, the target of colonial violence.

Gendered resistance:

In societies in general and settler colonial societies more specifically, authority has been observed to be maintained through sustained acts of violence. There are some theories of the state, an example would be political scientist Robert H. Bates's text *Prosperity and Violence: The Political Economy of Development*, that posit that gaining a monopoly on violence is an essential part of the state development. By using violence or by the very least the threat of violence (i.e. coercion) is used to secure economic development, the state becomes the only body that can legitimately use violence.²⁷ Patrick Wolfe argues that settler colonialism deviates from other colonial contexts because the presence of the state is not always necessary for enacting and sustaining this violence:

In sum, then, settler colonialism is an inclusive, land-centred project that coordinates a comprehensive range of agencies, from the metropolitan centre to the frontier encampment, with a view to eliminating Indigenous societies. Its operations are not dependent on the presence or absence of formal state institutions or functionaries. Accordingly—to begin to move toward the issue of genocide—the occasions on or the extent to which settler colonialism conduces

²⁷ Robert H. Bates. *Prosperity and Violence: The Economy of Development* 2nd Ed. (W.W Norton & Company, 2010), 56.

to genocide are not a matter of the presence or absence of the formal apparatus of the state.²⁸

Wolfe's point is that when it comes to Indigenous societies, the state does not need to explicitly direct settlers to enact colonial violence because they do it on their own. Even when the state might be making conciliatory motions with Indigenous people's, at the structural and societal levels, the logic of elimination remains active with or without the state. All of this is to highlight the inherent nature of colonialism and settler colonialism in this province, which is explicitly driven by the desire for land for settlement and extraction. At any point, trying to see the state as anything but predatory is ridiculous given its long history of dispossession and exploitation of Indigenous lands. This is significant in this disaster because even though Indigenous people's are included in the narrative of the disaster, the structure of their inclusion ensures that nothing transformative will occur. Indigenous folk are included in the reports simply as a way for the Canadian state to continually assert their authority over them.²⁹ Chapter two and three of this thesis showed that looking at the disaster solely through the parameters of the state will not provide any sort of justice for Indigenous communities specifically.

Chapter two specifically looked at how the disaster narrative gathered from the official reports and news coverage is constructed to remove corporate and government obligation to Indigenous communities whose lands they polluted. Following that, chapter three looked at different registers of authority that the state possesses, despite the fact that

²⁸ Wolfe, "Settler colonialism and the elimination of the native," 393.

²⁹ Glen Sean Coulthard. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minnesota: University of Minnesota Press, 2014.

they do not act in any interest other than that of the mining industry, resulting in the continued marginalization of Indigenous concerns to this day. In order to achieve this analysis, I drew upon Agamben's theoretical frameworks of the state of exception and bare life to highlight the spatiolegal paradigm that Indigenous peoples occupy as a result of state domination. However, this theoretical apparatus needed to be expanded because it was too Eurocentric and built on the assumption that the categories of race and gender are no longer determinants of how people are treated on both an interpersonal and structural level. Thus, the use of both Hunt and Voyles was intentional. Their work has been able to get beyond the narrow theorizations of Agamben required to fully understand the extent of disaster, and their concepts of colonialscape and wastelanding hold central the lived experiences of Indigenous women and 2SQ folks. With these theories together, the authoritative structures that target Indigenous communities and the spaces they inhabit to deign them unimportant are revealed throughout the Mount Polley Mine Disaster. This is significant because with the use of these scholars, it becomes abundantly clear that gender is a major element that has been missing from this whole narrative. The assumption that there is no specific gendered aspect of the disaster is a long-standing aspect of colonialism and settler colonialism that specifically targets Indigenous women and 2SQ folks the same way they target and dominate land.

“Violence on the Land, Violence on Our Bodies:”³⁰

In the groundbreaking report from Women’s Earth Alliance and Native Youth Sexual Health Network entitled “Violence on the Land, Violence on Our Bodies: Building an Indigenous Response to Environmental Violence,” the connections between environmental violence, gender violence, and reproductive violence were laid out based on interviews with various Indigenous communities across North America.³¹ This report, as well many contributions made in the academic sphere make clear that the violent history of colonization and subsequent dispossession continues to affect Indigenous folks in a variety of ways, including structural factors such as poverty, lack of access to lands and recourses, or limited access to health and education services. It has also been made clear that Indigenous women and femmes often bear the brunt of these structural inequities.³² This has been a trend that has plagued Indigenous-settler relations since contact.

