Respecting Sovereignties: Indigenous/State Agreements in British Columbia and their Alignment with a Dual Sovereignty Concept

by

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Abstract

This thesis explores a conception of dual sovereignty, consisting of Indigenous and state sovereignties existing and operating within the same territorial space. A dual sovereignty construct, standing in distinct contrast with the common settler-held presumption of Canadian state sovereignty and hegemony, provides a superior frame for articulating just relations between Indigenous peoples, the Canadian state, and that state's citizens. The thesis examines the role of agreement-making in defining relations between sovereign Indigenous peoples and the state, both in treaty and non-treaty form. Focused on non-treaty agreements that pertain to land and resources in the province of British Columbia, a case study approach reveals a congruence of several such agreements with elements of a dual sovereignty construct. Some of the agreements exhibit substantial compatibility with a dual sovereignty concept, with dialogical forms of recognition and a well-articulated Indigenous land-use vision and worldview built into the agreement-making process. Those agreements centered on land-use planning seem particularly well equipped to embrace a more dialogical process that creates space for an Indigenous vision, and allows Indigenous Nations to expand their institutional and structural power meaningfully in relation to the state. Agreements designed primarily to help manage the state-driven consultation processes that are required under Canadian state law seem inherently monological by contrast, providing only a restricted space for increased institutional or structural power of Indigenous peoples.

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Dedication

To the Elders now gone who did so much to shape and enrich my life – Jean, Norman, Thelma, Myrtle, and Maria Teresa; and my children Claire and Owen whom I am proud to say have become resolute seekers for a kinder and more just future for all.

And above all, to my loving, supportive, and patient partner Ros, who remains the light of my past, present and future.

Chapter 1 – Introduction

The asserted sovereignty of the Canadian state lies draped over a multitude of Indigenous polities asserting their own living forms of sovereignty. Both Canadian and Indigenous claims to sovereignty and territory are rooted in their respective traditions and laws. Thus, both claim specific and unique forms of sovereignty over the same space.

This thesis explores the concept of dual or co-existing sovereignties as a frame within which just relations between Canada and Indigenous peoples can be given meaningful expression. I will argue that, despite persistent attempts at erasure by the people and institutions that led to and now constitute Canada, distinct Indigenous sovereignties remain undented and stand as fully legitimate forms of sovereignty over the full extent of Indigenous territories – in essence the whole of Canada. This pushes hard against the rigid and often prevalent understanding of sovereignty, as epitomized by its Oxford Reference definition as the "(s)upreme authority in a state," which is "vested in the institution, person, or body having the ultimate authority to impose law on everyone else in the state and the power to alter any pre-existing law" (n.d.).

While the Canadian state's territorial claims are recognized in the international order, I take the view that asserted Canadian sovereignty remains contested internally given the presence of pre-existing and ongoing Indigenous sovereignties. The presence of these coincident and competing claims for sovereignty gives rise to the first of two research questions that are used to frame this project:

> Can (and should) the physical territory that Canada claims be seen as simultaneously subject to two distinct sovereignties: one as asserted by the

Canadian state and the other as asserted by the Indigenous peoples whose territories coincide with that of Canada?

One foundation for workable and stable relations between sovereigns – both those in separated territories and those that exist in the same space – is the making of agreements, be they treaties or other forms of agreement. My project is concerned more with the latter, specifically non-treaty agreements made between one particular manifestation of the Canadian state, the province of British Columbia, and various Indigenous Nations whose territories overlap with that of the province. I postulate that simply entering into an agreement is not enough in itself to establish just and legitimate forms of relations between co-existing sovereigns in the same space. Instead, the agreement must reflect particular forms of relation that are respectful of and empowering for the Indigenous sovereign, and are not just a disguise by which long-standing oppressive colonial practices are continued.

While agreements may give shape to dual sovereignty relations in a number of spheres of Indigenous/state interaction, my work here is focused on relations as they pertain the use of land and resources, specifically those lands that the state presents as provincial "Crown land." This gives rise to my second and more applied research question:

Are recent Indigenous/state agreements and agreement-making processes, specifically non-treaty agreements related to the use of provincial "Crown land" in British Columbia, coherent with dual sovereignty?

To explore the two questions laid out above, this thesis is laid out in six chapters, including this introduction. Chapter 2 draws on the literature to help articulate a

conception of dual or co-existing sovereignties, proposing it as a superior construct by which to understand the political relationship between the Canadian state and the Indigenous Nations whose territorial spaces overlap with that of Canada. I will access the work of several Indigenous and non-Indigenous scholars – including Barker and Asch – to argue for the rejection of the classic European-origin conception of sovereignty. This sovereignty conception typically centres on the necessity of a single sovereign in any space which, in settler states, means asserting colonial power as that single sovereign. Important insights on the profoundly different relational constructs that underlie Indigenous forms of sovereignty are provided by a number of Indigenous authors, most notably Wallace Coffee and Rebecca Tsosie, and Heidi Kiiwetinepinesiik Stark.

A case is then made in this thesis, using the work of James Tully, John Borrows, and Michael Asch and others, that nothing has occurred to eliminate these existing Indigenous sovereignties, despite widespread assumptions to the contrary on the part of the colonizing state and its citizens. Indigenous sovereignties, built on Indigenous conceptions of law and governance, remain fully intact over most or all of the Indigenous territorial space occupied by Canada. Additional literature is then used, particularly political and legal analyses by Tully, Jeremy Webber, and Joshua Nichols, to envisage a world of two sovereignties – Indigenous and state – co-existing across a shared Indigenous/Canadian space.

A model that sees two sovereignties existing over a single geographical space seems more compatible with Indigenous political concepts and practices, focused as they are upon humans existing in meaningful relations with each other and all aspects of the living and non-living world. Heidi Stark notes how, for the Anishinaabe, “to be

sovereign—or enact sovereignty—necessitated the recognition of our interdependence, our connection to one another and creation, and our relationships" (2012, p. 353). This creates a more open space for complex and relational forms of sovereignty, that can more readily encompass the dual sovereignty construct at the centre of this thesis. In contrast, western (and mainstream Canadian) conceptions that emphasize a single and absolute political power are more directly challenged by the dual sovereignty model.

I will turn in Chapter 3 to the matter of agreement-making. Substantial scholarship in Canada over the past several decades, including for example, that of Michael Asch and John Borrows, has cast light on the pressing need to achieve rightful relationships between Canada's settler society and co-existing Indigenous peoples, and have pointed to the importance of treaties as living forms of agreement by which to achieve these ends. However, as noted above, my specific investigations here focus on Indigenous/state agreements that have been entered into *outside* of the treaty process. These agreements take a variety of forms and are typically much less comprehensive than treaties (or certainly modern treaties). Non-treaty agreements differ from treaties in that they do not acquire the legal status which treaties hold under the Canadian constitution, and are potentially subject to ongoing change or future abandonment. Since 2000, a number of non-treaty agreements have been created bilaterally between Indigenous Nations (singly or at times collectively) and the province of British Columbia, taking on considerable prominence in a province where treaties are currently the exception rather than the rule. Chapter 3 will, therefore, pay particular attention to the context within which these non-treaty agreements have been given life.

Chapter 4 provides a methodological framework to guide the subsequent analysis of some selected Indigenous/state agreements in British Columbia. To frame the space of engagement between state and Indigenous sovereignties, the idea of a "contact zone" as first articulated by Mary Pratt is used to characterize the arena within which interactions between state and Indigenous institutions occur (1991). To analyze the nature of interactions within contact zones and assess whether they conform to a dual sovereignty model, I pay particular attention to James Tully's characterization of recognition as either monological or dialogical, with the latter form an essential starting place for a meaningful dual sovereignty relationship (2004).[1] In a similar and supporting vein, relations between Indigenous and state governments can also be viewed through a governance lens, ranging from state-governed forms of engagement that tend towards the monological, through certain co-governance forms that embody a dialogical form of recognition, and ultimately to Indigenous-governed forms. This chapter also raises a taxonomy of power distribution between state and Indigenous sovereigns as an additional potential tool for analysis. Finally, I briefly explore whether an agreement adheres to the free, prior, and informed consent provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus further indicates a shift towards a dual sovereignty model. The UNDRIP now has increased relevance in British Columbia given

[1] In the extensive literature on recognition, starting with Hegel's master/slave dialectic, and extending to Frantz Fanon's characterizations in a colonial context and Glen Coulthard's work in an Indigenous/settler-colonial setting, the potential exists for destructive forms of misrecognition that inevitably leave the colonizer as the 'master' in an unequal relationship. In drawing here on Tully's work, I am guided by his assertion that Indigenous claims are not being made within the modern diversity construct of liberal states, but rather "are claims to be recognized as 'peoples' with universal rights of self-determination based on prior occupancy and sovereignty, and thus to be recognised as 'equal' in status'"(2004, p. 94). Therefore, by Tully's framing, the monological form of recognition is in essence a dangerous and inappropriate misrecognition form, while the dialogical is predicated on a relationship of equals.

its legislative adoption by the province through the *Declaration on the Rights of Indigenous Peoples Act*, 2019.

Chapter 5 presents the three case analyses for this project. The first case examines a 2008 land-use planning agreement between the Lil'wat Nation and the province, for that Nation's territory located in southwestern British Columbia. The second case involves two agreements involving an assemblage of Secwépemc Nations in the southern Interior region of the province. The first of these is a 2013 agreement that focuses primarily on addressing consultation procedures to meet state obligations that Canadian law indicates must precede management or development approvals by state officials. The second agreement within the Secwépemc case was signed in 2019 with (largely) the same group of Secwépemc First Nations, and focuses on broader relationship-building between those Nations and the province. The third and final case concerns an agreement concluded in northwestern British Columbia between the province and the Gitanyow Nation to address both land-use planning matters and consultation procedures. Overall, the analyses seek insights into those agreement-forms that most nearly conform to a dual-sovereignty framework. I specifically hypothesize that agreements around land-use planning offer considerable potential for a dual sovereignty orientation. An agreement focused exclusively on consultation procedures, by contrast, will reflect a more monological model, in which state conceptions of sovereignty continue to dominate.

In Chapter 6, the thesis concludes with a summary of the insights obtained by the analyses. I will attempt to confirm the concept of dual sovereignty as a superior frame for understanding the right form of relations between the Canadian state and Indigenous peoples, and one that can be reflected through certain types of agreement-making. But

inevitably, the work will be incomplete in important ways. While some existing forms of agreement will be shown to be more in keeping with a dual sovereignty model of relations, many unanswered questions of pivotal importance remain. Perhaps most notable among them is this one: What happens when, within a dual sovereignty model, the sovereigns disagree? The Canadian state might instinctively fall back on its self-asserted European forms of sovereignty to say that, ultimately, the settler state must prevail. But such a position cannot fully accord with dual sovereignty as described here. While this key question will remain unanswered in this project, I will return to it for a further brief discussion in Chapter 6.

Critical questions around sovereignty, Indigenous and otherwise, clearly extend to the ability of political communities to make decisions on all aspects of their lived experience, including matters pertaining to health, social services, education, and justice. However, these important areas are outside the scope of this investigation which, as noted, is concerned with sovereignty as it pertains to land and resources. The use of the terms "land" and "resources" here is meant to convey the full web of living and non-living entities that make up or live within the terrestrial and marine environments. These include the earth, water, and air, and the microbial, plant, and animal forms that exist together with humans in complex relationships, including at times their use by humans (thus the word "resources"). I am mindful of the settler origins and colonial context for terms like "resources," but have elected to use them here for lack of readily available alternative language.

Indigenous worldviews are frequently centered on the importance of relationships and responsibilities in sustaining the totality of living and non-living nature, within what

Starblanket and Stark refer to as a "relational paradigm" (2018). This relational model arguably stands as superior conception to the typical western vision of a separation from and exploitation of nature and natural resources, given the latter's continuing failure to achieve a sustainable relationship with nature. Indeed, evidence shows that the western political, social, and economic agendas have put many of the world's ecological systems at profound risk (Sanford, 2019, p. 24; Schultz, 2014, pp. 1–2; Tully, 2018, p. 105). This is a resonant suggestion, and I see much to be gained from engaging with and learning from these Indigenous modes of knowledge and worldviews for rightful and sustainable relationships within the natural world. However, exploration of this potentially rich theme lies beyond the narrow scope and capacity of this thesis.

The vast territory shared by Canada and Indigenous peoples can be conceived of as a series of sub-spaces arrayed on a spectrum. On one end of this spectrum are lands where settler presence and governance dominate, such as urban and settled agricultural areas. Here, privately held land titles issued by the state are prevalent and opportunities for exercising a nevertheless still-present Indigenous sovereignty are thereby constrained. On the other end of this spectrum are lands on which the Indigenous presence and governance outweigh (or should outweigh) those of the state, for example on lands affirmed unequivocally as First Nation lands through modern treaties or through a Canadian court (such as in *Tsilhqot'in Nation v. British Columbia*). In between lie the geographically extensive areas where a functional sharing of sovereignty can be given life. I refer to this large space as "Crown land(s)," and, for such lands that (by the state's assertion) lie within British Columbia's jurisdiction, as "provincial 'Crown land(s)'." I adopt this terminology with qualification as a geographical convenience only, since all

the lands examined in subsequent chapters technically fall within this state-defined geographic (and legal) category. I place "Crown land(s)" in quotations throughout the thesis to signal that it is defined as such unilaterally by the state. My use of this term is not intended to diminish in any way Indigenous sovereignty, which, I contend, remains active within this de facto shared space.

I am a settler Canadian descended from (to my knowledge) northern European immigrants who in the mid-19th and early 20th centuries came to the Canadian settler state, or its British colonial predecessors. I particularly identify as a British Columbian. This Canadian province British Columbia is the only home I have ever known, both physically and psychologically, and I now reside in distinct privilege within a few kilometers of my birthplace in the city of Victoria, on a small piece of urban land I claim to own by virtue of a settler-order title. But I am very much aware that "my" land is situated within the territory of Lekwungen peoples who now form the Songhees and Esquimalt First Nations. My project to explore the nature of sovereignty and the potential of co-existing sovereignties applying to the Indigenous/Canadian space could be seen as no more than an effort on my part to justify my own legitimacy in this space. I am open to hearing such critiques. I do hope, however, that my work can also be taken as a sincere attempt to make a small but positive contribution toward understanding forms of political thinking and practice that can support both Indigenous peoples and settler society in seeking just relationships within this Indigenous/Canadian space.

I subscribe fully to a position that colonialism in Canada and British Columba has been, and in very many respects *continues to be*, a multifaceted process rooted in and giving persistent life to racism. The historic and ongoing reality in Canada and British

Columbia has consisted of multiple forms of oppression, including attempts at cultural genocide (National Inquiry into Missing and Murdered Indigenous Women, 2019, p. 1). For almost two centuries, and up to the present day, Indigenous peoples and persons have suffered grievously at the hands of a Canadian settler state and citizens acting on a self-proclaimed sovereignty over Canada's territorial space.

As a non-Indigenous person identifying with British Columbia, and more specifically as a long-time provincial government employee in land and resource policy, I understand that I have been personally complicit in many aspects of the colonial project. I hope that I am wiser today but can make no claim to a convincing transformation. Many voices, academic and otherwise, have emerged to describe and bear witness to the enduring legacy of oppression of Indigenous persons by the Canadian state and citizens, and advocate persistently and with great eloquence for redress. I see these expressions as critically important. If in this work I appear to pay insufficient attention to the oppressive workings of a still-present colonialism, it is because my own voice has little to offer to this important agenda for truth, other than to support those who work tirelessly to expose colonialism and its continuing injustices. I defer with great respect to these scholars and advocates, possessing as they do a clearer eye, a stronger critical voice, and a more pertinent lived experience than my own.

Chapter 2 – Conceptualizing Co-Existing Sovereignties

> There is real doubt whether Canadian institutions can achieve a more satisfactory relationship with Indigenous peoples without some reconsideration of their claims of sovereignty (Webber, 2016, p. 69)

This chapter will draw on a diverse literature to explore conceptions of sovereignty, in both its European/settler-state form and its Indigenous forms. It will then turn towards a central premise for this thesis by arguing how these distinct sovereignties – emanating as they do from distinct worldviews – can be seen to co-exist at present in the geographic space that constitutes present-day Canada.

In using the language and lens of "sovereignty" in general, and speaking specifically of "Indigenous sovereignty," I am mindful of the dangers and limitations of the terminology. These risks are perhaps best expressed by Taiaiake Alfred, who argues against using the term "sovereignty," in an Indigenous context, fearing that continued use of such language and constructs continues its reification to the detriment of Indigenous aspirations (2005, p. 38, p. 46). Alfred argues instead for a profound re-orientation of Indigenous politics and a recovery of Indigenous political traditions, such that a western-defined "sovereignty" is inappropriate as a political objective for Indigenous peoples (p. 38). However, despite the European origins of the sovereignty concept, one can also argue that it describes something intrinsic to all peoples (Stark, 2013, p. 341). There is also a clear instrumental value in formulating and articulating Indigenous expressions of

sovereignty to "speak back" to a hegemonic Euro-centric view in which the language of sovereignty looms large.

As a historically contingent construct, sovereignty defies any absolute stabilization (Barker, 2005, p. 21). This allows sovereignty to serve as a malleable term and construct that can speak to Indigenous forms of power and politics, provided it is recognized contextually as including *Indigenous* sovereignties, which take forms that are radically different from, and even at odds with, the dominant European form.

Rejecting the Westphalian Legacy

Arising as it does from a European worldview, the dominant conception of sovereignty in its modern political form is often traced to the promulgation in Europe of the 1648 Treaty of Westphalia, as a means of resolving (or at least muting) religious conflicts in Europe (Asch, 2014, p. 119). It stresses a single "sovereign," meaning an acknowledged and therefore legitimated governing power, having full universalized legal jurisdiction over religion and all secular affairs within a defined territory, forming a kind of intrinsically "pan-optical sovereignty" (Bilosi, 2005, p. 240). Informed by Hobbes' theories, this "Westphalian" construct insists no two sovereigns can rule within a single territory (Asch, 2014, pp. 119–120).

The emergence of this now-dominant Westphalian conception of sovereignty in mid-17th century Europe coincided with the inception of an era of accelerated colonial expansion in North America and elsewhere. While the previous century had seen dramatic colonial conquests and expansion by Spain and Portugal in what is now Latin

America, the 17th century saw other European powers such as France, the Netherlands, and particularly England embarking on new settler-based forms of colonial enterprise.

The "doctrine of discovery" also played a key role in European self-assertions of sovereignty over their colonial domains while dismissing the existing sovereignties of non-Christian inhabitants. The doctrine originated with a Papal Bull in 1493, further epitomizing the religious connotations underpinning European conceptions of sovereignty. Although the doctrine only meaningfully established a claim against other potential European colonizing states, it also positioned Christian colonizers as morally empowered (in their own frame) to "discover" and claim any land not already inhabited by Christians (Gilder Lehrman Institute of American History, n.d.). Tied to this concept was "*terra nullius*," whereby empty lands, or more often lands empty of Christians, were available to Christian nations for the taking. These "discovered" lands were then open for assertions of Westphalian modes of sovereignty by the European colonizing states (Ivison et al., 2000, p. 12). This manufactured vision of sovereignty can be seen as a particular and mythical "origin story" drawn on by European colonizers and their succeeding settler states in occupying and colonizing multiple Indigenous homelands (Asch, 2007, p. 281; Brown, 2018, p. 81).

In the United States, an early 19th century series of Supreme Court judgements forming the "Marshall trilogy" applied the doctrine of discovery to diminish Indigenous sovereignty to one of dependency within the sovereignty and eminent domain that European discovery conveyed to the colonizing state (Barker, 2005, p. 8). These judgements, issued under Chief Justice John Marshall between 1823 and 1832, ultimately positioned Indigenous peoples in the United States as "domestic dependent nations."

Although an important acknowledgement of Indigenous sovereignty, Barker sees this as a re-invented form of sovereignty void of any of the associated rights to self-government, territorial integrity, and cultural autonomy that would have been affiliated with international law at the time (2005, p. 14).

The impact of these decisions extended beyond the United States to influence the British Colonial Office's policies for its asserted possessions, including colonies in what is now Canada. As in the United States, relations with Indigenous peoples were imbedded with the ideologies of race, culture, and identity that legitimated the narratives of discovery (Barker, 2005, p. 14). Canadian courts continued to apply the doctrine of discovery as transmitted through Marshall's interpretation, but lacking even the dependent form of Indigenous sovereignty that informed American discourse (Webber, 2016, p. 65). The adherence to the doctrine of discovery persists even after the 1982 *Constitution Act*, where Section 35(1) states "(t)he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" (Department of Justice Canada, 2013, p. 63). Rather than affirming any continuing form of Indigenous sovereignty, this constitutional language responds to pre-existing Indigenous societies by creating Indigenous rights *within* a hegemonic settler-state constitutional order. As Supreme Court of Canada Chief Justice Antonio Lamer stated in the 1996 *R v. Van der Peet* decision, and took pains to reiterate in the landmark 1997 ruling in *Delgamuukw v. British Columbia*, "a basic purpose of s. 35(1) (is) the reconciliation of the pre-existence of the aboriginal societies with the *sovereignty of the Crown*" [emphasis added] (quoted in Asch, 2014, p. 11). The meaning is clear: by virtue of the Westphalian model there can be only one sovereign. The doctrine of discovery continues to reign in the mind of the

Canadian state. The rights of Indigenous peoples within Canada are positioned as flowing from their status as prior users of its land and sea, and not from a status then and now as sovereign Nations.

Framing Indigenous Forms of Sovereignty

Prior to the arrival of Europeans, Indigenous Nations "recognized and exercised their sovereign powers, both internally, through established governing systems for regulating social, political and economic practices, and externally through political alliances" (Stark, 2013, p. 341). This conception of sovereignty was shaped by Indigenous worldviews that stress connections between human and non-human forms, and continue to contrast starkly with the dominant European-based paradigms that privilege humanity over the world around us. Indigenous peoples' relationship with the land and waters around them is essential to their indigeneity – past, present, and future. In this way, Indigenous sovereignty is rooted in a different kind of origin story than that of the standard settler-state narrative.

