

Living Well Through Story:  
Land and Narrative Imagination in Indigenous-State Relations in British Columbia

by

Megan Harvey  
B.A. Honours, McGill University, 2007

A Dissertation Submitted in Partial Fulfillment of the  
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in the Department of History

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## **Abstract**

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Students of colonialism know well that the stories we tell have the capacity to make, maintain, or transform our relationships as well as our material futures. As earlier work has shown, Indigenous and settler peoples encountered and apprehended one another through story at first contact and in all subsequent contact moments, reaching right up to present-day mechanisms for negotiating conflicts over rights, resources, sovereignty, and historical injustice. In this dissertation, I explore in depth the role of story as a social practice in Indigenous-state relations, examining a series of key encounters over the last 150 years in which Indigenous peoples challenged and contested the state's possession of their lands in what would become British Columbia. Informed by archival and community-based research with two Indigenous nations – the Stó:lō and the Haida – this study offers a history of Indigenous tactics in pursuit of the larger objective of decolonization, especially since the 1960s.

Each of the four main chapters explores how Indigenous peoples have engaged distinct state-sanctioned mechanisms for addressing the state's dispossession of their lands. The first chapter examines the dynamics of orality and literacy in a series of Stó:lō petitions from the late nineteenth century, a time when reserves were being reduced in order to accommodate a rapid influx of settlers seeking agricultural lands. Chapter 2 looks at Stó:lō experiences of treaty

negotiation in the early twenty-first century, and how they are attempting to re-write the master narrative of Stó:lō -state relations. Chapter 3 focuses on the Haida blockade of logging in the mid-1980s, examining how the Haida acted into being what would become an iconic story of Haida nationhood. Finally, chapter 5 explores story and belief through a close study of the narrative dynamics of Haida participation in the Joint Review of the Enbridge Northern Gateway Project between 2012-2014. In each of these encounters, Stó:lō and Haida people exceed the limited narrative spaces they are assigned for communicating who they are and how they relate to their territories and to the state, while attempting to shift the established narrative.

Recent scholarship on Indigenous-state relations has focused on how liberal settler states continue to exclude Indigenous peoples even through their gestures at including them into the body politic. While such work on the state is critical, I suggest that it is equally important to understand Indigenous peoples' demonstrated capacity for collective cultural endurance, and how it exists in tension with the forces acting to assimilate and subsume Indigenous difference within the normative structures of settler society. This study attempts to grasp the nature of this endurance, and demonstrates how narrative is as central to Indigenous peoples' repossessions of their land as it was to the state's original dispossession of it.

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## **Dedication**

*For my parents,  
and for Mark.*

*Three people  
who are always teaching me  
what it means to be in relationship.*

## Chapter 1

### Introduction: Storied Lives

*“Narrative is serious business”<sup>1</sup>*

*“You have to be careful with the stories you tell. And you have to watch out for the stories that you are told.”<sup>2</sup>*

We are all, every one of us, tellers and consumers of stories. Some suggest that we are made of stories in much the same way that we are made of cells, tissue, bone, and blood.<sup>3</sup> Social animals with a remarkable capacity for abstract thought, we relate to our worlds and to one another through meaning making (for better and worse), and we make these meanings through narrative. Stories help to explain where we came from, how we got here, what our purpose is, and who we are; they describe and define what is imaginable and unimaginable in any given moment. Stories are powerful. Students of colonialism know well that the stories we tell have the capacity to make, maintain, or transform our relationships as well as our material futures. As postcolonial scholar Edward Said once observed, “the power to narrate, or to block other narratives from forming and emerging” was a crucial dimension of imperial struggles over land:

Stories are at the heart of what explorers and novelists say about strange regions of the world; they also become the method colonized people use to assert their own identity and the existence of their own history. The main battle in imperialism is over land, of course; but when it came to who owned the land, who had the right to settle and work on it, who kept it going, who won it back and who now plans its future – these issues were reflected, contested, and even for a time decided in narrative.<sup>4</sup>

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<sup>1</sup> Jerome Seymour Bruner, *Making Stories: Law, Literature, Life*, (Harvard University Press, 2003), 107.

<sup>2</sup> Thomas King, *The Truth about Stories: A Native Narrative*, Massey Lectures Series, (Toronto, ON: House of Anansi Press, 2003), 11.

