Finding Judicial Conciliation in the Nineteenth Century Pacific Northwest

by

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B.A. (Honours) University of Victoria 2001

A Thesis Submitted in Partial Fulfillment of the
Requirements for the Degree of

MASTER OF ARTS

in the History Department

We Accept This Thesis as Conforming to the Required Standard

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ABSTRACT

This thesis argues that during the nineteenth century in the Pacific Northwest English systems of law and order were significantly influenced by Aboriginal law-ways. Several homicide cases and one incidence of civil disobedience are examined beginning in the second decade of the century and ending in the 1890s. It is argued that the response of English law depended on geographical factors as well as the potential for economic advancement. Where English law could prevail it did. However, in the case of criminal offences that took place in remote regions or areas of little economic interest, Aboriginal systems of justice prevailed. In situations where the races interacted with each other, solutions of judicial conciliation were arrived at that were of significant utility and endurance. The degree of influence each had on the other depended on underlying power balances.

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Acknowledgements

What began as a casual interest in our past has, with the help of many members of the History Department at the University of Victoria, developed into a deep desire to understand and appreciate what has gone before. Without their continuing encouragement, inspiration and the generous sharing of their time and resources this change would not have come about. I am particularly indebted to Dr. Eric Sager, for starting it all, Dr. Martin Bunton for his early encouragement, Dr. Brian Dippie for teaching me how the past informs the present, Dr. Wendy Wickwire for reminding me that everyone's words count, and, of course, to Dr. John Lutz, who first brought the history of our corner of the world to my attention.

The support staff in the History Department, and especially Karen Hickton, have been instrumental in guiding me through the maze that is the university experience and especially in the preparation of this thesis. Without exception, they are a credit to their profession and the department. Thank you.

I am also indebted to my daughters Claire and Carmen together with my son in law Gabe for their continuing support over all these years. Thank you.

I am also indebted to the folks from Wednesday night for keeping me focussed and aware of the important things in life. Thank you.

Finally, I want to acknowledge and thank my wife Janice who first suggested that the fulfillment of this dream was within my grasp and then made it possible. Thank you, especially.

To Jelena

Introduction

Furthermore, the atrocity of a crime was also the violence of the challenge flung at the sovereign; it was that which would move him to make a reply whose function was to go further than this atrocity, to master it, to overcome it by an excess that annulled it. The atrocity that haunted the public execution played, therefore, a double role.

Michel Foucault, Discipline and Punish - The Birth of the Prison[1]

On July 18, 1865, a small article appeared on an inside page of *The British Columbian*, published at New Westminster, capital of the new colony of British Columbia. Barely a half-column-inch long, readers were informed

> Executed: The Indian Ahan will have expiated his crime upon the gallows, ere these lines meet the public eye. The execution will take place in the rear of the jail this morning.[2]

So unremarkable was this execution that no subsequent confirming article appeared.

Earlier that year, Maurice Moss, guide, packer and interpreter was at the village of Bella Coola, on the central coast of British Columbia, getting up a search party that would attempt to find and arrest a renegade called Antoine who was wanted for murder. In a statement later given to Chartres Brew, colonial police officer and Justice of the Peace, Moss related how two Aboriginals had come down the river to Bella Coola with a message from Anaham,[3] a native chief from the Chilcotin region to the east. Anaham's message was that two Sutless natives, Ahan and Lutas, who were wanted for the murder

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[1] Michel Foucault, Discipline and Punish - The Birth of the Prison (New York: Vintage Books - A Division of Random House, Inc., 1995), 2nd ed., 56.

[2] The British Columbian, 18 July 1865, 3.

[3] Historical sources frequently spell names of people, places etc. in a number of different ways. Except when directly quoting source material I have used the generally accepted spelling of known historic figures and contemporary names.

of three white men, accompanied him. These murders happened during the course of the Chilcotin War, which had taken place the previous summer. In Moss' words,

> The messengers said that Ahan and Lutas were not prisoners but were coming down to buy their pardon from the Whites.[4]

Moss journeyed up the river until he met Anaham and his band descending where he arrested Ahan and Lutas and informed them that they would have to come to New Westminster with him. He explained to Brew,

> Lutas said he was quite willing to come but Ahan said he would not go any farther than where he then was and he became very saucy. I then seized Ahan and the Indians seized him by the arms and bound him with a rope. Lutas was seized at the same time by the Indians and I afterwards bound him also.

Moss and his prisoners arrived at New Westminster where Ahan and Lutas appeared before Brew and were committed for trial.[5] Moss acted as interpreter. In reporting the details of the case *The British Columbian* recommended that a special commission be struck allowing Brew to preside at trial, rather than waiting for the Assize Court in the fall.

A Special Assize Court was convened in early July 1865, but rather than finding Brew on the bench Ahan, Lutas and their counsel, Mr. Wood, faced Henry Pering Pellew Crease, part-time judge and Attorney General of the Colony.[6] Brew acted as Prosecutor.

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[4] British Columbia Archives (hereafter BCA) H.P.P. Crease Legal Papers, 1853-1895. MS00054, Box 3, File 12, pp. 1601-1603.

[5] The British Columbian, 01 June 1865, 2.

[6] As the chief law enforcement officer in the colony, Crease was in an obvious conflict of interest. Begbie, who had convicted the five other Tsilhqot'in murderers at Quesnel the previous fall, may have disqualified himself. Hamar Foster, "'The Queen's Law is Better Than Yours': International Homicide in Early British Columbia," in Jim Phillips et al, eds., Essays in the History of Canadian Law: Crime and Criminal Justice (Toronto:

The subsequent trial, including indictment, lasted only a few hours, and after a brief deliberation, the twelve (white) man jury returned guilty verdicts; Ahan of murder in the first degree and Lutas in the third. Defence counsel Mr. Wood's arguments on sentencing, which took place the next day, were summarily dismissed by Judge Crease who sentenced both accused was sentenced to death.[7] In July Lutas was granted a pardon and returned to Bella Coola in the company of Moss. Ahan never saw his Tsilhqot'in home again.

While Ahan failed to find mercy at the bar of English justice, the most interesting aspect of this affair is his mistaken notion that a pardon could be bought from the whites for several hundred dollars worth of furs.[8] This suggests that in the mind of Ahan aboriginal systems of justice and compensation were available and appropriate. The apprehension, detention, trial and eventual execution of Ahan suggests several areas of historical interest. Ahan was convicted for his part in the 1864 slaying of a party of labourers, who were moving into Tsilhqot'in territory to build a wagon road from tidewater at the head of Bute Inlet to the Cariboo. The Chilcotin War had been brought to a close with the trial and execution of five native men at Quesnel the previous autumn.

In the remote reaches of their plateau home the Tsilhqot'ins had been less affected by the presence of the white man than many of their neighbors. Hudson's Bay traders

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University of Toronto Press, 1994): 83. David R. Williams, The Man for a New Country - Sir Matthew Baillie Begbie (Sidney, British Columbia, Gray's Publishing Limited, 1977), 116.

[7] The British Columbian, 06 July 1865. 3.

[8] Edward Sleight Hewlett, "The Chilcotin Uprising of 1864," BC Studies 19 (Autumn 1973): 71.

among the Tsilhqot'ins had been generally unsuccessful because of the Tsilhqot'ins migratory nature and animosity toward white men. Contact by Oblate missionaries was sporadic and generally superficial and fur trade activities had all but ceased immediately prior to the Chilcotin War. Territorially sensitive by nature, the Tsilhqot'in were offended by the presence of the road builders but perhaps unaware of the power of the whites to prevail.[9] This may help to explain why Ahan, shielded only by his belief that he could "buy his pardon" from the whites, would avail himself to the embrace of the colonial justice system. But what was the role of the other native men at the time of his arrest? Did Anaham's men assist in the arrest or did natives from the Bella Coola band aid Moss?[10] These questions remain unanswered but it is clear that Ahan and Lutas, by descending the Bella Coola River, placed themselves within the grasp of the colonial justice system.

Ahan and Lutas were also culturally attuned to the possibility of compensatory negotiation for offences committed. The Tsilhqot'ins occupied the high plateau country

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[9] Hewlett, "The Chilcotin Uprising of 1864," 52-53.

[10] Loo suggests that the effective extension of state power in British Columbia could not have been carried out without the participation and assistance of many aboriginal people. Frequently they acted for their own political or personal gain (aboriginal bounty hunters were unusual but not unknown), while on other occasions the white man's law served to rid a native community of a troublemaker. Tina Loo, "Tonto's Due: Law, Culture4, and Colonization in British Columbia," in Hamar Foster and John McLaren, eds., Essays in the History of Canadian Law - British Columbia and the Yukon (Toronto: University of Toronto Press, 1995): 142, 143. Alternatively, white whiskey traders, for example, frequently positioned themselves beyond the reach of colonial law, preferring aboriginal law when it came to offences such as bootlegging. See Barry Gough, Gunboat Frontier - British Columbia Authority and Northwest Coast Indians, 1846-1890 (Vancouver: UBC Press, 1984), 91.

of British Columbia,[11] lying between the upper Fraser River and the east slope of the Coastal Mountains. Among the Tsilhqot'ins, sharing was ideal; informal, co-operative arrangements met their basic needs. Their semi-nomadic lifestyle of hunting and gathering in small, mobile groups limited the opportunity to control significant resources which meant that they did not have a sophisticated political structure based on wealth accumulation. Nevertheless they shared a common sense of identity, manifested by continuing expectations of aid and co-operation. Feuding, when it occurred, was generally directed against the responsible individual, but continuing loyalties to extended family and community often drew others into the fray. However, because of scarce resources, the ever-present need for co-operation ensured that good relations were generally maintained. Individuals who failed to meet minimal community standards were ostracised or even executed if their behaviour was particularly violent or anti-social.

The Tsilhqot'in system of justice included the possibility of compensatory settlement to pay for offensive acts. The offending party, in an effort to ward off a wasteful and dangerous round of retaliation would offer compensation to the affected party for the harm done.[12] Political and social upheaval in a culture that demanded co-operative and concerted efforts to meet basic daily requirements could not be tolerated. In this context, Ahan and Lutas' offer to compensate for their offence was culturally appropriate.

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[11] For the sake of clarity contemporary political and geographical names and expressions will be used except in the case of quoted material.

[12] Robert B. Lane, "Chilcotin," in William C. Sturtevant, general ed., Handbook of North American Indians - Volume VI, (Washington: Smithsonian Institution, 1981): 402, 404-408.

The experience of Ahan and Lutas suggests to the historian there was a period in our past when two systems of law and order were at work simultaneously. It is well known that the leading edges of the frontier always involve a significant amount of cultural melding. My task is to create working model and conceptual framework for studying the action and reaction of two systems of law in the presence of each other. This discussion argues that native systems of justice found direct and indirect expression in the imperial project from early contact until at least the last decade of the nineteenth century. Further, the thesis will construct a model to examine the interaction of the two cultures. The goal of this essay is to provide a model with which to consider the influence and predominance of a particular justice system in various conditions. The model suggests that the degree and extent of native participation in the law is somewhat predictable if one is aware of the geography and economic interest where the offending event occurred and the paternalistic undertakings on the part of the white man's government. If a violent offence took place geographically near a settlement then English law prevailed. If, however the site of the offence was in a remote region English law was generally not available unless there was sufficient economic incentive to expand or confirm the span of English law. For example, offences that occurred in the Cariboo during the gold rush were remote from metropolitan centers but the region was of sufficient economic interest to warrant a circuit court that delivered English law to the hinterland. Finally, if the site of the offence was geographically remote and of little economic interest, then there is less chance that English law would prevail. What is of particular interest to this thesis are those cases that took place in geographically remote areas, making enforcement difficult if not impossible, but were of some economic

interest. In these cases one can see that both the aboriginal and English systems of justice were utilised. Another aspect of the model is that it helps identify criminal cases that seem to fall outside of reaction anticipated by the model. While these events are of interest they are beyond the scope of this thesis.

What follows is an exploration of this notion of a model, spread across the pre-colonial, colonial, and early provincial periods. This discussion does not set out new historic knowledge, nor does it significantly challenge the work that has gone before. While a number of primary and secondary sources were referred to, the work of Hamar Foster and John Phillip Reid, and to a lesser extent Tina Loo and Cole Harris, provide the backbone of the thesis. Rather than expand or take issue with the scholarly work that has gone before this thesis contemplates a model envisions a framework to organise existing material and helps to identify areas of interest for future consideration. Obviously, it is possible to examine only a few of the major criminal events that took place in the Pacific Northwest during the 19th century.[13] Therefore, I have selected four cases for closer examination. Taken together, the cases show a transition from native to English law. However, my research to date has revealed only one case that seems to be outside of the model I envision.[14] In every other case, geographic space or economic interest informed

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[13] There are dozens of capital cases that could be considered. For example in the 1860s 50 British Columbians were sentenced to death and 27 were actually executed. National Archives of Canada, Capital Case Files RG 13 quoted by Tina Loo, "Savage Mercy: Native Culture and the Modification of Capital Punishment in Nineteenth-Century British Columbia," in Carolyn Strange, ed., Qualities of Mercy: Justice, Punishment, and Discretion (Vancouver: UBC Press, 1996): 106.

[14] One case at least, appears to be outside the model. In 1888 a native man named Sinequar was tried and convicted for killing a native child at Hosquoit on the west coast of Vancouver Island. Evidence introduced at the trial suggests that Sinequar felt the child was possessed and would bring bad fortune to his people. Sinequar was tried and

both the natives and the whites and played a role in the application of either or both systems of law. The English rule of law found acceptance in colonial metropolitan centers but in the wilderness, colonial actors and their aboriginal contemporaries resorted to systems of justice that blended the cultures as well as their law systems and frequently produced understandings and solutions of fundamental utility and endurance.

While the span and impact of English justice depended on several factors including geography and economic happenstance, one of three broad responses might occur. First, where it was possible, English systems of law and order were fully deployed to the exclusion of the other. The ability of the white man's law to respond depended on the seriousness of the offence, the geography or distance from metropolitan centers and the extent of settler interest, both as witnesses and victims. In cases where colonial law could be effectively and economically brought to bear, it was. But the quest to apprehend those responsible for murdering Waddington's road gang at Bute Inlet, while partially successful, was frustrating and expensive. The colonial government abandoned the case before Ahan and Lutas were apprehended. In placing himself within the grasp of the court, Ahan gave away whatever geographic and economic advantage he may have enjoyed. In this circumstance there was no need for the colonial government to share its authority because Ahan and Lutas were firmly in the embrace of English law, which would have its way.

The reach of the white man's law, when geography and economic potential justified it, also depended on the enthusiasm of the court. Circuit courts, particularly in

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convicted Before Judge H.P.P. Crease despite the fact that no white people were involved and the provincial government did not have an apparent economic interest in this particular case. Nanaimo Free Press, 10 November 1888, p. 3.

the colonial period, extended the span of the white man's law but only in cases where there was a direct economic or political interest at stake. For example, Judge Begbie brought his court to the gold fields of the Cariboo and the Kootenay Districts, where mining had drawn a significant number of Europeans. However, English law arrived much later in other parts of the colony.

As interest in the gold fields waned and settler populations moved into the fertile valleys of the interior it became important that they be provided with a peaceful opportunity to extract the rich resources of the land. As Sidney Harring has observed, "The main goal of colonial law was to protect the lives and property of settlers from all forms of attack."[15] Successive governments consistently portrayed British Columbia as a safe and desirable place to live and invest and were particularly anxious to favourably compare themselves with the American experience to the south. The continuing settlement of the country depended on the peaceful and quiet enjoyment of land and person.[16]

In contrast, when offences that involved only natives, in remote parts of the Interior, if they came to the attention of the legal system at all, affected settler society so minimally enforcement was not worth the necessary time and expense. Under these circumstances native justice systems were left to operate undisturbed. There were also

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[15] Sidney L. Harring, White Man's Law - Native People in Nineteenth Century Canadian Jurisprudence (Toronto: University of Toronto Press, 1998), 208.

[16] Patricia Roy, "Law and Order in British Columbia in the 1880s," in R.C. Macleod ed., Swords and Plowshares: War and Agriculture in Western Canada (Edmonton: University of Alberta Press, 1993): 57.

situations where white people were involved but had neither the ability nor the desire to bring English law to bear. In these cases, native law prevailed in both communities.

Under certain conditions however, the colonial and later provincial governments responded to civil and criminal wrongs through negotiation and accommodation with aboriginal systems of justice. Typically this would occur when the government had a vested interest in the outcome but lacked the ability to exercise the full power of the law or military. As will be considered, negotiated settlement of offences contained many facets of aboriginal systems of justice and were recognised by the white community because of their inherent utility or simply because early governments had insufficient power or opportunity to react otherwise.[17]

These three responses suggest a continuum of power and dominance ranging from little or no interference on the part of government to complete dominance by the white man's court and the exclusion of native law. English law found full expression only when it had the capacity to prevail. The immense and challenging geography of the region frequently frustrated the imperial endeavour but this might be mitigated by economic incentives that promoted the prompt and vigorous application of English law. When other avenues of power and dominance were unavailable, the commitment to peaceful opportunity for resource extraction consistently trumped the government's desire for English law to prevail at the fringes of frontier and it accepted judicial conciliation, By "judicial conciliation" I mean a legal space that is not fully informed by either English law nor aboriginal justice. A judicial conciliation was required when neither the white man's government nor the aboriginal people had the power to prevail or were unwilling to

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[17] Sidney L. Harring, White Man's Law, 10.

bear the associated costs. In this space the offending and the offended parties sought and agreed upon the existence and utility of a middle ground - an area of judicial conciliation.[18]

The study of history has been described as the observation of change over time. Ideally, the observation of this change will lead to a hypothesis that can be tested against our understanding of the past. While legal history is a mirror on society, the law, as a vehicle for historic recollection, is somewhat blunted by its closed and circuitous nature. Historians generally divide legal history into three fundamental categories.[19] There is the history of the law itself, dealing with the past decisions of judges and courts as well as the statutory evolution of the law. A careful analysis of the structure and function of the law and its operation is a rich source of historical recollection. A second approach is to examine the impact that the law has on a community. For example, the Poor Laws of nineteenth century Upper Canada forced many to relocate in the United States where welfare and other forms of relief were easier to obtain.[20] Finally, the effect of society on the law is also of considerable interest. For example, the *Gold Field Act* of 1859, drafted

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[18] Richard White, The Middle Ground (Cambridge: University of Cambridge, 1991) capably explores this region of cultural and racial interaction. White's earlier conception and description of this phenomenon inspired my notion of an area of "judicial conciliation".

[19] David H. Flaherty, "Writing Canadian Legal History: An Introduction," in David H. Flaherty ed., Essays in the History of Canadian Law - Volume I (Toronto: University of Toronto Press, 1981): 12-19.

[20] J.C. Levy, "The Poor Laws in Early Upper Canada," in D.J. Bercuson and L.A. Knafla, eds., Law and Society in Upper Canada - A Historical Perspective, (Calgary: University of Calgary, 1979: 29.

by Judge Matthew Baillie Begbie, was an unusual piece of legislation but was well received by the miners because it contained many features of the informal regulations that had prevailed in the California camps and later in British Columbia before the arrival of English law.[21]

As a source of social history the law is an ongoing discussion that takes place in a closed and somewhat secretive setting. To most people a courtroom is a place of power, dominance and ritual where rules, understood only by specialists trained in the law, are engaged to elicit truths, the scope and calibre of which are truly appreciated only by those specialists. Although the courts are at the service of the greater community they do not, indeed cannot, accurately and faithfully recognise or represent the community will in a timely manner. While the ultimate task of a legal system is to delineate the rights and responsibilities of individual people, legal language and legal process often obscure that objective. Moreover, the law, and thus the courts, have a tendency to serve the powerful, frequently excluding, or at least diminishing, the rights of other segments of the community such as women and minorities. In addition, courtroom law is a closed system that defines the offence, determines the relevant facts according to its own rules and reaches decisions based on a self-constructed version of the "truth."[22] This is accomplished by judicial interpretation of statutes and case law which informs the rules

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[21] David Richardo Williams, "The Administration of Criminal and Civil Justice in the Mining Camps and Frontier Communities of British Columbia," in L.A. Knafla, ed., Law and Justice in a New Land - Essays in Western Canadian Legal History (Toronto: Carswell Legal Publishing, 1986): 223, 229.

[22] Tina Loo, Making Law, Order and Authority in Colonial British Columbia, 1821-1871 (Toronto: University of Toronto Press, 1994) 7-8.

of evidence thus creating its own truth and, if appropriate, specifies the appropriate sanction.

Exposure to the English legal system must have been alarming for Aboriginal people. First there was the matter of language. While Judge Begbie was conversant in some native languages, his court often had to resort to the Chinook jargon. As Begbie lamented, "Chinook [has a very] scanty vocabulary [where] one phrase may convey five or six meanings to as many different interpreters."[23] Commenting in 1873, a Victoria lawyer observed that native prisoners knew nothing of evidence, could not speak in their own defence and were seldom allowed to introduce circumstances that, in their world, would justify their behaviour. The lawyer concluded that English law is "unfitted" for Aboriginal offenders.[24]

However, just as an echo mimics its creator, careful analysis and review of archival material surrounding documented legal cases provides an opportunity to explore the past with a degree of accuracy and optimism. Having identified and accounted for the limitations of the genre, legal history affords a significant opportunity to recollect many facets of history. By carefully noting the creation, activation, enforcement and reaction to the law much can be surmised. Often, the mentality of the times and prevailing ideologies can be detected through the creation and application of the law. The varying power of political groups, special interest groups and the general public can be

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[23] BCA Begbie Correspondence. F142-8. Begbie to Governor, 08 April 1869. Quoted by David R. Williams, The Man for a New Country- Sir Matthew Bailie Begbie (Sidney: Gray's Publishing Limited, 1977), 108.

[24] The lawyer may have been Montague Tyrwhyt Drake. National Archives Canada, RG10, Vol. 3604, File 2521, Reel "C" 11063. Letter to Powell, 11 November 1873. Quoted by Foster, "'The Queen's Law is Better Than Yours,'" 83.

discerned.[25] When legal history is coupled with other avenues of historical inquiry important evidence emerges that at once satisfies and motivates the historian to new areas. For example, the study of 19th century probate documents and other court records has re-opened the discussion surrounding the role of firearms in the United States.[26]

At the core of this thesis is the task of understanding and describing comparative legal systems,[27] a chore made especially onerous because native law-ways are orally recorded and applied. While oral transmission offered flexibility and utility at the point of application, the objective efforts of historians are often compromised because much of their research is garnered from impressions recorded by white participants. The ethnographic literature describing aboriginal culture is significant and a thorough review of aboriginal law and justice systems is beyond the scope of this discussion. However, relying on recent secondary sources and stable notions and observations from older works I will examine aspects of native law in the case studies that follow.