³⁰ It is important to note that even though bare life is not used to talk about gendered violence in this chapter, there has been important work that has utilized Agamben’s work to do so. The topic of gendered violence and spaces of exception has been explored through Geraldine Pratt’s article “Abandoned Women and Spaces of Exception” which looks at the ways in which women in urban spaces are abandoned but not necessarily legally excluded. Pratt does this by exploring the experiences of sex workers and live-in caregivers paying specific attention to how gender and racialisation play in being rendered bare life. In particular, when looking at the experiences of Aboriginal sex workers Pratt highlights the trope of visibility/invisibility where Aboriginal women feel both hyper-visible and invisible, both inside and outside the view of the state. Their inclusion is a deliberate act of exclusion. For more information please find: Geraldine Pratt, “Abandoned Women and Spaces of the Exception,” *Antipode*. 37, no. 5(2005): 1052-1078.

³¹ Women’s Earth Alliance (WEA) and Native Youth Sexual Health Network (NYSHN), “Violence On the Land, Violence on Our Bodies: Building an Indigenous Response to Environmental Violence.” Berkeley and Toronto: Women’s Earth Alliance (WEA) and Native Youth Sexual Health Network, 2016. <http://landbodydefense.org/uploads/files/VLVBReportToolkit2016.pdf>

³² Rauna Kuokkanen. *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender*. (New York: Oxford University Press, 2019), 183.

Sami political scientist Rauna Kuokkanen states that early colonizers were well aware of the crucial role that Indigenous women played in reproducing societies both through giving birth and through passing on cultural values such as collective identity, culture, and language.³³ Thus, conquering the land was immediately connected with notions of conquering Indigenous women's bodies, which elucidates the fundamentally gendered character of the colonial project from the very beginning. Meaning that both structural and discursive forms of violence played central roles in the sexual and physical violence against women.³⁴ According to Kuokkanen, "as settler colonialism's logic of elimination seeks to erase Indigenous political, legal, and economic orders that stand in the way of its access to Indigenous lands and resources, it has to destroy those Indigenous bodies that represent those orders."³⁵ This sentiment lends credence to the gendered aspect of the state that often goes unremarked upon originally noted by the late Mohawk lawyer and activist Patricia Monture-Angus where she names the Canadian state as the invisible male perpetrator.³⁶ This sentiment is echoed by Mohawk scholar Audra Simpson, who further identifies the settler colonial state as one that is characteristically male, white, and heteropatriarchal, that seeks to destroy what it is not. Simpson states that "the state does so with a death drive to eliminate, contain, hide and in other ways

³³ Kuokkanen. *Restructuring Relations*, 188.

³⁴ Kuokkanen. *Restructuring Relations*, 189.

³⁵ Kuokkanen. *Restructuring Relations*, 191.

³⁶ Patricia Monture-Angus. *Thunder in my Soul: A Mohawk Woman Speaks* (Halifax: Fernwood Publishing, 1995), 175.

“disappear” what fundamentally challenges is legitimacy: Indigenous political orders.”³⁷

They do this through the direct attack upon Indigenous women because their bodies represent a dual threat to settler colonial orders, the reproduction of Indigenous life and the reproduction of other Indigenous political orders. In the process Native women’s bodies, like land, are rendered expendable. Much like the land they come from, Indigenous women are to be extracted from, used, sullied, taken from, and violated over and over.³⁸ Ojibwe political scientist Heidi Kiiwetinepinesiik Stark notes that “in this environment, Indigenous women’s bodies, much like Indigenous lands, became marked as both criminal and lawless, solely because of their racialized-gender and its’ accompanying western constructions of Indigenous women’s sexuality.”³⁹

From this long history of colonization, and some structural and legal transformations, Indigenous women have been deemed disposable citizens whose main significance to the international human rights realm is that they have an inherent lack of rights.⁴⁰ This construction of Indigenous women requires explicit anti-colonial feminist critiques to disrupt the dominant narrative that Indigenous women might be passive victims of colonialism. Zapotec political scientist Isabel Altamirano-Jiménez argues that “Indigenous women’s politics not only unsettle representations of the state as the saviour,

³⁷ Audra Simpson, “The State is a Man: Theresa Spence, Loretta Saunders and the Gender of Settler Sovereignty,” *Theory & Event* 19, no. 4 (2016). <https://muse.jhu.edu/article/633280>

³⁸ Simpson, “The State is a Man”

³⁹ Heidi Kiiwetinepinesiik Stark, "Criminal Empire: The Making of the Savage in a Lawless Land," *Theory & Event* 19, no. 4 (2016). <https://muse.jhu.edu/article/633282>

⁴⁰ Isabel Altamirano-Jiménez, “The State Is Not a Saviour,” *Making Space for Indigenous Feminism*. Second Edition. (Halifax: Fernwood Publishing, 2017), 230.

but also critique its role in producing the material conditions in which Indigenous women find themselves.”⁴¹ The function of Indigenous feminist political analysis is to bring attention to how the settler state has come into existence through gender-based violence against Indigenous peoples and so leaving patriarchy and heteronormativity out of the analysis is not an option when critiquing racism, land dispossession, and settler colonialism.⁴² Furthermore, Indigenous feminist political analysis will also illuminate the ways that gender is substantively left out when it comes to how authority is constructed, accepted, and upheld at the expense of Indigenous women.