The contrast between Indigenous peoples' relational perceptions and the dominating anthropocentric European and settler-colonial worldviews is of more than academic interest. The tidal waves of settler-colonialism that inundated the Americas and the Pacific brought European social and political conceptions to the fore, creating dramatically altered landscapes where Indigenous peoples and their worldviews struggled to resist and survive. The settler-colonial project has been multi-faceted, but the dispossession of Indigenous peoples from their lands and seas has been particularly vital for the types of European settlement and resource extraction that drive settler-

colonialism. But Indigenous Nations have survived in the geographic spaces that make up North America, Canada, and British Columbia. The relationships of those Nations with the lands and seas around them continue to have potent meaning and effect, and rightly continue to trouble the hegemony of (in Canada and British Columbia) presumed Crown sovereignty and jurisdiction.

In parallel with the religious origins of European concepts of sovereignty, we can position Indigenous conceptions of sovereignty within the context of Indigenous cosmologies. As Coffey and Tsosie note, while the varied Indigenous peoples have their own distinctive culture and traditions, some fundamental features are discernible across many Indigenous cultures (2001, p. 197). These authors stress that a concept of relationships is fundamental to a culturally based notion of Indigenous sovereignty, one radically different from European and settler-state constructs (p. 198). They further point to the widely observed forms of Indigenous spirituality that underpin Indigenous worldviews, citing for instance Iroquois leader Oren Lyons on human beings embodying the essence of the Creator. In Lyon's words, "we are a government that is entwined with spiritual guidance" and "the separation of spiritual, religious ways from political ways does not exist within the structure of the Ho-de-no-sau-ne [sic]" (p. 200). Similarly, Coffey and Tsosie quote Sauk/Fox writer Dagmar Thorpe saying:

> We recognize one sovereign – the Creator. He has given us a life, and we live by the Creator's good will. If we are to survive we must recognize and live within the Creator's laws. Our laws were created to keep our people with the framework of the Creator's laws. They were principles toward each other and all of creation. (2001, p. 203)

Stan McKay, a Cree Nation member who became leader of the United Church of Canada in the 1990s, summarizes the common fundamental concepts that frame Indigenous cosmologies, notably doing so in the present tense:[2]

> Indigenous spirituality around the world is centered on the notion of our relationship to the whole creation. We call the earth "our mother." The animals are "our brothers and sisters." Even what biologists describe as inanimate, we call our relatives.
>
> This calling of creation into our family is a metaphorical construction that describes the relationship of love and faithfulness between human persons and the creation. Our identity as creatures in the creation cannot be expressed without talking about the rest of creation, since that very identity includes a sense of the interdependence and connectedness of all life. (1992, p. 29)

Stark uses the language of accountability to deepen this understanding of relationship, noting that Anishinaabe Nations have continually acknowledged their responsibilities to creation through their accountability to the Creator *Gizhe-Manidoo* (2013, p. 348). These common features of Indigenous worldviews have also been observed among Indigenous peoples on other continents, such as the reindeer-herding

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[2] In referring to "Indigenous cosmologies" I mean common Indigenous conceptions as to the nature of the universe, its origins, and the place and role of humans in the universe. These cosmologies become a "description of personalities and of the relationships among them" such that the laws of nature "can be seen as contracts among clans or lineages—contracts the leaders of communities are charged with maintaining under varying conditions" (Aldana, 2005). While it is largely synonymous with "Indigenous worldviews," "cosmology" is used here to further emphasize the deep conceptual and spiritual foundations underlying these worldviews, in parallel with the different but equally deep cosmological roots of European and settler worldviews.

Evenki people of Siberia. The Evenki are said to be grounded in an "ecological ethic," meaning a "a system of mutual responsibility of people to nature and her spirit masters, and of nature to people" such that it "encompasses the norms and rules regulating the social community's relations with the natural environment (incorporating mythological ideas and ethical concepts), as well as the practical actions based on these norms and rules" (Sirina, 2008, p. 9).

As this scholarship shows, Indigenous worldviews in general emphasize how humans are situated within webs of relationships and mutual responsibilities. This includes not only socio-ecological relationships across the species boundary, but an orientation towards continuance of "the group," meaning Indigenous communities (or Nations), rather than the privileging of individual rights that underlies western liberal concepts of sovereignty (Coffey & Tsosie, 2001, pp. 197, 198).

Importantly for the theme of this thesis, land also figures prominently in Indigenous worldviews and associated concepts of Indigenous sovereignty. Relationships to land (in the expansive sense described in Chapter 1) are the central and overriding aspect of Indigenous epistemologies (Coffey & Tsosie, 2001, p. 204). Alfred, while rejecting the specific language of sovereignty for Indigenous peoples in favour of "Indigenous nationhood," also emphasizes the importance of using land in ways that respect spiritual and cultural connections between Indigenous peoples and their territories, committed to ensuring benefits for natural as well as human occupants (2005, p. 46). In her example of the Algonquin Nation of Quebec, Pasternak describes members of that Nation as belonging to that land on the basis of their respect for the life-giving nature of the forest, and a responsibility to protect the land, a concept fully in keeping

with the relationship-based Indigenous worldview (2014, p. 146). This concept of responsibility to the land and the life it sustains is also clearly articulated from a Coast Salish perspective by Naxaxalhts'i, Albert (Sonny) McHalsie (Sto:lo, Nlaka'pamux), stating "we have to take care of (our land). All those things, those are all ours, and we have to take care of them because nobody else can take care of them but us" (2007, p. 130).

Geographical conceptions of sovereignty also differ widely between European models and Indigenous-based notions of sovereignty. As noted above, Westphalian sovereignty is strongly predicated on the idea that no two sovereigns can rule over a single space. Territories are by definition held exclusively by one sovereign or the other. Indeed, examples of sovereignty being shared within the European-based system are rare and usually seen as temporary, such as the joint occupancy of Oregon Country by the United States and Great Britain from 1818 to 1846 in what is now the northwest United States and most of British Columbia.[3] Consequently, the European sovereignty model is explicitly tied to a concept of "hard" boundaries in both space and time, precisely defined and resistant to change. Indigenous conceptions of territory and relationships to it are often strikingly different from settler norms. Thom describes these differences in a Coast Salish context, by highlighting a "paradox in the notion of representing cartographic boundaries for an indigenous community whose core social relationships are embedded in a moral ethos of borderless kin networks" and describing how, despite a tradition of ethnographic maps depicting Coast Salish peoples in discretely bounded territories, the

[3] Of course, this arrangement between two colonizing powers applied the doctrine of discovery, and completely ignored the area's indigenous peoples and their sovereignty over land and sea.

more recent “land claims maps submitted by Coast Salish political leaders reveal a nest of overlapping and interlocking lines” (2009, p. 179). Furthermore, territorial boundaries

> based strictly on land use and occupancy (do) not take into account broader relationships between people and place. Property, language, residence and identity are categories also appropriate to Coast Salish territorial boundaries, while ideas and practices of kin, travel, descent and sharing make boundaries permeable. (Thom, 2009, p. 179)

Nadasdy describes how the Indigenous peoples in the Yukon Territory conceived of their relationships with land and neighboring Indigenous peoples, noting that “social relations among Yukon Indian people were ordered by principles of kinship and reciprocity rather than territoriality” (2012, p. 507). He notes also how, using the Yukon example, territoriality has become “virtually the only template available to indigenous peoples seeking a measure of self-determination” even though in doing so they are called upon in a culturally inappropriate way to “play the game as formulated by the colonizer” including its focus on a territorial framework for sovereignty (p. 505). Nadasdy goes on to document how this process introduces forms of ethno-nationalism among Indigenous peoples that were not present before colonization.

In a similar vein, Stark also speaks to Anishinaabe kin- and relationship-based geographies as a

> (d)ense web of clans, kinship ties, and loyalties to non-Anishinaabe nations existed within nationhood, not as forces that opposed it. These overlapping networks, to which access to land was crucial, were far more complex than the

> American or Canadian federal governments wished. They frustrated American and Canadian efforts to impose fixed land boundaries, obtain land cessions, and divide Native nations internally and from one another. (2012, pp. 122–123)

Drawing on a South American case, Postero and Fabricant also stress the relational basis of Indigenous forms of sovereignty

> When the Guaraní of Charagua assert sovereignty, they (mostly) use the term to describe to describe their efforts to govern themselves in their territories. But they insist that sovereignty is embedded in local relationships, including those with the land and broader natural environment, and that it is not owned by the state, but by those who have long-standing reciprocal relationships with the land and being in that territory. Moreover, the forms these relationships take may take look very different from liberal democracy. (Postero & Fabricant, 2019, p. 99)

These unique Indigenous forms of sovereignty clearly prevailed over the territorial spaces that became Canada. As Tully puts it, "when Europeans invaded and began to settle in North and South America, they encountered free, vibrant, sovereign indigenous nations with complex forms of social and political organization and territorial jurisdictions" (2000, p. 38). Tully sees Indigenous Nations (both past and present) as negotiating from a place of equal status to the (Canadian) Crown, but also suggests that Indigenous sovereignty is not "state sovereignty" (presumably meaning not sovereignty in the classic Westphalian form) but rather a type of self-governing, autonomous stateless

sovereignty that "is equal in status but not in form" to state sovereignty (2000, pp. 53–54).

Have Indigenous Sovereignties Been Extinguished?

Having argued just now that fully legitimate forms of Indigenous sovereignty were in place before the arrival of the settler-colonizers, it is necessary to consider whether Indigenous sovereignties were legitimately extinguished within what became the Canadian state.[4] Tully refers to the doctrine of discovery as underpinning the "strategies of extinguishment," by which a settler society constructs exclusive jurisdiction over the entire territory of the state and thus enables the intensive settlement and capitalist growth inherent to the settler-colonial model (2000, pp. 40–41). While the doctrine of discovery can be relevant to assertions of sovereignty *among* competing European colonizing powers and their settler-state inheritors, and can be sufficient in combination with other actions (including settlement itself) to "establish sovereignty vis à vis other European nations," it does nothing to diminish the presence, then and now, of real and vibrant Indigenous polities exercising their own Indigenous sovereignty (Tully, 2000, p. 52).

Nor does the idea of conquest as a means of obtaining sovereignty provide a mechanism for the surrender or abrogation of Indigenous sovereignty in what is now Canada. Despite popular conceptions in Canada that the arrival and subsequent domination of the settler-state territory by colonizers represented a kind of *de facto*

[4] Whether Canadian state sovereignty is internally legitimate in the face of Indigenous counter-claims is important question, but one which I do not take up here; proceeding instead from the position that Jeremy Webber adopts when he notes that Canada's institutions and its citizenry *presume* Canadian sovereignty to be a fact of history and now fully operational, whether or not such a claim is actually valid (2016, p. 70)

conquest, such a premise is neither morally sound nor does it hold up in Canadian settler-state law (Borrows, 2010, pp. 19–20). The Supreme Court of Canada, in *Haida v. British Columbia*, states explicitly that Indigenous peoples in what is now Canada were here when Europeans came and were never conquered (p. 19).

But did some Indigenous Nations surrender their sovereignty to the Canadian state or colonial predecessors by way of consent through treaty? While this question is currently less relevant in British Columbia than it is in other Canadian regions given a general absence of treaties in that province, I explore it briefly here to assess the potential strength of a dual sovereignty model for the extensive areas of Canada where treaties have been made.

The concept of treaty-making between sovereign nations was not introduced to North America by Europeans. On the contrary, this continent's Indigenous peoples already possessed a strongly developed cultural and political system of agreement-making between their Nations, founded in Indigenous worldviews that emphasize a web of relationships that include relations between peoples (Asch, 2014, p. 75). Treaty-making between colonizers and Indigenous peoples in what is now Canada also has a long history, starting with the Peace and Friendship Treaties made in Atlantic regions from 1725 to 1779 (Indian and Northern Affairs Canada, 2010, p. 4). The Treaty of Niagara of 1764 was also an early agreement in which the "Two Row Wampum" form was used as a highly symbolic expression of Indigenous treaty-making concepts and practices. Overall, these 18th century treaties cannot be treated as a surrender of Indigenous sovereignty, even when read in the context of the British Royal Proclamation

of 1763 (Borrows, 1997, p. 170).[5] Later in that same century, the British entered into a number of land surrender treaties with Indigenous peoples in the St. Lawrence and Great Lake Regions to accommodate refugees, both settler and Indigenous, displaced northward in the aftermath of the American Revolution (Indian and Northern Affairs Canada, 2010, p, 5).

A later and notable era of treaty-making followed Canadian Confederation in 1867 and that newly formed settler Dominion's 1870 "acquisition" of the vast region then referred to as the Northwest Territories.[6] For the Canadian state, the resulting "Numbered Treaties" enabled European-origin settlers and settler corporations to take up land and resources within the Indigenous territories that make up the Canadian West (Asch, 2014, p. 76).

Treaty 8 contains English-language text that is typical for these treaties, stating that the Indigenous signatories "do hereby cede release, surrender and yield up…forever, all their rights, titles, and privileges whatsoever, to the lands" within the treaty area (Indigenous and Northern Affairs Canada, n.d.-b). However, this seemingly stark and explicit language contrasts sharply with the understandings that participating Indigenous Nations brought to, and took away from, the oral negotiations that generated the Numbered Treaties. As Asch maintains, Indigenous parties to all the Numbered Treaties

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[5] The use of the Two Row Wampum was first recorded in 1613 through treaty-making between the Haudenosaunee and Dutch settlers in what is now New York State, which established what Indigenous parties continue to describe as a living treaty relationship (Onondaga Nation, n.d.).

[6] Before 1870, the Hudson's Bay Company served as the vehicle for asserting British colonial sovereignty in northwestern North America. In keeping with the colonialist history of Canada, the transfer of this land to the newly formed Canadian state occurred without any attempt to seek consent from Indigenous peoples.

"speak with one voice in asserting that what the Crown asked for was permission to share the land, not to transfer the authority to govern it" (2014, p. 77).[7]

As Starblanket describes, settler discourse and practice have gone even further to read the Numbered Treaties as not only a (contested) surrender of land, but as a surrender of sovereignty

> It is through the continual proliferation of treaty mythologies that the Canadian government legitimates its presence on and title over much of central and western Canada. Further, mythologies of treaties as mechanisms through which Indigenous peoples surrendered not just land but also (their) associated powers of governance promulgate misinformation, half-truths, and uncertainty about Indigenous peoples' political status that cloud the contemporary legal and political implications of treaty relations. (Starblanket, 2019, p. 446).

Modern treaties, as created in Canada since 1973, use different language but ultimately pose similar questions. For example, the 1998 Nisga'a Treaty and other more recent treaties in British Columbia stipulate that the agreement itself sets out the entirety of the Indigenous signatory's rights (p. 76). In other words, if a right is not specified explicitly in the agreement the rights are assumed to be nullified. As with the Numbered Treaties, Indigenous sovereignty does not appear to be mentioned in these modern treaty examples, which is unsurprising given the state's prevailing assumption of a single and

[7] In this context, the Crown is represented by the Canadian federal government.

overriding state sovereignty. In any case, the impact of modern treaties on Indigenous sovereignty remains open to debate.

In summary, settler-state assumptions about an ascendant state sovereignty, based as they are on a misplaced adherence to the doctrine of discovery, cannot be seen as even remotely capable of extinguishing Indigenous sovereignties. These Indigenous sovereignties should be taken as a continuing fact with Canadian space. This is particularly so in areas that, like most of British Columbia, are not subject to treaties. But a substantial body of scholarship also supports a view that the Numbered Treaties and other historic treaties did not serve to erase Indigenous sovereignty from those extensive territories to which they apply. It is also possible to see modern treaties in the same light, given that sovereignty itself is not mentioned in the treaty texts and so presumably remains unaddressed.

Envisaging Dual Sovereignty

Drawing on numerous Indigenous academics and treaty Elders, Starblanket summarizes an Indigenous view of treaties (in this case the Numbered Treaties) as "a legal and political framework intended to govern the co-existence of multiple beings in a shared space" (2019, p. 445). In parallel fashion, Tully suggests that Indigenous peoples in Canada have shown "a willingness to negotiate shared jurisdiction of land and resources" (2000, pp. 53–54). By his analysis, Indigenous peoples appear willing to give their consent to the assertion of coexisting sovereignty on three conditions

> First, that the indigenous peoples continue to exercise their own stateless, popular sovereignty on the territories they reserve for themselves and the newcomers are

> not to interfere. Second, the settlers can establish their own governments and jurisdictions on unoccupied territories that are given to them by indigenous peoples in return for being left alone on their own territories. Third, indigenous peoples agree to share jurisdiction with the newcomers over the remaining, overlapping territories so that one party to a treaty does not extinguish its rights and subordinate itself to the other (Tully, 2000, p. 53).

This idea that dual sovereignty brings a shared jurisdiction over the remaining overlapping territories pertains directly to the provincial "Crown land" which is the focus of this thesis. A similar stratification of Indigenous space can be seen in the United States, for which Biolsi suggests the following:

> The first (kind of Indigenous space) is tribal sovereignty with a Native homeland (a modern tribal government with its tribal citizenry on its reservation)….The second is territorially based rights to off-reservation resources that imply co-management of (or perhaps even shared sovereignty over) overlapping territory of the tribes on one hand and the federal and state governments on the other (Biolsi, 2005, p.240).

Although Tully's analysis seems to focus specifically on treaty, I would argue these "conditions" can be applied usefully in areas where treaties are not (or not yet) in place, as in the British Columbia cases examined below.[8] Tully emphasizes the kind of

[8] As indicated previously in this chapter, the presence of a treaty does not (or should not) be seen as diminishing Indigenous sovereignty; therefore, I position Indigenous sovereignty as equally present in treaty and non-treaty areas. The important question of whether an Indigenous-state treaty is necessary to legitimize settler-

relationships that are needed in the context of dual sovereignty, where the settler-state and Indigenous Nations

> treat each other as equal, self-governing, and co-existing entities and set up negotiation procedures to work out consensual and mutually binding relations of autonomy and interdependence…subject to review and renegotiation when necessary, as circumstances change and differences arise. (2000, p. 53)

These forms of relationship are consistent with other important contributions Tully makes, including his assertion about the need for dialogical versus monological forms of recognition, which Chapter 4 explores at greater length.

Webber, in his own reflections on Canadian and Indigenous sovereignty, speaks instructively of

> a bracketing of the question of sovereignty, not in a way that ignores the question, but that suspends its final determination, allowing multiple assertions of sovereignty to exist in a continual, unresolved – perhaps never resolved – tension (Webber, 2016, p. 63).

Webber argues for an alternative (or, in his sophisticated and nuanced treatment, an additional) conception of sovereignty that is rooted in "the idea that law and the associated governmental rights originate from within a particular people's own traditions" (p. 81).

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state sovereignty is not one I take up in this thesis. Therefore, in non-treaty areas I see state sovereignty as simply an asserted and de facto presence, while acknowledging that the political legitimacy of such an assertion is very much open to question.

Kent McNeil also focuses on the idea of a plurality of sovereignties, with the legal basis and legitimacy of sovereignty contingent on the legal order chosen, be it international, state or Indigenous. He acknowledges the Canadian state's effective occupation and jurisdictional control over the territory "included in Canada on contemporary maps" as a de facto sovereignty (2018, p.302–303). However,

> (e)ven if the Crown has *de jure* sovereignty over Canada in Canadian domestic and international law (which, as we have seen, is not entirely clear) the application of these bodies of law to assess Crown acquisition of sovereignty vis-à-vis the Indigenous peoples lacks legitimacy because they had no role in creating these legal systems (and) did not consent to their application in this context. (2018, p. 304)

For the purposes of this thesis, it is important to note the presence of this outstanding question raised by McNeil (and others) regarding the legitimacy of Canadian asserted state sovereignty in the absence of some form of legal or constitutional reconciliation with Indigenous sovereignties. While I see this as a matter of profound importance, it is beyond the capacity of this project to explore in any meaningful way. Instead, I will simply proceed (imperfectly) from the premise that an assumed and pervasive Canadian state sovereignty is a *de facto* reality in Canada, and leave it to others to address the means by which Canadian state sovereignty might be legitimized in relation to present and co-existing Indigenous sovereignties.

Whether state sovereignty is legimate or otherwise, Webber and McNeil both argue that distinct conceptions of an Indigenous sovereignty rooted in Indigenous law can

be arrayed against traditional European conceptions of state sovereignty as exclusive power, to understand how contested and multiple forms of sovereignty are at play today between Indigenous peoples and Canada. Starblanket speaks of an Indigenous understanding of "diplomatic process for negotiating relations of non-violent and generative coexistence between living beings in shared geographies" (2019, p. 444). Thus, multiple sovereignties in the same space can be positioned as continually – and perhaps productively – in tension.

Of course, state sovereignty has never been fully operational, even within European and settler states. Pasternak applies the concept of jurisdiction as a means of assessing actual applications of sovereignty within the Canadian settler state (2014). Jurisdiction can be regarded as the dynamic aspect of sovereignty, making the notion of sovereignty visible and describable in strictly legal or technical terms (Yang, 2012). Pasternak shows how, within an imperial project such as that which created Canada, state jurisdiction has often been imperfect and territorial control has not been realized in a straight chronological process (2014, p. 148). Moreover, in her words, "new kinds of differentiated legal zones have emerged where Indigenous territorial jurisdiction forms lumps that betray patterns of partial and uneven state sovereignty" (p. 148).