<sup>3</sup> See Bruner, *Making Stories*, 2003.; Jonathan Gottschall, *The Storytelling Animal: How Stories Make Us Human*, (Boston: Houghton Mifflin Harcourt, 2012).; King, *Truth about Stories*, 2003.

<sup>4</sup> Edward W. Said, *Culture and Imperialism*, (Random House LLC, 2012), xii-xiii. In reference to renowned historian Harold Innes, anthropologist Julie Cruikshank also observes that “colonialism is simultaneously economic

This dissertation is concerned with the power of story in the contestations over land that have characterized Indigenous-state relations in British Columbia since the mid-nineteenth century. The dispossession of Indigenous lands – that most central and material dimension of the colonial project – was effected and contested through story. It is the narrative dynamics of this process of dispossession – and Indigenous repossessions – that are the central concern of this work.<sup>5</sup>

Historically, story was one of the central mediums through which Indigenous and state actors attempted to engage and influence one another, and it remains so today. Whether it was done in the name of conquest or the white man’s burden to impart European civilization to those apprehended as colonial subjects (or some other notion), settler colonialism hinged on dispossessing Indigenous Peoples of both their lands and their stories. As historian John S. Lutz has shown, Indigenous and settler peoples encountered and apprehended one another through stories at first contact and have continued to do so in all subsequent contact moments, reaching right up to present-day mechanisms for negotiating conflicts over territory, resources, sovereignty, and historical injustice.<sup>6</sup> This dissertation focuses in on four such moments of

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and intellectual.” See Julie Cruikshank, *The Social Life of Stories: Narrative and Knowledge in the Yukon Territory*, (Lincoln: University of Nebraska Press, 1998), 71.

<sup>5</sup> I use the term Indigenous Peoples as a general term to denote the descendants of the first peoples who lived in the territories in question. I use the term First Nations in reference to self-defined modern Indigenous political collectives, such as the Haida Nation, but when referring specifically to a tribal government I attempt to use that name (e.g., The Council of the Haida Nation). Where appropriate, I also recognize further ways of identifying internal to Haida or Stó:lō collectives, as well as people’s ability to define themselves as having multiple ancestries or identified belongings. In regards to words or phrases in Indigenous languages, I attempt to use the most current orthography possible, except in quotations or titles. Sometimes, the only orthography I have been able to access is that which is found in a primary source (e.g., the injunction hearing transcripts in Chapter 3). Occasionally, individuals I have interviewed prefer an older orthography to the most current one used in their communities. In most cases, every effort has been made to obtain the orthography preferred by the individual being referred to.

<sup>6</sup> John S. Lutz, “Introduction: Myth Understandings; or First Contact, Over and Over Again,” in *Myth and Memory: Stories of Indigenous-European Contact*, ed. John S. Lutz, (Vancouver: UBC Press, 2007), 1. See also: Elizabeth Mary Furniss, *The Burden of History: Colonialism and the Frontier Myth in a Rural Canadian Community*, (Vancouver: UBC Press, 1999).; Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation*, (London; New York: Routledge, 1992).; Nicholas Thomas, *Entangled Objects: Exchange, Material Culture, and Colonialism in the Pacific*, (Cambridge, Mass: Harvard University Press, 1991).; Nicholas Thomas, *Colonialism’s Culture: Anthropology, Travel and Government*, (Cambridge, England: Polity Press, 1994).; Elizabeth Vibert, *Traders’ Tales: Narratives of Cultural Encounters in the Columbia Plateau, 1807-1846*, (Norman: University of Oklahoma

encounter, and the ways stories are mobilized in them. As Said suggests, anti-colonial and decolonization movements operated and continue to operate through narrative, as Indigenous Peoples in settler colonies across the world work to repossess their land through a repossession of their stories. Such repossessions are about taking hold of one's own stories, telling them, and seeing these stories shape the world in some way.