Throughout the region under consideration, aggrieved parties often resorted to revenge or retaliation for perceived wrongs. As we shall see, the course and extent of retaliation depended on the relationship between the offender and the offended. In the alternative, compensation may be offered to mitigate retaliatory responses to offending acts. Compensatory justice offered an alternative to retaliation and served to short-circuit

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[25] Flaherty, "Writing Canadian Legal History: An Introduction," 15.

[26] For example see Michael Bellesiles, Arming America - The Origins of a National Gun Culture (New York: Alfred A. Knopf, 2000). For a counter argument see Danny Postel, "Did the Shootouts Over 'Arming America' Divert Attention From the Real Issues?" The Chronicle of Higher Education February 01, 2002, A12.

[27] Flaherty, "Writing Canadian Legal History: An Introduction," 15.

the possibility of a continuing revenge that might compromise the very safety and well-being of all parties. Finally, this thesis will consider the potlatch as a site of native justice and an important vehicle of judicial reconciliation and settlement.

Although the continuing threat of American opportunism in the far west called for and justified the early presence of English law, the legal system was also burdened with facilitating the economic well-being of the settlers. This called for a system that would respond aggressively toward any situation that compromised the imperial project. While an overly active legal system tends to oppress, the frontier community in British Columbia expected and, as we shall see, frequently demanded, that the law maintain peace, order and the continuing economic opportunity for all settlers.[28] Much like common law, native systems of justice, based on oral tradition and habit, were not fixed, but evolved with changing circumstance. This offered a certain degree of vulnerability and colonial governments, where capable, frequently cast native systems aside.

Unlike scientific inquiry, recollecting the past will never reach a complete and satisfying conclusion. The past does not exist and our notion of it is culturally constructed and based on the investigation and rearrangement of maddeningly incomplete records and threads of evidence. In addition, E.H. Carr correctly reminds us that the historian, far from being the lofty surveyor of the passing parade is "just another dim

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[28] Tina Loo, Making Law, Order, and Authority in British Columbia, 1821-1871 (Toronto: University of Toronto Press, 1994), 3.

figure trudging along in another part of the procession."[29] Ideally, the discovery of new material or the responsible re-interpretation of old, will alter and enhance our knowledge of the past. Beyond this meagre observation, "There has always been the expectancy that history blows somebody's trumpet."[30] It is no accident that suggestions of significant change to historic knowledge are frequently met with howls of outrage and indignation.

Because it is impossible to contemplate all facets of legal history, what follows, will, with one exception, explore native and settler response to violence. Violence, and especially the taking of a human life, has a highly visible and direct impact on the community and consistently calls for a response in both cultures. My exploration of this subject is presaged by a review of the arrival of English law in British Columbia as well as a commentary on three facets of aboriginal law set out earlier. Several incidents of interracial violence will be briefly reviewed and an effort made to determine the reaction of each system of law over time and circumstance. Next follows four case studies of incidents that occurred in the Pacific Northwest during the 19th century. These cases were selected because they amply demonstrate the evolving relationship between aboriginals and the white community during the fur trade, the colonial period and the first several years of provincehood in British Columbia. John McLoughlin's violent revenge against the Clallum in response to the murder of several Hudson's Bay employees is a strong example of members of the white community participating in aboriginal law-ways. Governor James Douglas' sojourn among the natives of the Cowichan Valley is perhaps the earliest example of the application of English law. In an interesting blend of police

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[29] E.H. Carr, What is History? 2nd ed., (Toronto: Penguin Books, 1987), 36.

action strongly supported by military dominance, this incident marks a turning point in the legal history of our province. While the accidental burning of Kitsegukla in 1872 did not involve the loss of human life it does provide an opportunity to review the settling of a native/provincial government dispute under circumstances where the government was unable to prevail. Finally, using material from the office of the provincial Attorney General and related records, the Skeena "War" of 1888 will be explored. During this incident it is evident that both systems of justice were applied to the same people simultaneously. Only the compromising attitude of both government and aboriginal leaders prevented an all out conflict that may have rivalled the Northwest Rebellion.

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[30] Greg Denning Performances (Chicago: University of Chicago Press, nd) 104. [30] The British Columbian, 18 July 1865, 3.

Chapter One

Two Systems of Justice

The explorers and colonists were guided by a biblical prayer, "May we take possession of this land that God has provided and let it drip milk and honey into our mouths, forever"

Edward O. Wilson, The Future of Life[1]

It rained steadily on the 19th of November 1858, a typical British Columbia coastal rain with lowering skies and a mist-shrouded landscape. Inside the Hudson's Bay[2] post at Fort Langley two men took part in an occasion of solemnity and importance. At the conclusion of this brief ceremony the colony of British Columbia came into existence. In a curious procedure that saw each swear in the other, James Douglas, ex-fur trader for the HBCo. , became the first governor of the new colony while the other, Matthew Baillie Begbie became its first judge.

Begbie, who had only just arrived from England carried with him the formal makings of English law for the new colony. In addition to the appointments of himself and Douglas, Begbie also presented documents that brought the Colony of British Columbia into existence and a further Act which mandated that the law of England would be the law of British Columbia. Beyond creating the colony, the *Act to Provide for the Government of British Columbia*, contrary to settled common law, denied a

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[1] Edward O. Wilson, The Future of Life (New York: Alfred A. Knopf, 2002) xxi.

[2] The Hudson's Bay Company will also be referred to as the HBCo. or simply as the company in this discussion.

representative institution for the settlers and allowed for the Crown appointment of a governor with both administrative and executive authority. Not only did the act make Douglas a virtual dictator, it revoked the Hudson's Bay's exclusive right to trade in the new colony and repealed the jurisdiction of the Canadian courts that lingered from earlier legislation. Douglas was required to resign his position with the company and for six years was the governor for both British Columbia and Vancouver Island.[3]

The first paragraph of the *Act to Provide for the Government of British Columbia* laid the legal groundwork for the application of English law and is important for this discussion.

> WHEREAS divers of her Majesty's Subjects [and others have] resorted to and settled on certain wild and unoccupied Territories on the North-west Coast of North America, commonly known by the Designation of New Caledonia, ...[4]

The declaration, made by a government half a world away, that the colony of British Columbia was a wild and unoccupied territory, is vital to the legal application of English law that immediately followed.

To colonial eyes British Columbia may indeed have appeared wild, but it was hardly unoccupied. The first census, taken shortly after Confederation with Canada in 1871, revealed that more than 25,000 natives lived in the province, but in 1858 the native population was probably more than twice that.[5] So many Aboriginals died of introduced

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[3] Hamar Foster, "The White Man's Law in the Far West: Establishing Legal Institutions in British Columbia," in University of Manitoba Canadian Legal History Project - Working Paper Series, CLHP-WPS-92-12, p. 43.

[4] An Act to Provide for the Government of British Columbia 21 & 22 Victoria, C.99

[5] Jean Barman, The West Beyond the West (Toronto: University of Toronto Press, 1995) 363. It has been estimated that pre-contact 200,000 native people lived in the region of

diseases that vast tracts of land were depopulated. European diseases travelled ahead of white settlers, literally emptying the land of people. Most settlers had little inkling of this tragedy, which made their observation that the land was vacant and underused, somewhat plausible.[6]

The Treaty of Washington in 1846 extended the boundary along the 49th parallel across the Rockies to the coast. In response to American expansionistic tendencies south of the border, Britain was anxious to confirm and expand her presence in British Columbia. The naval facilities at Victoria together with the supporting coalfields at Nanaimo and Fort Rupert were strategically important.[7] In granting Vancouver Island to the Hudson's Bay Company, the government in London charged the company with the protection and welfare of the Aboriginal people but the underlying concern was that nothing should compromise the availability of new land for colonization.[8]

In early 1858, word of gold in the gravel bars of the Fraser River reached California and the rest of the world, setting off a stampede to what had been a quiet

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the Northwest Coast making it one of the most densely populated non-agriculture areas in the world at that time. Robert T. Boyd, "Demographic History, 1774-1874," in Wayne Suttles, Volume Ed., Handbook of North American Indians - Volume Seven (Washington: Smithsonian Institute, 1990): 135. The thirty to forty thousand Native people who lived in British Columbia during the 1860s represented about 1/10th of their population a century earlier. Cole Harris, Making Native Space - Colonialism, Resistance, and Reserves in British Columbia (Vancouver: UBC Press, 2002), 47.

[6] Cole Harris, Making Native Space, 47. See also Charles C. Mann, "1491," The Atlantic Monthly March 2002, 41-56.

[7] R.C. Macleod, "Law and Order on the Western Canadian Frontier," in John McLaren et al, eds., Law for the Elephant, Law for the Beaver - Essays in the Legal History of the North American West (Saline, Michigan: McNaughton & Gunn Inc., 1992): 99.

[8] Cole Harris, Making Native Space, 16.

backwater of the British Empire. Almost overnight, thousands of miners, and more than a few hangers-on and camp followers arrived in Victoria bound for the mainland. Many of the miners were veterans of the California Gold rush, and, on arrival, were poorly acquainted with British colonial governments and legal systems. Despite having nothing in the way of an army, or even a functioning police force at its disposal, the government decided that political and economic control of the area would best be accomplished by "a legal order in British Columbia powerful enough to control both American miners and Indians."[9] This was the most efficient and parsimonious method of expressing British sovereignty over the area. However, the imposition of British sovereignty had to be accomplished in such a way that it satisfied its own rules and precedents. Colonial Secretary E.B. Lytton advised Douglas and Begbie that "the colonists of a territory circumstanced like British Columbia carry with them the laws of England, so far as it is applicable to their circumstances."[10] He also provided draft legislation to indemnify Douglas for his pre-emptive legislative action during the months prior to the formation of the colony and allowed him to apply English law in a manner that suited the situation in the new colony. There were, of course, debates about the nature and extent of English

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[9] Sidney L. Harring, White Man's Law: Native People in 19th Century Canadian Jurisprudence (Toronto: University of Toronto Press, 1998), 195.

[10] The Right Honourable Sir E.B. Lytton to Governor James Douglas, 02 September 1858, in 'Papers Relating to British Columbia' in British Parliamentary Papers (Shannon: Irish University Press), Vol. 22 at 79, quoted by Hamar Foster and John McLaren, "Hard Choices and Sharp Edges: The Legal History of British Columbia and the Yukon," in Hamar Foster and John McLaren, eds., Essays in the History of Canadian Law - British Columbia and the Yukon (Toronto: University of Toronto Press, 1995): 7. Harring points out that this was a general rule and so this was simply a restatement of existing law. Harring, White Man's Law: Native People in 19th Century Canadian Jurisprudence, 379-380, n.50.

law and its enforcement in British Columbia and it would be decades before the law found continuing expression outside the metropolitan areas. In the early days, however, the imposition of English law was successful in the mining community because it recognised the need for a system of justice that addressed civil as well as criminal wrongs and provided a venue for dispute resolution.[11]

The history of establishing title to newly discovered or conquered lands is long and chequered. What is most interesting in this respect is that these "discoveries" were not, in any real sense of the word, discoveries at all. The fundamental problem with discovery of this sort is that claiming a prior right based on first discovery applies only to territory, which, at the time of discovery, was ownerless.[12] North America in general and the Pacific North West in particular had been "discovered" thousands of years earlier by ancestors of the aboriginal people who still lived there. The discovery of a new land by a European power was therefore a discovery only in relation to other European powers and was, at least initially, little more than a newly realised economic opportunity. The application of European, or in this case English law, made sense only to the discoverers. The original inhabitants already had their own systems of justice and authority.

In English law there are four methods by which a new territory can be legally acquired: conquest, cession, settlement and annexation. Conquest suggests the military domination and subjugation of a new territory by an aggressor state. Cession involves the formal transfer of territory and power by treaty or deed while annexation is accomplished

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[11] Foster, "The White Man's Law in the Far West," 50.

[12] Henry Reynolds, The Law of the Land (Victoria, Australia: Penguin Books, 1992), 9.

by a unilateral act that transfers title to a new power. Finally, and of germane importance to this discussion, an empty territory can be acquired merely by the act of settlement by a sovereign state. It is also particularly important to understand that in the case of conquest, cession and annexation, the laws of the conquered or overtaken state remain in force until there is a clear expression of the Crown's intent.[13] The Crown holds full power, without the consent of parliament and, in the absence of a proclamation, the original laws of the territory remain.[14] If, however, the land is deemed, as was the case in British Columbia, to be "wild and unoccupied" then the English Rule of Law applies in the first instance.

Indigenous peoples were thought by Europeans to be without a sovereign state and therefore without title to the land that they occupied. This approach enjoys a certain amount of contemporary support. Commenting in 1989, L.C. Green, a legal scholar said,

> [I]nternational law did not recognise the aboriginal inhabitants of such newly discovered territories as having any legal rights that were good against those who "discovered" and settled in their territories. From the point of view of international law, such inhabitants became the subjects of the ruler exercising sovereignty over the territory. As such, they enjoyed no rights that international law would recognise, nor was international law concerned with the rights which they might enjoy or which they might claim under the national law of their ruler.[15]

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[13] Brian Slattery, Aliens, Enemies and Infidels: The 'Significant Other' in British Imperial Law, 1500-1850," Ph.D. diss., Osgoode Hall Law School, York University, Toronto, 1999. 2.

[14] See particularly *Campbell v. Hall* (1774) 1 Copw. 204, 98 E.R. 1045 (K.B.)

[15] L.C. Green, "Claims to Territory in Colonial America," in L.C. Green and O.P. Dickason, eds., The Law of Nations and the New World (Edmonton: University of Alberta Press, 1989) 1, quoted by Brian Slattery, "Aboriginal Sovereignty and Imperial Claims," Osgoode Hall Law Journal (Vol. 29-4 1991): 682-683.

Therefore, in order to undertake the task of establishing clear title and authority in British Columbia, Great Britain had to declare the country vacant. This notion had been confirmed by Privy Council more than one hundred years earlier when it declared that, "if there be a new and uninhabited country found out by English subjects, as the law is the birthright of every subject, so, wherever they go they carry their laws with them," and therefore such a country is to be governed by English law.[16] In 1937 R.T. Latham, a prominent legal scholar, commented, "their invisible and inescapable cargo of English law fell from their shoulders and attached itself to the soil on which they stood. Their personal law became the territorial law of the Colony."[17] However, this did not mean that English law immediately prevailed during the early years in the Pacific Northwest. For some time following contact English law was virtually absent outside of the fur trade posts. Rather, the extent of its application depended, as is argued elsewhere in this thesis, on geographic space, economic potential and imperial motives.

Establishing a legal interest in a new territory can be, at least to European powers, accomplished in a number of ways. For example, the surveying voyage of Captain Vancouver, in the closing years of the 18th century, supported the proposition that merely gazing on or surveying a new territory confirms a claim to it. Vancouver's careful mapping of the Inside Passage and the North Coast, in addition to creating an intimate

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[16] 2 P. Wms. 75, 24 E.R. 646 (P.C.) quoted by Slattery in, "Aliens, Enemies and Infidels, 12.

[17] R.T. Latham quoted by V. Windeyer, "A Birthright and Inheritance," Tasmanian University Law Review (1 November 1962): 636, quoted by Henry Reynolds, The Law of the Land (Ringwood, Victoria, Australia: Penguin Books, 1992) 1. Although Latham was speaking of Australian colonial history, his observation applies equally to the British Columbia experience.

knowledge of the area and its attendant maps, confirmed British interest in the area. This claim was certainly more substantial that that of the Spanish who, years earlier, indicated their interest by erecting crosses and burying symbols of their authority at places of geographical and political prominence such as Friendly Cove. However, mapping and other expressions of interest remain vulnerable if not followed up by actual occupation and settlement.[18] This was the course Great Britain chose in 1849 when it created the Colony of Vancouver Island and, in 1858, the Colony of British Columbia.

Taming and claiming a "wild and unoccupied" land was confirmed in a timely fashion. No sooner had the Hudson's Bay fort in Victoria been completed than work got underway planting gardens and erecting fences. Gardens, fences and soil improvement through careful husbandry consistently signified and confirmed British possession of land in the New World. Seasonal rounds of ploughing, planting and reaping extended possession through time and tamed the "heathen land." Much earlier the English philosopher John Locke observed, "Whatsoever, then, he removes out of a state that nature hath provided and left it in, he hath mixed his labour with ... [he] thereby makes it his property."[19] By committing these expressions of territorial interest, European powers in their view, acquired original title to the land.[20]

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[18] Daniel Clayton, Islands of Truth: The Imperial Fashioning of Vancouver Island (Vancouver: UBC Press, 2002), 171.

[19] John Locke quoted by E.P. Thompson, Customs in Common, (New York: New York Press, 1991), 160. Thompson did not cite his source for this quotation.

[20] Patricia Seed, Ceremonies of Possession in Europe's Conquest of the New World: 1492-1640 (Cambridge: Cambridge UP, 1995), 16-38.

The presence of an indigenous people did not seem to undermine English claims that the land was empty. Thomas Manby, a midshipman on Captain Vancouver's armed tender *Chatham*, in 1791, observed of the original inhabitants,

> Little can be said of the government of these wandering people, or whether they have any system subsisting among them, that corresponds with our ideas of political society, for tho' (sic) we some times gave to particular persons the appellations of chief, yet we never observed instances of authority on one side or subordination on the other, as the trifling property each possesses affords but little temptation to [transgress?] there will be but little occasion, if any for laws to restrain."[21]

Manby's observations parroted and confirmed contemporaneous European thought about aboriginal culture and political systems. He concluded that since they had so little in the way of personal possessions they had a diminished need for laws to protect them. Moreover, Manby concluded that since it was difficult to identify a chief with significant and wide spread authority they did not have a sophisticated political system. These observations typically justified the notion of *terra nullius* despite the obvious original inhabitants on the land.

Terra nullius does not doggedly contemplate the strict absence of people in the landscape. Rather, it can be broken into two underlying components. First, its suggests that the land is vacant when it is not used in a way that seemed appropriate to Europeans. The fact that the original inhabitants could meet their basic needs without establishing permanent communities and sophisticated systems of property ownership affronted European ideas of industry. Additionally, the land could be deemed vacant if the people who lived on and moved over it lacked a meaningful and overarching government and

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[21] Thomas Manby, An Unpublished Manuscript Account of Vancouver's Celebrated Voyage of Exploration in the "Discovery" and the "Chatham, 1709 - 1793," Yale Collection of Western Americana, 105.

was therefore without a sovereign owner.[22] Each of these observations will be addressed in turn.

The presence of a sophisticated agricultural system is paramount to the introduction and encouragement of specialization within a society.[23] A steady, predictable source of nourishment promotes concentrations of wealth, trade, individual ingenuity and population. So strong was this basic observation in Western Europe that land used merely for hunting and gathering was considered wasted or surplus despite the continuing existence of commons in England. Colonisers generally assume that all land belongs to, or at least should be available to, those most capable of exploiting its economic potential according to a European system of commerce and industry.[24] Therefore, at least on the west coast of North America, the original inhabitants were seen to have land far in excess of their needs. Moreover, coastal natives drew most of their food from the sea, which further confirmed European ideas of vacant land.

Nineteenth century Europeans did not attach an obligation to use land in a particular way because individual farmers or landowners would maximise its agricultural potential.[25] Therefore, land of reduced agricultural capacity, as understood by Europeans, was allowed to lie fallow without attacks being made on its titleholder.

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[22] Bruce Kercher, "Native Title in the Shadows: The Origins of the Myth of *Terra Nullius* in the Early New South Wales Courts," in Gregory Blue et al eds., Colonialism and the Modern World - Selected Studies (New York: M.E. Sharpe Inc., 2002) 101.

[23] Jared Diamond, Guns, Germs and Steel (New York: W.W. Norton and Company, Inc., 1998), 104-114, passim.

[24] David Spurr, The Rhetoric of Empire, (London: Duke UP, 1993) 31.

[25] Reynolds, The Law of the Land, 21-22.

Regardless of the degree and extent of use, title to this land was as secure as any other. Yet in North America, the common view was that aboriginal people failed to meet their economic responsibilities as owners of the land. They were not farmers and did not till the land; nor did they enclose it in any way. Allowing land to lie waste for want of labour offended European sensibilities and, if ignored, would arrest colonial, indeed, human, progress.[26] As Vattel, an 18th century Swiss jurist, observed,

> This [hunting and gathering way of life] might be allowed in the first stages of the world, when the earth … produced more than was sufficient to feed its small number of inhabitants. But, at present, when the human race is so greatly multiplied, it could not subsist if all nations were disposed to live in that manner. Those who still pursue this idle mode of life … therefore, [have] no reason to complain if other nations … come to take possession of a part of those lands.[27]

Along the coast, the aboriginal dependence on the sea for foodstuffs further confirmed the European observation that surrounding territory lay in waste and was available for settlement. While this was a popular, and convenient, notion, reality was that at certain times of the year, especially in early spring before the herring and salmon runs got underway, starvation sometimes threatened. During these lean times roots, bulbs, shoots and other plants were especially important parts of the native diet. Later in the year related kin groups gathered berries from favourite patches that were jealously guarded. It is estimated that Aboriginal people had an intimate knowledge of over two

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[26] See, for example, Cole Harris, Making Native Space - Colonialism, Resistance, and Reserves in British Columbia (Vancouver: UBC Press, 2002), xvi.

[27] De Vattel, The Law of Nations (Philadelphia: T. & J.W. Johnson & Company, 1861), 36.

hundred plants that were used for food and medicine.[28] They used cedar for clothing and housing and in the manufacture of household implements, canoes and weapons. While the native people of British Columbia may not have used European farming techniques even the coastal people drew an important portion of their sustenance from the land.

Interior bands, whose access to fish resources was more limited, were very dependent on the land. As much as fifty per cent of their caloric intake came from fruits, green vegetables, lichen, roots and inner bark from certain trees.[29]

Arguing that the natives of British Columbia maintained sovereignty over their territory is more complex, but no less convincing. To rely exclusively on European definitions of sovereignty depends on the assumption that the European idea of sovereignty is the only acceptable model. This hegemonic approach was sanctified by the Victorian belief in an evolutionary model that placed their culture at the apex and put hunting and gathering cultures well below industrial and agricultural societies.[30]

Britain first declared formal sovereignty on the west coast in 1849 when it created the colony of Vancouver Island and granted fee to the Hudson's Bay Company. The Colonial Office reminded the company that it was expected to perfect its title to the land by treating with the Aboriginals who lived there.[31] In compliance, Douglas arranged a

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[28] Nancy J. Turner, Food Plants of Coastal First Peoples, (Vancouver: UBC Press, 1995), v.