Historical analysis can also shed light on the potential for and nature of dual sovereignty in Indigenous/Canadian space. Forms of co-existing sovereignty can be more easily discerned in the era of early European/settler interactions in North America, where European colonial powers applied the doctrine of discovery to assert their territorial interests with respect to each other, but their territorial assertions within their claimed territories were often tenuous at best. For the early colonizers in New France,

> the French had the physical means to penetrate into the interior, (but) they could do so only with the agreement of the Indian nations. As long as the Indians received benefits and saw no threat to their own interests, they allowed the French to establish trading posts, and even a few settlements on their lands. (Eccles, 1969, p. 5)

This situation where Indigenous sovereignty and political power were clearly visible seems to have persisted into the British colonial era when "the new (British) political rulers of Canada after 1763 were forced to continue old (French) Canadian policies" (Eccles, 1969, p. 187). This visible interplay of two active sovereignties over the same space was ultimately obscured (although not necessarily altered) by the advent of widespread settlement starting in the 19th century and bringing the active manifestation of the imperial settler-colonial project and the concomitant ascendency of a seemingly universal (settler) state sovereignty.

My work here does not seek to investigate whether and how the idea of dual sovereignty might penetrate the realm of Canadian constitutional law. Joshua Nichols does speak of a "new constitutional order" that could emerge when the Westphalian underpinnings of the current assumed Canadian constitutional order are cast aside.

> (I)t is entirely possible to remove the doctrine of discovery and its associated legal fictions from the constitutional structure of settler colonies such as Canada…by doing so, one is not confronted by a legal vacuum, but by an abundant wealth of practical resources that help give shape to the "new constitutional order." (2018, p. 10)

Although constitutional questions will remain unexplored here, I do hope that the forms of agreement-making I evaluate in this thesis can provide insight into the kind of practical resources that Nichols describes.

Apart from the legal and constitutional debates that have arisen specifically in relation to these lands, the 2008 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has become an important part of Canadian Indigenous rights discourse over the past decade. (United Nations, 2008). Adoption of the Declaration in Canada was specifically recommended by the Truth and Reconciliation Commission in 2015 (p. 4). While Canadian governments have been slow to adopt the Declaration, the province of British Columbia finally acted in late 2019 when the province's legislature unanimously adopted the UNDRIP within provincial law (Declaration on the Rights of Indigenous Peoples Act, 2019). The UNDRIP does not employ the language of sovereignty, but rather emphasizes the right of Indigenous peoples to self-determination. For example, Article 3 of the Declaration speaks of Indigenous peoples having "the right to self-determination" and by virtue of that right they "freely determine their political status." Article 4 indicates that self-determination also means Indigenous peoples "have the right to autonomy or self-government" (United Nations, 2008, p. 8). This emphasis on self-determination is not at odds with dual sovereignty. In fact, the very presence of ongoing Indigenous sovereignties, living in tension with the asserted sovereignty of the Canadian state, arguably gives rise to this self-determination right. Self-determination and self-government must be seen as expansive rights, rather than limited and devolved authority analogous to that of municipalities. As Joshua Nichols emphasizes, "(t)he

minimal requirement of meaningful self-government is the recognition of its inherent claim to internal sovereignty, legislative power, and underlying title" (2016, p. 370).

The language of self-determination could also, regrettably, be deployed to limit the application of to those lands specifically allocated to Indigenous occupation or authority, by dictate of the state, by treaty agreement, or through Canadian judicial confirmation as "aboriginal title lands." It does seem clear that Indigenous peoples have less range for exercising Indigenous sovereignty on those lands within their territories that settlers have intensively occupied for (for example) residential or agricultural uses. But this does not mean Indigenous sovereignties have been erased from these areas (or, following an Indigenous worldview, ever can be erased). Rather, such areas simply constitute a part of an Indigenous territory where the scope for exercising Indigenous sovereignty and governance is now constrained by the practical realities of an overwhelming settler presence. On the "Crown lands" that cover most of the larger Canadian provinces and northern territories, Indigenous sovereignty can (and should) have substantial scope for application, and act very much in tension with the assumed (de facto) sovereignty of the settler state, consistent with the idea of "overlapping territories" raised by Tully and Biolsi. It is this particular type of shared Indigenous/Crown space, and the manifestations of dual sovereignty it can embrace, that the balance of this thesis examines.

This chapter has sought to establish that Indigenous sovereignties persist over the territorial space of Canada, constituting a unique form of sovereignty that co-exists with a de facto Canadian state sovereignty. None of the devices that the British Imperial or Canadian state have deployed has erased the presence of an Indigenous sovereignty

founded in Indigenous worldviews and law. Any presumption by Canadian state institutions, including the courts, of an exclusive Westphalian-style Canadian sovereignty is ultimately untenable, given legitimate Indigenous sovereignties on the same territory. Dual or co-existing sovereignty is, in my view, a superior conception for articulating and understanding a future political relationship between the Canadian state, its institutions and citizens, and the Indigenous polities and persons that live upon the same territory. That relationship may be summarized as follows: two forms of sovereignty, legitimate within their respective worldviews, exercising their jurisdictions and constructively engaged in a respectful, ongoing, dynamic relationship.

Chapter 3 – Indigenous-State Agreement-Making in British Columbia

Agreement-making between the colonizing state and Indigenous peoples in what is now British Columbia has ebbed and flowed since the arrival of the colonizing state. While some agreement-making occurred in the colonial period which preceded British Columbia's establishment, much of the province's history has involved long periods where neither the Canadian federal nor the provincial state sought to engage in agreement-making of any form (see British Columbia Claims Task Force, 1991, pp. 5–6).[9] In the past three decades, however, multiple forms of Indigenous/state agreements have emerged. This chapter provides historical and political context for these agreements to situate the subsequent analysis of specific agreements.

British Columbia as a Colonizing Entity – Landscape and History

The multiplicity of Indigenous peoples that overlap with British Columbia's territorial claims carry diverse stories and lived experiences. Without meaning in any way to discard or devalue these Indigenous stories or experiences, I recognize that they are not mine to tell. For that reason I offer just one story as context – that of British Columbia as (initially) a British Imperial and (subsequently) a Canadian instrument of colonization.

British Columbia is one of ten provinces defined under the Canadian Constitution, which, along with the three northern Canadian Territories and vast territorial seas on

[9] Cole Harris points to how the terms of union by which British Columbia entered Confederation in 1871 creating "years of Dominion (federal)-provincial acrimony on the Native land question" because Indigenous peoples were placed under federal responsibility while lands were assigned to provincial jurisdiction; a situation which Harris suggests tended to "fossilize" an existing restrictive colonial-era set of Aboriginal land policies (2000, p. 73).

three coasts, makes up the area of lands and waters over which the Canadian state asserts sovereignty. The province's origins as a colonizing instrument predate its 1871 entry into the Canadian federation. The Oregon Treaty of 1846 confirmed Britain's place as the sole colonial power asserting (Westphalian-type) sovereignty over what is now the southern two-thirds of British Columbia. This treaty between the United States and the United Kingdom, two states within the European Westphalian construct, neither acknowledged nor engaged the affected Indigenous Nations. The state-to-state negotiations that generated the Oregon Treaty reveal the doctrine of discovery at work, with a concomitant erasure of Indigenous peoples (Claxton & Price, 2019, p. 133).

It is worth reflecting for one further moment on the British Crown's 1846 assertion of colonial sovereignty over what is now British Columbia, a date that has remained significant in Canadian Aboriginal law (Claxton & Price, p. 130). The colonizer's narrative for British Columbia positions this date of British sovereignty assertion as the moment at which Indigenous sovereignties, if indeed they existed, were eliminated. As argued previously here, a superior conceptual model would see this moment as no more than the imposition on this territorial space of a particular European conception of sovereignty, rendered highly conditional and imperfect by the presence (and continuation) of already established and fully legitimate Indigenous sovereignties over that same territory. To the extent that this introduces a tension around apparently co-existing assertions of sovereignty, it was the assertion of British sovereignty, and not the presence of existing Indigenous sovereignties, that introduced this tension.

Shortly after the British Crown's assertion of sovereignty, Crown colonies were established over Vancouver Island in 1849, and a new mainland colony of British

Columbia in 1858. These two colonial entities were subsequently merged under the name of British Columbia in 1866, and the province entered the Canadian confederation in 1871 within more or less its current boundaries.[10] As always, these colonial institutions arrived with no agreement with or reference to the territories' Indigenous peoples, many of whom had already begun to suffer the first profound effects of colonization through introduced European diseases and the early ecological consequences of European exploitation (e.g., the local extinction of the sea otter).

With often mountainous terrain and frequently adverse soils and climate, the province contains relatively few areas that are suitable for agricultural development. The capitalist colonization of British Columbia's territory, therefore, was oriented from the start to the extractive exploitation of natural resources. At the founding of the first colony of Vancouver Island, the fur trade was already long established as the principal arena of European economic exploitation, supported as it was through an economic association with Indigenous peoples. This early inter-cultural collaboration soon changed, however, with the coming of a significant gold rush in the Fraser River watershed, with a sudden influx of non-Indigenous people and attendant ecological impacts. Mining has continued to feature prominently in the province's economy since the first gold rush. The exploitation of Pacific salmon also became important to the capitalist economy in coastal areas, again with no regard for Indigenous sovereignty over, reliance on, and stewardship of that distinct and vital resource. The logging and forest products sector emerged by the early 20th century as an economic engine of the settler state and remained so for the

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[10] The Alaska-British Columbia border with the United States had not been agreed at that time, nor had the marine border in the vicinity of the San Juan Islands between Vancouver Island and the U.S.

balance of the century, with transformative and at times destructive results for forested landscapes over much of the province. Energy development proceeded from the early extraction of coastal coal for international ocean travel to the later development of major coal mines in the Rocky Mountain region. The second half of the 20th century saw massive hydro-electric developments, with at times catastrophic consequences for impacted First Nations.[11] Oil and gas extraction in the province's far northeast have more recently become a key site of capitalist exploitation.

British Columbia's transportation infrastructure predates Canadian Confederation, with Victoria serving as an important port of call along the West Coast for British naval and commercial operations. From the founding of the Canadian state (and British Columbia's entry into Confederation in 1871) the province assumed national importance as a Pacific gateway, with railways and eventually highways connecting to Pacific ports, most notably at Vancouver. That dominant city, as well as other urban centers in the province, have now evolved towards a diverse economy and (belatedly, after decades of sustained white supremacist and exclusionary immigration policies) a culturally diverse population consistent with newer national immigration patterns over the past half century.[12]

This development emphasis on resource extraction rather than agriculture over most of the province, coupled with a provincial policy of (in general) maintaining Crown

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[11] The Tsay Keh Dene Band and Cheslatta Carrier First Nation, located in northeastern in central British Columbia respectively, are two examples of Indigenous peoples who suffered extraordinary impacts due to 20th century hydro-electric developments.

[12] British Columbia's urban centres have also re-emerged as important sites of habitation for Indigenous peoples from across the province and Canada, with the 2016 census showing, for example, that over 60,000 persons of aboriginal identity reside within the Vancouver Census Metropolitan Area, of a total population of over 2,460,000 (Statistics Canada, n.d.).

ownership of non-agricultural resource lands, has meant that the vast majority of the province's territory has remained as (in Canadian-state language) "Crown land." While the Canadian (settler) Constitution assigns jurisdictional responsibility for Indigenous peoples to Canada's federal government, this same Constitution dictates that these lands and most of the resources they provide are subject to provincial jurisdiction. The province's effective possession (in a Canadian constitutional sense) of these "Crown" lands and most of the attendant resources creates important points of interface with the Indigenous peoples whose territories coincide with the province's asserted territory. A key exception to the province's dominance of (settler) natural resource jurisdiction is the federal responsibility for fisheries and navigable waters, a conspicuous place of direct interface for the Indigenous peoples whose lives (in many cases) are economically, culturally, and spiritually interwoven with salmon and other marine life. Although the history of Indigenous and (federal) state interactions on the use and management of fish will not be explored in this project, it is clear that any form of "exclusive" Indigenous right over fish was never accepted by the Canadian state, who instead applied a British legal tradition whereby fisheries constituted an open-access resource with the (federal) Crown as holding the "right to fish…in trust for British subjects" (Harris, 2002, p. 201).

Canadian federal jurisdiction, in British Columbia and elsewhere, also extends to responsibility for "lands reserved for Indians" (Department of Justice Canada, 2013, pp. 26–27). Cole Harris recounts the history of Indian reserve delineation in the province, something that he sees as lying "at the heart of colonialism in British Columbia" (2002, p. xxv). This colonizing action – proceeding as it did despite the frequent objections of Indigenous peoples – resulted in more than 1,500 small and widely

scattered reserves across the province, many insufficient to meet the needs of Indigenous communities, and making up a geographical pattern of reserve lands unlike that of any other part of North America (Harris, 2002, p. 265; Thistle, 2015, p. 39).

Early Agreement-Making in British Columbia

Indigenous/state agreements began to take shape in what became British Columbia soon after the British Crown's assertion of sole sovereignty in 1846. Between 1850 and 1854, the colonial government of Vancouver Island entered into 14 treaty agreements with Indigenous Nations whose territories fell over portions of the asserted territory of the Colony of Vancouver Island colony (Vallance, 2015, p. 1).[13] These are commonly known as the "Douglas Treaties," in reference to Governor James Douglas, who acted for the British Crown to enter into the treaties. The Douglas Treaties differ from other early Indigenous/state treaties in Canada in bearing more resemblance to treaties concluded in other parts of the British Empire in the mid-19th century such as Aotearoa/New Zealand (Vallance, 2015, p. 72). British treaty-making policies in eastern North America were, by contrast, derived from the Royal Proclamation of 1763 and the alliance system taken over from the preceding French regime (Harris, 2002, p. xxviii).

This brief period of early treaty-making in what is now British Columbia did not continue beyond the 1850s. As European settlement accelerated

> British Columbia (settler) society saw itself as the successor of European explorers, who believed they had "discovered" an unknown, even empty, land that

[13] As noted earlier, the Colony of Vancouver Island formed the first colonial administration within what is now British Columbia. The colony of Vancouver Island was merged with the younger mainland colony of British Columbia in 1866 (Perry, 2004)

> was free for the taking. Thousands of years of aboriginal habitation in the area were ignored. First Nations were accorded no place in colonial British Columbia. Individual aboriginal people were denied recognition, respect, dignity, and even the minimal opportunity that was implicit in the policy of assimilation. (British Columbia Claims Task Force, 1991, p. 5)

This continuing expression of the terra nullius doctrine explicitly disavowed even the historical presence of Indigenous sovereignties. This policy of denial was but one part of a multifaceted colonial project of Indigenous dispossession and oppression in British Columbia, analogous with that of the experience of Indigenous peoples throughout Canada and beyond, but exhibiting distinctive legal, constitutional, and political features.

Treaty-making ceased altogether over most of British Columbia for well over a century. An important exception occurred between 1900 and 1914 in the northeastern portion British Columbia, where several First Nations "adhered" to Treaty 8, under which the government of Canada also entered into a treaty relationship with many First Nations and Metis peoples across what is now northern Alberta, northwest Saskatchewan, and southeastern portion of the Northwest Territories (Tesar, n.d.). In keeping with the policy of denial that British Columbia had adopted in the previous century, and with the assignment of responsibility for Indigenous peoples to the federal government upon British Columbia's 1871 entry into Canadian Confederation, the province was not a party to Treaty 8. Cole Harris' work summarizes how, throughout the post-Confederation period, the provincial and federal governments worked (although often in acrimony) to create limited and often inadequate Indian reserves in the province without resort to the

treaty format, or any reference to any wider land and resource rights that might be held by Indigenous peoples in what became British Columbia (2002).

The Revival of Indigenous/State Agreement-Making in British Columbia

While Indigenous/state agreement-making in British Columbia largely ceased after the mid-1800s, the Indigenous peoples in what had become British Columbia remained active in asserting their rights and sovereignty, despite the onslaught of colonialism. A "Memorial" presented to the Prime Minister of Canada in 1910 by the "Shuswap, Okanagan, and Couteau Tribes" (Secwépemc, Okanagan, and Nlaka'pamux Nations) is one notable recorded example of such assertions that continue to echo through the present (Feltes, 2015, p. 469). The Nisga'a Nation also engaged in an ongoing campaign to affirm their sovereignty in the face of colonial encroachments, including a formal petition to the British Privy Council in 1913 (Allen, 2004, pp. 233–234).

The Nisga'a example has particular significance for more recent historical developments, as it was the sustained efforts of that Nation to assert its sovereignty in relation to Canada that ultimately created a chain of events re-igniting Indigenous/state agreement-making within British Columbia. State-imposed restrictions on Indigenous action began to ease in 1951 with the lifting of provisions in the Canadian *Indian Act* that prohibited the legal pursuit of Indigenous claims (British Columbia Claims Task Force, 1991, p. 7). By the 1970s, a number of Nisga'a leaders acted on behalf of their communities to pursue legal action against the province of British Columbia, seeking a declaration that the "aboriginal title…to their ancient tribal territory…has never been lawfully extinguished" (*Calder et al. v. Attorney-General of British Columbia*, 1973).

Although the Nisga'a leaders were ultimately unsuccessful in obtaining such a declaration from the Court, a majority at the Supreme Court of Canada acknowledged aboriginal title as pre-existing the establishment of colonial and Canadian sovereignty (McCrossan & Ladner, 2016, p. 415). The Court saw the pre-existence of Indigenous society as a basis for a set of continuing rights, ranging from title to usufructuary rights, which were (somehow) transferred into the Canadian legal order in a way that did not challenge the assumed hegemony of Canadian state sovereignty.

This acknowledgement in *Calder* of persistent Indigenous rights, albeit within the Canadian constitutional framework, was a significant catalyst for the eventual move to a new period of agreement-making in British Columbia. The Canadian federal government began treaty negotiations with Nisga'a in 1976, although the province of British Columbia continued to deny responsibility for relations with Indigenous peoples and did not participate in these negotiations (British Columbia Claims Task Force, 1991, p. 8). By the 1980s, a combination of direct action by Indigenous peoples, court actions, and growing public support for Indigenous rights led the provincial government to revisit its policy of non-engagement (p. 8). In the same period, the Canadian *Constitution Act* of 1982 acknowledged the existence of Indigenous rights within Canada's territorial space, stating in section 35(1) that "(t)he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" (Department of Justice Canada, 2013, p. 63).[14] By 1990 the provincial government had joined the treaty negotiations already underway between Nisga'a and the federal government, and agreed to work with

[14] "Aboriginal" as used in the 1982 *Constitution Act* is assumed here to be synonymous with "Indigenous."

Indigenous representatives and the Canadian government to establish a tri-partite treaty process, with the understanding that modern treaties would also have constitutional protection under section 35(1) (British Columbia Claims Task Force, 1991, p. 9). Thus was born the current British Columbia treaty negotiations process, described as "voluntary and open to all First Nations in British Columbia. Active or completed negotiations involve 40 First Nations, representing 76 Indian Act bands, totalling 38% of all Indian Act bands in BC," with completed negotiations (and therefore modern treaties in place) in just three cases: Maa-nulth First Nations, Tla'amin Nation, and Tsawwassen First Nation (BC Treaty Commission, n.d.-a).

Additional Supreme Court of Canada judgements clarified the Canadian legal framework for Indigenous/state relations for "Crown land" and resources through the 1990's and 2000's. Landmark judgements in this period included *R. v. Sparrow* in 1990, *Delgamuukw v. Britsh Columbia* in 1997, *Haida Nation v. British Columbia* in 2004, and *Taku River Tlingit First Nation v. British Columbia*, also in 2004 (Ochman, 2008). The latter two judgements were pivotal in establishing and describing an obligation for state governments (federal or provincial) to consult with affected Indigenous governments before any state decisions on the development, management, or administration of land and resources, where such decisions might infringe on Indigenous rights (pp. 321–322). Furthermore, the courts affirmed that accommodation must be provided to the affected Indigenous government commensurate with any infringement. *Tsilhqot'in Nation v. British Columbia* in 2014 was also of landmark importance for affirming an expansive

view of aboriginal title, recognizing that Nation as holding title to a large area within their claimed territory (Borrows, 2015, p. 711).[15]

While these court decisions continued to assume a single hegemonic Canadian sovereignty, the legal confirmation of consultation requirements created important new leverage for Indigenous peoples. The implications were enormously significant for activities on the provincial "Crown lands" which make up the vast majority of British Columbia's area. In the decades before and after the turn of the 21st century the continuing exploitation of natural resources from these lands remained critical for both the province's rural economy and the provincial economy overall. But the provincial government's long disavowal of Indigenous rights and its denial of any legal responsibility for dealing with Indigenous peoples had been substantially overturned. Within a Canadian constitutional context, state law had thus established Indigenous peoples and their governments as important players whenever land and resource developments or related administrative actions were contemplated by provincial officials. Again, this is a construct entirely within Canadian law, and concedes little to the independent and ongoing presence of Indigenous law and sovereignty.

The Emergence of Land-Use Planning and Land-Use Planning Agreements in British Columbia

While court direction stands as an important backdrop to the development of Indigenous-state agreements (both treaty and non-treaty) in British Columbia, other

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[15] Borrows also points out how *Tsilhqot'in*, while positive in many respects for furthering Indigenous rights in Canada, also perpetuates colonial assumptions around sovereignty by assuming "underlying Crown title and overarching Crown sovereignty" (2015, p. 725).

events also helped create the conditions that ultimately resulted in the ascension of non-treaty Indigenous/state (province) agreements. These events can be traced back to the 1980s, when the provincial government encountered mounting opposition, within the province's (largely settler) population as well as from beyond the province's borders, to the industrial forestry model that had long been dominant over large areas of provincial "Crown land." In response, in 1991 a newly elected left-of-centre New Democratic Party provincial government committed to an ambitious land-use planning program and a significant expansion of designated protected areas (Day, Gunton, & Frame, 2003, p. 22; Hoberg & Morawski, 1997, pp. 392–393).[16]

However, environmental opposition continued, catalyzed in particular by a 1993 provincial government land-use and forestry proposal in the scenic and biologically diverse rainforest region of Clayoquot Sound on the west coast of Vancouver Island. Protesters, in this case primarily non-Indigenous environmental activists, took high-profile direct action to disrupt a provincially approved plan and logging operations in the area (Hoberg & Morawski, 1997, p. 394). The region was also the site of parallel Indigenous action, with Nuu-chah-nulth First Nations using their newly acquired leverage in Canadian law to obtain an injunction against industrial logging on Meares Island, a significant geographic feature located in the heart of Clayoquot Sound (pp. 395-–396).