In this dissertation, I explore in depth the role of story as a social practice in Indigenous-state relations, examining a series of key encounters over the last 150 years in which Indigenous Peoples, in what would become British Columbia (BC), challenged and contested the state's possession of their lands. In particular, I look at the relatively rare encounters for which there is a record of Indigenous Peoples speaking and acting in relation to the state, and the state responding in some form. I track the ways that specific stories are wielded in Indigenous-state relations, while drawing attention to the fact that story is one of the primary means through which people attempt to engage each other and direct the course of their relationships. There is now a rich tradition in scholarly work considering stories as "part of the equipment for living" rather than simply repositories of information.<sup>7</sup> Julie Cruikshank invites us to consider stories as a social process, with social lives of their own, worked upon by human will, but also acting upon us in ways that are often difficult to grasp. The work of story in early (and subsequent) encounters between Indigenous and non-Indigenous Peoples is a growing object of study, and highlights storying as a relational process.<sup>8</sup> In English, the word story is a noun as well as a verb, signalling

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Press, 1997).; Jeremy H. A. Webber, Rebecca Johnson, and Hester Lessard, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, (Vancouver: UBC Press, 2011).

<sup>7</sup> Julie Cruikshank, *The Social Life of Stories: Narrative and Knowledge in the Yukon Territory*, (Lincoln: University of Nebraska Press, 1998), 41.

<sup>8</sup> See J. Edward Chamberlin, *If This Is Your Land, Where Are Your Stories?: Finding Common Ground*. 1st ed. (Toronto: A.A. Knopf Canada, 2003).; Julie Cruikshank, *Life Lived like a Story*. American Indian Lives. (Vancouver: University of British Columbia Press, 1990).; Cruikshank, *Social Life of Stories*, 1998; Julie Cruikshank, *Do Glaciers Listen?: Local Knowledge, Colonial Encounters, and Social Imagination*. Brenda and David McLean Canadian Studies Series, (Vancouver : Seattle: UBC Press ; University of Washington Press, 2005).;

the need for stories to be recounted orally, verbally, visually, physically, or by some other means. Throughout this work, it is the active dimensions of story that are my focus: the ways we act upon our stories, the ways they act upon us, and, especially, how we act upon one another through narrative. In short, I am interested in the work that story does in Indigenous-state relations; how Indigenous and state actors use and rely on – how they operationalize – story as part of their negotiations with one another. For example, in early petitions to colonial and later federal representatives, Coast Salish people aligned themselves with a story of colonialism as a project of racial uplift in order to hold officials accountable to their promises to protect Salish people and their lands. More recently, in their testimony to the Joint Review Panel on the Enbridge Northern Gateway Pipeline Project, Haida people passionately told the Panel stories about their relationship to place. These stories were a way of explaining the interconnections between Haida identity and Haida territory as well as challenging the state’s assumed sovereignty over that territory. Before I discuss the narrative dynamics of Indigenous-state relations however, I will offer a brief historical summary of the state’s dispossession of Indigenous lands in BC, and Indigenous resistance to this process.

### **Land Claims in British Columbia**

In contrast to much of the rest of Canada, and in violation of existing international and British law that recognized pre-existing Indigenous title to the land, BC largely failed to negotiate treaties with the Indigenous Peoples of the territory, with a few exceptions. These exceptions, the so-called Douglas treaties, were negotiated between 1850 and 1854 by the man who soon became the governor of colonies of Vancouver Island and British Columbia, Sir James

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Harry Robinson and Wendy C. Wickwire, *Write It on Your Heart: The Epic World of an Okanagan Storyteller*, (Vancouver: Talonbooks : Theytus, 1989).; Jeremy H. A. Webber, Rebecca Johnson, and Hester Lessard, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, (Vancouver: UBC Press, 2011).; Wendy C. Wickwire, “To See Ourselves as the Other’s Other: Nlaka’pamux Contact Narratives,” *Canadian Historical Review* 75, no. 1 (March 1, 1994): 1–20.

Douglas, and covered patches of territory on southern Vancouver Island.<sup>9</sup> Douglas' reserve lands were small in comparison to those created through the numbered treaties (signed between 1871 and 1922). Indeed, small reserves would become the norm throughout BC with or without treaties. By the time BC was made a colony in 1858, the will to force nascent colonial governments to negotiate and settle treaties in Britain was waning as the Colonial office showed a lessening enthusiasm to act as a protective shield standing between the Indigenous Peoples of the British colonies and the more self-interested inclinations of settler societies.<sup>10</sup> After 1867, the Dominion of Canada was granted more independence from British rule, but along with this came the expectation that the Dominion government would assume responsibility for protecting the interests of Indigenous Peoples. After BC joined confederation in 1871, the Dominion government did, for a time, pressure the new provincial government of British Columbia to extinguish Native title to the land through treaty. However, BC's stubborn refusal to acknowledge or deal with Native title, its growing settler society, and a shift to a less sympathetic Tory government under Robert Borden in 1911 meant that the matter of Indigenous title largely ceased to be a federal priority.