[29] Nancy J. Turner, Food Plants of Interior First Peoples, (Vancouver: UBC Press, 1995), 19.

[30] Julie Cruikshank, "Invention of Anthropology in British Columbia's Supreme Court: Oral Tradition as Evidence in *Delgamuukw v. B.C.*," BC Studies 95 (Autumn 1992): 27.

[31] Hamar Foster, "The Saanichton Bay Marina Case: Imperial Law, Colonial History and Competing Theories of Aboriginal Title," U.B.C. Law Review 23:3 (1989): 630.

series of fourteen treaties that confined aboriginals to several small reserves of land and made the rest available for colonisation. Ironically, the mere act of treating with the aboriginals for extinguishement of their interest in the land automatically implies that they enjoyed title in the first place.[32] The Colonial Office, however denied Douglas' request for further funds to treat with the Aboriginals, with a terse reminder that acquiring land in British Columbia, being purely a colonial interest, could not be undertaken at the expense of the English taxpayer.[33] Other efforts to find funds for land treaties were similarly unproductive and Douglas, faced with limited local support and no help from London, apparently changed his views on the matter.[34]

The European version of sovereignty, since the 18th century, has been legally defined, carefully recorded and codified. While it is generally described in terms of clearly delineated territorial borders the essence of sovereignty and its legitimacy is acquired from the consent of those living under it. Aboriginal people had a defined territorial presence and lived under a political system that enjoyed their support. For example, the Sto:lo people of the Fraser Valley practised family ownership of identifiable berry patches in the hills and fishing spots along the river. Ownership of these valuable resources was attached to particular individuals who passed them down from generation to generation through the family. The sale of these properties was not possible but an

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[32] Robin Fisher, Contact and Conflict - Indian-European Relations in British Columbia, 1774-1890 2nd ed. (Vancouver: UBC Press, 1977), 66-67.

[33] Cole Harris, Making Native Space, 23.

[34] Foster, "The White Man's Law in the Far West," 41.

interest could be acquired through inheritance or by way of strategically arranged marriages.[35] In the interior, the Wet'suwet'en people practised a sophisticated system of land management. Responsibility for the care and management of the land rested with the chiefs of each house and trespassing laws were rigorously enforced.[36] Moreover, virtually all parts of what is now British Columbia were owned and used by Aboriginal people[37] who never lacked sovereignty, but merely practised a form of government and land ownership that was dissimilar to the European model practised by explorers and colonisers.

Beyond this, the mere extraction of resources from the land confirms the right of those earlier peoples to that territory as against all other claims. Several legal scholars, especially Christian Wolff of Switzerland, confirmed that hunting territories belong to the people who hunted over them.[38] It follows that a society enjoys the right to defend its territory against outside intrusions to ensure the well being of its members. The discussion is then reduced to the degree of possession or the actual exploitation of the land and its resources compared to the perceived potential of the land. Whatever the degree of aboriginal claim on the land it was at all times superior to any claim by the Europeans and the land was not *terra nullius*.

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[35] Keith Thor Carlson, You Are Asked to Witness: The Sto:lo in Canada's Pacific Coast History (Winnipeg: Hignell Printing Limited, 1997), 112.

[36] Antonia Mills Eagle Down Is Our Law - Wet'suwet'en law, Feasts and Land Claims, (Vancouver: UBC Press, 1994), 144, 146-147.

[37] Foster, "The White Man's Law in the Far West,"12.

[38] Cole Harris, Making Native Space, xxii.

Therefore, the arrival of Europeans and the displacement of the original inhabitants set up a fundamental tension that exists to this day. Settlers found the land to their liking and saw in it an economic potential that the original inhabitants were unwilling or unable to visualise. Supported by imperial initiatives and superior military technology they often simply took the land. Imperialism and economic advancement in a colonial setting call for the inexpensive acquisition, control and quiet enjoyment of land and, "The actual geographical possession of land is what empire, in the final analysis, is all about."[39]

Earlier European-Aboriginal contact did not involve exclusive and far reaching possession of the land. During the fur trade era, generally culminating in the middle of the 19th century, native people, as partners in an economic venture, enjoyed significant agency. Insofar as fur traders often operated well beyond the reach of European law, native law-ways found significant expression and judicial conciliation contained significant elements of aboriginal justice. This was particularly true in Oregon country where, after the 1818 the United States and Britain created a region of dual interest. Bounded by the Rocky Mountains to the east , the Pacific Ocean to the west and lying between the 42nd and the 49th parallels, this "free trade" area[40] was administered by neither government. In this legal vacuum, "Indian domestic law was the custom."[41]

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[39] Edward W. Said, Culture and Imperialism (New York: Vintage Books, 1994), 78.

[40] Harris, Making Native Space, 15.

[41] John Phillip Reid, Contested Empire - Peter Skene Ogden and the Snake River Expeditions (Norman, Oklahoma: University of Oklahoma Press, 2002), 4.

In the Oregon Territory, European law was seldom practised in relations with the aboriginals, and consequently, native law-ways were often followed. For example, in 1824 Alexander Ross, remembered as a fine writer but inept leader, led a fur trading expedition deep into Oregon Territory, in the home territory of the Shoshoni or Snake Indians. Accompanying him were a number of free traders, men who were not under the employ of the Hudson's Bay Company, but traded on their own account. HBC Governor George Simpson described these traders as, "a motley congregation [that was] quite impossible to keep under control."[42] During the trip the free traders killed at least one member of the Shoshoni tribe while stealing horses from them. Later that year, the natives took their vengeance on a group of Americans, killing seven of them and Patrick O'Connor, a runaway Hudson's Bay employee who happened to be travelling with the Americans. The next year, Peter Skene Ogden, who led the fur brigade forbade horse stealing, knowing that the raid the year before had directly cost a number of innocent lives.[43] This incident of thieving and revenge amply displayed the power and authority of aboriginal systems of justice. Nor was this acceptance of aboriginal law-ways especially unusual. Writing of his nineteenth century experience among the Carriers of north central British Columbia the Reverend A.G. Morice observed, "Gambling Indian fashion, face painting, potlatching or heathen feasting, rendering murder for murder, the lax observance of the Lord's Day, disregard of the sanctity of marriage tie - nay, in two cases

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[42] Reid, Contested Empire, 15, 39.

[43] John Phillip Reid, "Principles of Vengeance: Fur Trappers, Indians and Retaliation for Homicide in the Transboundary North American West," The Western History Quarterly XXIV 1 (February 1993): 24-25.

at least, even polygamy - were not only countenanced, but actually practised by the Company's officers and servants."[44]

Although, "it is risky business in the extreme to generalize about law, much less about the laws of a group of human beings as diverse as the Indian peoples of North American,"[45] three aspects of native justice systems will be considered. These include retaliation for wrongful killings, compensation for the family of a victim and the potlatch as a vehicle of justice. It is helpful to remember that disputes were often inter-tribal and therefore displayed many of the characteristics present in relations between sovereign nations.

Depending on the identity of the perpetrator, cases of homicide were frequently avenged by death. If the offender and victim were members of the same nation the killer or a member of his family was killed. If however, the offender was a member of a different nation, killing any member of that nation could exact the revenge. In this way, acts of homicide between nations took on many of the characteristics of war. Little effort was made to identify the actual offenders and retaliation was taken against the enemy as a group.[46]

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[44] A.G. Morice, The History of the Northern Interior of British Columbia: 1660-1880 (London: John Lane, 1906), 115.

[45] Hamar Foster, "'The Queen's Law is Better Than Yours': International Homicide in Early British Columbia" in Jim Phillips et al, eds., Crime and Justice - Essays in the History of Canadian Law (Toronto: University of Toronto Press, 1994): 53.

[46] Tina Loo, "Tonto's Due: Law, Culture and Colonization in British Columbia," in Hamar Foster and John McLaren, eds., Essays in the History of Canadian Law: British Columbia and the Yukon (Toronto: University of Toronto Press, 1995): 147.

The role of the Hudson's Bay Company was to earn a profit and its creed was to deal with the natives, who were, after all, its partners and customers, in a mild and conciliatory way. Nevertheless, the company occasionally participated in Aboriginal justice systems and instigated retaliatory raids, taking revenge on innocent people. For example, John McLoughlin, in charge of company operations in the west, reminded William Connolly, a chief factor, that plotting or promoting the murder of natives would not be tolerated. However, McLoughlin added that the company had the right to murder a native only if he had killed a company employee or servant.[47] As a rule, the company did not interfere with the affairs of the natives that were often beyond its geographical grasp and usually beyond its economic interest. Fits of retaliation properly impressed and punished the offending nation where failure to act would portray cowardice and lack of resolve. Traders, in avenging offences against them, exercised their rights and preserved their own lives.

Native law was neither codified nor uniform, was carried by oral tradition and was subject to change over time. Thus, its instigation and application must have appeared, to early white men, as chaotic and unpredictable. In a sense however, it was somewhat like English Common Law that observed precedent but was not blindly bound to it. Judge Begbie recognised the impulse for revenge and knew of similar roots in Anglo Saxon law. His court was also aware that trade goods were frequently offered as compensation for a killing or other offensive act.[48] This created something of a tension

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[47] John Phillip Reid, Patterns of Vengeance - Cross Cultural Homicide in the North American Fur Trade (n.p.: Ninth Judicial Circuit Historical Society, 1999), 39.

[48] Compensatory justice also finds its roots in medieval English law. See Reid, Patterns of Vengeance, 43.

on the bench because Begbie also asserted that aboriginals were fully subject to British law regardless of their old ways. He later rejected the implicit attitude of paternalism and legal dualism found in the Indian Act.[49]

The vigour with which native law was applied frequently depended on extensive and far ranging inter-tribal influences such as the economic and political interests of each party as well as the capacity, ability and opportunity of the offended group to demand and enforce the appropriate degree of accountability and revenge.[50] It is evident that the Shoshoni made no distinction between Hudson's Bay men and Americans and preferred to take their revenge on the first white men they came upon. To the Shoshoni in 1824, all white men belonged to the same tribe.

While the main aspect of native law is the ever-present possibility of retaliation in kind, a number of other facets frequently came into play. For example, during inter-tribal disputes care had to be taken that any course of vengeance was in keeping with the original offence because a needless and bloody round of killings and general warfare could easily result.[51] A middle ground was needed. Too much revenge would invite a new round of retaliation; too little might indicate a weakness or lack of resolve. Peter Ogden Skene realised the importance of finding this central place where peaceful

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[49] Harring, White Man's Law, 203-204, 205.

[50] Jo-Anne Fiske, "From Customary Law to Oral Traditions: Discursive Formation of Plural Legalisms in Northern British Columbia, 1857-1993," BC Studies 115/116 (Autumn/Winter, 1997/1998): 271.

[51] Tina Loo, "Tonto's Due," 147-148. In 1869 an accidental shooting at a potlatch touched off a round of retaliatory murders among the Tsimshian and Nisga'a. B.C. Sessional Papers, 1869, 228 (BCSP) Trutch to Officer Administrating the Government, 22 June 1869.

commerce existed. After taking charge of HBCo. operations in north central British Columbia, he remarked, "We are constantly aware that in this country our lives are constantly exposed, and in regulating our treatment of Indians neither too much severity nor leniency will answer; but a medium between both is most advisable."[52]

Moreover, in a social and economic setting that was well beyond the reach of white man's law it was important, as Morris Arnold observed,

> that there can be commonly held social assumptions about a way a moral world is ordered, founded on logic and experience, that people accept in their daily dealings with each other, and this entirely apart from whether there are places to resort to for their systematic and dependable vindication. This natural law, as we may call it, counts as much for law as the product of the most sovereign decree ever could.[53]

Insofar as Ogden did not seek out those responsible for the deaths of the Americans and O'Connor, it is evident that he felt the punishment for horse stealing was in keeping with the offence and the nature of the community. More to the point, the fact that the American recipients of native justice were Ogden's competitors in the region meant that he was disinclined to revenge their deaths. While the Shoshoni response to horse stealing may have been outside of the white trader's notions of an acceptable level of punishment it was, in its awfulness, predictable and thus was endowed with a central characteristic of a legal system. Moreover, it worked because Ogden and his fur brigade

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[52] Morice, The History of the Northern Interior of British Columbia, 181.

[53] Morris S. Arnold, "Towards an Ideology of the Early English Law of Obligations," Law and History Review 5 (Fall 1987): 508 quoted by John Phillip Reid, "Principles of Vengeance," 34.

were disinclined to steal horses the following year. Social control was confirmed and deviant behaviour discouraged through violence and assured retaliation.

Also beyond contemplation of 19th century English law was the aboriginal custom of perpetrators compensating their victims. Although this aspect of law varied greatly from nation to nation in the Pacific Northwest,[54] it offered a significant amount of utility since it mitigated the arbitrary harshness of retaliation that was incapable of efficiently responding to varying degrees of guilt. Thus, compensation allowed for consideration of extenuating circumstances such as accidental deaths, killings done in self-defence and crimes of passion. Additionally, compensation was usually made directly to the victims of a crime and this, in a country where domestic instability might spell death from starvation or exposure, was important.

In explaining their compensation customs concerning accidental deaths, the Gitxsan, who lived along the Skeena River, wrote to the provincial government in 1884

> The general custom … is that if anyone calls another to hunt with him, to go canoeing, &c., and death occurs, the survivor always makes a present corresponding with his ability, to show his sympathy and good will to the friends of the deceased, and to show that there was no ill-feeling in the matter.[55]

In this case a young native man, Billy Owen, was accidentally drowned in the summer of 1884 while in the employ of white trader Alex Youmans. Although there is evidence that Youmans, who was married to a Gitksan woman, knew of the native custom of

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[54] Compensation was not practised by the Nuu-chah-nulth nor the Kwakwaka'wakw, and was rare in other parts of North America. Foster, "The White Man's Law in the Far West," 14-15.

[55] BCSP. Geddum cal doe to Robson, quoted by Hamar Foster, "'The Queens Law is Better Than Yours,'" 42.

compensation for all deaths, including accidental ones, he ignored it. This mistake cost Youmans his life. When Owen's father Haatq learned of his son's death he went to Youman's trading post at Hazelton and stabbed him to death. By this time the reach of English law was extending into the Skeena Valley and Haatq was arrested prompting the Gitxsan letter to Provincial Secretary John Robson. Robson, speaking for the provincial government, replied:

> It is by the Queen's law that all people, Indians and whites alike, are now governed, and those who disobey that law must be punished, no matter what they may have been accustomed to before. Besides, the Queen's law is better than yours.

He went on to explain

> A man might kill an Indian and say it was an accident … and make … the accustomed present, thereby satisfying Indian law. But under the Queen's law, the man would be taken in charge and a thorough investigation made … and he would have a fair trial. If proved guilty of murder, he would be hanged.[56]

Haatq had his "fair" trial in Victoria the following winter, but despite a spirited defence, which spoke more to mitigation than innocence, he was convicted and sentenced to death. The federal authorities, on the recommendation of the presiding Judge Henry P.P. Crease, commuted Haatq's sentence to ten years in prison where he apparently died before completing his term of imprisonment.

Fifty years earlier the aboriginal's law had a greater sway with the European fur traders. James Douglas killed a Carrier in revenge for an earlier murder at Fort George on the upper Fraser River. Despite the earlier killing, compensation was expected but granting it would have been to admit liability for the murder that was, at least in Douglas'

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[56] BCSP 1885 282-3 Robson to chief and people of Kit-au-max, 13 October 1884 quoted by Foster, "'The Queen's Law is Better Than Yours,'" 44.

eyes, a matter of retaliation. Had the Carriers killed Douglas it would have touched off a deadly round of murders that could have degenerated into an all out war, and would have at least severely disrupted trade among the various factions. The crisis was averted when Douglas accepted a transfer to the Oregon region the following year.[57]

The Aboriginal system of compensation for criminal wrongs operated well into the last decade of the nineteenth century. For example, a Carrier named Edward accidentally killed his hunting companion in the fall of 1898. Following their custom, Edward's parents paid compensation, amounting to a horse and other goods, to the dead man's family. As far as the victims were concerned, the matter was settled. Nevertheless, Edward was arrested by the police and escorted to Quesnel where the presiding judge interpreted the payment of compensation as an admission of guilt and found Edward guilty of murder. The gift and, more importantly, its acceptance, suggested that the required *mens rea* was absent. Father A.G. Morice, who had counselled Edward to go peacefully, argued for his release explaining Carrier law to the authorities,

> The "customary law" among the Indians was that you killed in return for killing or, when the cause was evidently accidental, that you marked your sympathy for your involuntary victim's relatives by making them presents.

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[57] Reid, "Principles of Vengeance:," 26 and Foster "'The Queen's Law is Better Than Yours,'" 87.

Appealing further to the judge's sense of justice, Morice succeeded in having Edward released. Any other outcome would have seriously undermined the authority of Euro Canadian law with the Carrier and Morice's capacity to advocate for them.[58]

A third aspect of aboriginal systems of justice and authority that was foreign to the colonists was the potlatch.[59] Although it was not common to all nations, the potlatch played an important role in the lives of coastal aboriginals as well as several interior bands. Native oral tradition tells us that the Creator gave the potlatch to the people so that they could share their wealth with those less fortunate. Over time it became a political vehicle for creating and confirming social status[60] and offered an opportunity for appeasement and conflict resolution.[61] The potlatch has been described as the seat of government, a land titles office, a courtroom, a theatre, an art gallery and a library of native history and culture, all rolled into one.[62] Its authority is further described in Wet'suwet'en tradition,

> The chiefs use this authority vested in them in the feast hall to settle disputes and breaches of Wet'suwet'en law. In other words the feast validates authority ... and provides a forum for the exercise of that authority.[63]

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[58] The account of Edward draws on David Mulhall, Will to Power - The Missionary Career of Father Morice (Vancouver: UBC Press, 1986), 129-131.

[59] Potlatch is a Chinook word meaning "to give." Daisy (My-yah-nelth) Sewid-Smith, Prosecution or Persecution (n.p.: Nu-Yum Baleess Society, 1979), 61.

[60] Sewid-Smith, Prosecution or Persecution 82.

[61] Antonia Mills, Eagle Down is Our Law - Wet'suwet'en law, Feasts and Land Claims, 38, 146, 152.

[62] Terry Glavin, A Death Feast in Dimla Hamid (Vancouver: New Star Books, 1990), 20.

[63] Mills Eagle Down Is Our Law, 43.

Outlawed in 1884, the potlatch was alien to the new settlers. Moreover, the native habit of reconfirming status by giving property away was the very antithesis of Victorian principles of thrift, accumulation and individual prosperity. But several facets of the potlatch escaped colonial gaze. Carried on during the winter months, the potlatch was a highly regulated round of feasting, dancing and story telling that confirmed or asserted status, and frequently commemorated important events such as a marriage, a death or someone's coming of age and furnished native people with a broad understanding or who they were and their place in the world. Potlatching was the observed and ritualised equivalent of a constitution and over time confirmed tribal and intertribal notions of government, education, status, jurisdiction and religion.[64] In addition to redistributing wealth and confirming rites, the potlatch was also an important vehicle for providing legal redress and relief from tribal warfare and violence. It satisfied the need for sovereign Indian nations to establish a common legal order, "to bring warfare to an end and to ensure for the orderly management of land, resources and people."[65]

Potlatch ceremonies lasted many days and often included several elaborate feasts as well as dancing and story telling. The serving of meat, fish and plants gathered from the host's territory, when consumed by the guests, confirmed his band's ownership of that land. Masks, blankets, coppers and other symbols of authority were displayed and occasionally destroyed to impress upon visitors that their host's wealth was so immense it

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[64] Jim McDowell, Hamatsa: The Enigma of Cannibalism on the Pacific Northwest Coast (Vancouver: Ronsdale Press, 1997), 248.

[65] Jo-Anne Fiske, "From Customary Law to Oral Traditions," 278. See also note 37 at page 279. Robin Fisher, "Trade and Contact, 1774-1849," in Hugh M Johnston, ed., The Pacific Province (Vancouver: Douglas and McIntyre, 1996), 58.

allowed for its waste. Gifts were distributed to guests in accordance with their rank and acceptance confirmed and witnessed the host's inferred claims.

The question that faced both aboriginal people and settlers in British Columbia was whose law would prevail and to what extent. Insofar as the imposition of English law was central to the political and economic aspirations of the new colony of British Columbia it is tempting to assume that its reach was extensive. A strong colonial state, capable of fostering and promoting individual economic gain, must manifest itself in a sophisticated and predictable system of law.[66] English law and a strong central authority was seen by the settler community as the appropriate vehicle to suppress any notions of republicanism or local vigilantism that may have migrated north with the gold rush. Reality was less impressive.

Despite a season of bloody resistance, natives living along the Fraser River from Hope to the country above Lillooet, were quite overrun by the number of miners that flocked to the gold bearing bars and banks of the river. A semblance of order was restored only when Governor Douglas established the basis for a colonial system of administration in the area by appointing Gold Commissioners and Justices of the Peace.[67]

As time went on, and the gold rush wound down, policing in rural British Columbia was practically non-existent. One or two poorly paid constables were usually

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[66] Tina Loo, Making Law, Order and Authority in British Columbia, 1821-1871 (Toronto, University of Toronto Press, 1994), 3.

[67] Daniel P. Marshall, "Claiming the Land - The Fraser River Gold Rush and the Conquest of Native Lands" (Draft paper for presentation, University of British Columbia, 1995), 15.

attached to the office of the Gold Commissioner in each settlement. Chartres Brew, formerly of the Royal Irish Constabulary, came out to British Columbia with Judge Begbie, and expected to form a police force of 150 men or so, but the costs associated with this force were, in Governor Douglas' view, well beyond the means of the fledgling colony. The Colonial Office in London was even less enthusiastic. Consequently, nothing was done and constables were generally left to deal with local situations as they came up, expecting, and receiving little in the way of government compensation or support. Even when British Columbia joined Confederation in 1871 fewer than two dozen police serving the interior of the province and in 1882 the force was reduced to 19 men, and remained at that level for several years. If circumstances required a greater police presence, special constables were sworn in to meet specific emergencies. These men were untrained and of limited value to the regulars whose own thin ranks were once described as "the dumping ground for every young relative … who, with the first rumour of a rich strike, headed for the hills.[68] The new province counted a total of twelve lock-ups and three jails in which to incarcerate offenders, regardless of age or sex. The British Columbia Penitentiary, built with federal money, was completed in New Westminster in 1878.[69]

The reach of civil authorities was occasionally enhanced by the presence of military power. Governor Douglas had a contingent of Royal Engineers along the Fraser River to enforce the law among the miners and stabilise native-white relations during the

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[68] Loo, "Tonto's Due," 132, 133.