In an ultimately successful effort to defuse the intense protest activities in Clayoquot Sound, the provincial government reached out to the area's First Nations,

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[16] In British Columbia, the term "protected areas" includes provincial parks, national parks, and other forms of natural area protection under settler-state law, and generally means areas where commercial logging, mining, and energy development are prohibited.

starting with a Scientific Panel that included several prominent Nuu-cha-nulth members (and a panel co-chair) appointed to review and make recommendations on the issues raised in Clayoquot Sound (Hoberg & Morawski, 1997, p. 400). Subsequently, an Interim Measures Agreement was signed between the province and Clayoquot Sound First Nations, establishing a joint management board for the area with an equal number of First Nation and provincial government representatives to review forest plans and logging-related proposals with a mandate to accept, propose modifications to, or recommend rejection of the proposed plan or action (pp. 402–03).[17] The participating First Nations could exercise a de facto veto over any proposed provincial approvals, although the board itself adopted a consensus approach as their operating model (Goetze, 2005, p. 253). For land and resource management, this was the first non-treaty government-to-government agreement between Indigenous Nations and the province of British Columbia, and for the balance of the 1990s the Clayoquot Sound agreement remained the only such agreement within British Columbia.

Beyond Clayoquot Sound, the scale of (settler) public and international concerns about forestry and land use in British Columbia did not abate, and the provincial government proceeded in many other areas of the province with an ambitious multi-stakeholder, consensus-based approach to land and resource planning. By the late 1990's the provincial government had approved completed regional or sub-regional plans for over half the province, including Vancouver Island and most of the province's Interior

[17] The agreement was conceived as being "interim" to the completion of a treaty settlement between the participating Clayoquot First Nations and the federal and provincial governments. This "interim" characterization is consistent with a prevailing view of the province in the early 1990s wherein any land use understandings with First nations represented an interim step pending final treaty arrangements (Barry, 2011, p. 91).

(meaning the inland regions that make up most of the physical area of the province). Although First Nations were usually invited to participate in these state-sponsored projects, First Nations were not offered any meaningful form of government-to-government engagement and Indigenous representation was limited or absent in almost all of these 1990s planning processes (Barry, 2011, p. 85; Morton, 2009, p. 75).

By 1996, the provincial government had begun a similar land-use planning process for the large Central Coast region located on the continental mainland north of Vancouver Island, within the area of mountains, fiords, and rich temperate rainforests that came to be known as the "Great Bear Rainforest." Indigenous peoples forming a number of First Nations make up the majority of the Central Coast region's population (Barry, 2011, p. 87). As with previous state-sponsored land-use planning projects, Indigenous support was minimal and Indigenous representation among participating non-Indigenous stakeholders was limited (Howlett, Rayner, & Tollefson, 2009, p. 388). The situation remained dynamic, however, as environmental non-governmental organizations (NGOs) waged a successful international campaign against forest products emanating from clearcut logging within the region's old-growth temperate rainforests, and negotiations began between some environmental NGOs, the forest industry, and some First Nations in the region (p. 388). At the same time, Indigenous peoples were acquiring new leverage due to the series of court decisions described above. To re-establish control over what the provincial government saw as threats to its established authority for land and resource management, the province began to build its relationships with the region's First Nations, leading ultimately to a series of agreements by which the province and the First Nations entered into a government-to-government management process and

decision-making model for land-use planning for the Central Coast region (Barry, 2011, pp. 88, 107).

While the first such agreement in the Central Coast was reached in the waning days of the left-of-centre New Democratic Party government in 2001, the government-to-government relationship in the Central Coast and the larger Great Bear Rainforest survived the election of the right-of-centre BC Liberal party later that same year. In fact, the government-to-government model in the Central Coast was subsequently consolidated and reinforced through additional agreements between the province and First Nations.[18, 19] Of note were the creation and evolution of a government-to-government institutional structure for managing the land-use planning process in the Central Coast through a "Land and Resource Forum" and supporting "Land and Resource Working Group" and "Land and Resource Technical Group." The Forum consisted of "senior First Nation and Provincial representatives" and the other supporting groups of less-senior management or technical personnel from First Nations and the province (Barry, 2011, p. 116). This provided the first instance of a government-to-government structure for land and resource decision making since the Clayoquot Sound agreement. The Central Coast land-use planning process evolved to become what has been

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[18] In the Central Coast, First Nations engagement with the Province generally occurred through two main umbrella groups of Nations: the Turning Points Nations, who subsequently evolved into the Coastal First Nations, located in the northern portion of the Central Coast region, and, in the region's southern portion, a grouping of Kwakwala-speaking Nations, who eventually adopted the name Nanwakolas Council, in the region's southern portion.

[19] At the time, the willingness of the new BC Liberal government to continue with the Central Coast government-to-government process seemed like a significant departure from their previously less-open agenda toward Indigenous reconciliation, which included, for example, the party's earlier opposition to the Nisga'a treaty and, following their election, conducting a controversial province-wide referendum to confirm a number of suggested principles "to guide" the province's participation in treaty negotiations (Elections BC, 2002, p. 2).

subsequently characterized as a “two-tier” process, whereby the original stakeholder group consisting of largely non-Indigenous representatives completed their planning recommendations in 2004 (the first tier in the two-tier approach), at which point government-to-government negotiations then proceeded with the support of the new multi-level structure (this latter stage constituting the second tier) (Cullen, 2006, p. 4). Many of the individual First Nations also developed their own land-use plans for their territories to articulate their own land-use priorities (Barry, 2011, p. 105).

Government-to-government collaboration continued in the Great Bear Rainforest area, with key land-use planning agreements reached in 2006, that committed the parties to work towards establishing new protected areas and implementing an ecosystem-based forest management regime to sustain ecosystem integrity and address well-being in Indigenous communities (British Columbia, n.d.-a). What had begun with intense environmental NGO pressure and emerging Canadian aboriginal law used as a springboard for independent Indigenous action eventually saw an initially reluctant and reactive provincial government turning dramatically to join with First Nations to develop and implement a government-to-government approach to land-use and ecosystem-management decisions.

The government-to-government model of land-use planning soon extended to several other regions in British Columbia. In 2003, a Haida Gwaii land-use planning process was launched as a process co-designed from the outset by the province and the Haida Nation under a 2001 “Haida Protocol on Land Use Planning and Interim Measures” (Astofooroff, 2008, pp. 56–57). This process also met the definition of a “two-tier” process, although the Haida Nation played a stronger role in “tier 1,” including

providing a co-chair for this stakeholder-engagement phase. The complex history of the planning process and related political actions are well documented (see Takeda, 2015). The eventual result was a government-to-government land-use planning agreement in 2007, which in turn set the stage for the Kunst'aa guu – Kunst'aayah Reconciliation Protocol (2009). As noted by Webber, a particular feature of this Protocol was language acknowledging explicitly that both the Indigenous and provincial governments assert territorial sovereignty over the land area of Haida Gwaii (Webber, 2016, p. 76). The Protocol also contains unique provisions for a Haida-Gwaii Management Council, through which Haida-appointed and provincial officials are mandated in both provincial and Haida law to make certain forestry and land-use decisions jointly (Kunst'aa guu – Kunst'aayah Reconciliation Protocol, 2009, p. 11).

The province also launched a land-use planning process in the Sea-to-Sky region, a well-known coastal and mountain area lying just northwest of Vancouver, the province's largest city. This process also followed the "two-tier" model, with a stakeholder-based phase launched in 2002 (Kennedy, 2012, p. 72). The tier 2 government-to-government phase for this plan led to individual agreements with four affected First Nations between 2005 and 2008, including the agreement between the province and the Lil'wat Nation that is examined further in Chapter 5.

Government-to-government land-use planning and associated agreement-making also occurred in northwestern British Columbia. In 2008, the Taku River Tlingit First Nation, who occupy a territory in the far northwest of the province, entered into a Framework Agreement with the province to shape government-to-government work on land use and wildlife management (Framework Agreement Between the Taku River

Tlingit First Nation and the province of British Columbia for Shared Decision Making Respecting Land Use and Wildlife Management, 2008). This agreement created a "Government-to-Government Forum to manage the collaborative activities under the agreement, a structure analogous to the Forum established for Central Coast (p. 4). The resulting land-use planning collaboration led to the Wóoshtin yan too.aat / Land and Resource Management and Shared Decision Making Agreement (2011), which confirmed a jointly agreed land-use plan as well as agreement on further consultation procedures. In contrast to the "two-tier" approach that applied in the Central Coast and Sea-to-Sky areas, First Nation and provincial officials managed the planning process that led to this agreement jointly from the outset. Non-Indigenous community and stakeholder representatives in this sparsely populated region provided input at various stages in the jointly managed process (Taku River Tlingit First Nation & British Columbia, 2011, pp. 4–6).

Another agreement in British Columbia's northwest also built on previous land-use planning collaboration between the Gitanyow Nation and the province. The catalyst for this government-to-government engagement was court action in 2002 and 2004 by the Gitanyow and neighbouring Nations regarding certain provincial decisions on local forest harvesting licences. The direction of the court created pressure for increased consultation and accommodation by the province, which for the Gitanyow included a desire for land-use planning. The province eventually relented and a joint planning process began in 2005 (Porter & Barry, 2016, p. 121).

Gitanyow land-use planning was structured to reflect Indigenous governance systems centered on eight distinct houses – or Wilp – each of which holds authority over

a defined territory. The eventual result was an agreement on a Gitanyow Lax'yip Land Use Plan as part of the Gitanyow Huwilp Recognition and Reconciliation Agreement (2012). This planning process and its political context – both Indigenous and state – are explored at length by Porter and Barry (2016). It represents an instance where sustained Indigenous action in multiple venues, including land-use planning and subsequent agreement-making, have allowed that Nation to go some distance towards projecting their Indigenous vision on their territory. This case is analysed further in Chapter 5.

By mid-decade, government-to-government land-use planning and related agreement-making had begun to wane. However, strong Indigenous interest in planning for the marine environment on the Central and North coasts and on Haida Gwaii led to engagement with the province that started in 2011, continued through plan completion in 2015, and then implementation agreements in 2016 (Marine Plan Partnership for the North Pacific Coast, n.d.-b). The Canadian federal government did not participate actively in these planning processes, despite their (state) jurisdiction over fisheries and other important aspects of oceans management; nevertheless, the Indigenous Nations and province were able to plan together for matters that under Canadian law fall within provincial jurisdiction. Following the general model first established through Central Coast (Great Bear Rainforest) planning and agreements, a government-to-government management structure was put in place for both plan development and implementation (Marine Plan Partnership for the North Pacific Coast, n.d.-a).

Following the completion of marine plans and agreements by 2016, little or no government-to-government land-use planning was underway in British Columbia. The potential for future government-to-government planning is noted in some newer

agreements. For example, the comprehensive Nenqay Deni Accord (2016), entered into by the Tsilhqot'in Nation and the province in the wake of that Nation's successful 2014 hearing at the Supreme Court of Canada, contains a commitment to further "strategic planning" on specified lands within Tsilhqot'in territory (p. 12). A 2018 shíshálh Nation / British Columbia Foundation Agreement includes the establishment of a government-to-government "Land Use Planning Table," to develop a joint draft land-use plan for shíshálh territory (p. 20).

Strategic-Engagement Agreements

Following on the development of land-use planning agreements in the early 2000's, a variety of non-treaty agreement types between First Nations and the province of British Columbia took shape. Of greatest interest for this thesis are agreements that were developed to guide how consultation processes are carried out between the province and the signatory Nation(s). Consultation agreements can take several forms, with the Forest Consultation and Revenue-Sharing Agreement being the most common. In these agreements, the signatory First Nation agrees that it has been "accommodated" (in the sense outlined by Canadian courts) for forestry-related provincial decisions including logging approvals, based on the province providing the Indigenous Nation with a share of revenues and on adherence by provincial officials to agreement-defined procedures for consultation.

A more comprehensive form of consultation agreement, to which I will generally apply the term "strategic-engagement agreements," has been pursued by the province with a number of First Nations. Subsequent case analyses in this thesis will focus on this strategic-engagement agreement type along with land-use planning agreements. The

strategic-engagement type may form a stand-alone agreement, or be imbedded in an even more comprehensive agreement document that addresses other areas such as land-use planning or revenue-sharing.[20]

As with the government-to-government land-use planning approaches described in the previous section, the move towards strategic-engagement agreements was catalyzed by a series of landmark decisions at the Canadian Supreme Court, culminating as previously noted in *Haida Nation v. British Columbia* (2004) and *Taku River Tlingit First Nation v. British Columbia* (2004). Importantly, these decisions confirmed and clarified the obligation in Canadian law for state governments (in this case the provincial government) to undertake consultation before any state decisions for the development or management of land and resources. The number of land and resource decisions made by the province under provincial statutes, and their significance to the settler-state resource economy, created an urgent imperative for the province to efficiently discharge its consultation and accommodation obligations. While the province created its own policy and procedure for consultation and accommodation as compiled in a 2010 document entitled "Updated Procedures for Meeting Legal Obligations When Consulting First Nations (Interim)," strategic-engagement agreements offered a way in which to elaborate on or vary from these standard procedures (British Columbia, 2010).

An agreement-based approach to consultation, "intended to streamline and bring additional clarity to Aboriginal consultation and accommodation," first took shape in the

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[20] Some of the agreements that fall within this strategic-engagement agreement category are actually entitled "Strategic Engagement Agreement." However, other titles are also used for such agreements, including "Shared Decision Making Agreement" and "Reconciliation Framework Agreement." As noted, the strategic-engagement agreement form may also be just one component of a more comprehensive agreement.

Central Coast region, concurrent with the evolution of land-use planning agreements in that area (Barry, 2011, p. 68). The province and the KNT First Nations signed the first such agreement in 2007 as a pilot project, and (after the KNT group was reconstituted as the Nanwakolas Council) affirmed and continued their agreement in 2009. Having successfully developed an approach with the Nanwakolas Council, the provincial government was interested in extending it to other parts of the province (Barry, 2011, p. 68). Table 1 describes agreements made between 2009 and 2018 for which strategic engagement was the primary focus, or where strategic engagement was a major component of a more comprehensive agreement.

The contents of a typical strategic-engagement agreement will be described more fully in Chapter 5 using the example of the 2013 Secwépemc Reconciliation Framework Agreement. In general, they define the traditional territory or territories to which the agreement applies, and provide tables and matrices to help determine the "engagement level" for a particular type of provincial-government land or resource decision occurring within the territory. The determined engagement level then informs the nature and extent of consultation that will precede the making of that provincial decision. In almost all cases, these agreements establish a multi-layered, government-to-government institutional structure to conduct or oversee the consultation processes, and potentially to resolve disputes. Provincial funding is provided to support First Nation involvement in the agreed-to consultation framework.

Table 1 – Summary of Strategic-Engagement Agreements, as of 2018[21]

First Nation(s)	Agreement Title and Original Date	Overall Focus of the Agreement
Nanwakolas Council	Framework Agreement 2009	strategic engagement
Coastal First Nations	Reconcilation Protocol 2009	strategic engagement
Taku River Tlingit	Land and Resource Management and Shared Decision Making Agreement 2011	strategic engagement and other matters
Kaska Dena	Strategic Engagement Agreement 2012	strategic engagement
Ktunaxa	Strategic Engagement Agreement 2013	strategic engagement
Tahltan	Shared Decision Making Agreement 2013	strategic engagement
Secwépemc	Reconciliation Framework Agreement 2013	strategic engagement
Sto:lo	Strategic Engagement Agreement 2014	strategic engagement
Tsilhqot'in	Stewardship Agreement 2014	strategic engagement
Gitanyow	Recognition and Reconciliation Agreement 2012	strategic engagement and other matters
Saulteau	New Relationship and Reconciliation Agreement 2015	strategic engagement and other matters
Gwa'sala-'Nakwaxda'xw	Consultation Engagement Agreement 2018	strategic engagement
Kitselas	Consultation Agreement 2018	strategic engagement

[21] Table contents are derived from a review of agreements available through the Province of British Columbia website, at https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations

Most strategic-engagement agreements and other non-treaty agreements have been created in areas and with Nations that are not in a treaty relationship with the state. However, there are a few exceptions. For example, non-treaty agreements have been made with Nations who are signatory to Treaty 8, with the Saulteau New Relationship and Reconciliation Agreement being one example.

For modern treaty areas, various government-to-government implementation agreements have been signed by the province and the modern-treaty Nations. The Maa-Nulth group of treaty Nations on Vancouver Island have, for example, entered into an agreement for assuring reasonable opportunities for the Nations to exercise harvesting rights specified under the treaty (Reasonable Opportunity Agreement, 2014). The contents of this Maa-Nulth agreement bear considerable resemblance to strategic-consultation agreements developed elsewhere in the province. The Maa-Nuulth Nations have also entered into an agreement with the province to establish a government-to-government forum structure to manage the general relationship on natural resources (and potentially other) matters between the Nations and the province (Government to Government Forum Agreement, 2018, p. 5).

Other Forms of Agreement

Forms of non-treaty government-to-government agreements have proliferated since the first land-use planning agreements of the 2000's. A number of agreements address "economic benefits" or "revenue sharing," including the numerous "Forest Consultation and Revenue Sharing Agreements" mentioned earlier. Similar revenue-sharing provisions for other activities such as mining are addressed through a form generally entitled "Economic and Community Development Agreements" (British

Columbia, n.d.-c). Yet another unique variant addresses how benefits from carbon sequestration will be shared, as for example in the Central Coast area (British Columbia, n.d.-b).

"Incremental Treaty Agreements" are a type that, typically, transfer specific parcels of provincial "Crown land" to a First Nation as (in the Canadian title system) fee simple lands. The province describes these bi-lateral agreements as "not a replacement for treaty (rather), it advances treaty-related benefits for the First Nations and the province prior to a Final (Treaty) Agreement" (British Columbia, n.d.-e).

At time of writing, non-treaty agreement-making continues to evolve between British Columbia and First Nations. For example, the previously mentioned shíshálh Nation Foundation Agreement (2018) stresses the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The shíshálh agreement also invokes a joint decision-making approach on all land and resource matters through a joint governance structure, similar to the model introduced for Clayoquot Sound in the 1990's and more expansive (in terms of scope) than the joint governance approach established in 2009 for Haida Gwaii under the terms of the Kunst'aa guu - Kunst'aayah Reconciliation Protocol (2016). A new agreement with Secwépemc Nations, the Letter of Commitment (2019), represents a significant departure from the earlier Secwépemc Reconciliation Framework Agreement, and is examined further in Chapter 5.

Two recent non-treaty agreements, the Tuígila Agreement for Implementation of Heiltsuk Title, Rights and Self-government (2019) and the Lake Babine Nation Foundation Agreement (2020), include the Canadian federal government as a party to the agreement, along with the British Columbia and the respective Indigenous Nations.

Further investigation of these newer agreements would be needed to determine the extent to which (like the 2019 Secwépemc Letter of Commitment analyzed in Chapter 5) they represent a significant evolution in Indigenous/state relations. The participation of the federal government in these non-treaty agreement-making processes in British Columbia is clearly a noteworthy development. However, these new agreements are not evaluated further here.

Chapter 4 - Analysis Approach

In this chapter I describe how I intend to assess land and resource agreements between state and Indigenous governments for their degree of alignment with a political relationship around land and resources that is predicated on a dual sovereignty construct. This approach will then be applied to three British Columbia cases. For analysis, I deploy several key reinforcing and sometimes overlapping concepts. The first is the idea of "contact zones" between Indigenous and state polities, used here as a way of conceptualizing the arenas in which agreements are formed and carried out. The second is to assess whether the agreement reflects a state-dominated "monological" conversation in the contact zone, versus a "dialogical" engagement more consistent with dual sovereignty. Third, I seek to understand whether an agreement affords space to Indigenous governments to take independent action to express and apply their own sovereignty over the land and resources within their territories. I will also apply concepts of power to help to understand whether the meaningful shifts that a dual sovereignty relationship demands have occurred through agreement-making or the agreement itself. Finally, I will turn to the currently topical matter of consent, which has assumed international expression through the United Nations Declaration on the Rights of Indigenous Peoples. The following sections elaborate on these concepts.

The Contact Zone

The idea of the contact zone applied here relies on a concept presented initially by American critical linguist Mary Louise Pratt, and subsequently applied in a land-use planning context by Canadian Janice Barry and Australian Libby Porter (Pratt, 1991;

Barry & Porter, 2011; Porter & Barry, 2016). Pratt's foundational article presents contact zones as the "social spaces where cultures meet, clash and grapple with each other, often in contexts of highly asymmetrical relations of power, such as colonialism, slavery, or their aftermaths," and points to the early 17th Century work of Indigenous Andean writer Felipe Guaman Poma de Alaya as an illustration of writing and literacy that epitomize contact zones (1990, p. 34). Written in Quechua and Spanish, Guaman Poma's "letter" of 1200 pages presents an Indigenous Andean worldview which uses both the language of the conqueror and Indigenous language to, amongst other things, provide a lengthy critique of Spain's imperialist colonial hegemony in Peru (pp. 35–36). Pratt finishes her article by describing "arts of the contact zone." Although presented in an academic pedagogical context, these arts have resonance wherever such zones occur.