Especially in the early decades of the twentieth century, however, asserting title was becoming more and more of a priority among the Indigenous population of British Columbia. As I discuss in Chapter 2, Indigenous Peoples were objecting to the loss of their lands and mistreatment at the hands of settler governments well before the turn of the twentieth century, and were acting collectively to voice their concerns to local and distant authorities. In the early

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<sup>9</sup> As Cole Harris and Hamar Foster have argued, the Indigenous signatories to these treaties likely had no conception that they were signing away their rights to their territories in perpetuity, and likely perceived these agreements to be akin to peace treaties establishing trading relationships. See: R. Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* by Eric Leinberger, Brenda and David McLean Canadian Studies Series, (Vancouver: UBC Press, 2002), 25; Hamar Foster, "Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927," in *Essays in the History of Canadian Law: The Legal History of British Columbia and the Yukon*, edited by Hamar Foster and John McLaren. (University of Toronto Press, 1995), 41.

<sup>10</sup> Harris, *Making Native Space*, 23-5

twentieth century, however, and often with the assistance of sympathetic missionaries, Indigenous Peoples began to form collective political organizations representing an enormous diversity of cultural groups and geographic terrain to pursue state recognition of their title. Between 1876 and 1916, two government-appointed reserve commissions were created in response to widespread Indigenous activism and to resolve the so-called ‘Indian Land Question’ in BC, both of which proved deeply unsatisfying to Indigenous Peoples.<sup>11</sup> The latter, commonly referred to as the McKenna–McBride Commission, resulted mainly in the loss of valuable agricultural land from existing reserves with occasional additions of lands poorly suited to farming.<sup>12</sup> This at a time when Indigenous Peoples were being pressured by missionaries and the state to abandon their earlier economies and become ‘settled’ as subsistence farmers.

In response, two existing Indigenous-led political organizations, the Indian Rights Association and the Interior Tribes of British Columbia, joined forces in 1916 to create the Allied Tribes of British Columbia. Hiring skilled legal counsel, the Allied Tribes attempted to bring a legal claim against the government, by bringing a petition for Aboriginal title to the Judicial Committee of the Privy Council in London in 1926. The federal government’s response was to amend the Indian Act in 1927, adding section 141, which barred Indigenous Peoples in Canada from organizing or raising funds for the pursuit of land claims. This effectively silenced land claims for almost thirty years, driving Indigenous political activism in BC underground,

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<sup>11</sup> These were the Joint Indian Reserve Commission (1876-8) and The Royal Commission on Indian Affairs for the Province of British Columbia (commonly known as the McKenna–McBride Royal Commission), which was active from 1912-16.

<sup>12</sup> For more on the McKenna-McBride Commission, see: Harris, *Making Native Space*, 2002.; Pamela E. Klassen, “God Keep Our Land: The Legal Ritual of the McKenna–McBride Royal Commission, 1913–16,” in B.L. Berger & R. Moon (Eds.), *Religion and the Exercise of Public Authority*, (Oxford: Hart Publishing, 2016), 79–94.; Patricia E. Roy, “McBride of McKenna-McBride: Premier Richard McBride and the Indian Question in British Columbia,” *BC Studies* 172 (2011): 35.; Reuben Ware, *The Lands We Lost: A History of the Cut-Off Lands and Land Losses From Indian Reserves in British Columbia*, (Vancouver: Union of British Columbia Indian Chiefs, 1974).; Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*. (Vancouver: University of British Columbia Press, 1990).

until section 141 was quietly dropped from the Indian Act in the early 1950s. One effect of this silencing of Indigenous resistance through official means was that it facilitated a kind of historical amnesia in BC about the legal illegitimacy (to say nothing of the moral illegitimacy) of the creation of British Columbia. To this day, this provincial version of the widespread phenomenon of colonial forgetting continues to haunt the public perception of Indigenous activism against the dispossession of their lands, and certainly proved an early obstacle to the establishment of the BC treaty process in the 1990s.