[69] Foster, "The White Man's Law in the Far West," 62.

gold rush.[70] British warships regularly plied the waters of the Gulf Islands and the Inside Passage and on several occasions, were used to facilitate the arrest of native offenders or protect the thinly scattered white settler population. When the Royal Engineers departed in 1863 the fledgling colonies lacked a field force capable of manoeuvring in the interior until about one hundred men in "C" Battery were dispatched from Kingston in 1887.[71] In the meantime, posses of special constables and volunteers responded to civil and criminal emergencies such as the Chilcotin War.[72] Once available, the use of military units was generally reserved for occasions when there was a significant possibility of an Indian uprising. Difficult to control and notoriously expensive, a military presence, while highly desirable by settlers on the fringes of their community, was resorted to only when nothing else would do.[73] Settlers invariably turned to their government for help urging a "get tough" policy with respect to objectionable native behaviour[74] but government was not keen to channel funds into law enforcement and settlers were occasionally left to their own devices.[75]

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[70] Barry Gough, Gunboat Frontier: British Maritime Authority and Northwest Coast Indians, 1846 - 1890 (Vancouver: UBC Press, 1984), 78.

[71] Ken Campbell, "The Skeena War," The Beaver 69:4 (July 1989): 34.

[72] Edward Sleigh Hewlett, "The Chilcotin Uprising of 1864," BC Studies 19 (Autumn 1973): 67.

[73] Campbell, "The Skeena War," 40. In this case the governments of Canada British Columbia constantly bickered about which government would shoulder the $8000 cost of transporting a company of soldiers to the mouth of the Skeena River.

[74] Foster, "The White Man's Law in the Far West," 62.

[75] Bruce Stadfield, "Manifestations of Power: Native Resistance to the Resettlement of British Columbia," in R.W. Sandwell, ed., Beyond City Limits - Rural History in British Columbia (Vancouver: UBC Press, 1999), 42.

The degree of vigour with which English law was enforced depended on a number of factors including the nature and extent of settler interest, the perceived threat to the overall colonial project, the cost of bringing law and order to the frontier and the responsibility of either the federal or provincial government to pay for it. Beyond this, the ability of the government to respond at all was controlled by the colony's immense and varied geography.

Away from the metropolitan centers, colonial and native interests and power regimes were more closely balanced and in this area of generally equal power intercourse, innovative and locally prudent solutions included elements of English law as well as aboriginal law-ways. In this climate of shifting relationships native peoples, as their utility to the fur trade diminished, found themselves confronted with a new economy that no longer required their goods, that is the furs of the land, but required the very land itself, leaving them with little more that diminished reserves and piece-meal wage economies. Moreover, their status and fundamental relationship to the whites changed as they ceased to be independent and sovereign bands or tribes and instead became individual subjects. For the aboriginals, economic and cultural independence gave way to social and political dependence and eventually deteriorated to subservience and a culturally constructed "otherness."[76] Citizenship and a meaningful role in their new circumstances were denied them.

However, the history of this time, when shifting power balances allowed for and demanded compromise and flexibility, points to a brief period when the two systems of law and justice were in play at once. Native participants are seen to submit to colonial

law, while on other occasions, aboriginal laws are observed, sanctioned and permitted. There are numerous incidents, in the colonial and early provincial period, where this interplay is apparent. In the chapters that follow four incidents, two before Confederation and two after, will be considered.

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[76] A specific description of this devolution was described by Daniel Clayton in "Geographies of the Lower Skeena," BC Studies 94 (Summer 1992): 29-58.

Chapter Two

From Retaliation to Responsibility

The Government is a perfect farce though the Governor is a wonderfully clever man among the Indians.

- Lieutenant Charles William Wilson, August 1858.

One of the most significant differences between English and Aboriginal systems of justice is that white man's law consistently requires that the offenders be individually held responsible for their offending act. Under certain circumstances, this is also desirable in Aboriginal law but not insisted upon. Depending on circumstances, family members, clans or entire bands could be held responsible for the offensive behaviour of a single person. While this added a community wide tension during times of trouble it had the beneficial effect of making all responsible for the behaviour of each other since revenge could be legally taken against a wide range of people for perceived offences. As we have seen Alexander Ross and Peter Skene Ogden participated in this system of justice, suffering from, and enjoying the fruits of its utility.

Over time, as fur traders became more secure in their surroundings and settlers began to arrive, English law found a greater degree of expression in the Pacific Northwest. As the white community gained presence, stability and power, the point of judicial conciliation began to shift away from Aboriginal systems and toward English law that began to find a rudimentary sort of expression. One indicator of this arrival was the early efforts to hold individual Aboriginal people responsible for their criminal behaviour. Early on this manifested itself as merely an attempt to seek out individual

offenders but as time passed, concerted efforts, occasionally mediated by native law, were made to arrest and try individual offenders. Two case studies demonstrate this progression from group to individual responsibility for criminal conduct.

The first example involves the 1827 murder of several Hudson's Bay employees by members of the Clallum nation near the Hood Canal in present day Washington State. In December 1827 Alexander McKenzie along with four companions were sent with the mail from Fort Vancouver, on the Columbia River to the new trading post at Fort Langley on the Fraser. Along the way, McKenzie and his party, which included the native wife of one of the men, met and camped among members of the Clallum tribe along Hood Canal. In January, as McKenzie's party returned home, the Clallum ambushed them, taking the woman as a slave, murdering the men and stealing their trade goods.[1]

Company policy called for revenge and tended to practise "retaliation in kind, blood for blood, life for life,"[2] and then some. Chief Factor John McLoughlin believed that any other response could be seen as a lack of resolve and would continually compromise and the safety of whites in the entire region.[3] The offer of a number of other tribes in the vicinity of the Columbia River to exact revenge on behalf of the H.B.Co. raises an interesting point. Aboriginal bands frequently allied themselves with the white

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[1] E.E. Rich, The History of the Hudson's Bay Company 1670-1870 Volum II 1763-1870 (London: Hudson's Bay Record Society, 1959), 601-602.

[2] John Phillip Reid, "Certainty of Vengeance - the Hudson's Bay Company and Retaliation In Kind Against Indian Offenders in New Caledonia," Montana - A Magazine of Western History 43-1 (Winter 1993): 7.

[3] Rich, The History of the Hudson's Bay Company, 601-602.

community to gain strategic advantage or to settle old scores with other bands.[4] However, McLoughlan declined all outside assistance fearing that he would be placed in their debt or that it would be interpreted as a lack of resolve on the part of the Bay men. Rather, he organised a brigade and reminded them to "make a salutary example of the murderous tribe [since] the honour of the whites was at stake." Retaliatory brigades were often little more than wilderness gangs, organised and supported by the company.[5] While the brigade managed to exchange the native women for a prisoner they had taken, before they were finished twenty-two people were slain, thirty canoes destroyed and two villages, and quantities of food and eulachon oil were put to the torch.

Early in the retaliatory expedition, Alexander McLeod, the brigade leader, demanded that the Callums produce the offenders,[6] neglecting to mention that the brigade had already killed eight native people. Despite his assurances that the Bay men did not want to further injure innocent people, when negotiations broke down, McLeod opened fire and destroyed their village. With the company vessel *Cadboro* at his disposal

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[4] For example see Tina Loo, "Tonto's Due: Law, Culture and Colonization," in Hamar Foster and John McLaren, eds., Essays in the History of Canadian Law - British Columbia and the Yukon (Toronto: University of Toronto Press, 1995): 147 and Hamar Foster, "'The Queen's Law is Better Than Yours:' International Homicide in Early British Columbia," in Jim Phillips et al, eds., Essays in the History of Canadian Law - Crime and Criminal Justice (Toronto: University of Toronto Press, 1994): 54.

[5] Reid, "Certainty of Vengeance," 10.

[6] This may have been an example of what Reid calls "legal behaviourism," the notion that personal conduct is determined by perceived (and I would add preconceived) legal concepts or values dictating day to day behaviour. Legal behaviourism tends to create and maintain general order in the absence of an overarching enforcement agency. In this case, I would pragmatically point out that the outcome of legal behaviourism depends on the relative power bases of the parties involved. John Phillip Reid, Contested Empire - Peter Skene Ogden and the Snake River Expeditions (Norman, Oklahoma: University of Oklahoma Press, 2002), 8-11.

McLeod was able to mount attacks from land and sea. Unlike native bands and, for that matter, most American trappers, the company had the organisational skills and sufficient economic wherewithal to keep brigades of revenge in the field for extended periods. There is also a suggestion that spare labourers, hanging around the post at Fort Vancouver, were employed during the quiet winter months on largely extraneous brigades of exploration on company business and the presence of a pool of spare labour may have influenced McLoughlin's decision to retaliate. Whatever the underlying factors, the behaviour of this brigade so thoroughly confused and terrorised the Callums that fellow band members, who had lost family members during the course of the ruckus, killed two of the original murderers.

Later revelations that none of the surviving offenders had been apprehended or killed caused some concern among company officers. Nevertheless, they were generally satisfied that the Clallums, indeed all-surrounding tribes, had been sufficiently impressed. Later Governor Simpson sourly observed that the terror in the region was so complete that natives were reluctant to attend the posts to trade, which affected the profitability of the region. This, together with the wanton slaying of so many natives concerned headquarters in London but Simpson assured his superiors that deterrence was a justifiable act that promoted their safety and overall profitability. "What has been done," Simpson told London, "will be productive of much good and render our intercourse with the natives … a less dangerous service."[7]

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[7] The preceding account of McLoughlin's brigade among the Clallum draws heavily on Reid, "Certainty of Vengeance," 10 - 13 and Rich, The History of the Hudson's Bay Company 1670-1870 Volume II 1763-1870, 601-603, together with Foster, "'The Queen's Law is Better Than Yours," 53-55.

This is a clear example of white traders acting to enforce Aboriginal law of revenge. It is unique only by its overly brutal implementation and the fact that it seems to have failed to inspire a retaliatory round of killings on the part of the Clallum.

The revenge among the Clallum also demonstrates a very early attempt to single out and identify individual natives who had offended the fur traders. Where Ogden, operating deep in Shoshoni territory, elected to forego retaliation for the deaths of the Americans a few years earlier, McLoughlin, with a secure base on the Columbia and the mobility of the *Cadboro* enjoyed an advantage and consequently shifted the balance of power in his favour. Therefore, the area of judicial conciliation had shifted toward the English. Two results flowed from this. First, McLoughlin felt that the attack by the Clallums, which was apparently motivated by the theft of goods and the taking of a slave, could not be overlooked. In order to facilitate the trade with all native bands and ensure a profit for the company, trade routes had to be free from danger of attack and servants must enjoy security of their persons and company goods. This was weighed off against the possibility that the retaliation among the Clallum may set off a round of revenge that would disturb the trading patterns throughout the region. However, McLeod and his brigade had so thoroughly exacted revenge on behalf of the company that the Clallum were completely cowed. While Aboriginal bands were capable of massacres, their law typically required a life for a life not the wanton disregard for life and property exhibited by McLoughlin's brigade.[8]

It is interesting to note that McLeod felt it necessary to offer the Clallum an opportunity to participate in the white man's legal ways by producing the individual

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[8] Hamar Foster, "'The Queen's Law is Better Than Yours,' 51.

offenders, apparently so they could be tried for their offences. One can only speculate how this offer must have struck the Clallum tribe. It is apparent that the dispute was undertaken at an international level - that is to say between the Clallum and the white tribe. According to Aboriginal law, every member of the tribe would be responsible and therefore exposed to the retaliatory wrath of McLoughlin's brigade and individual responsibility would be difficult to understand. This suggests that the parties to these events were culturally at odds with each other. The Clallum were involved in an international war while the Bay men, although they behaved as if they were at war with the Clallum, also saw their task as something of a police action that presumably required the arrest and trial of the offenders. The fact that negotiations to apprehend individual members of the Clallum were brief and were promptly followed by the destruction of a village, suggests that the cloak of legal responsibility fell lightly on the shoulders of the brigade.

Twenty-six years later, almost to the day, James Douglas, governor of the Colony of Vancouver's Island found himself in a position not unlike McLoughlin. In the intervening years the center for Hudson's Bay coastal operations had been moved to Fort Victoria on the southern tip of Vancouver Island. The 1846 Treaty of Washington established sole British sovereignty in the region - at least in the eyes of the British and Americans - and Letters Patent from the Crown in 1849 created the colony and confirmed that English law would prevail. Following Blanshard's departure Douglas became

governor of the colony in 1851. This growth in political sophistication played an important role in the arrest, trial and execution of two native men in January 1853.[9]

In November 1852, Peter Brown, a Hudson's Bay shepherd, was murdered at his cottage in the Lake Hill District about five miles north of Fort Victoria. Two Aboriginal men were seen with Brown shortly before his death and word soon reached Governor Douglas that the suspects Sque-is, a member of the Cowichan band, and Siam-a-sit, from the Sne-ny-mo (Nanaimo) band had fled north toward their homes. Although the Cowichan were a fearsome band they soon sent a message that they regretted the murder and were willing to turn Sque-is over to the English. Soliciting the co-operation of Captain Augustus Kuper, commanding the British frigate HMS *Thetis*, then moored at Esquimalt, Douglas mounted an expedition to capture the man killers. Towed by the Hudson's Bay paddlewheeler steamship *Beaver*, a small flotilla of assorted craft made its way to the mouth of the Cowichan River, some forty miles north of Victoria. Douglas had at his disposal a force of about 150 men, many of whom were navy sailors and marines together with a few French Canadians and a number of the Victoria Voltigeurs militia.[10]

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[9] This account of the arrest, trial and execution of Sque-is and Siam-a-sit draws heavily on Hamar Foster, "'The Queen's Law is Better Than Yours:,' 61-63 and Barry M. Gough, Gunboat Frontier - British Maritime Authority and Northwest Coast Indians, 1846-1890 (Vancouver: UBC Press, 1984), 50-56.

[10] The Voltigeurs were an assorted group of Kanakas, "half whites", Iroquois and blacks. Many were ex HBCo. employees who received 20 acres of rural land in exchange for "volunteering" as police. Hamar Foster, "The White Man's Law in the Far West: Establishing Legal Institutions in British Columbia," in University of Manitoba Canadian Legal History Project - Working Paper Series, CLHP-WPS-92-12, p. 37.

The native chiefs were reluctant to come aboard the *Beaver* so Douglas established a temporary shore camp near the mouth of the river and, after carefully placing his boats to maximise their firepower, settled down to wait. A few hours later, the rhythmic sound of canoe paddles and drums broke the monotony of that rainy afternoon. A party of about 200 armed native men descended the river, beating the sides of the canoes with their paddles, and with much shouting and fanfare landed nearby. Despite several tense moments as the armed groups faced each other, Sque-is was brought forward and presented to Douglas who undertook to give him a fair hearing.

Meanwhile the second suspect, Siam-a-sit had fled further north to Nanaimo so Douglas' force headed there. At first members of the Sne-ny-mo tribe consented to the suspect's arrest, but later changed their minds and instead offered Douglas furs as compensation for the murdered Peter Brown. This was summarily rejected. Gough suggests that Douglas' party then seized control of the Sne-ny-mo village and held its chief captive. Meanwhile, shore parties ranged along the coast and eventually captured Siam-a-sit, whereupon control of the village was relinquished and the chief released.

The trial of the two accused, the first of its kind in what would become British Columbia, got underway on January 17 on board the *Beaver* anchored in Nanaimo harbour. A jury of sailors found Siam-a-sit and Sque-is guilty and sentenced them to death. Before the sentence was carried out Siam-a-sit's mother pleaded with Governor Douglas to accept her husband in place of her son. Douglas refused. Later that afternoon the condemned were taken onto the beach on Protection Island and hanged at a spit of land still known as Gallows Point.

While the arrest, trial and execution of Siam-a-sit and Sque-is contains significant elements attributable only to English law, several other facets of the event suggest that Douglas treated the First Nations people in the Cowichan Valley and at Nanaimo as if they were independent nations. The fact that he took a significant force of men on this expedition suggests that he was less than fully confident that individual arrests could be accomplished. In that event, if he wished to accomplish his goal, Douglas would have had little choice but to resort to international warfare where innocent people were likely to be wounded or killed. One can only speculate about Douglas' response had the Cowichans refused to turn over the suspect. However he came with a large, disciplined and well armed force and if fighting had broken out his response to the aboriginal murder of a white man would have differed little from McLoughlin's.

John Moresby, a gunnery officer from the *Thetis*, recorded Douglas' remarks to the gathered natives,

> I am sent by King George, who is your friend, and who desires right only between your tribes and his men. Give up the murderer, and let there be peace between the peoples, or I will burn your lodges and trample out your tribes.[11]

Douglas, in recording the day's events in his journal, seems to have had his role as governor and the general extinguishement of Aboriginal law in mind. He recalled that he reminded the Cowichans that "the whole country was a possession of the British Crown and that [he] had special charge to treat them with justice and humanity."[12] The

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[11] John Moresby, Two Admirals: Admirals of the Fleet Sir Fairfax Moresby (1787-1877) and His Son John Moresby (London: n.p. 1913), 110, quoted by Gough, Gunboat Frontier, 53.

[12] James Douglas, Diary, 3-25 January 1853, Private Papers, 2nd ser, B20, 1853 fols. 34-35 British Columbia Archives, quoted by Gough, Gunboat Frontier, 53 - 54.

paternalistic overtones of Douglas' journal entry advances the colonial endeavour to a far greater extent than Moresby's observation would seem to justify. If this was merely a police action to arrest criminal wrongdoers, the presence of a large amphibious military force suggests that the alternative plan contemplated a good deal more violence. In addition, the apprehension and execution of Siam-a-sit and Sque-is contains elements of international relations. While his private journal may have indicated that the whole country was in possession of the Crown his words to the aboriginal people suggest otherwise. The assembled people are addressed, not as subjects, but as friends of the king, whose only desire is peaceful relations between the aboriginals and the colonists. As time passed, and additional layers of law were draped over British Columbia, aboriginal people completed the transition from members of independent nations to British subjects. This incident marked one of the first expressions of English law among the aboriginals.

The length that Douglas was prepared to go to effect the capture of Siam-a-sit and Sque-is is demonstrated by his actions at Nanaimo. No sanction in English law justifies the military occupation of a community or taking ranking political actors captive. This strategy was clearly a blatant form of international intrigue and was undertaken to apply political and military pressure on the entire Sne-ny-mo band. Gough suggests that the Sne-ny-mo objected strenuously but took no further action. In the meantime, Siam-a-sit fled further north and was eventually captured along a creek now known as Chase River.

One observer suggested that the arrest, trial and execution of two native men in the Colony of Vancouver Island marked, perhaps in comparison to earlier responses to

violence, the arrival of the *Magna Carta* to this furthest flung outpost.[13] While the elements of a judicial system were present, the inherent fairness that is supposed to accompany it was missing. Records of the proceedings on the *Beaver* are unavailable but the make-up of the jury and its summary decision suggests that only the rudiments of English justice were present. Douglas maintained the ever-threatening presence of the military throughout this campaign. While the outcome was seen, at least to Douglas, as a confirmation of the fairness of English law and was accomplished, "without molesting or doing any other damage whatever to the natives"[14] the results may have resembled McLoughlin's brigade had the natives resisted Douglas.

Instead, a certain degree of native facilitation was present, including an attempt to introduce other Aboriginal alternatives to the judicial execution of Siam-a-sit and Sque-is. While the Cowichan apparently trusted that Douglas would grant Sque-is a fair hearing, the Sne-ny-mo offered compensation for the murder of Brown. By offering Douglas a gift of furs, the value of which was well beyond that normally accorded good-will gifts of relatively trivial worth, they were attempting to mitigate the situation and save the life of one of their own. Douglas rejected this offer out of hand because English law requires a life - in this case two - for a life after due process. Nevertheless, the offer to compensate suggests that the natives believed peace with the white tribe could be attained without exposing one of their own to what they must have surely known would

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[13] B.A. McKelvie, Tales of Conflict: Indian-White Relations and Massacres in Pioneer British Columbia (Surrey: Heritage House, 1985 reprint of 1949 edition), 57 quoted by Foster in "'The Queen's Law is Better Than Yours,'" 62.

[14] Douglas to Barclay, 20 January 1853, quoted in B.A. McKelvie and W.E. Ireland, "The Victoria Voltigeurs," British Columbia Historical Quarterly 20 (1956): 227 quoted by Gough, Gunboat Frontier, 55.

be his execution. Compensation in native law-ways also allows for the recognition of extenuating circumstances that may have been a factor in this case. One source suggests that Brown "had insulted [Aboriginal women] and therefore merited his doom."[15]

Although Douglas' foray among the Cowichan and Sne-ny-mo is outwardly different than McLoughlin's brigade against the Clallum, there are a number of similarities. Both efforts were in response to the murder of members of the white community and both involved a significant, if not overwhelming, force of armed white confederates. McLoughlin's brigade among the Clallum unleashed its armed fury against members of the tribe who were not directly involved in the murder of McKenzie's party while Douglas was not required to do the same. However, it seems apparent that Douglas was prepared, if the situation deteriorated or he could not arrest the suspects, to instigate military action against the aboriginal villages.

In comparing the two incidents it is apparent that the arrival of English law on Vancouver Island fundamentally changed the way aboriginal offenders, at least those living near a metropolitan center, were apprehended and punished by colonial actors. While much can be made about the crude way English law was applied on board the *Beaver* it was a marked departure compared to what had gone before. Not only did English law formally arrive on Vancouver Island, it must also be mentioned that Douglas had long experience with members of the aboriginal community and had garnered a certain amount of respect. Beyond this, he was prepared to negotiate, at least to some extent, with the natives in order to arrest and detain the suspects for trial.

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[15] John Moresby, Two Admirals, 107 quoted by Foster, "'The Queen's Law is Better Than Yours,'" 100,n.98.

Douglas' apprehension and trial of Siam-a-sit and Sque-is also had an economic component. Coal deposits at Fort Rupert, near the northern tip of Vancouver Island were of poor quality and were running out. However, the company optimistically expected to make a substantial profit from recently discovered deposits near Nanaimo.[16] Serious problems with the natives in the area would significantly compromise this venture. Therefore, it was doubly important that Douglas carry out his mission in such a way that it served the requirements of English law, but did not aggravate the aboriginal people to such an extent that resource extraction would be compromised.