Gendering authority:

Despite the fact that it was noted by early settlers that Indigenous women traditionally held high places of authority in their respective Indigenous political orders, the active suppression of these roles over the last 500 years of colonization has meant that the reclamation of these positions has been slow and inconsistent in conversations of self-determination. Saulteau and Gitksan legal scholar Val Napoleon noted that in Aboriginal rights jurisprudence, it seems that women have been erased from the land and the legal landscape, despite the fact that “women were and are on the land (as well as everywhere else).”⁴³ Leey’qsun scholar Rachel Flowers echoes Napoleon when discussing the ways

⁴¹ Altamirano-Jiménez, “The State Is Not a Saviour,” 230.

⁴² Traci Brynne Voyles. *Wastelanding: legacies of uranium mining in Navajo country*. (Minneapolis: University of Minnesota Press, 2015), 149. And Rauna Kuokkanen. *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender*. (New York: Oxford University Press, 2019), 8.

⁴³ Val Napoleon. “Aboriginal Discourse: Gender, Identity, and Community” *Indigenous Peoples and the Law: Comparative and Critical Perspectives*. (Portland Oregon: Hart Publishing, 2009), 241-2.

in which Indigenous women have carried out this kind of care since time immemorial, and have simultaneously felt the worst aspects of settler colonial violence in the process.

She states:

Often, Indigenous women's bodies are explained in symbolic terms, as a microcosm of Indigenous lands; her body is where our sovereignty begins. Indigenous women represent our political orders, our political will, our cultural teachings, our laws, and the power to reproduce Indigenous life. While Indigenous women's bodies are described as targets of gendered colonial violence, it is critical not to lose sight that we are also legal and political actors.⁴⁴ Even though Indigenous women were and are still involved with their nation's laws at every level, including its source, interpretation, application, and recording they are continually erased legally and politically⁴⁵ leading to the question "whose voices are heard?"⁴⁶ Napoleon states that if Indigenous women's knowledge of land and resources remains suppressed politically and legally, Indigenous knowledge as a whole will be incomplete.⁴⁷ "Indigenous women's knowledge expands beyond the activities done by women and involves a system inquiry that reveals Indigenous processes of observing and understanding and the protocols for being and participating in the world."⁴⁸ To ignore the specific ways that Indigenous women know the world around them is to undermine them as active knowledge producers in their respective communities.⁴⁹ Ultimately, a lack of

⁴⁴ Rachel Flowers. "Refusal to Forgive: Indigenous women's love and rage." *Decolonization: Indigeneity, Education & Society* Vol 4. No. 2: (2015): 41.

⁴⁵ Napoleon. "Aboriginal Discourse: Gender, Identity, and Community," 242.

⁴⁶ Napoleon. "Aboriginal Discourse: Gender, Identity, and Community," 253.

⁴⁷ Napoleon. "Aboriginal Discourse: Gender, Identity, and Community," 243.

⁴⁸ Isabel Altamirano-Jiménez, "Introduction: Women and Knowledge," *Living on the Land: Indigenous Women's Understanding of Place*. (Edmonton: Athabasca University Press, 2016), 10.

⁴⁹ Altamirano-Jiménez, "Introduction: Women and Knowledge," 4.

attention to how Indigenous women's political and legal concerns are erased within and outside their communities may hinder future attempts to decolonize knowledge production because their experiences are embodied and unique from those of others.⁵⁰

With Indigenous women's unique embodied experiences of being mind, we must be careful not to define their identities through their material capacity of their bodies as noted by Cree/Saulteaux political scientist Gina Starblanket.⁵¹ Sometimes Indigenous male leadership is keen to propagate the 'mothering the nation' discourse without actually prioritizing issues directly relating to the safety and wellbeing of Indigenous mothers and their children.⁵² Furthermore, this rhetoric does not acknowledge that historically Indigenous women's motherhood did not supersede their roles as political beings within their community. This rhetoric "ignores that Indigenous women are not mere instruments of the nation, and that in order to have political power they do not need to invoke concepts of motherhood or other kinship relations."⁵³ So it is important to recognize women's embodied experiences, which gives them a unique perspective on land and authority, while not forcing them into heterosexist notions of what womanhood (and what women's responsibilities are) are without being totalizing and exclusionary.⁵⁴

⁵⁰ Altamirano-Jiménez, "Introduction: Women and Knowledge," 4;10.

⁵¹ Gina Starblanket, "Being Indigenous Feminists: Resurgences Against Contemporary Patriarchy," *Making Space for Indigenous Feminism*. Second Edition. (Halifax: Fernwood Publishing, 2017), 31.