> These (arts of the contact zone) will include exercises in storytelling and in identifying with the ideas, interests and attitudes of others, experiments in transculturation and collaborative work…the redemption of the oral; ways for people to engage with suppressed aspects of history (including their own histories), ways to move into and out of rhetorics of authenticity; ground rules for communication across lines of difference and hierarchy that go beyond politeness but maintain mutual respect; a systematic approach to the all-important concept of *cultural mediation.* (Pratt, 1990, p. 40)

Pratt's summation above can be read as focused on the positive cross-cultural opportunities that can be realized in the contact zone, although contact zones can clearly be sites of continuing oppression. Barry and Porter adopt Pratt's contact zone formulation

as an “evocative vocabulary” for Indigenous-state interactions, while also rightly presenting them as “inevitably contested, conflictual, highly circumscribed, and agonistic.” The latter qualities often entail obvious asymmetries of power where difference is manipulated, dominated or categorically ignored (Barry & Porter, 2011, pp. 174, 176).

Agreements between Indigenous and state governments, including those analyzed later in this thesis, are inevitably born in contact zones – with all the risks and potential rewards that embodies. Previous scholarship provides insights on the functioning (and performances within) agreement-generating contact zones in British Columbia through extensive case examinations from the Central Coast of British Columbia and Haida Gwaii (see in particular Barry (2011) and Takeda (2015)). These detailed analyses of actual processes and relationships within specific contact zones provide maximum value in obtaining a robust understanding of and insights into dynamics of any zone; however, practical constraints mean this project’s analyses are limited instead to investigating the texts that either give shape to or reflect results from contact zone activities. The textual attributes which are used to indicate certain forms of relationship and outcomes are described below.

Mutual Acknowledgement of Asserted Sovereignties

As described in the previous chapter, Webber presents a case of a Haida/British Columbia agreement text that explicitly acknowledges the sovereignty assertions of the state (province) and the Indigenous Nation (2016). Such explicit assertions of both sovereignties will be taken as a first and important indicator of a dual sovereignty

framing, for both the contact zone yielding an agreement and for subsequent relations under the agreement.

Monological versus Dialogical Recognition

Contact zones are inherently spaces of recognition – with all that entails. James Tully provides a way of understanding modes of recognition applicable in Indigenous/state relations, by contrasting the often prevalent "monological and finality orientation" with an alternative "dialogical approach" (2004, p. 85). The monological and finality orientation is problematic in his view, because

> the solutions are handed down to the members from on high, from theorists, courts, or policy makers, rather than passed through the democratic will-formation of those who are subject to them. They are thus experienced as imposed rather than self-imposed. The second problem is the assumption that there are definitive and final solutions to struggles over recognition in theory and practice. (Tully, 2004, p. 91)

Citing Tully's characterization of monological recognition as the "language of the master," Barry and Porter describe this orientation as tending to "dilute and accommodate (in the pernicious sense of co-opt) Indigenous claims" (2011, p. 174). They suggest that rights ceded by the state, such as substantive use rights or procedural rights for inclusion and consultation, are manifestations of this monological mode of recognition.

Tully states that "reconciliation should be dialogical" and that "an acceptable norm of mutual recognition should be worked out by those subject to it through some

form of the exchange of reasons in negotiation, deliberation, bargaining, and other forms of dialogue" (2004, p. 91). He further notes that in a dialogical mode

> engagement in the give and take of reasons for and against different proposed norms of mutual recognition from the various perspectives of the participant changes (and often transforms) the self-understandings and background comprehensive doctrines and worldviews of the interlocutors, breaking down unexamined group prejudices, stereotypes and blind spots that the bring to the dialogue. (p. 93)

Tully sees the monological and finality orientation as misconstruing the very nature of Indigenous demands, failing to see that these claims were not for recognition as cultural minorities, but rather as peoples who are equal to other peoples under international and constitutional law (2004, p. 94). Speaking to the desire for finality, he notes that "a norm of mutual recognition is never final" and that reconciliation is "not a final end-state but rather is an activity that inevitably will be reactivated from time to time" (2004, p. 98). This speaks strongly to the role and nature of agreement-making as a manifestation of an ongoing relationship between sovereign entities; not as a one-time act, but rather as an evolving and malleable device for managing political relations. Evidence in agreement texts of a dialogical process, either in the process by which the agreement came to be or in the contact zone that is shaped by the agreement, must be present if (real or potential) coherence with dual sovereignty is to be claimed. Evidence of a monological and finality orientation, by either agreeing party but most obviously by the state, is inconsistent with a dual sovereignty model. To be clear, I do not mean to

suggest that either or both of the agreeing parties in the cases presented had consciously embraced a dual sovereignty conception. Rather, I mean simply to draw on these recent cases to identify and describe the types of more dialogical agreement processes and outcomes that could continue productively within a dual sovereignty model, and those which could not.

Governance Types

As a complementary tool for assessing agreements for their monological versus dialogical characteristics, I intend to draw on a typology of "Indigenous engagement" as initially formulated by Hill, Grant, George, Robinson, Jackson, and Abel (2012). These scholars analyzed a wide range of engagement processes in Australia to identify types of Indigenous/state engagement, including co-governance forms. I have built on and modified their typology to create the following:

- *Indigenous governance* (or *Indigenous-governed* processes), which are initiatives carried out by Indigenous peoples themselves within rules defined by the Indigenous parties,
- *co-governance* (or *co-governed* processes), ranging from *Indigenous-driven* to *state-driven* forms, and
- *state governance* (or *state-governed* processes), which exhibit only traditional state-defined and characteristically monological modes of engagement.

Co-governance is a feature in all of the agreements that will be examined in this project. Co-governance between a state and Indigenous parties can invoke any number of contact zones conditions. Drawing on the framing by Hill and her associates, state-driven

co-governance (which they refer to in their work as “agency-driven”) sees state agencies being constrained only by the state’s (often narrow) legislative and policy recognition of Indigenous rights and as such is essentially monological. Indigenous-driven co-governance, by contrast, seems by definition to elevate the Indigenous voice, potentially to produce a contact zone within which dialogical recognition prevails. Arguably, a truly dialogical form of co-governance that reflects co-existing sovereignties can best be conceptualized as living in tension at the line between Indigenous-driven and state-driven co-governance, with space for both Indigenous and state worldviews and authorities to be expressed and molded within a dialogical process.

The application of the Indigenous governance type, although on its own is potentially monological, can be important for formulating an Indigenous vision independently to then be injected into the contact zone. This independent and unfettered creation of an Indigenous land and resource vision may often be essential to realizing a dialogical form of engagement within subsequent (or parallel) Indigenous/state agreement-making processes.

Taxonomy of Power

The idea of power distribution within the contact zone is important for assessing a shift towards a meaningful realization of dual sovereignty, and arguably integrates the other concepts presented above. The analytical question is this: have Indigenous Nations, long deprived of meaningful power by a hegemonic state, acquired meaningful power within or through an agreement-based contact zone, thus suggesting a shift towards dual sovereignty?

Barnett and Duvall provide a "taxonomy of power" framed within an international politics context, but which also can inform our understanding of relationships between multiple sovereignties located in a single territorial space (2005). Moore and Tjornbo have demonstrated how this taxonomy can describe evolving power relationships through a case analysis in British Columbia's Great Bear Rainforest (2012). The taxonomy outlines four types of power: compulsory, institutional, structural, and productive.

Compulsory power has clearly played an ongoing role in state relations of a colonial form with Indigenous peoples in Canada. However, in state-managed land and resource use and management on provincial "Crown lands," I would suggest that compulsory power is most likely to operate within the state's established institutional mechanisms, and as such, for the case analysis, will be considered in conjunction with institutional power. The latter is imbedded in "the rules and processes defined by institutions to guide and constrain how actors may act" (Moore & Tjornbo, 2012). Barnett and Duvall echo Hill and associates, with the former noting how "long-standing institutions represent frozen configurations of privilege and bias" (Barnett & Duvall, 2005, p. 52).

Structural power can be illustrated through classic conceptions such as master-slave and capital-labor relations, and is rooted in "the kinds of social beings that are mutually constituted are directly or internally related; that is, the social relational capacities, subjectivities, and interests of actors are directly shaped by the social positions they occupy" (Barnett & Duvall, 2005, p. 53). Specific agreement documents may simply entrench the structural power of social positions within state-dictated norms and

perpetuate long-standing state/Indigenous power imbalances. Alternatively, an agreement document may point to a shift in structural relations or institutional arrangements towards increasing Indigenous power in relation to the state. Such a shift may not be permanent or static, as power can move back and forth within the relationship; however, it is assumed here that a net shift in power toward the Indigenous party can be obtained within a more dialogical relationship.

Barnett and Duvall describe productive power as "the constitution of all social subjects with various social powers through systems of knowledge and discursive practices of broad and general social scope" (2005, p. 55). While they see considerable overlap between structural and productive power, the latter moves "away from structures, per se, to systems of signification and meaning (which are structured, but not themselves structures), and to networks of social forces perpetually shaping one another" (p. 55). Indigenous/state agreement-making has the capacity (realized or unrealized) to elevate Indigenous knowledge systems and help create discursive practices that further the productive power of Indigenous peoples in relation to that of the settler state.

Consent Orientation

The concept of Indigenous consent before state-mandated resource development projects has emerged as a specific principle for understanding Indigenous/state relations pertaining to the use of resources within an Indigenous territory. For this thesis, the presence of a consent orientation in an agreement or agreement-making process, while perhaps important in its own right for meeting UNDRIP obligations, is used as a further indicator of the types of dialogical orientation, co-governance processes, and power

rebalancing that are consistent with a dual sovereignty model for land and resource decision-making.[22] A consent orientation signals a move beyond the (largely monological) consultation and accommodation requirements articulated by Canadian courts, within which consent is not an explicit requirement (Imai, 2017, p. 371).

Summary of Approach

The qualitative analysis of documents that will be undertaken in Chapter 5 will look at the apparent nature and characteristics of the pertinent contact zones, both those generating the agreement and those invoked by the agreement for future interactions. Given the orientation here towards a dual sovereignty construct, I will first assess each agreement as to whether co-existing sovereignty claims are explicitly or implicitly acknowledged in the document. I will then analyze the language and content that signal dialogical interaction in the contact zones, or, alternatively, indicate the perpetuation of a more traditional state-dictated monological form. The space afforded to Indigenous governance models will be read as potentially contributing to (although not a guarantor of) a dialogical interaction. Governance arrangements will be examined to see if state-driven co-governance or Indigenous-driven co-governance prevail. Similarly, agreement text will be examined to see of any shifts in institutional or productive power are visible,

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[22] The relevant consent obligations outlined in the United Nations Declaration on the Rights of Indigenous Peoples are specified in Article 32(2):

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources. (United Nations, 2008, p. 12)

moving from the traditional hegemonic state power monopoly towards a sharing of power with Indigenous governments. Finally, the extent to which an orientation towards Indigenous consent is evident in either the creation or implementation of the agreement will be briefly assessed. Based on these indicators, the apparent congruence of each agreement (or lack of congruence) with a dual sovereignty model will be summarized.

Chapter 5 – The Cases: Assessing Alignment with Dual Sovereignty

In this chapter, I will examine three cases that represent particular types of non-treaty agreement entered into by the province of British Columbia and Indigenous Nations, with each case assessed for alignment with a dual sovereignty model. I am particularly interested in examining the characteristics of two agreement types: land-use planning agreements and strategic-engagement agreements (as described earlier in Chapter 3).

The first case is the Land Use Planning Agreement (2008) between the Lil'wat Nation and the province in 2008. This presents an instance where a land-use planning agreement has been entered into without (concurrently or subsequently) a strategic-engagement agreement.

The second case, involving the Secwépemc group of Nations, was originally chosen to provide an analysis of a 2013 Secwépemc Reconciliation Framework Agreement (SRFA) as representative of a number of broadly similar strategic-engagement agreements entered into between 2012 and 2018.[23] By 2019, the SRFA had lapsed and a new agreement between the Secwépemc Nations and the province had been signed (Letter of Commitment, 2019). An analysis of the 2019 agreement has also been included for this case.

The third case involves a 2016 agreement between the Gitanyow Nation and the province, which contains core elements of both land-use planning and strategic-

[23] See Table 1, page 57.

engagement agreements (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016). This case was also particularly well suited to analysis here given the availability of an extensive investigation of Gitanyow/provincial planning interactions undertaken previously by Porter and Barry (2016, pp. 115–130).

The following sections provide the context for each of these agreements as well as an evaluation against the parameters described in Chapter 4. As this analysis is largely confined to an examination of agreement texts, it inevitably overlooks many of the real-world contextual factors that would have come to bear on the agreements and their development. For example, the involvement of particular Indigenous or provincial government leaders in the agreement-making process may have been vital to shaping an agreement's contents and realizing (or not) the types of actions and relationships it is intended to invoke. Without diminishing the insights that *can* be obtained through the agreement texts themselves, which has been my focus in this thesis, I wish to acknowledge that a more robust understanding of their development and effect would require deeper investigative work to engage persons who were involved in the agreements' creation or implementation.

Case 1: Lil'wat Nation – British Columbia Land Use Planning Agreement

The Lil'wat Nation – British Columbia Land Use Planning Agreement (LUPA) points to forms of Indigenous/state relations that tend towards consistency with a dual sovereignty model over provincial "Crown lands." The agreement presents a clear acknowledgement of both state and Indigenous assertions of sovereignty, and otherwise shows signs of a general shift towards dialogical interactions. An Indigenous-governed

process that preceded the development of a government-to-government LUPA allowed Lil'wat to articulate and bring forward Indigenous values and goals, and may have been important to rebalancing power towards the Indigenous party. The LUPA does not include provisions for any ongoing structure to manage activities under agreement or government-to-government relations in general. It is unclear whether the absence of such a structure is detrimental to continuing dialogical relations between the Lil'wat Nation and the provincial government.

Lil'wat Nation and territory

Lil'wat is a First Nation of over 2,200 members, most of whom reside in the community of Mount Currie, located in the heart of their territory (Lil'wat Nation, n.d.-a). Lil'wat territory is centered on the Lillooet River and the Pemberton Valley, including and extending northward from the well-known resort community of Whistler, and is characterized by a rich landscape of rivers, lakes, and valleys situated within the rugged southern Pacific Ranges of the Coast Mountains.[24] The area's extensive forests exhibit characteristics of coastal forest types, but also show signs of their transitional location adjacent to the province's interior forest zones. As with much of the province, the rivers and lakes of Lil'wat territory have traditionally provided abundant salmon as a food source. The Lil'wat people have exercised sovereignty and used the territory's rich endowment of fish, wildlife, and other natural resources since time immemorial.

[24] Settler-origin names are used here and elsewhere for convenience only; Indigenous names exist for most if not all of the places and features described.

> We are the Líl̓wat Nation, an Interior Salish people. We live in a stunning and dramatic landscape with a rich biodiversity – a mysterious place of towering mountains, ice fields, alpine meadows, white-water rivers, and braided river valleys that run to a milky colour due to the silt and clay deposited by glacial melt. Líl̓wat is a separate and distinct nation with cultural and kinship ties to the St̓át̓ẏemci.
>
> Lil'wat Nation strives toward self-determination by continuing to exert control of its territory and resources, and by building the economic foundation for a sustainable community.
>
> As the Nation envisions its future, it honours our past, practicing Nt̓ákmen (Our Way), celebrating and reclaiming Lil̓wat7ul culture and language. (Lil'wat First Nation, n.d.-b)[25]

Lil'wat's territorial assertion overlaps in some places with the asserted territory of neighbouring First Nations, including the Squamish Nation in areas around the settler community of Whistler (Land Use Planning Agreement, schedule A; BC Treaty Commission, n.d.-b). Lil'wat territory has seen a variety of settler uses over the past century, including significant agriculture in the Pemberton Valley, extensive logging on surrounding forest lands, a burgeoning tourism sector, and, in recent decades, the development of run-of-river hydro-electric projects. Significant settler populations reside

[25] St̓át̓ẏemci is larger grouping of related Interior Salish Nations.

in the communities of Pemberton and Whistler as well as in rural areas. The Lil'wat Nation has not entered into a treaty of any form with the Canadian settler state, and is not involved in treaty negotiations. Lil'wat has elected to pursue business opportunities within the settler economy, including, for example, a range of forest management enterprises. Within Lil'wat territory, about 70,000 cubic metres per year of state-allocated logging rights (about one-third of the annual timber harvest on the territory) is in Lil'wat hands (Lil'wat Nation, n.d.-c).

Description and Analysis of the LUPA

The Land Use Planning Agreement (LUPA) between the Lil'wat Nation and British Columbia was signed on behalf of their respective governments by the Chief of the Lil'wat Nation / Mount Currie Band Council and the British Columbia Minister of Agriculture and Lands on April 11, 2008 (Land Use Planning Agreement, 2008).

The agreement came about in the context of a state-initiated project entitled the Sea-to-Sky Land and Resource Management Plan (LRMP), which applied the "two-tier" planning approach described in Chapter 3. "Tier 1" in this process saw a group of largely non-Indigenous stakeholders developing land-use recommendations, while the subsequent "tier 2" phase saw government-to-government negotiations between the affected First Nations and the province arriving at a government-to-government agreements for land use (Kennedy, 2012). The state-defined Sea-to-Sky planning area encompassed most of the Lil'wat Nation territory as well as parts of the territories of several adjoining First Nations. In a not-uncommon mismatch between Indigenous territories and state-defined administrative boundaries, a relatively small portion of

Lil'wat territory also extends into the area of an adjoining "Lillooet Land and Resource Management Plan," and the LUPA also speaks to this additional part of Lil'wat Nation territory. For the provincial government, the successful completion of its Sea-to-Sky land-use planning and government-to-government negotiations with Lil'wat and other Nations in the Sea-to-Sky region helped assure a positive political climate for the 2010 Winter Olympics, which saw facilities and events in the Whistler area within Lil'wat (and neighbouring Squamish Nation) territory.

Prior to the tier 2 government-to-government negotiations for the Sea-to-Sky plan, the Lil'wat Nation undertook its own independent land-use planning initiative, to represent

> the vision of the Lil'wat people for our Traditional Territory (is to provide) management direction to sustain the plants, animals, and waters of this land, and the health of the Lil'wat people, who rely on the resources that our Traditional Territory offers. (Lil'wat First Nation, 2006, p. 4)

This Lil'wat Land Use Plan (LLUP) lays out a number of goals for sustaining their traditional territory, including

- A deep respect for the importance of the environment in Lil'wat culture among those that visit the Traditional Territory and undertake resource activities.
- Lil'wat stewardship of the Traditional Territory using the concepts of K'úl'stam' ("take only what food we need") and K'ul'antsút ("take only what materials we need") to protect the land.

- The creation of Lil'wat Nt'ákmen Areas to protect environmental values and enable areas to function naturally. (Lil'wat Nation, 2006, p. 18)

In addition to Lil'wat terms, names, and concepts, the Lil'wat Land Use Plan also uses terms such as "vision," "goals," "management strategies," and "actions" that are frequently found in settler planning documents. This may point to, drawing on Pratt's earlier example, an instance of an Indigenous Nation using "the language of the conqueror" as a necessary tactic for Indigenous assertion within the (in this case anticipated) contact zone. Or Lil'wat may simply have found that settler technologies for land-use planning served their own immediate purposes.

The subsequent government-to-government land-use planning negotiations that constituted tier 2 of the overall land-use planning process culminated in the signing of the LUPA in 2008. Prominent at the start of the agreement are a number of recitals (statements prefaced by "whereas"). The recitals note the linkages to the (tier 1) Sea-to-Sky land-use planning process, the presence of the Lil'wat Land Use Plan, and the government-to-government negotiations that led to the agreement (Land Use Planning Agreement, 2008, p. 1). Importantly for this thesis, the recitals also include state and Indigenous sovereignty assertions in the form shown below in Figure 1.

Figure 1: Territorial Sovereignty Assertions in the Land Use Planning Agreement (2008, p. 2)

G. Section 35 of the *Constitution Act, 1982* recognizes and affirms any existing aboriginal title and aboriginal rights of the Lil'wat Nation. With respect to sovereignty, title and ownership:

The Lil'wat Nation asserts:	**British Columbia asserts:**
The Lil'wat Nation has held its Territory, including all the lands, waters and resources in its Territory, since time immemorial. The Lil'wat Nation is the steward of its Territory and is charged with protecting and managing the lands, waters and resources today and for future generations. The Lil'wat Nation has aboriginal title to and aboriginal rights throughout its Territory. These title and rights have never been ceded, surrendered, or abandoned. Similarly, they have not been extinguished. The Lil'wat Nation asserts authority to and autonomy to its entire Territory, and an inherent right to govern itself and its uses of the lands, waters and resources of its Territory.	The lands, waters and resources within the Sea-to-Sky LRMP Area and Lillooet LRMP Area are Crown lands, waters and resources subject to the sovereignty of Her Majesty the Queen and the legislative jurisdiction of the Province of British Columbia.

Thus, a mutual acknowledgement of the sovereignty assertions of both the Indigenous and state parties are clearly expressed at the outset of the LUPA. The use of this format of assertions is similar to (and actually predates) the 2009 Kunst'aa guu - Kunst'aayah Reconciliation Protocol that Webber points to as indicative of the province of British Columbia's "willingness to agree to disagree on the location of sovereignty" (2016, p. 75). In the LUPA, these acknowledgements of the parties' dichotomous views on sovereignty are clarified further in the agreement's Definitions section where, for the same geographic space, "Lil'wat Territory" is defined as "the area over which the Lil'wat Nation asserts sovereignty and jurisdiction, stewardship and aboriginal title and rights" and "Crown lands" means "land over which the Province asserts sovereignty, ownership and jurisdiction" (Land Use Planning Agreement, 2008, p. 3).