These two cases demonstrate that the net of English law that was cast over Vancouver Island in 1853 was of somewhat finer mesh that it had earlier been. Moreover, comparison of the two incidents shows the beginning of a transformation that took place between the fur trade and the settlement or colonial eras. The role of Aboriginal people was devolving from being members of independent and sovereign nations to subject of the Crown. Douglas, in attending with a large armed force, shifted the area of judicial conciliation somewhat in favour of English law. In this way, his position was quite like McLoughlin's but Douglas was constrained by the Rule of Law and obligated, as Governor of the colony, to obey it. In doing so, he confirmed the aboriginal's emerging status, not as members of sovereign nations, but as British subjects living in various communities.

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[16] Jean Barman, The West Beyond the West - A History of British Columbia (Toronto: University of Toronto Press, 1991), 55.

Chapter Three

Meeting at Metlakatla

Many people in Western Europe and European America suffer from what may be called spiritual pride. They are firmly convinced that their own form of civilization is the only universal form. In deep ignorance of the intellectual and social conceptions and traditions of other peoples, they think it is quite natural to impose upon them their own ideas and customary practices, whether of law, of democratic society, or of political institutions.

Joseph Needham, Within the Four Seas[1]

At fifteen tons capacity each, the two barges that Captain Billie Moore, together with his father and brother, constructed at Port Essington on the Skeena River in the spring of 1872 guaranteed that their freighting business would be a success. The Moores had arrived from Victoria in the March of that year with a hefty contract from the Hudson's Bay Company to move freight up the Skeena to the new company post at Hazelton. Once construction was complete, and freight secured aboard, the job of moving upriver was undertaken. The lead barge was equipped with a capstan that allowed it to be winched through the rapids while the second barge and several canoes were towed behind.

Progress was slow but steady until they reached Kitselas Canyon, about a hundred miles from Port Essington, where they met a group of natives and learned that the village of Kitsegukla, further up the Skeena, had been entirely burnt. Evidence suggests that in mid June 1872 a carelessly

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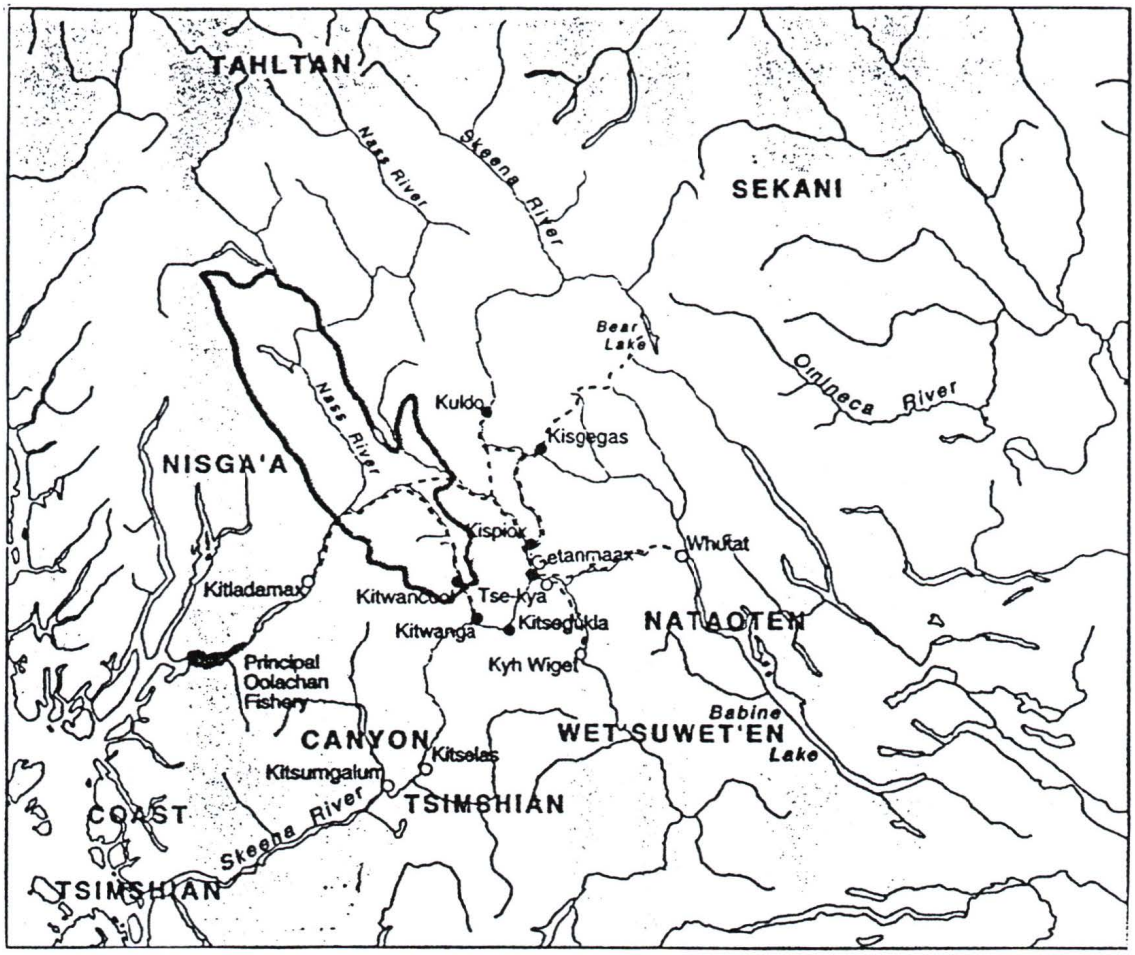
[1] Joseph Needham, Within the Four Seas (London: George Allen and Unwin Limited, 1969), 11.



Map One: The Gitksan and Their Neighbors, Skeena Valley, c. 1860.
Gitksan Territory Outlined in Black

Taken from:

G.M. Galois, "The Burning of Kitsegukla, 1872," BC Studies 94 (Summer 1992): 61

extinguished campfire, abandoned by some white travellers, sprang up and consumed the village of Kitsegukla while most of the inhabitants were away fishing. The value of the village was set at $6000[2] but more importantly several totem poles, canoes and items of cultural regalia were destroyed.[3]

Despite warnings that trouble might break out, Captain Moore's party continued until they reached Kitwanga where they found that more than a hundred armed and belligerent aboriginal people had gathered. Since the natives refused to allow river traffic above that point, the Moores decided to wait for a few days, hoping that the situation would resolve itself.

Several days later Provincial Constable Robert Brown, on his second trip to the area, arrived from Port Essington and spoke to a number of natives about the burning of the village. Still unable to resolve the impasse Brown, with a promise that compensation would be forthcoming, arranged for three of the most important chiefs, and several others, to accompany him to parley with white officials at Metlakatla, near the mouth of the Skeena.

With the chiefs gone Captain Moore felt emboldened to continue his journey and, despite some anxious moments passing through the canyon at Kitsegukla Village, the freight was eventually delivered to Hazelton. As soon as the barges were unloaded they were turned around and carried down river to Port Essington on the freshening stream.

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[2] Brown to Provincial Secretary, 26 June 1872, GR 526, Box 3, file 465, British Columbia Archives, (BCA) quoted by R.M. Galois, "The Burning of Kitsegukla, 1872," BC Studies 94 (Summer 1992): 65.

1 British Columbia Archives (BCA) Lieutenant Governor's Records, 1871-1936. T. Hankin to J.W. Trutch n.d., GR 443, Vol. 58, File 2.

As they swept past Kitsegukla village several shots were fired from shore. One struck a crewman in the leg while another tore a piece out of the steering oar, but the speed of the current soon carried the barges out of range. On arrival at Port Essington Captain Moore recorded that the Hudson's Bay vessel *Otter* and a British gunboat were in port. While they were there, the gunboat, carrying a party of provincial government officials including Lieutenant-Governor J.W. Trutch and the three native chiefs departed for William Duncan's Christian mission at Metlakatla, a few miles up the coast.[4]

Kitsegukla, located 150 miles from the mouth of the Skeena, and about forty miles downstream from Hazelton, was a village of the Gitxsan nation, an inland part of the northwest coastal native cultural and language realm. The Gitxsan are related to the coastal Tsimshian and the Nisga'a. Their territory joins that of the Wet'suwet'en, an Athabaskan speaking tribe, to the east. Up until the 1860s the Gitxsan had very limited contact with the whites although they had been indirectly participating in the fur trade for about fifty years. Despite the establishment of a company trading post at Hazelton, near the junction of the Skeena and Bulkley Rivers in 1866, the Upper Skeena was virtually unknown to the white community. When the post proved unprofitable and was closed in 1868 and the natives living along the river resumed their traditional way of life. In the early 1870s the possibility of gold in the Omineca district rekindled economic interest and traffic on the Skeena increased as miners made their way inland.

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[4] Will H. Chase, Reminiscences of Captain Billie Moore (Kansas City, Missouri: Burton Publishing Company, 1947), 51-57.

Controlling traffic on the Skeena, together with the other trails and trade routes that criss-crossed their territory was a significant feature of the Gitxsan economy. In addition, the river also yielded an important annual salmon run and the canyon near Kitsegukla was a particular favourite fishing spot.

In response to the fire, the Gitxsan of Kitsegukla immediately blocked the river to all traffic. Later that month, Constable Brown, on a routine patrol of the area, learned of the fire. When his efforts to negotiate the re-opening of the river failed, Brown returned to Port Essington and sought direction from his superiors in Victoria. Fuelled by rumours that the natives had massacred a number of whites at Hazelton, his superiors summonsed Constable Brown to Victoria so that he could report on the situation first hand. Once there, Brown recommended immediately dispatching a warship to the mouth of the Skeena and taking measures to satisfy the demands of the natives for compensation for the loss. This was in keeping with earlier promises that he and others had made to the Gitxsan.

Meanwhile, Victoria turned to the federal government for direction, and several days were wasted waiting for a response from the east. Local newspapers criticised both levels of government for lack of an Indian Agent on the west coast and called for the early dispatch of gunboats to quell what was seen as a serious native uprising.[5] It was

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[5] The Daily Standard, 23 July 1872, 3. It is clear from the tone of the piece that the author had no clear idea where Kitsegukla was and that gunboats would be limited to patrolling tidal waters. On August 10 the Daily Standard again reported the massacre at Hazelton, this time blaming the atrocity on "Chilacoaten" Indians. Given that the Chilcotin people lived several hundred miles south of the Skeena it seems that the Chilcotin Massacre was still fresh in the editor's mind. Regardless of the eventual peaceful resolution of the crisis at Kitsegukla, Victoria was still convinced of the utility of gunboats to quell native problems. The Daily British Colonist opined on August 24, 1872 after the Lieutenant Governor had arrived back in Victoria, "It also appears that

only when a group of white men arrived from the north with "reliable" news that the white community at Hazelton was safe that rumours of a massacre faded.

Nevertheless, this latest report of unrest in the remote reaches of the colony prompted Lieutenant-Governor Trutch to request assistance from the Royal Navy at Esquimalt. HMS *Scout* accompanied by HMS *Boxer*[6] departed for Metlakatla on July 24 bearing Trutch and several other high-ranking members of the provincial government. The plan, as suggested by William Duncan and Constable Brown, was to invite a delegation of native leaders from Kitsegukla to Metlakatla in an effort to address their concerns. Brown was sent to fetch the chiefs, and on this trip he met Captain Moore and his party who were held up by the blockade.

Trutch was hardly the most conciliatory person the government could have sent to deal with the Gitxsan living along the Skeena. His longstanding disdain and contempt for native people was well known. He once remarked they were, "the ugliest & Laziest creatures I ever saw, & we shod. as soon think of being afraid of our dogs as of them."[7] It is evident that his journey to the north coast did little to change his opinion. On his

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they (the natives) have a wholesome and most profound dread of war vessels. This tends to confirm us more and more in the opinion that the cheapest and most effective way to regulate the Indians is to keep an armed revenue cutter cruising continually in our waters."

[6] The *Scout*, a warship, and *Boxer*, a gunboat, were wind powered sailing vessels, incapable of ascending the Skeena. Barry M. Gough, The Royal Navy and the Northwest Coast of North America, 1810-1914: A Study of British Naval Ascendancy (Vancouver, UBC Press, 1971), 166 and 195. In 1866 the paddlewheeler *Union* ascended as far as Terrace, but did not remain on the river. By 1891 the HBCo. paddlewheeler *Caledonia* was in regular service, working up as far as Hazelton. "Paddlewheel Steamboats," Encyclopedia of British Columbia, 2000 ed.

[7] "Trutch, Sir Joseph William," Dictionary of Canadian Biography, Vol. XIII 1901 to 1910.

return he wrote to the Prime Minister about the "utter savages living along the coast, frequently committing murder and robbery amongst themselves, one tribe upon another, and on white people who go amongst them for the purpose of trade."[8] A product of England's confidence in its global superiority, Trutch was convinced that aboriginals had no mechanism for resolving disputes but felt certain that, in their primitive way, they would be suitably impressed with a theatrical display of imperial power.[9] Without real title to the land, indeed incapable of conceptualising the notion of individual ownership, they stood in the way of progress manifested by the dominance of a superior people of an inferior one. Evidently charmed by his own rhetoric Trutch remarked in 1869 that

> Our system of treatment of Indians was more humane that in any other country. Our laws entitled them to all the rights and privileges of the white man; they have thriven under them and had vastly improved in every respect by contact with the white man. The laws when applied to the Indian were always strained in his favour.[10]

Later, as a demonstration of government largess, Trutch pointed out that natives were not required to pay tolls on any colonial wagon roads. He neglected to mention that

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[8] Trutch to Macdonald, 14 October 1872, Sir John A. Macdonald Papers, Vol. 278 Public Archives of Canada. Quoted by Robin Fisher in "Joseph Trutch and Indian Land Policy," 155-156.

[9] BCP, "Report and Journal by the Honourable Chief Commissioner of Lands and Works, of the Proceedings in Connection with the Visit of His Excellency, the Late Governor Seymour, to the North West Coast, in His Majesty's Ship *Sparrowhawk*, Victoria, 1869, p. 1 quoted by Fisher, "Joseph Trutch and Indian Land Policy," 156.

[10] The Daily British Colonist, 12 February 1869. Quoted by Robin Fisher in "Joseph Trutch and Indian Land Policy," in Ward and McDonald eds., British Columbia: Historical Readings 168.

speculating in cheap land together with the bridge toll at Alexandria had made him a wealthy man.[11]

The reality was that after being appointed Commissioner of Lands and Works by the colonial government in 1864 Trutch had systematically gone about reducing the already meagre size of native reserves throughout the colony. After the gold rush fizzled out it was apparent that British Columbia's future lay in exploiting other resources offered and free land, arbitrarily taken from its original occupants, was key to the colony's continuing existence and success. Trutch led the British Columbia delegation that negotiated the Terms of Union with Canada and it seems likely that he penned the doubly ambiguous Article Thirteen, which required that the federal government, in assuming responsibility for Indian affairs undertake "a policy as liberal as that hitherto pursued by the British Columbia Government."[12] Even after Confederation Trutch sought to dictate federal government policy with respect to natives living in British Columbia. Writing to the Prime Minister Sir John A. Macdonald, following Israel Wood Powell's appointment as the first Superintendent of Indian Affairs on the west coast, Trutch complained that Powell had never dealt with aboriginals and ought to be put under the supervision of someone with more experience. Later he openly suggested that this authority should be

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[11] "Trutch, Sir Joseph William," Dictionary of Canadian Biography, Vol. XIII 1901 to 1910, 1035.

[12] Report of the Government of British Columbia on the Subject of Indian Reserves, 17 August 1875, British Columbia Papers, appendix, p.1. Quoted by Robin Fisher in "Joseph Trutch and Indian Land Policy," 169.

vested in the office of the Lieutenant Governor a position he had assumed when British Columbia joined Confederation in 1871.[13]

The blockade at Kitsegukla was not the first aboriginal matter that required Trutch's attendance on the north coast. In early 1869, at a potlatch near Fort Simpson, a Nisga'a man was accidentally shot to death by a Tsimshian touching off a round of retaliation that saw a number of murders take place between the two tribes. Investigation revealed that a supply of rum had been delivered to the potlatch by the trading vessel *Nanaimo Packet*. Later that year the *Nanaimo Packet* was apprehended and impounded by colonial officials, including Governor Seymour and Trutch, on board the British naval warship HMS *Sparrowhawk*. In a subsequent report to government Trutch pointed out that the quarrel might have gone on for years without the intervention of a "powerful peace-maker." Trutch went on, "It must be borne steadily in mind [that these tribes are placed] under the operation of English law, that law must in the future be enforced among them at whatever cost."[14]

This goal was tested by the Gitxsan blockade, which frustrated the efficient flow of commerce on the Skeena and east into the Omineca District. The situation called for Trutch to back up his words sooner than he expected. In his experience this defiance by a politically naive and culturally inferior people bordered on open contempt. Frustrated by his inability to go to Kitsegukla and force the barricade, Trutch had to resort to other measures. The government had to set a course that not only persuaded the natives to open the river but also observed its sovereign jurisdiction in all parts of the province

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[13] Fisher in "Joseph Trutch and Indian Land Policy," 171.

[14] BC Papers, 228-231.

including the Upper Skeena. Trutch maintained that nothing was owed the natives but did observe that James Douglas, in undertaking the fourteen Vancouver Island treaties made payments to "[secure] friendly relations between the Indians and the settlement of Victoria."[15] According to the government, this payment was made without acknowledging any interest, general title or special rights belonging to the natives. Therefore, this avenue of compensation without admission of title or authority was available to, and selected by, Trutch when he addressed the Chiefs on the deck of HMS *Scout* at Metlakatla.[16]

Along with the three chiefs, a party of about twenty prominent natives from Kitsegukla came onboard the *Scout* on August 9 to parley with the Trutch and other government officials. In meetings that lasted several days Trutch reminded the Gitxsan that the burning of Kitsegukla was an accident and the government bore no responsibility for it. However, he added that the offence of blocking the river would, under the circumstances, be forgiven. Moreover, if the chiefs undertook to remain peaceful he (meaning the government) would always be ready to hear their complaints. This aspect of the agreement was written down and the natives were given copies of it to take home.

Chief Ahask, in an earlier address to the provincial delegation, pointed out that the village represented not only a significant value to the Gitxsan but had stood for generations and honoured their forefathers. The destroyed totem poles, masks and other potlatch regalia represented not only the epitome of Gitxsan art but also recorded and

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[15] BC Papers, appendix, p. 10-13. Quoted by Fisher in "Joseph Trutch and Indian Land Policy," 161.

[16] Fisher, "Joseph Trutch and Indian Land Policy," 154-178, passim.

confirmed their history and social organisation. Additionally, the village and its artifacts could only be reconstructed with due respect to protocol and would, at a minimum, require the tribes from other Gitxsan villages to be called together for a potlatch[17] to commemorate the destroyed property and reconfirm the status and social responsibilities of the people of Kitsegukla. Beyond the actual cost of village reconstruction and the feast, significant work would have to be undertaken to recreate items of cultural importance.

In keeping with native law-ways responsibility for the burning of Kitsegukla, even if accidental, was the responsibility of all members of the "white tribe." It follows then that Captain Moore, the traders from Hazelton, Constable Brown, indeed all the white people that lived in or travelled through Gitxsan territory had an obligation to provide compensation for the damage done to the village. Moreover, merely turning over property in compensation was insufficient because Gitxsan law required that certain social and ceremonial traditions were respected. In short, the loss of Kitsegukla was much greater that mere houses and furnishings.

In response to this economic and cultural loss, Trutch offered a "present" in the amount of $600 to be distributed among the Kitsegukla leaders with the promise that more money would follow in the future. Duncan noted that the Chiefs, "all appeared greatly delighted both by their reception and the results."[18]

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[17] Galois in "The Burning of Kitsegukla" points out that "potlatch" is the familiar Chinook jargon term, but the Gitxsan prefer the term "feast" that is closer to their word "yukw."

[18] Duncan to Church Missionary Society, 303 February 1873, Duncan papers, p. 8882/146 ff. Quoted by R.M. Galois, "The Burning of Kitsegukla," 71.

Subsequent newspaper accounts of this meeting were significantly more condescending. Lieutenant-Governor Trutch is reported to have forcefully reminded the natives that both the burning of their village, and the earlier drowning of several members of their community in an unrelated incident, were accidents for which the government could not be held responsible. Although the natives would receive money this time they must, in the future remember, "that if they annoyed or interfered with the whites in any way they would be severely dealt with." The natives were reported to have fired off their muskets and sung songs "expressing their love for the whites" and that the "savages" were forcefully impressed with the firing of the *Scout*'s guns.[19]

Oral history of the incident that was recorded about fifty years later suggests that Constable Brown, on his second trip to Kitsegukla urged Chief Wiget to, "put on your chief's clothes"[20] whereupon the chief donned a button blanket and his chief's hat. Another chief is described as wearing an exotic skin coat covered with beadwork and fringes. This behaviour would suggest to the Chiefs that they were going to attend an event of some significance - as indeed they did.

The meeting on board the *Scout* took on several aspects of native systems of law and justice, which would be immediately recognised by the Gitxsan. From the outset, it involved a significant amount of pomp and circumstance, with speech making and displays of power and prestige. The Gitxsan correctly anticipated that the meeting would

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[19] Duncan to Church Missionary Society, 303 February 1873, Duncan papers, p. 8882/146 ff quoted by R.M. Galois, "The Burning of Kitsegukla," 71.

[20] Charles Mark mentioned in the Barbeau Files (np. np.nd.) np. quoted by Galois, "The Burning of Kitsegukla," 74.

generally contain three components. A demand for compensation, not at an individual but at a sovereign level would be made. During this part of the meeting the Gitxsan chiefs would outline the loss they had suffered and probably remind Trutch that others, including Constable Brown, the government's representative, had promised them compensation. Next, with what the natives would see as a suitable rhetoric response, an acceptable offer for settlement was made; not at an individual but at a community or tribal level. The settlement included cash and the promise of more money if the people of Kitsegukla remained peaceful for a year.[21] It is interesting to note that monies paid in compensation may have been distributed in order of rank with important chiefs getting more cash and goods than others. Additionally, the natives were supplied with nails, saws and other tools. This practice of recognising rank at a feast would be in keeping with Gitxsan habit and tradition.

Following the settlement, there was a period of feasting and entertainment and storytelling where the natives danced and discharged their muskets. In turn, the ship's cannons bombarded targets along the shore. On-the-spot accounts suggest that the delegation from Kitsegukla (who may have been tipped off by Duncan) were not particularly awed by the cannon, which is remarkable considering that this may have been the first demonstration of imperial heavy weaponry that they had witnessed. Presents in the form of tobacco, food and clay pipes were made to the people from Kitsegukla.[22]

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[21] They evidently did because 1874 correspondence from Constable Brown suggested that the provincial government keep its promise. See Galois, "The Burning of Kitsegukla, 1872," p. 78.