⁵² Kuokkanen. *Restructuring Relations*, 165.

⁵³ Kuokkanen. *Restructuring Relations*, 166.

⁵⁴ Kuokkanen. *Restructuring Relations*, 166.

Ultimately, ignoring or minimizing the gendered nature of violence does not address violence against women in, both intimate relationships and state violence. that impact Indigenous women and two-spirit/queer individuals who are systematically marginalized in realms of policy, law, and overall decision making.⁵⁵ It's also important to note that if colonialism, dispossession, and alienation are explicitly premised on gender violence, as shown throughout this section, the settler colonial state is not going to eliminate that violence because it depends on it for its own existence.⁵⁶ Thus it is important to understand that when it comes to advocating for inclusive efforts of Indigenous self-determination, rights and relations, the state is not the only site of political significance. Holding the state accountable is just as important as rebuilding traditional political and legal structures within Indigenous communities, so long as they are not recreating the gender based violence imposed upon them by colonization.⁵⁷ Rethinking forms of Indigenous authority is integral to moving away from colonial notions of assumed authority that lies in the state. What is clear from these discussions is that statist notions of authority cannot, and will not, suffice going forward. This final section will explore what this might look like moving away from hierarchical notions of authority and towards grounded Indigenous ones that are built on land-based practices.⁵⁸

⁵⁵ Kuokkanen. *Restructuring Relations*, 199.

⁵⁶ Kuokkanen. *Restructuring Relations*, 207.

⁵⁷ Kuokkanen. *Restructuring Relations*, 212.

⁵⁸ Coulthard. *Red Skin, White Masks*, 13.

The Spill:

Drawing together all of the themes discussed in this project, authority, gender, and environmental justice through the Mount Polley Mine Disaster, I have arrived at a concept called “the spill” to rethink these things together. The spill is both a physical representation of the disaster and a metaphorical container for the cyclical processes that Indigenous communities face as the state attempts to capture and contain Indigenous systems of governance within the overarching colonial structure. Shiri Pasternak highlights that while “Canadian assertions of sovereignty did not obliterate Indigenous governance authority, and as such, encounters between settler and Indigenous law reveal the unfinished project of perfecting settler colonial sovereignty claims.”⁵⁹ This colonial project will continue to attempt to fold Indigenous legal orders under the jurisdiction of their own. My theory of the spill can help us understand not only that the state moves to perpetually make claims to jurisdiction, but also how Indigenous communities on the ground contest this through everyday acts of resistance as seen throughout the Mount Polley Mine Disaster. Indeed, “Canada’s assertion of jurisdiction over all lands and resources within its national borders presumes the forms that law will take, despite the multiplicity of Indigenous governance systems embedded within their own ecologies of law. Tensions between settler and Indigenous regimes arise from these overlapping claims.”⁶⁰ These discussions of Crown-Indigenous interaction and conflicts are important

⁵⁹ Shiri Pasternak. "Jurisdiction and Settler Colonialism: Where Do Laws Meet?" *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 29, no. 02 (2014): 147. doi:10.1017/cls.2014.5.

⁶⁰ Shiri Pasternak. "Jurisdiction and Settler Colonialism: Where Do Laws Meet?" *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 29, no. 02 (2014): 148. doi:10.1017/cls.2014.5.

because in situations such as these, there is so much emphasis on deconstruction of colonial actions that there leaves little time for reconstruction or reassertion of Indigenous ways of knowing and lived resistance in these spaces. In doing so, gender needs to be a central aspect of this reformulation because “those who fail to recognize how exposing Indigenous women’s dispossession from their self-determination is imperative to Indigenous nation-building are colluding with the heteropatriarchal, colonial discourse that has naturalized that very dispossession.”⁶¹ It is important to recognize that Indigenous women, like Sellars, Mack, and Manuel are putting forward alternative and more inclusive conceptions of self-determination that are set within an entirely different paradigm that is not informed and enforced through heteropatriarchal colonial law embedded in structural violence.⁶²

The spill, as a nascent concept, challenges hierarchical notions of authority that seek to uncover and challenge the various ways that Indigenous voices have been silenced in the wake of the disaster and what forms of governance have been suppressed as a result of longstanding colonial narratives. The lack of attention to gender in the official narrative of the Mount Polley Mine Disaster speaks to the pervasiveness of settler colonial heteropatriarchal conceptions of authority. An entire study that ignores gender and the implications of gender violence on Indigenous lands and waters speaks volumes as to whose voices and bodies that matter. So, this concept that seeks to disaggregate

⁶¹ Kuokkanen. *Restructuring Relations*, 216.

⁶² Kuokkanen. *Restructuring Relations*, 216.

colonial notions of absolute authority serves as a jumping off point for work that I will continue to do well beyond this project.

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