The Definitions section of the agreement also brings forward the Lil'wat construct of "Nt'ákmen Area" as "areas of Lil'wat Territory identified by the Lil'wat people as important intact natural and cultural area that enable Lil'wat people to participate in traditional activities and express their connection to the land" ((Land Use Planning Agreement, 2008, p. 4). In general, the use of Lil'wat language terms, names, and concepts is notable. The new protected areas to be established by the province are consistently referred to in the agreement by their Lil'wat-language name, in tandem with an English-language name. The agreement document also incorporates a Lil'wat vision statement, albeit as an attachment. Overall, the inclusion of Indigenous names and the embracing of the "Lil'wat NT'ákmen Area" and "A7x7ūlḿecw (Spirited Ground) Areas" language and concepts are indicative of movement towards the dialogical. Also indicative are the ways in which the agreement leaves the door open for further engagement and

action; for example, in response to further Indigenous-driven planning activity at the watershed level. This may signal some movement away from the state's insistence on "finality," which Tully associates with a monological approach (2004, p. 91).

The "Scope" section of the agreement makes clear reference to the Lil'wat Nation's own 2006 Lil'wat Land Use Plan (LLUP) as expressing the Nation's preferred management approach for Lil'wat territory, and indicates that the parties "attempted to harmonize (the draft Sea-to-Sky Land and Resource Management Plan land-use zones) in a manner that considers the intent of the LLUP." It is significant that the Lil'wat Land Use Plan, as an Indigenous initiative conforming to the Indigenous-governance type, preceded the LUPA process and significantly informed the contents of the agreement. Lil'wat was able to bring a fully articulated land-use vision into the agreement-generating contact zone. The substantial number of direct references to the Lil'wat Land Use Plan in the LUPA document speaks to the efficacy of this Lil'wat initiative for influencing the government-to-negotiations and rendering them more dialogical. The presence of the LLUP allowed an Indigenous voice and vision to be injected into and shape the outcome of government-to-government negotiations, providing a clear counterpoint (and one intelligible to the state) to influence the state-driven stakeholder-built draft of the Sea-to-Sky Land and Resource Management Plan.

The influence of the LLUP is evident in much of the LUPA. The Scope section affirms the province's recognition that "the Lil'wat Nation's Nt'ákmen Areas are areas of special importance to the Lil'wat people and "that the Lil'wat Nation desires to protect these areas in accordance with the LLUP" and to include the Lil'wat Nation's territorial vision within the LRMP (Sea-to-Sky Plan) documents (Land Use Planning Agreement,

2008, p. 5). Perhaps more substantively, the agreement states that the strategic land-use zones in the draft Sea-to-Sky Plan (as generated earlier by non-Indigenous actors during tier 1 of the two-tier process) will be amended, and that "the Provincial Ministers will seek to establish the Lil'wat Nt'ákmen Areas as conservancies, Cultural Wildlands, or Cultural Management Areas" (p. 6).[26] In other words, the province listened to and responded meaningfully to Lil'wat land-use priorities. All in all, the agreement contents point to movement towards a dialogical relationship within the agreement-making contact zone, as opposed to a state-dominated monological environment.

Other supporting provisions in the agreement call for the for the provincial Environment Ministry to "consider the use of traditional Lil'wat names for the new Protected Areas" and to seek a "Collaborative Management Agreement for all Protected Areas in Lil'wat Territory" (Land Use Planning Agreement, 2008, pp. 7–8).[27] The agreement also calls for the establishment of a Skelulátkwa (Owl Creek) Cultural Education Area "as a location focused on rejuvenating Lil'wat culture through ceremonial use and community education" (p. 11, p. E-4). The A7x7ūlḿecw (Spirited Ground) Areas mentioned previously are also significant for addressing Lil'wat priorities. Generally much smaller than Nt'ákmen Areas, the A7x7ūlḿecw are not described in the earlier Lil'wat LLUP, but rather are first presented in the agreement itself as areas that "represent important spiritual, cultural, and food gathering areas," which "ranged in size,

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[26] A "conservancy" is a particular type of legally designated protected area under provincial legislation.

[27] It may be that the province's tepid commitment to "consider" (rather than apply) Lil'wat names is largely due to Indigenous territorial overlaps. A review of the new Protected Areas established under the agreement shows that Lil'wat names were used (alongside English names) where those areas fell exclusively within Lil'wat territory, while English-only names were applied to those new Protected Areas falling within areas of territorial overlap with the Squamish Nation. Given the language differences between those Nations, a single Indigenous language name could not be assigned.

use or value, sensitivity and overall conflict with other resource uses" (Land Use Planning Agreement, 2008, p. H-1). This emergence of an additional Indigenous-informed designation again suggests a pattern of open and dialogical interactions within the agreement-making process.

The apparent success of Lil'wat in bringing substantial Indigenous influence into the agreement and its associated land-use outcomes suggests a contact zone that trended away from a strictly state-driven co-governance forms. The Nation's investment in the Indigenous-governed LLUP project appears to have played an important role in Lil'wat's ability to assert itself effectively in the LUPA contact zone. The government-to-government (tier 2) LUPA process itself, however, cannot be described as having fully transitioned away from state-driven co-governance and toward Indigenous-driven co-governance. Rather, the LUPA process seems to live at a tension point between Indigenous- and state-driven co-governance. This inherent tension is not, however, in conflict with dialogical interactions; indeed, they may often represent the dynamic nature of dialogical relations. This form of contact zone interaction is consistent with a dual sovereignty model.

The agreement includes provisions for further negotiations. This includes negotiations for collaborative protected areas management as noted above, and also to address an unresolved status for a part of one Nt'ákmen Area (MKwal'ts/Ure Creek), where the province noted its settler economic development interests for "hydro-electric power project, mineral resources, and forestry" (Land Use Planning Agreement, 2008, p. 15). These negotiations did ensue, culminating in a further agreement to establish a provincially designated conservancy over the area in contention (Agreement Regarding

the MKwal'ts Nt'ákmen, 2010).[28] As noted above, the LUPA leaves space for further planning, acknowledging that the Lil'wat Nation intends to prepare "detailed watershed level plans" in Lil'wat Territory" (Land Use Planning Agreement, 2008, p. 18). When doing its planning the Nation will "invite the Province to participate" and the province will "review and consider implementing the proposed management directions and recommendations that flow from Lil'wat Nation watershed management planning" (p. 18). Thus, future Indigenous-driven co-governance is contemplated.

While the land-use planning items described above are clearly the primary content of the agreement, the document also addresses other matters. For example, there is a provision for negotiations to "complete a consultation protocol within 12 months" to develop an agreement on consultation procedures, presumably in line with the approaches then developing for strategic-engagement agreements (Land Use Planning Agreement, 2008, p. 17). However, the absence of a consultation protocol agreement in the record suggests this intention was never realized. The agreement calls for the parties subsequently to "meet and discuss interests and opportunities related to resource benefits sharing within Lil'wat Nation territory" (Land Use Planning Agreement, 2008, p. 16). The LUPA also notes "the importance to the Lil'wat Nation of an opportunity to increase its participation in commercial recreation," and takes administrative actions to maintain those opportunities with the Provincial licensing (2008, p. 13). This, too, is consistent with Lil'wat aspirations as expressed in their LLUP (Lil'wat First Nation, 2006, pp. 47–49).

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[28] As a point of disclosure, I was personally involved as a lead provincial representative in the negotiations that led to this follow-up agreement.

The LUPA does not contain any provision for an ongoing government-to-government governance structure. This notable lack (in relation to other agreements) of a specified structure for ongoing and regular dialogue between Lil'wat and provincial government representatives raises a question that this analysis cannot answer: will the lack of a structured engagement mechanism work (or has it worked) against the further realization of a dialogical engagement between Lil'wat and the province? As will be seen in subsequent cases, the presence of such a mechanism does not in itself automatically signal a shift towards the dialogical. And its absence may or may not prohibit periodic dialogical engagement. A more in-depth analysis involving both Lil'wat and provincial actors would be needed to provide insight on this question.

Despite the lack of commitment to an ongoing government-to-government structure, a shift in institutional power seems to have prevailed for at least the duration of the LUPA process. Moreover, the visible role of the Lil'wat Nation as a decision-maker in the context of the LUPA may well have enhanced their structural and productive power, serving in combination with growing structural and productive power other Indigenous peoples in Canada. The visible role that Lil'wat and other Nations played in ceremonies surrounding the 2010 Olympics may, for example, have contributed to the Nations' structural power as well as Indigenous productive power more generally.

While the word "consent" does not appear in the Land Use Planning Agreement document, the agreement negotiation process and the contact zone it created can be seen as having a consent-seeking orientation. In essence, the approval of the agreement by Lil'wat officials indicates consent to the land-use provisions mutually agreed-to and laid out by the agreement.

In summary, despite its origins in a state-defined initiative for land and resource management planning in the Sea-to-Sky and Lillooet areas, the documentary evidence suggests that the Lil'wat Nation was able to pry open the contact zone and shift it towards the type of dialogical interaction that aligns with dual sovereignty. The preceding Indigenous-governed Lil'wat Land Use Plan may have played a significant role for the Nation in seeing their land-use goals incorporated and at least partly addressed. However, the apparent lack of a consistent ongoing government-to-government structure within which Lil'wat can continue to force a shift in institutional and structural power *could* see interactions rebound to state-driven monological forms. Further work would be needed to see if a dialogical relationship between the province and Lil'wat has been maintained in these circumstances.

Case 2: Secwépemc Reconciliation Framework Agreement and Letter of Commitment

The Secwépemc case concerns two agreements: the 2013 Secwépemc Reconciliation Framework Agreement (SRFA) and the 2019 Letter of Commitment (LOC). Unlike the Lil'wat case (and the Gitanyow case described later), the SRFA and LOC were entered into by multiple First Nations rather than a single First Nation. Most of the participating Nations are members of the Shuswap Nation Tribal Council, although not all members within that tribal organization are signatories to the agreements (Shuswap Nation Tribal Council, n.d.).[29]

[29] I have followed recent conventional practice here by referring to individual Bands (where so identified) as First Nations, but in doing so do not intend to presume how Secwépemc Bands, or Secwépemc peoples collectively, might self-identify.

The text of the SRFA points to a contact zone that is distinctly monological, dominated by state governance or state-driven co-governance forms. References in the agreement text pertaining to the recognition of Indigenous sovereignty claims are weak and few in number. Although an ongoing government-to-government structure is established by the agreement, it does not appear likely to overcome the essentially state-dominated and monological orientation of this Indigenous/state contact zone. The strategic-engagement provisions that make up most of the agreement do not offer a significant shift in institutional power, beyond that already obtained by Indigenous peoples through current Canadian law and practice for consultation and accommodation. It is unclear whether the government-to-government structure under the SRFA agreement was important for future power shifts towards the Secwépemc. The SRFA does not embrace a consent orientation in any significant way, given that its primary focus is on consultation requirements under current Canadian law, and this law does not require Indigenous consent before land and resource decisions by the state.

The SRFA ceased to have effect in 2019, and the new Letter of Commitment took effect that year. The LOC agreement moves way from the consultation-oriented strategic-engagement agreement provisions that dominated the SRFA, and the LOC is much shorter than the technically detailed SRFA. Importantly, the LOC's language suggests a significant shift in contact zone relations towards the dialogical. Governance under the agreement lies at that potentially creative tension point between Indigenous-driven and state-driven co-governance. A potential shift in institutional, structural, and productive power can be discerned, and a consent orientation arises through, for example, references

to the UNDRIP. In relation to the SRFA, the LOC represents a conspicuous move towards consistency with a dual sovereignty model.

Secwépemc Nations and territory

The Interior Salish Secwépemc Nations together occupy territories covering an extensive area in the Southern Interior of British Columbia. The Secwépemc Nations overall include almost 5000 persons, although only a portion of this population belong to Nations participating in the SRFA and LOC (British Columbia, n.d.-d). The communities and individual territories of the participating Nations extend from Kamloops in the west towards the Rocky Mountains in the east, a distance of approximately 300 kilometers. Landscapes across these vast territories include dry grassland ecosystems and forested plateau and highlands in the west, with an eastward transition toward the rugged mountains and interior rainforest ecosystems of the Monashee, Selkirk, and Rocky Mountain ranges. The terrestrial and aquatic natural resources are equally diverse, and include the hugely abundant salmon runs of the Thompson River system, which have sustained Secwépemc peoples for generations.

> The Secwepemc(sic) people have lived in this territory for thousands of years. Archaeological evidence in fact shows at least nine thousand (9,000) years of occupancy along the lakes and river areas. The remains of pit houses not far from our current reserves leaves us with a picture of the lives of our ancestors.
>
> Our Elders tell us we have lived here since time immemorial. We lived based on an economy of resource extraction, including fishing, hunting, trapping and berry gathering; our ancestors prospered, grew and grew from these lands for thousands

> of years. The waterways and networks of trails enabled vast travel that was tied to the seasonal cycles. Similarly, we developed intricate social and political systems that remained in place for thousands of years. (Adams Lake Indian Band, n.d.)

As with many Indigenous territories within the area of British Columbia, Secwépemc Nations' territories overlap with those of neighboring Nations. For example, a considerable portion of the Secwépemc's most easterly territory is also within the territory of the Ktunaxa Nation (BC Treaty Commission, n.d.-b).

Settler development in and across Secwépemc territory has been underway for well over a century. Mining has a long history in this area, as does cattle ranching. Although not extensive overall, other forms of settler agriculture can be found in the major valleys. Widespread logging has supported the development of a significant forest products infrastructure across the territory. In addition, Secwépemc territory has long been a nexus of British Columbia's and Canada's transportation network, initially through fur trading routes, followed by the construction of two national railway lines and two inter-provincial highways. Other industrial infrastructure crossing the territory includes existing and proposed pipelines, such as the Trans Mountain pipeline expansion designed to move crude oil as bitumen originating from the Alberta oil (tar) sands to the Port of Vancouver.

Most prominent among numerous settler communities throughout the territory is the city of Kamloops, with a population of over 90,000. Both the name and geographical significance of this urban center connects to the area's Indigenous origins and important

location, as expressed by the Tk'emlúps te Secwépemc people in whose territory Kamloops is situated:

> The word Kamloops is the English translation of the Shuswap word Tk'emlúps, meaning 'where the rivers meet,' and for centuries has been the home of the Tk'emlupsemc, 'people of the confluence.'
>
> Tk'emlúps has always occupied a place of great economic importance in our region. Traversed by two major waterways, traditional Tk'emlupsemc territory was the center of major traffic and trade routes. (Tk'emlúps te Secwepemc, n.d.)

Like the Lil'wat Nation, the Secwépemc Nations have not entered into a treaty with the Canadian state, nor are they currently engaged in treaty negotiations.

Description and Analysis of the SRFA and LOC.

The Reconciliation Framework Agreement: The Secwépemc Reconciliation Framework Agreement (SRFA) was initially signed on April 4, 2013, by the Chiefs of the (initially) participating Secwépemc Nations and the British Columbia Minister of Aboriginal Relations and Reconciliation (Reconciliation Framework Agreement, 2013, pp. 27–28).[30] At time of writing, the Reconciliation Framework Agreement (2013) is no longer in effect, having been supplanted by the Letter of Commitment (2019). For consistency of language across the agreements analyzed, the description and analysis of the SRFA below is largely presented in the present tense.

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[30] The initial Indigenous signatories were the Tk'emlúps Indian Band, Skeetchestn Indian Band, Adams Lake Indian Band, the Neskonlith Indian Band, the Splats'in First Nation, and Simpcw First Nation. By early 2014, the Shuswap Indian Band had joined the SRFA by way of an Amending Agreement while the Neskonlith Indian Band had withdrawn from the agreement (Amending Agreement, 2014).

The contents of the SRFA are generally consistent with those of a number of strategic-engagement agreements brought into being between 2012 and 2014 (see Table 1 in Chapter 3)) where strategic-engagement agreements were created without any associated or parallel government-to-government land-use planning process and agreement.

The SFRA begins in the usual pattern for B.C./Indigenous non-treaty agreements with a number of recitals (the typical "whereas" statements). Interestingly for this thesis, these recitals open with a reference to an important historical Indigenous assertion of continuing sovereignty.

> In the summer of 1910, Prime Minister Sir Wilfred Laurier met with a delegation of chiefs, which included those from the Secwépemc Nation, who presented him with a document known as the Memorial whereby the chiefs asserted the persistence of…their aboriginal nation's title and sovereignty, vowing that they would continue to struggle for a just and reciprocal relationship with the government until it was achieved. (Reconciliation Framework Agreement, p. 2)

This history-based reference is reinforced with an additional Indigenous assertion of the continuing existence and force of Indigenous law:

> The Secwépemc assert they have established law or laws related to cultural heritage and way of life over their territorial lands that may be embedded in Secwépemc Stspetekll (oral history). (Reconciliation Framework Agreement, 2013, p. 2)

However, later agreement text projects a distinct counterpoint by saying under "Governing Law" that "(t)his Agreement is to be covered by the applicable laws of British Columbia and Canada" with no accompanying reference to Secwépemc law (Reconciliation Framework Agreement, 2013, p. 22). Unlike the Lil'wat case, the SRFA recitals do not include an explicit declaration by the province of its asserted Canadian-based sovereignty on provincial "Crown Lands," instead only making reference to aboriginal rights being recognized and affirmed under the Canadian *Constitution Act, 1982*. The reference to any Crown assertion of sovereignty is indirect, with a small nod to "differing views with regard to sovereignty, jurisdiction, title, laws, and ownership" (p. 2).

Despite the SFRA including a reference to a historical Indigenous assertion of sovereignty through the compelling 1910 Memorial, the agreement is notably insufficient overall in directly acknowledging asserted sovereignties to signal coherence with a dual sovereignty model. Tellingly, the SRFA language does not directly assert state (provincial) sovereignty. This absence should not be read as the province acceding to Indigenous assertions of sovereignty. Rather, it is evidence that the province simply assumes state sovereignty as self-evident and overriding, such that any Secwépemc sovereignty claims do not need to be countered. Rather than acknowledging the presence of two asserted sovereignties (Indigenous and state), the agreement reinforces the prevailing Canadian settler-state view whereby pre-existing Indigenous sovereignties were somehow transformed into aboriginal rights upon the arrival of settler-state sovereignty (or that of its colonial predecessors).

The recitals make several references to the SRFA being a step (and in one instance a “first step”) in an evolving long-term relationship and towards “advancing reconciliation of (the Parties’) interests” (Reconciliation Framework Agreement, p. 2). Whether this intention might have been realized (at least in part) given the transition in 2019 to a new Letter of Commitment will be touched on below.

In comparison with the previous Lil’wat case, the use of Indigenous language in the agreement text is minimal (the above-noted reference to Secwépemc oral history as Stspetekll being one exception). This may reflect a core difference of the SRFA, with its focus on state-driven processes rather than a spatially focused land-use agreement. In the Lil’wat case, Indigenous geographical language could take on pertinent meaning in understanding and understanding the use of the land. A state-driven, procedurally oriented agreement such as the SRFA seems, by contrast, to offer no meaningful place for an Indigenous geography.

This absence of Indigenous language may also flow in part from the lack of any apparent space for independent Indigenous agency and governance to help shape the contact zone within which the SRFA was created. This stands in stark contrast to the Indigenous governance (through the Lil’wat Land Use Plan) that injected an Indigenous view into the Lil’wat-BC agreement. The contents and scope of the SRFA strongly suggest that the contact zone around the agreement creation was shaped instead in an environment of (at best) state-driven co-governance. This focus on a settler state-created economic and administrative paradigm seems by definition to assure a largely monological interaction, with limited space for injecting, let alone fully realizing, Indigenous worldviews and priorities.

The “Engagement Model” that is central to the SRFA is consistent with the general strategic-engagement agreement form described earlier in Chapter 3. The SRFA defines the Engagement Model as “the process of engagement between the province and Secwépemc on land and resource decisions by which representatives of the Parties share information and undertake discussions related to the impacts of Proposed Activities on Aboriginal Rights” (Reconciliation Framework Agreement, 2013, p. 4). Both the statements of purpose and the subsequent details of the SRFA make it clear that the agreement’s focus is on managing the consultation obligations of the provincial Crown as it makes its land and resource decisions under Canadian law. Indigenous peoples may certainly benefit from improved consultation and accommodation processes, and the presence of these state-created obligations may stand as a significant improvement over a previous era where no such obligations existed; however, the processes described remain distinctly state-driven and monological. These processes are not, in themselves, indicative of any form of dual sovereignty orientation.

For the SRFA, the procedural details of the Engagement Model are laid out in a 55-page appendix to the agreement (Reconciliation Framework Agreement, 2013, pp. 30–85). This “Appendix B” defines “Engagement Levels” that are to apply to various specified decisions made under provincial land and resource law or policy: “Information Available On Request,” “Notification & Expedited,” “Normal,” and “Deep” (p. 30). If it is assumed that the “Normal” Engagement Level reflects that level that would normally apply under provincial consultation and accommodation procedures, then well over 50 percent of the approximately 350 types of provincial decision identified in the Matrix were assigned to a Default Engagement Level that invokes no or minimal consultation

effort (either as "Information Available Upon Request" or "Notification & Expedited"). The Normal level was assigned for about 75 types of decision (approximately 20 percent), while Deep engagement was unequivocally indicated for only nine types of provincial decision (less than 3 percent).[31] This formulation, therefore, clearly leans towards achieving administrative efficiencies rather than promoting dialogical interactions.[32] Also, it is a provincial official that determines the Engagement Level applied for each decision, with no apparent involvement from a Secwépemc representative (Reconciliation Framework Agreement, 2013, p. 49).[33]

Consistent with an administrative-efficiency agenda, the SRFA also specifies "Engagement Timelines" for each Engagement Level (p. 50). The response timeline for Secwépemc is 10 calendar days for the Notification & Expedited level, 25 days for the Normal level, and 60 days for the Deep level (p. 50). Where Secwépemc does not respond in the allotted timeframe, the province may proceed with its decision. These timelines offer no obvious space for Indigenous action, and serve to reinforce the inherently monological orientation of the Engagement Model.