[22] Galois, "The Burning of Kitsegukla," 78.

The meeting on the HMS *Scout* contained all the elements of a potlatch ceremony, which for generations governed and regulated relationships among native communities. The potlatch, or feast, was capable of settling disputes as well as marking the presence of ancient laws and traditions.

The settlement for the burning of Kitsegukla marks a significant foray into the justice systems of the Gitxsan by the provincial government. Joseph Trutch, better known for his sanctimonious approach to native affairs, was unable to force the reopening of an important trade and transport route along the Skeena. This effectively stalled the colonial venture and defied the supremacy of the provincial government. The white traders, living at Hazelton and further east in the Omineca district, were on the fringes of the provincial frontier and, although they felt they deserved government support and protection, lived beyond the effective limits of its authority. Therefore, the province, short of mounting a major inland expedition, was limited to the power of British warships that were unable to ascend the river. Trutch was forced to deal with the natives in such a way that would at once satisfy their cultural requirements and meet their need for compensation in order to reopened to transportation. Alternatively, he could have had the leaders arrested and charged for blocking the river. In this way they would have effectively been held in detention until the blockade was removed and regular traffic allowed to pass but this course of action was unacceptable. The arrest and detention of the chiefs would have made them little more than hostages of the government. To hold them responsible for the actions of their community, while a component of native international law, is unknown in English jurisprudence. Secondly, in the paternalistic mind of Trutch and other provincial officials, these were "children, and unfamiliar with

white laws and customs."[23] Therefore, they could not be held responsible for blocking the river because they were incapable of realising the seriousness of their offence.

Finally, by giving a gift of money and goods to the people of Kitsegukla, the province got around the thorny problem of compensation for the fire. Compensation and ceremony for the loss was a requirement of Gitxsan law but not, in the government's view, the responsibility of the province. Trutch was consistently careful to point out that the six hundred dollars was not in settlement of a debt but an act of graceful benevolence by an overarching provincial government. However, a larger review of the meeting on the deck of the *Scout* suggests that the provincial government, as representatives of the white nation, took part in an aboriginal ceremonial system of compensatory justice and not only acknowledged their wrong to the people of Kitsegukla but also paid for it.

The next crisis on the Skeena recalled the promise that the white man's law would protect them. Sixteen years later, on the threshold of a deadly round of retaliatory murders, the people of Kitsegukla remembered that promise.

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[23] Galois, "The Burning of Kitsegukla," 71.

Chapter Four

Roycraft's Mission

The Head Chiefs then remembered a paper they still had, given them some years ago by a Government Officer on board a man-of-war at the coast when the trouble caused by the village being burned was settled.

Alfred Green, Methodist Missionary, 14 March 1888.[1]

On the 14th of March 1888 Alfred Green, missionary to the natives of Nass River on British Columbia's north coast, wrote to The Honourable John Robson, the Provincial Secretary. His letter, which spoke of murder and compensation achieved through aboriginal systems of justice, related how two native men, Neatsqu and Kit-Wan-Cool Jim, vied for the same honoured position at an upcoming potlatch. Seating position at the potlatch was a matter of status and prestige. Although long standing rules offered a degree of expected continuity, complex family and clan situations caused a certain amount of ambiguity. Guests of the Witsuwit'en were occasionally asked, "*Tse wii iin zil*?" or "Where do you belong?"[2]

Jim wanted the position for his son who happened to die shortly later from a fever that was common among the Nisga'a and Gitxsan at that time. Because of the continuing dispute over the seat, Kit Wan Cool Jim blamed Neatsqu for bewitching his son and causing his death. Not long after, the two men met on the pack trail between Kit Wan

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[1] British Columbia Archives (BCA) Attorney General Records, GR 677, File F711.

[2] Antonia Mills, Eagle Down Is Our Law - Witsuwit'en Law, Feasts and Land Claims, (Vancouver: UBC Press, 1994), 45-46, 102.

Cool and Kit wan gar. To avenge his son's death, Jim shot the unarmed Neatsqu who subsequently died of his wounds. Green reported that during that time the natives were "much excited and declared they would kill the murderer," but Mr. Pierce, a native lay missionary, who was on the scene, convinced them not to take the law into their own hands and promised that the white man's government would arrest Kit Wan Cool Jim and see that he was punished. Then the head chiefs of Kitsegukla remembered a piece of paper they had been given while on a war ship at Metlakatla many years earlier, when their village had been destroyed by fire. The paper promised that the white man's government would help and protect them, so they decided to lay the matter before the provincial government for resolution.

Nevertheless, Kit Wan Cool Jim collected forty blankets as well as a native copper and offered these to the friends and family of the murdered Neatsqu but they refused this offer of compensation. More ominously, Kit Wan Cool Jim told Pierce that he was sorry for the death of Neatsqu but had built a fortified house at Kit wan cool and intended to resist any attempts by the government to arrest him. Green urged the government to honour its obligation in the promise made by Lieutenant-Governor Trutch on the deck of the *Scout* in 1872. Green concluded that Indian affairs on the Upper Skeena were in bad condition with some Indians, "constantly making trouble and boast[ing] that they do not care for the white man's [law] and the life of a white man is not safe in that part of the country."[3]

Almost immediately, the murder of Neatsqu took on political overtones. On the last day of March 1888 the Premier and Attorney General Alexander Davie asked Israel

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[3] BCA, GR 677, File F711.

Wood Powell, British Columbia's first Superintendent of Indian Affairs, if he would send Indian Agent Todd to the Upper Skeena with provincial police officers to arrest Kit Wan Cool Jim. The Attorney General directed Constable W.B. Anderson, posted at Fort Simpson, near the mouth of the Skeena, to get a warrant to arrest Kit Wan Cool Jim and accompany Mr. Todd. Anderson was to do an autopsy on Neatsqu and bring any witnesses down to the coast where local Magistrate S.M. Wooton would take their depositions. Wooton, who had already heard of the murder, wrote to the Attorney General on April 3rd counselling caution until the facts were known. Powell later told the Attorney General that Todd was not available to make the journey and that Anderson was to do the best he could by himself.[4]

Meanwhile, before his instructions arrived, Constable Anderson related what he knew of the murder including the fact "that the murderer, after the deed, gave some goods and chattels to the friends of the deceased, had a feast according to old Indian custom, and is now a great man amongst them." Anderson added that he was waiting for further details and concluded by cautioning that "hasty action may lead to fatal mistakes in a part of the country where the Indians are notoriously bad."[5]

Over the next few days, Anderson obtained a warrant for the arrest of Kit Wan Cool Jim but he was reluctant to set out alone and requested the help of at least five men with revolvers and Winchester carbines. While this may seem to be more men than would normally be necessary, Anderson pointed out that there was no possibility of

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[4] BCA Attorney General Records, GR 677, File F716.

[5] BCA GR677, File 291/88. Anderson to Attorney General, 05 April 1888, p. 1-2.

obtaining help from the natives living along the upper reaches of the Skeena. Later that month Anderson was assured that help was on the way and he was further authorised to draw $200 worth of sundry items for the trip from the Hudson's Bay trading post at Port Simpson. By then Anderson had injured his knee and used that as an excuse to delay his departure. Two weeks later, with his knee still causing pain, Anderson reported that he had still not gone but that a party of Constables accompanied by Mr. Todd had started for Hazelton.

Anderson also relayed news of yet another series of murders in the region, this time at Kit-skagass village, well above Hazelton on the Skeena River. He reckoned that efforts to effect an arrest in this case would depend somewhat on how they were received in the vicinity of Hazelton. He was also careful to mention that if the extra provisions he drew for the party were not needed, they could be returned for a refund.[6]

Constables Homaus, Parker and Franklin Green had been hastily recruited at Victoria the previous April and dispatched to the Skeena region. Recommended for the job by a white resident of the Upper Skeena, there is no evidence any of them had any police training or experience. On June 18 Homaus and Parker proceeded down river from their base at Hazelton, to Kit wan gar where they met Constable Green. There a friendly native, Charlie Ridley informed them that Kit Wan Cool Jim was in the village.

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[6] BCA GR677, File 399/88. Anderson to Attorney General, 16 May 1888. This letter mentions that Todd accompanied this party despite the misgivings of Powell. The Nanaimo Free Press, 07 November 1888, 3 in reporting Constable Homaus' testimony at Constable Green's trial also mentions Todd's presence in the Upper Skeena region but Homaus testified that Todd returned to the coast before Kit-Wan-Cool Jim was located and subsequently killed. Anderson's comment about returning unused supplies for a refund is also interesting and supports the observation that the provincial government kept a firm grip on its purse strings.

Ridley agreed to take a message to Jim urging his surrender but soon returned with word that Jim would not turn himself in. Ridley also informed the constables that Jim planned to slip away during the night so Parker and a native guide were sent out along the trail to Kit Wan Cool to wait in ambush.

Around midnight Constables Green and Homaus received word that Jim was hiding in a nearby cabin so they set out to make the arrest. The constables found the suspect in the first cabin they visited and got inside without difficulty, but Jim pulled a revolver and, while pointing it at the constables, ran out the door. Homaus' subsequent statement picked up the story from there,

> I then fired a shot to warn him but he would not stop. Green, who runs well, then passed me in chase of him. He fired three or four shots from his revolver to warn him and sung (sic) out for him, but he would not stop. Green then threw up his rifle and fired at him. Jim was about thirty yards away when he fired. He ran about 50 yards further around a house and then fell.

Despite attempts to dress his wound Kit Wan Cool Jim died before the police could get him to the Mission. Homaus went on,

> When we arrived at the Mission his sister and some of his friends were there and they wanted his body, so I gave them the body and told them what little expense there was would be paid. They told us we had better leave before the Kit-wan-cools heard it, or there would be trouble. We then took our packs and came to the forks.[7]

The death of Kit Wan Cool Jim aggravated the deteriorating relationship between the natives and the fledgling white community along the Skeena and at Hazelton. What had been a grudging attitude of deference and tolerance of white intrusion now became

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[7] BCA. GR677, File 677/88. Statement of Special Constable Homaus, undated, p.1-3. The "forks" refers to the location where the Skeena and Bulkley Rivers join - the site of Hazelton.

open defiance and threats of bloody revenge. In an effort to goad Victoria into action, Senior Constable B.W. Washburn sent an urgent letter to the provincial government on June 27. Washburn related how he and another constable together with a native guide and a "klootchman,"[8] arrived at Kit wan gar a few hours after the shooting and found Jim's body wrapped in a blanket in one of the cabins. By this time Homaus and the other constables had departed on foot for Hazelton and Washburn's small party thought it best, "to be gone before too late, most on account to prevent bloodshed." Washburn caught up with the others late in the day and all eventually arrived safely at Hazelton where they immediately fortified the Hudson's Bay Post.[9] Rumours abounded to the effect that villagers from Kit-wan-cool were arming themselves and were enroute to Hazelton to revenge Jim's death. The police force, together with the rest of the white community was virtually held captive at the company post. Washburn lamented, "I am very cautious in preserving the safety of the white settlers and ourselves here. I am bound hand and foot and have to remain here." To secure peace in the region, Washburn suggested that a high ranking provincial official, perhaps Mr. Roycraft, Superintendent of the B.C. Police, attend the Upper Skeena together with fifteen or twenty good men to, "nip the affair in its bud and secure peace for the future to come." Washburn went on to relate how he had asked the local chiefs not to bother the white community at Hazelton but to trust that a "high government chief" would soon arrive.

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[8] "Klootchman" is Chinook jargon for native woman. Chinook Jargon Phrasebook. <http://www.cayoosh.net/hiyu/people.html> (27 August 2003).

[9] A bastion had been built on to the side of the post and a low log barricade had been constructed around it. See the photo in Ken Campbell, "The Skeena War," The Beaver 69:4 (July 1989): 38.

Finally, Constable Washburn wrote, "The relatives of the deceased sent word with the demand of $1000 and a man in place of the killed (sic) as a matter for compensation and the gun that had done the killing as a memento."[10]

Not only did the killing of Kit Wan Cool Jim threaten the fragile relationship between the natives and the whites, there is evidence that it destabilised native community. Writing on July 16th, Constable Washburn related how Neaux-Goe-Queet, Jim's father-in-law, had been shot and killed at Kitsegukla by another native man named Tobas. In response Tobas was killed by Mau-ah-hua, the Head Chief from Kitsegukla who Washburn managed to arrest and hold at Hazelton.[11] It is unclear if this was a retaliatory round of murders or whether Tobas was on an unprovoked killing rampage.

Meanwhile, Napoleon Fitzstubbs, Stipendiary Magistrate from the Southern Cassiar arrived at Hazelton on July 23rd. Fitzstubbs' journey was uneventful until he reached Kit wan gar where natives refused to allow his party past until he had heard their grievances. Several elders complained that the police had interfered with their laws and justice systems and had taken Kit Wan Cool Jim's life despite Neatsqu's life having been paid for in accordance with their customary laws. Fitzstubbs explained "that the law of the whites was supreme and would have to be obeyed to the extinction of their own." Further up the river, Fitzstubbs called at Kitsegukla but found the village almost empty due to the shooting rampage that Tobas had embarked on a few days before. Mau ah hua, the chief of the village, was in custody of the police in Hazelton and the few natives

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[10] BCA GR677, File 487/88. Washburn to Provincial Government (page one missing) 27 June 1888.

[11] BCA GR677, File 626/88. Washburn to Attorney General, 16 July 1888.

Fitzstubbs found at Kitsegukla swore that their popular chief would never be taken away from the valley to face the white man's justice. Again, Fitzstubbs patiently explained "that the law was like the Skeena, it must run its course and would not be diverted." Despite his speculation that serious trouble was avoided only because most people were spread along the river fishing, Fitzstubbs proposed that the various chiefs and bands be called together to work out a solution between each other and with the provincial representatives of the white community.[12]

In a subsequent letter Fitzstubbs provided a fascinating summation of the situation along the Upper Skeena during the summer of 1888. His rough population census reported that approximately 2,200 natives lived in the area of which some six hundred men and boys were capable of bearing arms. These figures were taken after a measles outbreak that decimated the population and fostered much ill will against the whites by natives who suspected the disease was brought among them on purpose. Fitzstubbs speculated that much of the unrest among the natives was fostered by "Mr. Tomlinson, a resident on the river."[13] He accused Tomlinson of counselling the natives that white men secretly intended to deprive them of their land.[14]

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[12] BCA GR677. File 661/88. Fitzstubbs to Attorney General, 24 July 1888.

[13] Robert Tomlinson came out from Ireland in 1867 and worked with William Duncan and the Church Missionary Society at Metlakatla. When Duncan moved his mission to Alaska, Tomlinson took up his work among the natives of the Skeena Valley. Tomlinson is described as having a rare humility among missionaries whose ranks were often filled by men with over-inflated egos. Tomlinson frequently championed the native cause. For example, as early as 1872 he was urging white miners to avoid his mission at Kincolith, on the Nass River, so as to remove from the natives "an opportunity for sinning." Once while being examined under oath by the Attorney General Tomlinson questioned the validity of certain aspects of the Indian Act. The Attorney General exploded that it was not a question, "... for you or for the Indians to discuss whether the law be right or whether it be wrong." Peter Murray, The Devil and Mr. Duncan: A History of the Two

Fitzstubbs suggested that the natives of the Skeena Valley had never been exposed to the white man's law and consequently none of them were "in favor (sic) of the supremacy of any law but their own..." Moreover, past familiarity with the few white men who were in the country had decreased the inherent respect and fear that the white race ought to institute and promote among the natives. Consequently, "... they are intensely disgusted that the law should assert itself in their country with the chance of a check put upon their rapacity and extortion."

As Magistrate, Fitzstubbs had not yet brought Chief Mau-ah-hua before him to answer for the murder of Tobas although he was troubled by the talk around the community that Mau-ah-hua was a popular chief and had apparently shot Tobas in self defence after Tobas was reportedly "seized by a murderous madness," and had shot at Mau-ah-hua several times. Fitzstubbs was also concerned that transportation to trial in Nanaimo or Victoria was not readily available. Constable Green had not been arraigned for the same reason. Fitzstubbs speculated that Constable Green shot Kit Wan Cool Jim

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Metlakatlas, (Victoria: Sono Nis Press, 1985) 172, 205. "Robert Tomlinson," Encyclopædia of British Columbia, 2000 ed. See also BCA GR443, Vol. 8, File 2. Tomlinson to Lieutenant-Governor Trutch, June 24, 1872. P. 1-2.

[14] Missionaries were part of the colonial effort in British Columbia but they held out hope that aboriginal people could be saved from extinction if they turned to Christianity and the white man's ways. In doing so their culture would be destroyed. Meanwhile, most settlers saw the natives as an irrelevant and doomed race. These differing attitudes occasionally brought missionaries and settlers into conflict with each other. See Robin Fisher, Contact and Conflict - Indian European Relations in Briths Columbia, 1774-1890 (Vancouver: UBC Press, 2nd edition, 1992), 142-145.

in pursuit of his duty but an Information charging him had been laid by a native man named Snow.[15]

The Provincial Government's responded immediately to Washburn's call for help and the matter soon became a source of federal - provincial conflict. In early July the Attorney General alerted the Secretary of State in Ottawa to the problems along the Skeena and requested instructions, insinuating that the problem should be managed by the federal government's Superintendent of Indian Affairs Israel Wood Powell. Powell declined to become involved carefully pointing out that the problem was one of law enforcement, which was clearly a provincial responsibility. Later Ottawa relented somewhat and authorised Powell to go to the Upper Skeena if his presence would be of assistance but cautioned that the province would bear any related expense.[16]

Where Constable Washburn recommended sending less than two dozen "good men," the Provincial Government, perhaps remembering the recent North West Rebellion, responded by sending nearly one hundred,[17] in what would be a two stage approach. Firstly, Superintendent Roycraft with a further dozen armed constables would proceed to Hazelton to assess the situation and try to work out a satisfactory compromise. Secondly, about eighty members of "C" Battery would accompany Roycraft's party as far

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[15] BCA GR 677, File 663/88. Letter, Fitzstubbs to Attorney General, 27 July 1888. p. 1-11.

[16] BCA GR 677, File 586/88. Vankoughnot to Powell, 16 July 1888. P. 1.

[17] The Victoria Daily Times noted that General Middleton (of Northwest Rebellion fame) boasted that he could dispatch 5000 men to British Columbia on twenty-four hours notice. The paper dryly commented, "If properly handled it is believed that no additional force will be necessary, but if more men are wanted, five hundred would be quite as effective as five thousand, and considerably less expensive. The Victoria Daily Times, 20 July 1888, p. 3.

as Port Essington where they would prepare to move upriver if the situation deteriorated. While Roycraft went ahead, arrangements were made for the vessel *Caroline* to transport "C" Battery to the north coast. To facilitate their departure, the militia requested that the province provide transport from their barracks at Work Point to Esquimalt, thus excusing the soldiers the march. Premier Davie icily replied, "The Government having caused enquiries to be made find that they are unable to provide carriage for your men to Esquimalt."[18] It is evident that Ottawa's intransigence was not forgotten in provincial circles! Provincial - Federal relations were further strained when the *Caribou-Fly*, contracted to bring the militia back from Port Essington failed to arrive, causing Colonel Holmes, the on-site commander, to book separate passage for himself and his men on the *Princess Louise* for the return journey. When the bill was presented to the Provincial government Holmes was tersely reminded where the obligation lay. "I have to point out," said the Attorney General, "that the contract with the steamer *Princess Louise* was not made with the Government or by its authority." Surviving records do not reveal how this account was settled.[19] Nevertheless, something of a carnival atmosphere marked the

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[18] Ken Campbell, "The Skeena War," 36. The Federal Government was in the process of turning responsibility for policing native communities over to the province in the spring of 1888. Acceptance of the new responsibility would have delayed their plans. Duncan Duane Thompson, "A History of the Okanagan," (PhD Thesis, history, UBC, 1985) cited by Tina Loo, in "Tonto's Due: Law, Culture and Colonization," in Hamar Foster and John McLaren eds., Essays in the History of Canadian Law Volume VI - British Columbia and the Yukon (Toronto: University of Toronto Press, 1995): 136.

[19] BCA GR 677, File G445. Attorney General to Holmes, 04 September 1888 and Campbell, "The Skeena War," 40. Because native affairs were a federal responsibility the Provincial Government strongly lobbied Ottawa for financial assistance with little success. The Federal Government finally agreed that Powell could attend the Skeena but only at provincial expense. In correspondence dated July 17, 1888 Ottawa flatly refused to assist with expenses in connection with the trouble along the Skeena River. See BCA GR 677, Files 586/88, 587/88, 589/88, 586/88 and 90/88.

militia's departure. One soldier, while getting his hair cut remarked that he had fought Apaches and in his experience an Indian would never scalp a man whose hair was cut short.[20]

And so it was that a well-armed military field battery was moved into position to back up a fledgling police force at the very limits of British Columbia's jurisdictional reach. "C" Battery arrived at Port Essington on July 20 and was soon constructing a rough camp at nearby Soldier's Point. Ironically, Superintendent Roycraft, who left Victoria before the militia, arrived after them, but immediately prepared to leave for Hazelton with his contingent of Constables.

The enormity of the task that lay ahead must have played on Superintendent Roycraft's mind as his party slowly ascended the Skeena. Attorney General Davie's written directions were at once clear yet maddeningly vague. If the natives impeded his progress Roycraft was to call up the militia, yet he must not resort to significant or deadly force except as a last resort. The government optimistically hoped that the presence of the militia at the mouth of the Skeena would have a pacifying effect. However confident the government was of Roycraft's eventual success, it directed him to give the white people at Hazelton "notice that the Government does not propose to keep an armed force in the country and that they had better retire to the coast, while the opportunity offers." Further on, in a comment that entirely lacked Fitzstubbs' enthusiasm for the reach of English law, Davie lamented that the natives "are best let alone in a country in which hitherto only the tribal laws of the Indian have prevailed." Then, in one curious sentence

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[20] The Victoria Daily Times, 16 July 1888, p. 3.

that seem to speak indirectly to the efforts of the missionaries among the natives Davie said

> If their minds can be disabused of the notions instilled there by evil white people viz - that the Queen has no authority, that the Dominion and Provincial Governments are foes instead of friends and that the Indians must keep out of the white people (sic) and lawful authority, much will be done; indeed a more happy result could not be accomplished.

This was small comfort to Roycraft's party when every bend in the river might screen an ambush.