In contrast to the previous Lil'wat case, the Secwépemc Reconciliation Framework Agreement *does* establish a multi-layered government-to-government

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[31] The Default Engagement Level *might* result in Deep engagement in another approximately 30 types of decision, for which the suggested default Engagement Level is expressed as a range – either Notification & Expedited to Deep, or Normal to Deep.

[32] The SRFA does not apply to decisions under the province's *Environmental Assessment Act*, including consultation and accommodation for the currently controversial Trans Mountain pipeline expansion project, for which a substantial portion of the route is located in Secwépemc territory (Reconciliation Framework Agreement, 2013, p. 22).

[33] Engagement Requests are only invoked for the Notification & Expedited, Normal, or Deep engagement levels; the other engagement level described earlier as "Information Available Upon Request" is revealed to not be an engagement level at all, since no engagement is actually required (Reconciliation Framework Agreement, 2013, p. 50).

institutional structure. For the SRFA, the structure is described as "a Government-to-Government Forum to facilitate Government-to-Government Engagement at a political, strategic, and operational level" (Reconciliation Framework Agreement, 2013, p. 8).

Consistent with the general statement of SRFA purposes, the purpose specified for the Government-to-Government Forum starts with "meaningful dialogue" on "engagement and Accommodation related to Proposed Activities in accordance with the Engagement Model" (Reconciliation Framework Agreement, 2013, p. 8). Potential interests such as "broader land and resource use and environmental issues and concerns" are well down the list of topics (p. 8). A number of sub-structures within the SRFA's Government-to-Government Forum are arranged in a hierarchical relationship. The most operational structure is the Single Window Administrative Portal, which functions as a kind of administrative contact point for actions under the Engagement Model. It is created as a Secwépemc entity, working in a relationship with a designated "Provincial Responsible Official" (Reconciliation Framework Agreement, 2013, p. 9).[34] The province is to pursue its consultation and accommodation activities exclusively through the Portal, in lieu of the normal requirement for individual consultation and accommodation interactions with each of the participating SRFA First Nations. A "Senior Council" is the highest authority level in the SRFA Government-to-Government Forum arrangements, with appointees being a regional Assistant Deputy Minister or delegate and Secwépemc Chiefs or delegates (Reconciliation Framework Agreement, 2013, p. 10).

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[34] A Secwépemc Responsible Official is also established by the agreement (Reconciliation Framework Agreement, 2013, p. 13).

The establishment of an ongoing governance structure in the SRFA contrasts with the absence of any such structure in the previous Lil'wat case. Of interest for this thesis is whether the presence of a standing government-to-government structure in the form seen here is inherently conducive to a shift towards dialogical engagement. Although regular dialogue in a structured forum seems inherently positive, the limited space provided by the stated purposes of both the agreement and the government-to-government bodies does not seem to bode well for extensive dialogical interaction. Unlike the Lil'wat case, the SRFA does not explicitly set out any opportunity for articulating an Indigenous, non-Indigenous, and ultimately shared vision for land and resource use. Any progress towards the dialogical is more likely dependent on sustained efforts by the Indigenous parties to be heard within (or beyond) the government-to-government structure, and a willingness by provincial officials to respond meaningfully.

The SRFA, therefore, sees at best a limited shift in institutional power toward the Secwépemc Nations. The state retains much of its compulsory power in relation to land and resource decision making, consistent with its assumption of overriding state sovereignty. The establishment of a government-to-government structure might, however, be a source of an initially small shift in institutional and structural power towards the participating Indigenous governments. The very language of "government-to-government" can be seen as contributing, albeit at a minimum level, to a slow but steady increase in productive power for Indigenous peoples within the evolving Canadian reconciliation discourse.

The SRFA does not make any reference to, nor does it otherwise invoke, the concept of free, prior, and informed consent. Provisions for dispute resolution in the

agreement might be seen as some (relatively weak) attempt to achieve consent over more contentious issues that arise. However, the agreement's emphasis on prevailing Canadian law and the state-established norms of consultation and accommodation means, at most, a thin adherence to the concept of consent.

In summary, the SRFA is a state-centered document that cannot in itself be seen as compatible with a dual sovereignty construct. The presence of a government-to-government governance structure, which at first reading seems important, does not on its own suggest a significant shift towards a dialogical, power-balanced relationship. The previous Lil'wat case, despite lacking an ongoing government-to-government structure, shows a much stronger shift towards dialogical recognition and increasing power for the Indigenous Nation.

The Letter of Commitment: The Secwépemc – BC Government to Government (Qwelimínte) Letter of Commitment (LOC), which replaced the SRFA, was signed in 2019 by Chiefs of the same Secwépemc Nations participating in the SRFA (as of 2014), plus the Little Shuswap Indian Band (Letter of Commitment, 2019, pp. 9–10.) The provincial signatories were the Ministers (four in total) of: Indigenous Relations and Reconciliation; Forest, Lands, Natural Resource Operations and Rural Development; Energy, Mines and Petroleum Resources; and Environment and Climate Change Strategy (p. 11). This new (and much shorter) agreement is a dramatic departure from the SRFA. The LOC opens, in recital item A, with

> The Secwépemc have our own laws (Yerí7 re Stsq'ey's-kucw) which were given by Senxuxwlecw (Sk'elép) and laid out in our oral histories (Stseptékwll) relationg to Secwépemc ways of life and responsibilities to below, on and above

> Secwépemc territory (Secwépemculecw) including its water worlds, sky world, mother earth, fires, and cultural heritage. (Letter of Commitment, 2019, p. 1).

This strong assertion of continuing Indigenous law is reinforced by a further reference to Indigenous sovereignty claims in recital item (I):

> Without prejudice to their differing views with regard to sovereignty, jurisdiction, title, laws, and ownership, the Parties intend to work collaboratively and are committed to engaging across a spectrum of land and resource (Tmicw) issues, improving the Secwépemc economy, G2G relationships and to fulfilling legal obligations (Letter of Commitment, 2019, p. 2).

Through these recital items, the parties come close to an explicit acknowledgement of asserted sovereignties, with the Indigenous assertion clearly expressed. The state sovereignty assertion is somewhat less direct, being hidden in a general reference in the quotation above to "differing views." The recitals also contain reference (in items C and D) to the Canadian *Constitution Act* framing of "aboriginal and treaty rights" and the Canadian law obligations for consultation and accommodation, which might signal a continuing mindset on the part of provincial representatives that assumes the constitutional ascendency of the state and its sovereignty, despite acknowledgements of Secwépemc law (Letter of Commitment, 2019, p. 2).

Recital item B draws on the 1910 Memorial cited in the SRFA, and specifically quotes language from that Memorial indicating an Indigenous Nation desire to settle "our land question" and that "every matter of importance to each tribe be a subject of treaty so

we may have a definite understanding with the government on all questions of moment between us and them" (Letter of Commitment, 2019, pp. 1–2).[35]

A final (and significant) recital item states a desire, by the state as well as the Secwépemc, to work under collaborative principles as articulated in the Secwépemc story of Porcupine. An excerpt from that story is included: "(i)t was Porcupine who brought the two People together and when the People humbled themselves and shared their knowledge they were able to learn from one another and consequently lived in peace and prosperity" (Letter of Commitment, 2019, p. 3). It is difficult to envisage a more evocative expression of a dialogical intent to guide the conduct of state officials (as well as Indigenous participants) acting within this contact zone. The centering of an Indigenous story is an encouraging signal, as is a conspicuous shift overall (relative to the SRFA) toward the use of Secwépemc language.

A strong shift in the contact zone toward a dialogical orientation appears to be reinforced in the Agreement's "Objectives," the first of which is "development of a shared path to a long term reconciliation agreement to advance the Parties' interest in a true G2G relationship, based on the shared goal to reconcile their respect jurisdictions, governance, laws, values and responsibilities" (Letter of Commitment, 2019, p. 3). This apparent openness on the part of the state towards an evolving the relationship is a strong move away from the finality orientation that accompanies the monological form of recognition.

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[35] Despite this reference to a desire for treaty, the Secwépemc Nations party to the LOC are not currently participating in the B.C. Treaty process.

An intended consent orientation for the LOC is clear in Objective (b), which speaks to "reduced conflict over land and resource by collaboratively developing structure and processes that can facilitate consensus seeking outcomes reflecting the principle of free, prior, and informed consent under UNDRIP" (Letter of Commitment, 2019, p. 3). The state's commitment in this regard may be tempered somewhat by a subsequent reference to "the Supreme Court of Canada's *Tsilhqot'in* decision and other case law," thus ensuring that a Canadian law view of the meaning of consent will prevail (p. 3). A following objective (c) reinforces overall UNDRIP consistency by making reference to "the goal of enabling self-determined governance" for the Indigenous parties (p. 3).

Like the SRFA, the LOC gives life to a government-to-government structure which, for the latter, is referred to as an "interjurisdictional G2G Forum" (Letter of Commitment, 2019, p. 3). The components of and focus for this G2G Forum are significantly different from those of the SRFA. Where the SRFA creates a multi-layer structure primarily to address the management of "Engagement" (meaning consultation and accommodation activities), the LOC governance structure is more broadly oriented toward addressing: Secwépemc title and rights, the Nations' economies, and Secwépemc cultural revitalization (pp. 3–4). The LOC G2G Forum is specifically charged with, among other things, acting to

> "build a shared understanding of Secwépemc traditional governance, laws, and protocol, and identify processes to support Secwépemc governance and capacity building (and)
>
> collaboratively explore approaches for a contemporary shared decision making

> model between the Secwépemc and the Province, reflecting principles of UNDRIP" (Letter of Commitment, 2019, p. 4).

Of note is the establishment within the LOC G2G structure of a "Leadership Table" consisting of Secwépemc Chiefs and provincial Ministers, and a commitment to a minimum of one "Chief-to-Chief" meeting annually, with the location "alternating between Secwépemc territory and a location identified by the Province" (Letter of Commitment, 2019, pp. 3-4).[36] There is no equivalent access to provincial Ministers within the SFRA structure, within which the highest identified point of engagement is Chief to Assistant Deputy Minister (Reconciliation Framework Agreement, 2013, pp. 9–10).

The Engagement process that dominated the SRFA is relegated in the LOC to a relatively short appendix, coupled with a stated intention of developing an "Interim Engagement Approach" through a joint "Operations Table" that will function under the overall government-to-government structure (Letter of Commitment, 2019, p. 5). This represents a notable shift in emphasis from the primarily monological state-driven co-governance of the SRFA Engagement Model. Relative to the SRFA, the LOC suggests a much greater potential for a shift in power towards the Indigenous Nations, with the state appearing to be pull back on its compulsory power tendencies. There is a concomitant increase in Indigenous institutional and structural power by way of the broadly mandated government-to-government structure and a shift towards a consent orientation consistent

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[36] There are legitimate questions as to whether provincial Cabinet Ministers are conceptually equivalent to First Nation Chiefs, as the latter can be seen as having political status equivalent to at least a provincial Premier.

with the UNDRIP. The shift is also consistent with, and supportive of, the growth in productive power for Indigenous peoples across British Columbia and Canada.

The LOC does not appear to make specific reference to Indigenous-governed processes such as land-use planning as a specific means for injecting an Indigenous vision into the contact zones. Nevertheless, the LOC has moved substantially towards coherence with a dual sovereignty model. The actual pathway leading from the monological SRFA to the more dialogical LOC cannot be clearly discerned from the agreement texts. The SRFA was, by its own language, intended in part to serve as "the first step to an evolving long term relationship….jointly extended or amended to adapt to emerging common interests or new mandates" (Reconciliation Framework Agreement, 2019, p. 2). But it is unclear whether this intended evolution was realized entirely or partially within the SRFA contact zone itself. While the SRFA may have served as an important step towards the more expansive LOC, it is also possible that the election in British Columbia of a New Democratic Party government committed to UNDRIP adoption was at least as important for generating the significant evolution seen in the LOC.

Case 3: Gitanyow Huwilp Recognition and Reconciliation Agreement

The Gitanyow Huwilp Recognition and Reconciliation Agreement (GHRRA), like the Lil'wat LUPA and the Secwépemc LOC described above, displays evidence of a more dialogical relationship supportive of a dual sovereignty model. The land-use planning aspects of the GHRRA, flowing as they do from an earlier Indigenous-driven co-governed planning process suggest significant Indigenous influence. That, coupled

with the agreement's prominent use of Indigenous terms and concepts, suggests dialogical interaction within the contact zone. The GHRRA is less explicit than the Secwépemc LOC in establishing an ongoing consent orientation. However, the combination of a (potentially) dialogical contact zone within an ongoing government-to-government structure seems conducive to a sustained shift in overall institutional and structural power toward the Gitanyow, consistent with and supportive of broader advances in productive power for Indigenous peoples in British Columbia and Canada.

Gitanyow Nation and territory.

The Gitanyow Nation, as represented and governed by the Gitanyow Hereditary Chiefs, are the Indigenous sovereigns for a territory in the northwest of British Columbia located north of the Skeena River, and extending to the Kispiox River Valley and Nass Basin. Their primary community, also named Gitanyow, is presently home to approximately 40 percent of the Nation's population of 870 (Indigenous and Northern Affairs Canada, n.d.-a). Gitanyow shares Indigenous language and cultural affinities with neighbouring Gitxsan peoples, all of whom form part of the larger grouping of Tsimshian language peoples centered on the Skeena River and its tributaries. However, Gitanyow remains politically independent of larger Gitxsan and Tsimshian groups.

Gitanyow territory contains both mountainous terrain and open valleys dominated by forests of coastal western hemlock and western red cedar that form ecologically transitional ecosystems situated between coastal rainforests and the sub-boreal forests of northern British Columbia. Until well into the 20th century, Gitanyow territory remained outside the settler transportation networks that had, by the early part of that century, extended to the Skeena valley. However, a major highway connecting the Skeena Valley

to northwestern British Columbia and Yukon Territory was constructed in 1964, traversing the length of Gitanyow territory. Logging has been the most evident settler use in the territory. There are no significant settler communities in Gitanyow territory.

In addition to forest and wildlife resources, the salmon resources of the Skeena and Nass River systems are of enormous importance, providing vital sustenance to successive generations of Indigenous people and supporting major settler-controlled fisheries in the lower rivers and adjacent ocean. On this landscape and its rivers, the Gitanyow Nation has consistently asserted its own laws and forms of governance over their territory.

> The Gitanyow peoples have exercised their authority and legal obligation to sustain and protect the land and resources of their territories for millennia. In 1959, the Gitanyow, in conjunction with the Provincial Museum of British Columbia, published Histories, Territories and Laws of the Kitwancool. The histories, territorial boundaries and legal principles recorded therein go back thousands of years and will continue to exist forever. Over the centuries the Gitanyow have remained steadfast in the defence of their inherent title and jurisdiction over their territories in the face of ever greater encroachment from forestry, mining, settlement, and other threats. They have done so through military, diplomatic and legal means. (Gitanyow Hereditary Chiefs, n.d.-b)

The asserted territory of the Gitanyow Nation does not overlap significantly with most of its Gitsxan and other Tsimshian-language neighbours (BC Treaty Commission, n.d.-b). However, the Nass Wildlife Area within which the neighboring Nisga’a Nation

exercises wildlife harvesting treaty rights under their 1999 treaty with Canada and British Columbia overlaps with a majority of Gitanyow Nation territory.

The Gitanyow Nation is engaged in the British Columbia Treaty process, having signed a Framework Agreement to guide its treaty negotiations in 1996. No treaty-related agreements have been reached since that date. The Hereditary Chiefs describe their actions as supporting their long-term treaty-making goal.

> The goal of the Gitanyow Huwilp Society is to establish government to government agreements over time to form the foundation of a modern day treaty through an Incremental Treaty Approach, on behalf of the Gitanyow Huwilp membership. (Gitanyow Hereditary Chiefs, n.d.-b)

Huwilp is the plural of Wilp, the latter being the geographic areas that underpin Gitanyow law, resource management, and stewardship. The Gitanyow Huwilp Society is a supporting body for the Gitanyow Hereditary Chiefs.

Description and Analysis of the GHRRA.

The Gitanyow Huwilp Recognition and Reconciliation Agreement (GHRRA) was signed in March 2012, and renewed in 2016. The renewal agreement was signed by eight Gitanyow Hereditary Chiefs and a representative of the Gitanyow Huwilp Society, and by the provincial Minister of Aboriginal Relations and Reconciliation, and Minister of Forests, Lands and Natural Resource Operations.

Porter and Barry provide a substantive overview of the context within which the GHRRA arose (2016, pp. 119–130). In the 1990s and 2000s, the Gitanyow were introduced to the potential benefits of land-use planning through the Nation's

participation in the state-governed Kalum and Kispiox Land and Resource Management Plan processes, despite the clear state-oriented bias of these processes (p. 120). Seeing the ways in which planning could meet their Nation's interests, the Gitanyow effectively abandoned their treaty negotiations under the BC Treaty Process to focus on land-use planning (p. 120).

As often seen in recent Indigenous/state relations in British Columbia, further developments in the relationship between the Gitanyow and the province were propelled by legal action. A BC Supreme Court judgement in 2002 found that the province had not consulted Gitanyow sufficiently before deciding to approve an ownership transfer for certain forest harvesting licences located in part within the Gitanyow Huwilp (Porter & Barry, 2016, p. 120). After protracted follow-up negotiations between Gitanyow and the province, the latter acceded to a Gitanyow request to proceed with a joint planning process between Gitanyow and the province's Ministry of Forests (p. 121).

As Porter and Barry show, subsequent planning processes were long and complex, confounded by shifting responsibilities and varying policy agendas in the provincial government (2016, pp. 121–130). In the initial stages, Gitanyow were engaged with the Ministry of Forests. With the concurrence of that ministry, the Nation exercised substantial control over plan development through direct oversight of a principal planning consultant who saw himself as "working for the Gitanyow" (p. 122). This 2005 Gitanyow-influenced process identified "areas suitable for timber harvesting, as well as the forest ecosystem networks, wildlife patches and wildlife corridors needed to protect other biodiversity and cultural values" (p. 122).

This initial planning result was not given formal provincial government sanction, and instead that government's newly formed Integrated Land Management Bureau (ILMB) took on the role of planning agency and insisted on pursuing a different form of plan that better conformed to provincial planning policy, entitled the Nass-South Sustainable Resource Management Plan (Porter and Barry, 2016, p. 123). The Gitanyow role in this later process, although described as a partnership, seems to have been significantly less prominent than it was in the initial 2005 process, and the values addressed by the plan "did not always match Indigenous interests and aspirations" (p. 124). Issues arising from a significant territorial overlap with the neighbouring Nisga'a Nation's treaty-defined Nass Wildlife Area also contributed to the Gitanyow Nation's unwillingness to endorse all aspects of this ILMB-sponsored plan (p. 127).

The Gitanyow were not willing, however, to abandon their planning vision. The Nation proceeded to consolidate contents of previous planning exercises in their territory to create the Gitanyow Lax'yip Land Use Plan (GLLUP), and strategically used this plan in negotiations in 2011 with the government-owned British Columbia Hydro Corporation in their (Gitanyow's) efforts to protect key sacred lands from a proposed transmission line (Porter & Barry, 2016, p. 128). It was at this point that the initial 2012 GHRRA was negotiated, incorporating key Gitanyow land-use direction.

The development in 2012 of the initial GHRRA also corresponded with a particularly intense period for completing strategic-engagement agreements between a number of Indigenous Nations and the province. It is not surprising, therefore, that the GHRRA contains these types of provisions, as well as content that emerged from the Gitanyow's commitment to land-use planning. The type of multi-level government-to-

government governance structures that had become common by 2012 were also brought into the GHRRA.

The GHRRA contains a "Recognition" section where the province acknowledges that Canadian courts have pointed to strong Gitanyow legal claims for aboriginal title and rights within the Gitanyow Lax'yip (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, p. 6). This provincial statement of recognition is tangential and muted at best, simply recognizing "that the historic and contemporary use and stewardship of land and resources by Gitanyow are integral to the maintenance of Gitanyow society, governance, and economy with the Gitanyow Lax'yip" (p. 7). One recital item states that "(t)his Reconciliation Agreement will be implemented by each of the Parties in accordance with their respective laws, policies, customs, traditions, and their decision-making processes and authorities" (p. 2). But overall, the province fails to provide an explicit acknowledgement of Gitanyow's claim to Indigenous sovereignty, and instead defers to an Aboriginal rights construct under Canadian law without feeling compelled to express the state's sovereignty claim. This aspect of the GHRRA, therefore, is not notably compatible with a dual sovereignty orientation.

Neverthless, the GHRRA does acknowledge a strong Indigenous presence in its very title, with its reference to the Gitanyow Huwilp. The first recital for the agreement clarifies that "(t)he Gitanyow peoples comprise eight historic Wilp, which are the social political and governing units of the Gitanyow, and are collectively known as the Gitanyow Huwilp" (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, p. 1). A subsequent recital again uses Indigenous language to refer to "lands and natural resources on Gitanyow Lax'yip," the latter being the Gitanyow term for their own

territory (p. 1). The Definitions section of the Agreement also brings forward important Indigenous terms and cultural and legal constructs.

> "Adawaak" record the history of each Wilp, including the the origin of Wilp members, crests (Ayuuks), leadership, acquisition, over its territories (Gitanyow Lax'ip);

> "Ayookxw" is Gitanyow law; among other things the Ayookxw govern the ownership of Gitanyow land and resources, conduct of the Li'ligit (feast), relationships with one another and inheritance; the Ayookxw are founded on knowledge, experience and practice which are thousands of years old and are recounted in the Adawaak and Ayuuks; the Ayookw are affirmed and confirmed through testimony on the Adawaak and the Li'ligit; new Ayookxw may be adopted in order to meet new and evolving challenges of the contemporary world; the Ayookxw ensure peace and order for the Hulwilp and includes the *2009 Gitanyow Constitution*.

> "Gwelx ye'enst" means the exercise of what Gitanyow holds to be their rights and responsibility to hold, protect and pass on the land in a sustainable manner from generation to generation, including the process of developing the Gitanyow Lax'yip Land Use Plan.

> "Ha'nii tokxw" means "our food table" and is the Gitanyow designation that encompasses the land, water, air and all resources associated with Hanna Tintina and the Biodiversity Areas set out in Schedules A and B, which retains the landscape in a predominantly natural condition and, from the Gitanyow perspective, is intended to maintain and enhance the availability of Gitanyow foods, and protect the water that is the lifeblood of the Gitanyow Lax'yip.
>
> "Wilp Sustainability" means, from the Gitanyow perspective, conditions under which ecosystem function, socio-cultural and economic well-being are maintained, and risk to ecological integrity is low, thus providing the ecological foundation for the long-term socio-cultural and economic well-being of each Wilp for the purposes of this Agreement. (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, pp. 2–4)

Together, these definitions represent a strong assertion of Gitanyow's presence and worldview. Overall, the Definitions section presents a weaving of Gitanyow terms and concepts with conventional provincial government language such as "Land and Resource Decision," "Management Objective," and "Renewal Date" and finishes with what might be seen as a hybrid of Indigenous and Western terms and concepts. The GHRRA also provides space for a strong Gitanyow statement as follows:

> The negotiation and implementation of this Reconciliation Agreement supports the vision of the Gitanyow Huwilp, which includes:
>
> (a) reconciliation and co-existence with the Crown;

(b) the establishment and implementation of a sustainable land use plan for the whole of the Gitanyow Lax'yip;

(c) ensuring Wilp Sustainability;

(d) sharing the wealth of the Gitanyow Lax'yip; and

(e) Shared Decision-Making between British Columbia and Gitanyow (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, p. 5).

Thus, the Gitanyow appear to have obtained a clear space within the body of the agreement for an expression of their own purposes for the agreement, distinct from the goals of the province. By this agreement language, the Gitanyow have confirmed the importance of their own land-use planning vision, as consolidated in the GLLUP and subsequently brought into the GHRRA. Notably for this analysis, the Gitanyow's language of "co-existence with the Crown" and "sharing the wealth of the Gitanyow Lax'yip" is specifically consistent with a dual sovereignty construct.

The significant number of Gitanyow language terms combined with references to the Indigenous social, legal and political constructs that they represent strongly suggests a shift towards a dialogical process in the formulation of the agreement, and signals an opening to sustained dialogical forms of engagement between the two sovereigns (Indigenous and state) as they interact on the Gitanyow Lax'yip.

The juxtaposition in the GHRRA of Indigenous language and concepts with western forms is also conspicuous. This is perhaps epitomized by the concept of Wilp sustainability, which brings an Indigenous view to modern western concepts of ecological

sustainability. The apparent willingness of the Gitanyow to accept western language and forms may echo Pratt's view of a contact zone within which the Indigenous speaker often deploys the language of the conqueror in order to be heard. Or it may also mean that Gitanyow have concluded the western concepts and tools for sustainable planning and management are useful in their own right for supporting, rather than conflicting with, an Indigenous vision of land use.

The GHRRA bears some important resemblance to the Lil'wat case, given the prominence both give to land-use planning. The GHRRA sees the parties (Indigenous and state) agreeing to the contents of the Gitanyow Lax'yip Land Use Plan, with the contents of the GLLUP brought into the GHRRA by way of schedules containing Wilp maps (Schedule A) and management objectives (Schedule B) (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, p. 9 pp. 8–11; A1; B1–B66). Unlike the Lil'wat case, the Gitanyow planning efforts did not include a stand-alone Indigenous-authored land-use plan. Rather, the Gitanyow's planning initiatives were co-governed from the outset, with Indigenous-driven co-governance seen in early stages of collaborative planning and then shifting towards state-driven co-governed processes in later stages. Despite the changing agenda of the state, the Gitanyow's persistence in the pursuit of their planning vision did ultimately afford a strong Indigenous foundation for the GHRRA through the joint acceptance of the Gitanyow Lax'yip Land Use Plan as a central piece for the agreement. The sustained efforts of Gitanyow assured that the contact zone (or zones) that culminated in the formulation of the GHRRA were never exclusively monological, and overall tended toward the dialogical.

The Gitanyow's success in promoting their vision through Indigenous-driven land-use planning for the Gitanyow Lax'yip is illustrated once again through the use of Wilp territories and their Gitanyow language names used in organizing and presenting the folio of maps that make up Schedule A. This stands in interesting juxtaposition to the distinctly western-based planning language and concepts in the objectives in Schedule B, including, for example, "Exposed erodible soil," "forage habitat," "Hydroriparian zone," "Moisture regime," and "Equivalent Clearcut Area" (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, pp. B2, B3, B10). This schedule also employs a typical textual frame for forestry and environmental planning using "Plan Goals," "Objectives," "Measures/Indicators," "Targets" and "Management Considerations" (pp. B14–B53). Once again, an interesting hybrid of Indigenous and western language and concepts is evident.

The strategic-engagement aspects of the GHRRA "Engagement Framework" are conceptually similar to the Secwépemc SRFA "Engagement Model." The distribution of various provincial decisions to Engagement Levels laid out in the GHRRA is similar in overall form to that of SRFA: of over 200 decisions noted in the GHRRA, almost 40 percent (more than 80 in number) are assigned to the two least onerous Engagement Levels of "Summary of Non-Referral Activity" and "Pre-Notification." This is less than that of comparable Engagement Levels in SRFA, but not dramatically so. The GHRRA does, however, assign significantly more decisions to a Default Engagement Level of "Complex/Deep," with over 60 (close to 30 percent) of the decisions so assigned, as opposed to about 3 percent similarly assigned to Deep consultation for the SRFA.

Therefore, the GHRRA appears to provide at least marginally more space for Indigenous/state dialogue in consultation processes than does the SRFA.

The GHRRA also roughly parallels the SRFA in assigning expected (and sometimes truncated) timeframes for consultation activities (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, pp. C11–C12). The GHRRA Engagement Framework varies from the SRFA Engagement Model by placing responsibility for determining the Engagement Level with representatives of both Gitanyow and the province, rather than exclusively with provincial officials as in the SRFA (p. C15). The GHRRA also differs from the SRFA by including provisions for Gitanyow engagement on decisions under the provincial *Environmental Assessment Act* (a matter specifically excluded from the SFRA). Once again, these provisions note the role of the GLLUP in informing these decisions (pp. H1, H4). Perhaps most importantly, the Gitanyow Lax'yip Land Use Plan figures prominently in the GHHRA Engagement Framework as an important source of relevant information, being mentioned ten or more times in Schedule C and its attachments, while (as noted earlier) the SRFA Engagement Model makes no reference to land-use planning or plans.

Like both of the agreements described in the preceding Secwépemc case, the GHRRA mandates an ongoing government-to-government institutional structure. In the GHRRA case the tone of the agreement's text pertaining to the government-to-government structure is different in significant ways from the balance of the GHRRA. References to land-use planning in this part of the GHRRA are limited, with no specific mention being made of the Gitanyow Lax'yip Land Use Plan. The Joint Resources Governance Forum is mandated (well down its list of responsibilities) to make

"recommendations respecting the establishment, implementation, and potential amendment of the land use designations, Land Use Zones, and Management Objectives," but the overall thrust of the Forum and Council responsibilities are otherwise strongly oriented to managing the strategic-engagement provisions (i.e., consultation procedures) contained in the agreement (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, pp. C1–C4). In that respect, the scope and orientation of the government-to-government structures of the GHRRA are considerably less expansive than those indicated under the Secwépemc LOC, and are more in line with the earlier consultation-oriented SRFA.

Given its strategic-engagement focus as described above, the GHRRA language on government-to-government structure does not in itself point to a particularly dialogical form of recognition or interaction, or to a real shift in institutional power towards the Gitanyow. Any shift in power will flow instead from sustained efforts of First Nation representatives to assert themselves within the ongoing contact zone, and the provincial government's willingness to respond openly to the Nation. Looking at the GHRRA overall, the prominence of Indigenous language and Indigenous legal forms in the text does suggest an overall growth in Gitanyow's structural power. Such attention to the Indigenous both reflects and reinforces the growing productive power of Gitanyow specifically along with Indigenous peoples in British Columbia and Canada.

The consent orientation of the GHRRA is mixed. Clearly, the land-use planning direction provided through the Gitanyow Lax'yip Land Use Plan represents Indigenous consent for specified land uses with the Gitanyow Lax'yip. However, neither the

Engagement Framework nor the GHRRA government-to-government structure speak meaningfully to consent.

One additional item of interest in the GHRRA is the province's clear acknowledgement that the "Simgigyet" and "Sigidimhanak," respectively the hereditary male Chiefs and female Chiefs and matriarchs, are the representatives of the Gitanyow Huwilp (Gitanyow Huwilp Recognition and Reconciliation Agreement, 2016, p. 7). This could be both symbolically significant in further affirming the Gitanyow form of government, and practically important in making clear who speaks for the Nation in activities carried out under the GHRRA.

In summary, the consistent and sustained efforts of the Gitanyow have reconfigured the contact zone that shapes their relationships with the province, as the Nation achieved considerable success in prying open state-driven assumptions and practices. The state's response may have been uneven, at times hanging on to state-governance norms and a monological approach where they could. However, the province ultimately did come to recognize and adopt an Indigenous land-use vision based on the Gitanyow Huwilp. As with the Lil'wat case, land-use planning was a device used by the Indigenous Nation to assert their presence within the contact zone. This coincided with the province opening up in response to legal pressures emanating from Canadian court judgments, and created a contact zone and agreement that moved substantially towards compatibility with dual sovereignty.

Chapter 6 – Conclusion

> Cheryl Casimer, Ktunaxa, a political executive with the First Nations Summit, spoke in her Ktunaxa language in the House before she turned her message to those who feared the implications of UNDRIP. "Do you hear it? The sky did not fall."
>
> Justine Hunter, Globe and Mail reporter, upon the introduction of the *Declaration on the Rights of Indigenous Peoples Act* in the British Columbia legislature (2019).

As outlined in Chapter 1, this thesis sets out to explore two linked questions:

1) Can (and should) the physical territory that Canada claims be seen as simultaneously subject to two distinct sovereignties: one as asserted by the Canadian state and the other as asserted by the Indigenous peoples whose territories coincide with that of Canada?

2) Are recent Indigenous/state agreements and agreement-making processes, specifically non-treaty agreements related to the use of provincial "Crown land" in British Columbia, coherent with dual sovereignty?

Answering the first question has meant investigating the literature, drawing on both non-Indigenous and Indigenous scholars, to illustrate the flaws in the established and dominant European conception of a single, all-powerful sovereign as the only

legitimate model for understanding and applying concepts of sovereignty. This review also shows that, even by the particular standards of the European sovereignty construct and even more obviously by Indigenous conceptions and understandings, Indigenous sovereignties operating within the same territorial space as Canada have not been nullified – by *terra nullius* or any other means – and these Indigenous sovereignties persist as a legitimate reality. Indigenous sovereignty is not properly conceived as subordinate to state sovereignty; in other words, it is not the more limited and dependent form as often articulated in the United States through the 19th Century Marshall decisions.

Answering the second question has involved a significant detour into forms of agreement in the Canadian province of British Columbia, where the three cases examined are situated. Given my focus on agreement-making as a natural – indeed essential – means of giving life and shape to ongoing relations between sovereign polities, the history of and context for agreement-making between that province and co-located Indigenous Nations is first surveyed, with emphasis on "non-treaty agreements," a category within which all of the evaluated cases are found.

Several intellectual strands can be drawn together to create a framework by which the cases can be evaluated for their coherence with a dual sovereignty construct. The concept of a contact zone, as introduced by Pratt and amplified in a land-use planning context by Porter and Barry, is a useful device for understanding how distinct Indigenous and state polities engage within a definable political space (Pratt, 1991; Porter and Barry, 2016). They may clash, they may collaborate respectfully, or at times do both.

To characterize interactions within contact zones, Tully's concepts of dialogical versus monological recognition provide a particularly resonant frame (2004). For this project, only the dialogical can be considered to be congruent with dual sovereignty, as the monological form inherently reflects state institutions immersed in a construct of unchallenged state authority that positions Indigenous governments as absent or inherently subordinate.

Assessments of governance types, drawing on and adapting the work of Hill et al., provides a complementary indicator of forms of interaction in contact zones, with unfettered and un-coerced Indigenous governance being central to the achievement of the more dialogical engagement that conforms to a dual sovereignty frame (2012).

A taxonomy of power that draws on a framework originally articulated by Barnett and Duvall in an international relations context also seems helpful for assessing a shift towards meaningful relations between co-existing sovereignties (2005). Indeed, the application of a taxonomy drawn from a field where international sovereignty matters are at play is not at all incongruent with a world of overlapping internal sovereignties. Although applied here in a cursory fashion only, the taxonomy appears to be useful for assessing shifting (or in some cases static) power relations within Indigenous/state contact zones. The realization of meaningfully dual sovereignty clearly demands a shift away from state power in its compulsory and institutional forms that merely (and potently) assume unilateral state sovereignty. State officials must abandon these inherently monological power forms and embrace new institutions based on real power sharing – including certain forms and new norms for agreements and agreement-making.

At the same time, Indigenous parties must be able to access additional structural and productive power in their relations with the Canadian state and Canadian society.

The cases examined demonstrate that some agreements and agreement-making processes as undertaken by Indigenous Nations and the province of British Columbia over recent decades at least partially fulfill the expectations of dual sovereignty. But not all do so, as the 2013 Secwépemc Reconciliation Framework Agreement shows. Agreements focused almost exclusively on the type of strategic-engagement model used in the SRFA leave Indigenous peoples distinctly mired within a monological world that projects the European conception of a single dominant sovereignty, in this case as manifested by the province. These consultation-procedure oriented agreements are intended to secure state-mandated resource development approvals, with little meaningful deviation from state-defined consultation norms. This is so despite the establishment by the agreement of a government-to-government governance structure for agreement activities.

The 2019 Letter of Commitment with the Secwépemc Nations, which supplanted the SRFA, exhibits a strong evolution towards a dialogical contact zone between the Secwépemc Nations and the province. The extent to which the Secwépemc were able to use the SRFA governance structure to promote this evolution is unclear, particularly given the largely monological scope of that agreement. The province's 2019 adoption of the UNDRIP in provincial law may also have been a critical catalyst to the shaping of the 2019 agreement. In any case, the language and apparent intentions of the LOC are largely congruent with a dual sovereignty model.

The two other cases, the Land Use Planning Agreement (2008) between the Lil'wat Nation and British Columbia and the Gitanyow Huwilp Recognition and Reconciliation Agreement (2016), also exhibit the more dialogical forms of recognition that are necessary to meaningful dual sovereignty arrangements. This more dialogical tendency may be rooted in the inherent forms of relation that attend to government-to-government land-use planning processes, given the significance of land-use planning (although in different forms) to the creation of both agreements. By comparison, land-use planning is absent in both of the Secwépemc agreements. As Porter and Barry point out at length, however, land-use planning contact zones, particularly where they are state-defined and -dominated, are not necessarily dialogical and do not always entail a meaningful shift in power away from the state and towards Indigenous peoples (2016).

The cases of the Lil'wat LUPA and the Gitanyow GHRRA show that, within a certain context and with certain intentions, government-to-government land-use planning processes and resulting agreements can tend significantly towards dialogical recognition and a discernable rise in Indigenous power. In this way, these cases (along with the Secwépemc LOC) show how relations in a dual sovereignty context can be formed and realized, and how state and Indigenous authorities for land and resources can be reconciled on shared Crown/Indigenous lands. Independent Indigenous leadership over key inputs to, or aspects of, the government-to-government planning processes was extremely important to facilitating a shift towards the dialogical. Government-to-government process structures created for at least the duration of the planning processes saw an institutional power shift, and possibly supported broader shifts in both structural and productive power.

Government-to-government institutional arrangements, however, do not in themselves always indicate a shift toward the dialogical. In the Secwépemc SRFA, a standing government-to-government engagement structure is invoked by the agreement, but a continued focus on meeting state-defined consultation procedures may have tilted the ongoing interactions toward the monological. The failure in this case to explicitly incorporate Indigenous language in the agreement and the lack of meaningful space for Indigenous agency, both in the process of creating the agreement and in its operation, means dialogical relations are unlikely under this particular agreement. This is not to argue that Indigenous peoples derive no benefits from government-to-government structures created within what continues to function as state-driven monological relationship. But these benefits are more likely to be marginal improvements within a state-dominated system. Meaningful shifts towards Indigenous power require much more.

In the cases reviewed here, forms of collaborative land-use planning and associated agreements, as seen in the Lil'wat and Gitanyow cases, are clearly more likely to be dialogical. However, it is not my intent here to position government-to-government land and resource planning and agreements as the only means by which the dialogical relations of dual sovereignty can be realized. Other spaces for meaningful dialogical interactions undoubtedly exist, and the Secwépemc LOC illustrates how a dialogical contact zone may be created without any explicit role for land-use planning, either in the development of the agreement or in the ongoing relationship. What is most salient in the two land-use planning cases are three key features that facilitate or support a dialogical interaction. First is the symbolic acknowledgement of Indigenous sovereignty (as a direct acknowledgment as otherwise reflected in the agreement text), the use of Indigenous

language throughout the text, and in the clear presentation of the Indigenous worldview and law as it governs land and resource management. Second is the space afforded for independent Indigenous action, unfettered by the state and its traditionally dominant views, except where the latter's technologies are adopted by the Indigenous actors as a means of "speaking back" to the hegemonic settler order. This Indigenous action can take place as a precursor to a government-to-government process, as observed in the Lil'wat example, or as an integral part of the government-to-government process itself, as evident in the Gitanyow Huwilp case. Third, land-use planning is inherently forward-looking. In its government-to-government form, it provides a particularly open space for dialogical engagement – by explicitly undertaking to rationalize an Indigenous peoples' land-use vision with the state's own (often dueling) imperatives for both resource extraction and conservation. Whether a particular government-to-government land-use planning process is truly dialogical may depend on specific power relations within the planning and agreement-making process. But the potential is there.

Strategic-engagement agreements do not start from the same forward-looking and potentially dialogical place. The activities managed by these agreements are inherently reactive in nature, for both state and Indigenous players. The kind of day-to-day, decision-by-decision review associated with consultation procedures means that it is difficult for these agreements to transcend the monological, and they will always remain rooted primarily in a state-driven agenda. Even where a strategic-engagement agreement has confirmed a government-to-government approach and provided forms of joint consultation oversight, a truly dialogical interaction is difficult to envisage. It may not need to be land-use planning per se, but some form of early government-to-government

agreement on a broader vision of land and resource use, drawing on an Indigenous vision as well as the state's imperatives, is needed to realize the dialogical forms that recognize both sovereignties.

An analysis of existing agreement documents cannot fully assess the nature and functioning of institutional arrangements. Only engagement with real world actors and their lived experience within these arrangements would fully reveal their possibilities (and limitations) for furthering a just and durable relationship between sovereign Indigenous Nations and the constituent components of the Canadian state.

Another important stone remains unturned here. Even where dialogical relations predicated on dual sovereignty can be envisaged as an operational norm on Crown/Indigenous lands, instances will remain where the interests and aspirations of the two sovereign decision-makers diverge irreconcilably. By what principles and processes can such differences be addressed? For example, could the Canadian courts come to be seen as appropriate arbitrators of disputes that originate from distinct state and Indigenous sovereign authorities? If so, what would it take for the Canadian judicial system to take on this role legitimately? The rising prominence of Indigenous law is important. But it seems that the Courts would have to also abandon their magical thinking – what Gordon Christie describes as a "mysterious" thing – that somehow assumes the eradication of Indigenous sovereignties upon the assumed establishment of a singular Canadian sovereignty over the lands and resources (as well as the peoples) of what is now Canada (2019, p. 46). If the Canadian courts cannot overcome these obstacles, an alternate agreed-to forum for arbitration might need to take shape.

While this thesis attempts to affirm dual sovereignty as a means for envisaging just relations between Canada and the Indigenous peoples who inhabit the same territorial spaces, I am mindful of the risk that a concept of duality presents for exacerbating psychological and political differences. A sense of shared interest and broader community across all peoples in this shared Indigenous/Canadian space may be essential for sustainable social and political relations. The political visions provided by both Indigenous and non-Indigenous leaders could be important to creating and maintaining the type of symbolic capital needed to sustain relations within a dual sovereignty construct. Concepts around the sharing of land and resources, which arise frequently and prominently in Indigenous discourse, could be symbolically important in representing the means by which the presence of Indigenous and state sovereignties are rationalized. I am unable within the limits of this thesis to explore the role of symbols and the deployment of symbolic capital as both risk and opportunity, but I believe it merits further investigation.

This project started with a premise that the presence of dual Indigenous and state sovereignties provides a superior political conception for understanding and creating a just relationship between the Canadian settler state and the Indigenous polities that inhabit the same territory. The work here is focused upon agreements and the attendant process of agreement-making, a form of action that is central to relationships between sovereignties. Agreement-making between sovereignties is often focused on the development of treaties; however, by focusing on non-treaty agreements I hope I have shown how agreement-making in other forms can support a dual sovereignty relationship.

As noted, however, not any form of agreement has utility within or is coherent with a dual sovereignty construct, and some forms may do little more than reconfigure mechanisms of settler-state hegemony. But those agreements that tend towards Tully's concept of the "dialogical" over the "monological" resonate with a dual sovereignty frame, and help construct just forms of relationship. The cases examined here reveal that dialogical agreement forms have already taken shape, and point to practical means by which meaningful and workable expression can be given to dual sovereignty relationships governing land and (in western parlance) resources. The journey remains long and fraught – but a new pathway to just relations across these shared lands can be glimpsed. And the sky will not fall.

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