Roycraft's first duty, once he reach Hazelton, was to arrest Constable Green, for the murder of Kit Wan Cool Jim, and arrange for his trial in Nanaimo. He was further directed to make every effort to conciliate the natives and win their confidence but the ultimate responsibility for the excursion was squarely left with Superintendent Roycraft. "As circumstances arise, you must use your best judgement independently, if you so think proper, of my instructions. You have charge of the expedition, so far as the Government is concerned and will act on its behalf."[21]

After a hard trip Roycraft and his party arrived at Hazelton on August 1st. He made .arrangements to investigate the death of Tobas whose body had been removed to Hazelton for an inquest. He collected witnesses to the death of Kit Wan Cool Jim and arraigned Constable Green for trial. He invited the chiefs and natives from the surrounding villages to attend a meeting with provincial authorities. At the conclusion of the meeting Roycraft felt that "They are far more civil and now understand the power and firm measure with which the government have (sic) acted." Finally, Superintendent Roycraft confirmed that word had been sent downriver to "C" Battery that the situation

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[21] BCA GR 677, File G445. Attorney General to Holmes, 04 September 1888. p.1-2.

was under control and that their services would not be required. He directed their immediate return to Victoria.[22]

Roycraft's wrote following his return to Victoria that he had determined that Tobas' death at the hand of Chief Mau-ah-hua was a justifiable homicide and the chief from Kitsegukla was released. This caused much relief among the natives and more than a little for the whites too as Roycraft speculated that bringing the popular chief to the white man's court would have been stoutly resisted. In other business, he reported that Constable Green had been committed for trial in Nanaimo and released on bail. Roycraft pointed to evidence suggesting that Kit Wan Cool Jim never intended to surrender himself but that Constable Green should be taken to trial so that the public would have all the particulars, the insinuation being that the constable deserved a chance to clear his name.

Immediately following Constable Green's court appearance at Hazelton, Roycraft addressed the assembled crowd of natives and impressed upon them on the span and authority of the white man's law. Anticipating no more trouble, Roycraft reported that "They seem now perfectly to understand our power. They have promised to keep the law and their Chiefs will bring all offenders to justice." Roycraft proposed maintaining the peace by appointing a number of native constables and that he had already taken steps to have police badges made for them. Roycraft further reported that, despite his busy schedule, he found time to drill the police constables at Hazelton and this, along with their target practice particularly impressed the natives.

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[22] BCA GR677, File 664/88. Roycraft to Attorney General, 03 August 1888. p. 1-3.

Finally, the Superintendent commented on his general impression of the Skeena country and its economic potential. Pack trains departing for the interior were reported to be in magnificent condition, attesting to the ranching possibilities in the area. This, together with the mining potential justified a continuing white presence in the Upper Skeena.

Roycraft's success at Hazelton must have been beyond the Attorney General's most optimistic expectations. While more that $8000 had been spent maintaining "C" Company at the mouth of the Skeena,[23] the potentially complicated and expensive foray by a field force into the northern interior of the province was avoided. The natives along the Skeena had witnessed the operation of provincial law and seemed to agree that justice had been served. The white community at Hazelton also took heart at the prompt response of the government in far away Victoria. Margaret Hankin, the wife of long time Hazelton trader Tom Hankin, said that she was confident,

> that there will be no further trouble here with the Indians during this winter, there is nothing whatever to fear from them as far as I know.

Mrs. Hankin went on

> I have known them all [the natives around Hazelton] for seventeen years and I cannot say that they are bad Indians, true they did make bad threats last winter but, we must remember that they were sorely tried, the measles swept off a great number of young people and children, they lost as many as five in a week and we heard nothing but mothers weeping for their little ones. It was all so sad, of course it made them feel very bitter at heart and in their poor dark ignorant minds, they thought it must be from some whites. … but after hearing that the measles was also in Victoria and that numbers of little white children also died of it, it changed the idea they had of the … measles[24]

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[23] Campbell, "The Skeena War," 40.

[24] BCA GR677, File 665/88. Margaret Hankin to Roycraft, 07 August 1888. p. 1-3.

Despite his earlier request to be relieved, Magistrate Fitzstubbs remained in Hazelton that fall, organising the native police force and ensuring that the peace held. Following Roycraft's return to Victoria Attorney General Davie, in expressing his gratitude to Fitzstubbs for the work done to re-establish and maintain peace and order, explained,

> An expression in my letter of instructions to Roycraft, which I presume he showed you, might indicate a contrary view, still, dealing with murders by Indians of Indians was left to his discretion, and it must be recollected that at the time the letter was written, our information was such, as to lead us to think it by no means unlikely that attempts at further arrests would only provoke further hostility against the whites. It would appear however that the safety of the whites depends upon administering law amongst the Indians, and I am happy to think that now it can be carried out effectively.[25]

In a lengthy letter Fitzstubbs responded

> The Indians generally, with [some exceptions] have accepted the inevitable, are content to abide by our laws and are demeaning themselves decently. But there are some restless spirits still, who do their utmost to create discontent with the change that has occurred. However, I am convinced that firmness is the best and only remedy for any ills that they may work.[26]

Fitzstubbs discussed the need for money to pay off the constables and meet day to day expenses and pointed out that his program to recruit policemen from among the native community was going well.[27] His final paragraph touches on the lot of Kit Wan Cool Jim's widow who had also lost her father Neaux-Goe-Queet

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[25] BCA GR677, File G372. Davie to Fitzstubbs. 18 August 1888.

[26] BCA GR677, File 943/88. Fitzstubbs to Davie. 30 September 1888.

[27] As early as 1884 Powell suggested that Ottawa strike badges for the native police in British Columbia, indicating that the appointment of native constables along the Upper Skeena was neither new nor innovative. National Archives of Canada (NAC) RG10, Vol.

> With respect to a donation to the widow of Kit-Wan-Cool Jim, it would be a graceful act and indeed one of humanity. She was stripped of all she had by the harpies of his tribe and turned out to wander in the woods subsisting as best she could, in constant fear of her life. One evening she presented herself here in tatters, saying the Indians would kill her sooner or later and that if she had offended she preferred to be killed by the whites. As there is no evidence of her having done any more than any bereaved woman would have done under the circumstances, given loose to her tongue. I placed her under the protection of the Chief of her own people making him accountable for her safety. By all means give her something. $100.[28]

With peace and order restored along the Skeena attention focussed on the courthouse in Nanaimo. Franklin Green, the Constable who shot and killed Kit Wan Cool Jim, appeared before Supreme Court Judge Henry P.P. Crease at a Special Assize Court, which sat at Nanaimo in early November 1888. The Assistant Attorney General prosecuted while Constable Green defended himself. In his opening remarks, Judge Crease reminded the jury that it was not clear in law if a constable was justified in killing a man who was resisting or fleeing lawful arrest. He pointed out that all homicides are murder until they are explained away but Constable Green would be justified in using deadly force if he was in the strict discharge of his duty and did not resort to his weapon until it was absolutely indispensable. The constable was arraigned and entered a plea of "Not Guilty." The trial proceeded immediately.

3694, File 14665, reel C10121, Powell to Superintendent of Indian Affairs, Victoria, 22 December 1884, quoted by Tina Loo in "Tonto's Due: Law, Culture and Colonization," 136.

[28] BCA GR677, File 943/88. Fitzstubbs to Davie. 30 September 1888. It is not clear why this woman was turned out by the native community but it has been suggested that she coaxed Kit Wan Cool Jim into committing the murder. Marius Barbeau, The Downfall of Temlaham (Edmonton: Hurtig Publishers, 1973), 43-51.

Several witnesses had travelled from the Upper Skeena to testify at Constable Green's trial where two matters of concern were identified. Constable Homaus testified that when he found Jim wounded he also found that he had a revolver with one empty chamber, indicating that Jim may have fired at Green during his flight from the cabin. However Jim, in what was a death bed statement, told Homaus that he had fired the gun the day before, but had never fired it at Green despite the threatening way he brandished it in the cabin before he rushed out.

More troubling was the testimony of Charlie Ridley, a native in charge of the Mission at Kit-wan-gar. Ridley had informed the police that Jim was staying at a nearby cabin and Homaus sent him with a message for Jim to turn himself in. Ridley returned after a few minutes and related how Jim wanted the police to leave him alone and return to the coast and that he was going to return to Kit wan cool. But it was also discovered at trial that Jim had speculated that he might give himself up but apparently did not specifically tell Ridley to relay this to the police. Ridley, who testified that he did not think Jim was in earnest, never mentioned it. Ridley's evidence has a ring of truth insofar as Constable Parker and the guide, acting on his word, were sent out to wait in ambush on the trail to Kit wan cool. Consequently, the police had no idea that Jim may have been contemplating surrender.

Green offered no evidence in his defence and Judge Crease charged the jury, pointing out that they must decide if the killing of Kit Wan Cool Jim was necessary in securing his arrest. The jury retired for a "few minutes" and returned a verdict that Green was justified in resorting to deadly force and Judge Crease ordered that a "Not Guilty" verdict be entered on the court record. Crease agreed with the finding although he

thought Constable Green was somewhat reckless in the execution of his duty and he was troubled by Ridley's failure to alert the police that Jim might give himself up to the authorities. The trial for murder and acquittal had taken all of a long afternoon.[29]

Several elements of the police action that has been dubbed the "Skeena War" are of interest to this discussion. Despite an intimate knowledge of the coast, fostered and developed by extensive exploration and mapping, the reaches of the Upper Skeena were largely unknown and unappreciated by the provincial government. The Skeena valley does not lend itself to casual investigation. Its mouth is confused and hidden in a maze of islands lying at the top of Grenville Channel and the entire region is frequently lashed by outflow winds that churn the local bays and inlets to a seething froth. The lower reaches of the river are characterised by brooding mountains, frequently wrapped in fog and pelted by rain. The shores of the river are characterised by stunted evergreens and unpassable muskeg swamps while the gravel-strewn river channels are shallow and change with each spring freshet. The upper reaches of the Skeena were well beyond the British gunboat,[30] the most formidable expressions of government power. Nevertheless, by 1888, ocean going ships had nosed their way up the Skeena as far as Port Essington and delivered an entire battery of militia, serving to alert the native inhabitants of the valley that the reach of the white man's law was considerable, and increased with each passing year.

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[29] Nanaimo Free Press, 07 November 1888, 3.

[30] See note 3, Chapter Three, page 66.

It was during this period of societal and cultural flux, that the deaths of Neatsqu, Kit Wan Cool Jim, Neaux-Goe-Queet and Tobas occurred. The forks of the Skeena, and the several native villages nearby were at the furthest and most remote reach of the white man's system of law and law enforcement. For example, the killings at Kit-skagass, a further fifty miles east of Hazelton, mentioned by Constable Anderson seem to have been beyond the reach of the provincial authorities and went unattended.

Other remote parts of British Columbia, both in colonial and provincial times had felt the expression of English law. The circuit courts of Judge Begbie and others are well known yet served only areas where there was already a large and continuing economic interest and presence for the white community. However, the Skeena region was not as economically interesting as other parts of the province. The terrain in the valley was difficult to travel over and the river was a constant challenge. The fur trade was in its twilight years and the mineral potential of the Omineca region to the east of Hazelton was frequently disappointing.

The trouble in the territory of the Gitxsan presented an entirely different challenge to the government in Victoria. Although this land in the upper reaches of the new province showed potential, there was little immediate need to bring Euro Canadian law and order to bear. Because of its limited economic potential, the agenda of the provincial government did not demand a stable community platform. The Upper Skeena was too remote to be economically viable when compared to other parts of the province. At one level, the need to establish law and order among the Gitksan was not justified by the economic circumstances of the few white people in the region. This is clearly evidenced by Davies' remarks to Roycraft, suggesting that the safety of the white community at the

forks of the Skeena could not be guaranteed. Therefore, although the outcome was perhaps tentative in the mind of the Attorney General, the movement of police into the region and the effort expended to arrest Kit Wan Cool Jim was an imperialistic expression of white provincial power. The mesh of the net that was provincial law was in the process of being re-defined and made finer. The natives, as subjects, if not citizens, of the new power center in Victoria had to understand that their traditional ways of dealing with murderers were woefully inadequate and that the authority of the white man's law would, like the Skeena River, run its course and not be diverted.

The murder of Neatsqu by Kit Wan Cool Jim was prompted by a cultural and societal imperative that would have been at once mythical and extraneous to the white community. Competing for a coveted position at a social or political gathering is understandable, although not to the point of killing for it. The taking of a life in the belief that a deadly spell had been cast tended to confirm the white community's notion of native cultures as being simplistic and child-like. The altruistic idea that the provincial government had a moral obligation to subject the native communities to the white man's law and protect them from each other's treachery motivated Constable Washburn's expedition to the Skeena. Even in the furthest reaches of the province, wanton and unwarranted murder could not be tolerated.

However, native justice systems were in play months before English law found its way into the valley. Missionary Alfred Green's letter in early March outlined the murder of Neatsqu and detailed Kit Wan Cool Jim's effort to restore peace and balance in the community by offering a compensation of blankets and a much coveted copper. Anderson's letter, penned a few weeks later, also mentions this compensation offer as

well as a feast of reconciliation and suggests that it was accepted by offended parties, thus restoring peace to the area. Fitzstubbs' parley with the elders at Kit wan gar also confirms that Jim had made restitution for slaying Neatsqu but his subsequent murder by Constable Green upset the balance of peace among the natives and between the natives and the whites. The killing of Kit Wan Cool Jim not only disturbed the balance of reciprocity in the region but also subjected the white community to aboriginal law-ways that saw all whites as belonging to the same band or tribe and therefore legitimate targets for reciprocity killings. However, in the native manner, a request for compensation was proposed to avert further, and deadly, trouble. Revenge for the killing of Jim was certainly in the air and natives from Kit wan cool were rumoured to be arming themselves for a confrontation with the white settlers at Hazelton. Washburn's correspondence clearly outlines his concern and ultimate vulnerability to attack. Interestingly, he mentions, almost in passing, the request for compensation in the form of money and a man to replace Jim. Naturally, neither Washburn nor his superiors in Victoria ever seriously considered this proposal nor did they contemplate a counter offer.

Roycraft's subsequent attendance to Hazelton signalled a number of things to the native community. The presence of a large and well-armed military camp at Port Essington would not have escaped notice throughout the valley. This not only added to Roycraft's prestige as an important and powerful member of the provincial government, but also reminded the natives of the authority behind his words. The actual deployment of "C" Battery to the Upper Skeena would have been very difficult given that the season was advancing, but was possible. Although ocean-going vessels could not get much

above Port Essington, substantial river barges and freight canoes could have been commandeered for government use.

Shrewdly, Roycraft's first duty when he got to Hazelton was to deal with Constable Green's charge of killing Jim. This response by the provincial government against one of its own officers was important because it demonstrated to the natives that the white man's law was blind to community and meant for all. It was demonstrated that Constable Green's action was, as promised by Lieutenant-Governor Trutch all those years ago, an offence that the white man's government would deal with on behalf of the native community.

Roycraft also had to deal with the murder of Tobas by the Kitsegukla Chief Mau-ah-hua. In many ways Mau-ah-hua's offence mirrored Constable Green's. Each had confronted a man they thought was a menace to the community and, having no other immediate means, resorted to deadly force. The fundamental difference was that although Tobas had murdered another native, he continued to threaten the tranquillity of the community in a way that Kit Wan Cool Jim never did. Tobas was wildly firing his gun and had shot at Mau-ah-hua several times before he was killed. Nevertheless, as Judge Crease indicated that fall in Nanaimo, each homicide is a murder unless an acceptable explanation could be offered. Roycraft was mindful of his duty to resolve each case according to the rule of law. However, removing Mau ah hua from the valley to stand trial at Victoria may well have been the act that unleashed the wrath of the native community against the whites. What Roycraft needed was a legal vehicle that excused Mau-ah-hua for the killing of Tobas while it satisfied the white man's rule of law. Sitting as a Coroner Roycraft shrewdly determined not only how Tobas met his death but also

concluded that Mau-ah-hua was justified in killing him. Therefore, since Tobas was killed in self-defence, his murder was committed under circumstances that were recognised and allowed for in English law. However, had Mau-ah-hua been a white man the outcome may have been different.

Despite Fitzstubbs' obvious dislike for Tomlinson and his ilk, it is well to remember that it was Methodist Missionary Alfred Green's letter that initially motivated the government to attempt Kit Wan Cool Jim's arrest. One speculates how Mr. Green would have acted if Jim's offer of compensation had been accepted earlier so that there was not, in his mind, a continuing threat to the peace and tranquillity in the native communities. Regardless, his letter suggests that native systems of justice are at least partially present in this situation but are compromised by the victim's refusal to participate in the compensation scheme. Perhaps the people of Kitsegukla could not initially participate in native law-ways because of the agreement for protection offered by the white man's law on the deck of the HMS *Scout.*

Conclusion

When, instead of the continuous progress which we have come to expect, we find ourselves threatened by evils associated by us with the past ages of barbarianism - we naturally blame anything but ourselves.

Freidrich A. Hayer, The Road to Serfdom[1]

At the geographical and cultural frontier of interaction between aboriginal people and the European settlers, a certain amount of cultural melding occurred. During the course of earliest contact indigenous persons were regarded as exotic and barbarian savages. Similarly, the natives placed the traders and explorer-travellers into pre-existing ideas of what they should be. However, the white man's ability to write, and thus communicate over substantial distances, tended to promote and harden their expectations and attitudes towards indigenous people, long after more extensive interaction should have modified and modernised metropolitan views and attitudes. This dated attitude, shored up by a generous portion of social Darwinism, tended to maintain an archaic attitude toward British Columbia's original people. Each boatload of settlers, fresh out from the "old country," arrived in British Columbia burdened with dated and preconceived notions of aboriginal culture that bolstered and reconfirmed this mind set. Fortunately, sophisticated and experienced historical actors such as Governor James Douglas and others occasionally mitigated this sentiment. Their sagacious views allowed for the utility and sophistication of native social and cultural systems that were initially prevalent in this new country.

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[1] Friedrich A. Hayek, The Road to Serfdom (Chicago: University of Chicago Press, 1944), 10.

British Columbia's post-contact past can roughly be divided into the fur trade, the colonial and the provincial periods. Evidence suggests that during the course of each period historic actors, in confronting legal challenges, sought a area of judicial conciliation and the precise location of this area depended on a number of factors. While all parties to the fur trade operated for mutual benefit, disputes occasionally arose over control of trade routes, trading posts and the merits of various trade goods. In other cases, as reviewed in the cases of Ogden and McLoughlin, one side or the other carried out criminal behaviour that invited and required a response. Because English law was unable to prevail native laws relating to retaliation found almost complete expression.

However, this situation changed significantly when the settlers appeared with imperialistic agendas that were invariably tied to the continuing need for quiet and exclusive control of the land. Ventures such as ranching, forestry and mining tended to deny any sort of land use for hunter-gather societies prevalent among the indigenous populations. Therefore, it is easy to observe that as the power of the Euro-Canadian presence, fuelled by economic undertakings, expanded and became more firmly entrenched, the authority of native systems of justice waned until they virtually disappeared. It follows that if either party in a racial or judicial exchange enjoy overwhelming power and authority, the need to seek out an area of judicial conciliation is diminished, indeed nullified, and the overpowered party, in this case the natives, have little choice but to submit.[2]

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[2] Richard White, The Middle Ground, (Cambridge: University of Cambridge, 1991), 50-55.

Secondly, the will to overpower and thus ignore the realm of judicial conciliation had a geographical component that can, at least to some degree, be considered outside of Euro-Canadian economic endeavour. However, the various colonial and provincial governments got around this problem. If there was sufficient economic incentive, such as the gold fields of the Cariboo District, English law was delivered to the site. In other words, profits tended to trump geography where an efficient system of justice was required to promote and maintain a profit. Unless prompted by economic gain, the immense distance and various terrains of British Columbia tended to stymie the span of English law. While Judge Begbie and his ilk managed to deliver their version of the law to the mining camps of the Fraser River and later the Kootenays and the Cariboo, their arrival in the Cassiar and Omineca districts was much delayed. Similarly, British gunboats easily and conveniently delivered the law to coastal communities but had little effect beyond tide water. Therefore, their role in bringing English law to the interior of the province was limited to delivering and supporting representatives of the government or military units such as "C" Battery and their influence diminished as time passed.

Much like quilters, historians often devise a frame upon which our knowledge of the past can be can be organised and stitched into place. These frames provide organisational support that permits, encourages and enhances our understanding history. The preceding discussion has attempted to construct a frame, or model upon which the blending of two systems of law and order might be considered. Moreover, the notion that an area of judicial conciliation will assist in understanding how each system reacted to the presence of the other. It suggests that the government's response to offences can be

divided into three categories that depend on the economic viability of the region where the offence occurred and its geographical location. This impacted on the government's enthusiasm and ability to insist on the application of English law. If the offence or the offender, together with requisite witnesses could be conveniently delivered to a metropolitan area, then the full application of English law can be expected. If the offence took place in a remote region, but one that held sufficient economic potential then more vigorous enforcement action could be anticipated. Ahan, in delivering himself to Bella Coola effectively removed the geographical problem that colonial law experienced in his case. So long as he and Lutas remained in their remote Chilcotin home they were beyond the effective reach of the white man's law. Further, economic incentives were insufficient at that time to foray into the wilderness to effect their arrest nor was the dignity of the white community sufficiently offended.

If, however, economic interests justified the effort and expense the court was prepared to travel to the site of the incident and deliver the law to the hinterland. Circuit courts made regular rounds to foster a stable platform upon which early settlers and miners could build a profitable economic base.

At the opposite end of the spectrum, certain offences took place well beyond the geographical reach of English law and did not directly involve or threaten any economic endeavour or potentiality. For example, the reported murders east of Hazelton, at Kit-skagass, could not be readily investigated nor could the offenders be identified and brought before an English court. Further, there was little moral imperative or economic incentive to apply the white man's law. Similarly, the earlier murder of innocent American traders by members of the Shoshoni Band in retaliation for horse stealing and

murder similarly escaped the gaze of English, or indeed American law.[3] Not only was the scene of the crime well beyond the reach of the white man's law, English law did not exist even theoretically in this region. While every white man was thought to carry English law in his saddlebags, its application on the frontier was, at this time, far more challenging.

While the preservation of the lives of white economic actors may have been desirable, it was not always possible. However as white miners and later settlers moved inland from the coast, governmental concern for their safety was enhanced and this concern was usually tied to the economic viability and potential of the location the white folks had chosen to earn a living. Attorney General Davie, in weighing the government's response to the troubles along the Upper Skeena sensed the limited potential of the region, and was prepared to encourage the white settlers in the Hazelton area to resort to the coast or face abandonment by their government in Victoria.

Finally, a number of reported offences that occurred at the frontier between native and white cultures and are of interest to this discussion. It is at this intersection of culture that both systems of justice were used simultaneously to find an area of judicial conciliation that not only efficiently settled the problem, but also gave due respect to each system of justice and authority. The dynamics of power enjoyed by each side depended

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[3] The Canada Jurisdiction Act of 1803 applied to crimes and offences in "Indian Territory" but was directed toward criminal behaviour on the part of traders and trappers in the fur country, even as far away as Oregon. The act was not directed against Aboriginal people. Hamar Foster, "Forgotten Arguments and Sovereignty in *Canada Jurisdiction Act* Cases," Manitoba Law Journal 21-1 (1992): 365 and "Long Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas, 1763-1859," The American Journal of Legal History XXXIV No. 1 (January 1990): 15-16.

on where the area of judicial conciliation lay and this alone dictated which system would prevail. For example, Peter Skene Ogden, operating from an inferior power position, realised that the application of white man's law was impractical and probably impossible. Therefore the area of judicial conciliation that each side recognised and accepted contain overwhelming elements of native justice. But, here again, economic interests played a part. Ogden led a substantial fur brigade of considerable numbers that would have been quite capable of exacting some sort of revenge, thus precipitating a possible round of retaliatory moves that would have seriously upset the region and compromised the fur trade. Additionally, the American trappers probably represented competition for the H.B.Co. and their elimination was to the company's advantage. Therefore, Ogden chose to accept the murder of the Americans as appropriate considering all the circumstances and carried on scouring the country for furs.

Although the burning of Kitsegukla did not involve the loss of life, it did tend to disrupt the orderly and economical flow of people and goods throughout the Upper Skeena and Omineca regions in 1872. Since this incident did not involve a capital offence the Euro-Canadian colonial government enjoyed a greater range of legal solutions that included compensation to the people of Kitsegukla for the loss that they had suffered. Compensation for suffered losses is well known in indigenous law-ways and is considered an appropriate settlement strategy. It must be noted that the Colonial Government, while having no direct responsibility for the accidental burning of the village, nevertheless awarded compensation. The meeting aboard HMS *Scout* was highly ritualised and contained many elements of a potlatch which was a traditional native event

frequently used to foster and confirm the settlement of grievances. In this case the Colonial Government went beyond its responsibility in order to arrive at an area of judicial conciliation, as did the chiefs from Kitsegukla. Each side realistically measured the limits of its power and strove to reach an agreement that would not only address the immediate situation, but also foster and enduring and peaceful relationship. While the *Victoria Colonist* remarked that the firing of the ship's guns "seem[ed] to impress the savages very forcibly with the power of the whites" the Gitxsan version of this meeting recalls that the chiefs, with appropriate ceremony, were compensated for their loss and treated with respect.[4]

The killing of Kit Wan Cool Jim by Constable Green and the other deaths that were connected to the trouble near the forks of the Skeena during the summer of 1888 were much more complex and tension ridden than the settlement worked out at Metlakatla a decade and a half earlier. Native law-ways were intact and capable of settling the initial dispute and had apparently done so with the acceptance of the compensation gifts Jim had offered for the life of Neatsqu. However, the provincial government's agenda required that English law respond to the original murder. The result was that the "white tribe" intervened in a situation where they had, at least in the eyes of the natives, no part to play. The subsequent killing of Jim re-opened the healing inter-village wound and pitted what were in effect two sovereign nations against each other. The natives, and particularly the people of Kit wan cool, offered the white community a chance to make compensation for Jim's death. The acceptance of the offer and provision of suitable compensation would have again imposed a settlement and may have

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[4] Terry Glavin, A Death Feast in Dimla-Hamid, (Vancouver: New Star Books, 1990), 53.

confirmed that the whites were, although politically clumsy and ignorant of aboriginal ways, potential friends and allies of the Gitxsan. Of course, provision of compensation for Jim's death, which would have taken place in an area of judicial conciliation with overwhelming aboriginal law-way components, was beyond consideration for the provincial government. English law contemplated the possibility that Green was justified in killing Jim - and subsequently decided that he was - because English law, as Washburn patiently explained, was also superior to all forms of aboriginal law, and could not allow for alternative settlement mechanisms.

The days immediately following Jim's death were indeed tense for the white community huddled inside the hastily barricaded post at Hazelton. The balance of power overwhelmingly supported the Gitxsan and any settlement at that point would have featured many aspects of native justice. However, Roycraft's arrival a few weeks later with a number of armed and disciplined constables shifted that balance of power, which at once tended to diminish the possibility native justice and also provided Roycraft with sufficient prestige that his opinion held sway. Having a battery of militia at one's disposal also tends to alter the power grid! As Hilaire Belloc pointed out

> Whatever happens, we have got
> The Maxim gun, and they have not.[5]

Regardless, Roycraft was shrewd enough to realise that although the native villages were incapable of mounting a united attack at Hazelton indeed they could, if given sufficient time and incentive. Therefore, he had to arrive at a negotiated settlement

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[5] Hilaire Belloc, (np.,np.,nd.) quoted by Barry Gough in Gunboat Frontier - British Maritime Authority and Northwest Coast Indians, 1846-1890 (Vancouver: UBC Press, 1984), 211.

that would at once pay due respect to native law-ways as well as English law. Moreover, he had to demonstrate that the white man's law was capable of keeping the promise made at Metlakatla in 1872. The arraignment of Green, before the court at Hazelton, demonstrated this point. It also showed the Gitxsan that the "white tribe" saw the constable as a troublemaker whose behaviour had upset the balance of harmony in the greater community. They were apparently satisfied that he would be dealt with according to the white man's law.

The killing of Tobas by Chief Mau-ah-hua was more difficult to square with both systems. English law demanded that the chief be removed to a metropolitan center and tried before a judge and jury. However, removal of the popular chief would be fraught with danger, given the tense climate in the region and whatever gains that had been made would be quickly lost - perhaps with deadly result for the vulnerable white community. Roycraft shrewdly used the Coroner's Inquest as a political and legal vehicle to address the niceties of English law while ensuring that Mau-ah-hua's continued detention did not set off a deadly round of retaliation.

Part of the Roycraft's task was completed with the arrest and detention of Mau-ah-hua following the killing of Tobas. Despite the essential "rightness" of Mau-ah-hua's actions in the eyes of the native community he had been immediately subjected to the pervasive power of the white man's law. Roycraft, later sitting as Coroner, then found that Mau-ah-hua committed the murder in self-defence and freed him. Roycraft, in hearing the circumstances of the case correctly surmised that a jury, similarly informed, would come to the same conclusion. His immediate task was to compromise the

ponderous system of English law by declaring at the Inquest that Tobas had been killed in self-defence. A finding of self-defence is known in English law and is also known and sanctioned in native justice systems. At this point Roycraft had made a finding that defused the tension in the situation by adhering, perhaps somewhat loosely, to English law, but had also resolved the matter in a way that spoke to the aboriginal participants.

It is ironic that the inevitable and final swing toward English law in the Upper Skeena directly flowed from the tensions of 1888. Native police constables, an office virtually unknown in native community, were promoted as a way of creating and maintaining order and peace along the Skeena. William Duncan's creation of native police forces probably supplied the model, but these men, with their special badges, hastily acquired by Superintendent Roycraft upon his return to Victoria, became the vanguard of what was to follow.

As the new century opened the Upper Skeena began to display its true wealth to the ever-seeking Euro-Canadian communities that had tentatively grasped a meagre settler-hold barely half a century before. The shoals glittered with the flash and swirl of salmon while up above, the slopes and hanging valleys were clothed with some of the finest stands of timber on earth. Further east, meadows and high country clearings provided forage for ranchers and rich bottomland for stump farmers. In time the whistle of steam engines, drawing the wealth of a new nation to the coast, echoed across the misty slopes of the Skeena. During these decades of immense change the people of Kit wan cool, Kit wan gar, Kitsegukla and the other villages along the river asked and later demanded recognition of their traditional and historic rights to the very land the

supported this new economy. "How can it be right," they asked, and indeed continue to ask, "for the white man to act so to us?"[6]

[6] Glavin, A Death Feast in Dimla-Hamid, 17.

Bibliography

Primary Sources

British Columbia Archives

GR443, Lieutenant Governor's Records, 1871-1936.

GR677, Attorney General's Records.

MS00054, H.P.P. Crease, Legal Papers, 1853-1895.

Papers Connected With the Indian Land Question - 1850-1875. Victoria: Richard Wolfenden, Government Printer, 1875.

Thomas Manby, An Unpublished Manuscript Account of Vancouver's Celebrated Voyage of Exploration in the "Discovery" and the "Chatham, 1709 - 1793." Yale Collection of Western Americana.

An Act to Provide for the Government of British Columbia 21 & 22 Victoria, C.99.

Campbell v. Hall (1774) 1 Copw. 204, 98 E.R. 1045 (K.B.)

The British Columbian, 01 June 1865. 06 July 1865. 18 July 1865.

Daily British Colonist, 20 August 1872, 24 August 1872.

The Daily Standard, 23 July 1872, 10 August 1872.

The Nanaimo Free Press, 07 November 1888.

The Victoria Times, 16 July 1888, 20 July 1888.

Secondary Sources

Akrigg, G.P.V. and Helen B. Akrigg. British Columbia/1847-1871 Chronicle Gold and Colonists. Vancouver: Discovery Press, 1977.

Arnett, Chris. The Terror on the Coast - Land Alienation and Colonial War on Vancouver Island and the Gulf Islands, 1848-1863. Burnaby: Talon Books, 1999.

Barbeau, Marius, The Downfall of Temlaham. Edmonton: Hurtig Publishers, 1973.

Barman, Jean. The West Beyond the West. Toronto: University of Toronto Press, 1995.

Bellesiles, Michael. Arming America - The Originas of a National Gun Culture. New York: Alfred A. Knopf, 2000.

Boyd, Robert T. "Demographic History, 1774-1874." In Handbook of North American Indians - Volume Seven ed. by Wayne Shuttles. Washington: Smithsonian Institute, 1990. 135-148.

Campbell, Ken. "The Skeena War." The Beaver 69:4 (July 1989): 34-40.

Carlson, Keith Thor You Are Asked to Witness: The Sto:lo in Canada's Pacific Coast History. Winnipeg: Hignell Printing Limited, 1997.

Carr, E.H. What is History? 2nd ed. Toronto: Penguin Books, 1987.

Chase, Will H. Reminiscences of Captain Billie Moore. Kansas City, Missouri: Burton Publishing Company, 1947.

Clayton, Daniel "Geographies of the Lower Skeena," BC Studies 94 (Summer 1992): 29-58.

- Islands of Truth - The Imperial Fashioning of Vancouver Island. Vancouver UBC Press, 2000.

Coull, Cheryl. A Traveller's Guide to Aboriginal B.C. Vancouver: Whitecap Books, 1996.

Cruikshank, Julie. "Invention of Anthropology in British Columbia's Supreme Court: Oral Tradition as Evidence in *Delgamuukw v. B.C.*." BC Studies 95 (Autumn 1992): 25-42.

Davidson, Basil, Africa in Modern History, quoted by Edward W. Said, Culture and Imperialism. New York: Vintage Books, A Division of Random House, Inc., 1994.

Denning Greg. Performances. Chicago: University of Chicago Press, nd.

Diamond, Jared. Guns, Germs and Steel. New York: W.W. Norton and Company, Inc., 1998.

Duff, Wilson. "The Fort Victoria Treaties." BC Studies 3 (Fall 1969): 3-57.

Fisher, Robin. Contact and Conflict - Indian-European Relations in British Columbia, 1774-1890. Vancouver: UBC Press, 1994.

- " Contact and Trade, 1774-1849." In The Pacific Province ed. by Hugh M Johnston. Vancouver: Douglas and McIntyre, 1996, 48-68.

- "Joseph Trutch and Indian Land Policy." In British Columbia: Historical Readings ed. by W. Peter Ward and Robert A.J. McDonald. Vancouver: Douglas and McIntyre, 1981, 154-183.

Fiske, Jo-Anne "From Customary Law to Oral Traditions: Discursive Formation of Plural Legalisms in Northern British Columbia, 1857-1993." BC Studies 115/116 (Autumn/Winter, 1997/1998): 267-288.

Flaherty, David H. ""Writing Canadian Legal History: An Introduction." In Essays in the History of Canadian Law - Volume I ed. by David H. Flaherty. Toronto: University of Toronto Press, 1981, 3-42.

Foster, Hamar. "'The Queens Law is Better Than Yours': International Homicide in Early British Columbia." In Crime and Justice - Essays in the History of Canadian Law ed. by Jim Phillips, Tina Loo and Susan Lewthwaite. Toronto: University of Toronto Press, 1994, 41-111.

- "The White Man's Law in the Far West: Establishing Legal Institutions in British Columbia." University of Manitoba Canadian Legal History Project - Working Paper Series n.d. 1-96.

- "Forgotten Arguments: Aboriginal Title and Sovereignty in Canada Jurisdiction Act Cases. Manitoba Law Journal 21-1 (1992) 343-389.

- "Law Enforcement in Nineteenth-Century British Columbia: A Brief and Comparative Overview." BC Studies 63 (Autumn 1984): 3-28.

- "Long Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas, 1763-1859." The American Journal of Legal History 34-1 (Janurary 1990): 1-48.

- "The Saanichton Bay Marina Case: Imperial Law, Colonial History and Competing Theories of Aboriginal Title." UBC Law Review 23-3 (1989): 629-650.

- "Indigenous Peoples and the Law: The Colonial Legacy in Australia, Canada, New Zealand and the United States." In Asia-Pacific Legal Development ed. by Douglas M. Johnston and Gerry Ferguson. Vancouver: UBC Press, 1998. 464-500.

Foster, Hamar and John McLaren, "Hard Choices and Sharp Edges: The Legal History of British Columbia and the Yukon." In Essays in the History of Canadian Law - British Columbia and the Yukon ed. by Hamar Foster and John McLaren. Toronto: University of Toronto Press, 1995, 3-27.

Foucault, Michel. Discipline and Punish - The Birth of the Prison. New York: Vintage Books - A Division of Random House, Inc., 1995, 2nd ed.

Galois, R.M. "The Burning of Kitsegukla." BC Studies 94 (Summer 1992): 59-81.

- "Colonial Encounters - The Worlds of Arthur Wellington Clah, 1855-1881." BC Studies 115/116 (Autumn/Winter 1997/1998): 105-147.

Glavin, Terry. A Death Feast in Dimla Hamid. Vancouver: New Star Books, 1990.

Gough, Barry. Gunboat Frontier: British Maritime Authority and Northwest Coast Indians, 1846 - 1890. Vancouver: UBC Press, 1984.

- The Royal Navy and the Northwest Coast of North America 1810-1914. Vancouver: UBC Press, 1971.

- "Send a Gunboat! Checking Slavery Among the Coast Indians of British Columbia in the 1860s." Pacific Northwest Quarterly 69-4 (October 1978): 159-168.

Harring, Sidney L. White Man's Law - Native People in Nineteenth Century Canadian Jurisprudence. Toronto: University of Toronto Press, 1998.

Harris, Cole. Making Native Space - Colonialism, Resistance, and Reserves in British Columbia. Vancouver: UBC Press, 2002.

Hayer, Freidrich A. The Road to Serfdom. Chicago: The University of Chicago Press, 1944.

Hewlett, Edward Sleigh, "The Chilcotin Uprising of 1864," BC Studies 19 (Autumn 1973): 50-72.

Huttenback, Robert A. Racism and Empire - White Settlers and Colored Immigrants in the British Self-Governing Colonies, 1830-1910. Ithica, New York: Cornell UP, 1976.

Kercher, Bruce. "Native Title in the Shadows: The Origins of the Myth of *Terra Nullius* in the Early New South Wales Courts." In Colonialism and the Modern World - Selected Studies ed. by Gregory Blue et al. New York: M.E. Sharpe Inc., 2002.

Lane, Robert B., "Chilcotin," in Handbook of North American Indians - Volume VI, William C. Sturtevant, General Editor. Washington: Smithsonian Institution, 1981, 402 - 412.

Levy, J.C. "The Poor Laws in Early Upper Canada," in Law and Society in Upper Canada - A Historical Perspective, ed. by D.J. Bercuson and L.A. Knafla. Calgary: University of Calgary, 23-45.

Loo, Tina. Making Law, Order and Authority in Colonial British Columbia, 1821-1871. Toronto: University of Toronto Press, 1994.

- "The Road From Bute Inlet - Crime and Colonial Identity in British Columbia." In Crime and Justice - Essays in the History of Canadian Law ed. by Jim Phillips etal. Toronto: University of Toronto Press, 1994, 113-142.

- "Tonto's Due: Law, Culture and Colonization in British Columbia." In Essays in the History of Canadian Law - British Columbia and the Yukon ed. by Hamar Foster and John McLaren. Toronto: University of Toronto Press, 128-170.

- "Savage Mercy: Native Culture and the Modification of Capital Punishment in Nineteenth-Century British Columbia." In Qualities of Mercy: Justice, Punishment, and Discretion ed. by Carolyn Strange. Vancouver: UBC Press, 1996, 104-129.

Lutz, John. "'Relating to the Country': The Lekwammen and the Extension of European Settlement, 1843-1911." In Beyond City Limits - Rural History in British Columbia ed. by R.W. Sandwell. Vancouver: UBC Press, 1999, 17-32.

Macleod, R.C. "Law and Order on the Western Canadian Frontier." In Law for the Elephant, Law for the Beaver - Essays in the Legal History of the North American West ed. by John McLaren etal, Saline, Michigan: McNaughton & Gunn Inc., 1992, 90-105.

Manby, Thomas. "An Unpublished Manuscript Account of Vancouver's Celebrated Voyage of Exploration in the "*Discovery*" and the "*Chatham*, 1709 - 1793." Yale Collection of Western Americana.

Charles C. Mann, "1491," The Atlantic Monthly March 2002, 41-56.

Marshall, Daniel P. "Introduction: The Fraser River War." Native Studies Review 11-1 (1996): 139-145.

"Claiming the Land - The Fraser River Gold Rush and the Conquest of Native Lands," presented to the Canadian Historical Association Conference, Montreal, August 1995.

McDowell, Jim. Hamatsa: The Enigma of Cannibalism on the Pacific Northwest Coast (Vancouver: Rondale Press, 1997.

Macleod, R.C. "Law and Order on the Western Canadian Frontier," in Law for the Elephant, Law for the Beaver - Essays in the Legal History of the North American West ed. by John McLaren, Hamar Foster and Chet Orloff. Saline, Michigan: McNaughton & Gunn Inc., 1992: 90-105.

Mills, Antonia. Eagle Down Is Our Law - Witsuwit'en law, Feasts and Land Claims. Vancouver: UBC Press, 1994.

Morice, A.G. The History of the Northern Interior of British Columbia: 1660-1880. London: John Lane, 1906.

David Mulhall. Will to Power - The Missionary Career of Father Morice. Vancouver: UBC Press, 1986.

Murray, Peter. The Devil and Mr. Duncan: A History of the Two Metlakatlas. Victoria: Sono Nis Press, 1985.

Needham, Joseph. Within the Four Seas. London: George Allen and Unwin Limited, 1969.

Reid, John Phillip. Contested Empire - Peter Skene Ogden and the Snake River Expeditions. Norman, Oklahoma: University of Oklahoma Press, 2002.

- Patterns of Vengeance - Crosscultural Homicide in the North American Fur Trade. N.p. Ninth Judicial Circuit Historical Society, 1999.

- "Principles of Vengeance: Fur Trappers, Indians and Retaliation for Homicide in the Transboundary North American West," The Western History Quarterly XXIV 1 (February 1993): 21-44.

- "Certainty of Vengeance - the Hudson's Bay Company and Retaliation In Kind Against Indian Offenders in New Caledonia." Montana - A Magazine of Western History 43-1 (Winter 1993): 4-18.

- "The Layers of Western Legal History. In Law for the Elephant , Law for the Beaver - Essays in the Legal History of the North American West ed. by John McLaren etal. Saline, Michigan: McNaughton & Gunn Inc., 1992. 23-73.

Reynolds, Henry. The Law of the Land. Victoria, Australia: Penguin Books, 1992.

- The Law of the Land. Ringwood, Victoria, Australia: Penguin Books, 1992.

Rich, E.E. The History of the Hudson's Bay Company, 1670-1870. London: The Hudson's Bay Record Society, 1959.

Roy, Patricia "Law and Order in British Columbia in the 1880s." In Swords and Plowshares: War and Agriculture in Western Canada ed. by R.C. Macleod. Edmonton: University of Alberta Press, 1993.

Said, Edward W. Culture and Imperialism. New York: Vintage Books - A Division of Random House, Inc., 1994.

Seed, Patricia Ceremonies of Possession in Europe's Conquest of the New World: 1492-1640. Cambridge: Cambridge UP, 1995.

Sewid-Smith, Daisy (My-yah-nelth.) Prosecution or Persecution. n.p.: Nu-Yum Baleess Society, 1979.

Slattery, Brian. "Aboriginal Sovereignty and Imperial Claims." Osgoode Hall Law Journal (Vol. 29-4 1991): 682-703

- "Aliens, Enemies and Infidels: The 'Significant Other' In British Imperial Law, 1500-1850," diss. Osgoode Hall Law School, York University, Toronto, 1999.

Spurr, David. The Rhetoric of Empire. London: Duke UP, 1993.

Stadfield, Brad. "Manifestations of Power: Native Resistance to the Resettlement of British Columbia." In Beyond City Limits - Rural History in British Columbia ed. by R.W. Sandwell. Vancouver: UBC Press, 1999, 33-46.

Thompson, E.P. Customs in Common. New York: New York Press, 1991.

Turner, Nancy J. Food Plants of Coastal First Peoples. Vancouver: UBC Press, 1995.

- Food Plants of Interior First Peoples. Vancouver: UBC Press, 1995.

de Vattel, The Law of Nations. Philadelphia: T. & J.W. Johnson & Company, 1861.

Williams, David Richardo "The Administration of Criminal and Civil Justice in the Mining Camps and Frontier Communities of British Columbia." In Law and Justice in a New Land - Essays in Western Canadian Legal History ed. by L.A. Knafla. Toronto: Carswell Legal Publishing, 1986, 215-231.

- "... The Man For a New Country" - Sir Matthew Baillie Begbie. Sidney: Gray's Publishing Ltd., 1977.

Williams, Robert A. The American Indian in Western Legal Thought: The Discourse of Conquest. New York, Oxford UP, 1990.

White, Richard. The Middle Ground. Cambridge: University of Cambridge, 1991.

Wilson, Edward O. The Future of Life. New York: Alfred A. Knopf, 2002.

Encyclopædia of British Columbia, 2000 ed.

Dictionary of Canadian Biography, Vol. XIII 1901 to 1910.

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29 August 2003