The changes to the Indian Act made in 1951 reopened the door for First Nations to bring legal claims against the government with respect to their lands, and it did not take long for such claims to begin. In 1967, the Nisga'a initiated a claim against British Columbia insisting that their title had never been lawfully extinguished in their territories (*Calder v. British Columbia*). The case made it to the Supreme Court of Canada (SCC) in 1973, and resulted in a split decision as to whether the claim was valid, but also recognized, for the first time in a Canadian court, the possibility that Aboriginal title may pre-exist that of the Crown and is not derived from statutory law.<sup>13</sup> In response to *Calder* and to mounting legal evidence elsewhere in the country that the Crown was required to acknowledge and deal with Native title (i.e., the James Bay Cree and Inuit opposition against the Quebec government's James Bay Hydroelectric Project), in 1973 the federal government developed the Comprehensive Claims Process. Intended to resolve outstanding First Nations claims on all unceded lands in Canada, the process was meant to involve representatives from both the federal and provincial governments, but the BC government refused to join negotiations of the Nisga'a claim, which began in 1981, until 1990.

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<sup>13</sup> Michael Asch, "From *Calder* to *Van der Peet*: Aboriginal Rights and Canadian Law, 1973-96," *Indigenous Peoples' Rights in Australia, Canada, & New Zealand*, Havemann, Paul, Ed. (Oxford: Oxford University Press, 1999), 428-445.; Hamar Foster, Heather Raven & Jeremy Webber, *Let Right Be Done: Aboriginal Title, the *Calder* Case, and the Future of Indigenous Rights*, (Vancouver: UBC Press, 2007).; Peter Kulchyski, "Calder," in *Unjust Relations: Aboriginal Rights in Canadian Courts*, (Don Mills: Oxford University Press, 1994), 61-126.

Almost two decades after negotiations began, in 1999 the Nisga'a signed the first formal treaty in BC since 1899.

In this period, the patriation of the Canadian constitution (1982) provided an opportunity to update the Constitution. Persistent lobbying and activism by Indigenous Peoples resulted in the addition of Section 35, which recognizes and affirms existing Aboriginal and treaty rights in Canada.<sup>14</sup> Although Canada's position remains that Indigenous claimants must prove the continued existence of title and rights, in many subsequent decisions on Indigenous-led litigation cases, the courts have recognized that the language of 'rights' in Section 35 may include title. The most recent and by far the most definite expression of such recognition was articulated in the SCC's unanimous decision in favour of the Tsilhqot'in claim to title over 1,750 square kilometres of their traditional territory, found in *Tsilhqot'in Nation v British Columbia* (2014). While the impact of *Tsilhqot'in* has yet to be determined, even the more minor legal decisions and land and self-government agreements signed over the last thirty-five years have helped to define what rights and title may entail. For this reason, section 35 is often referred to as an 'empty box' that must be filled with meaning through negotiations and legal decisions.

However, in the 1980s, the Comprehensive Claims Process was proving extremely slow, due to the fact that only a handful of claims could be negotiated at a time. In BC, the backlog was considerable, and as I discuss in Chapter 4, there were at this time no laws barring the continued exploitation of disputed lands while First Nations waited their turn to file a claim. In the case of the Haida, this meant watching their ancestral lands be logged at an unprecedented pace while being told that their only recourse was to go through the land claims process in order

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<sup>14</sup> An excellent documentary of this process remains parts 1 and 2 of Maurice Bulbulian film, *Dancing Around the Table*, which can be viewed online on the National Film Board of Canada's website. See *Dancing Around the Table*, Maurice Bulbulian, dir., National Film Board of Canada, 1987.  
<[https://www.nfb.ca/film/dancing\\_around\\_the\\_table\\_1/](https://www.nfb.ca/film/dancing_around_the_table_1/)>  
<[https://www.nfb.ca/film/dancing\\_around\\_the\\_table\\_part\\_two/](https://www.nfb.ca/film/dancing_around_the_table_part_two/)>

to (perhaps) achieve legally recognized control over some of their territories. Unsurprisingly, the 1980s and 1990s in BC were characterized by numerous Indigenous-led protests and blockades of unwanted resource extraction projects. Thanks in part to a growing environmentalist movement, there was an unprecedented degree of media attention and public support for such protests. Nor were such actions restricted to Canada – Indigenous rights movements were a global phenomenon in the 1980s and 1990s.<sup>15</sup>

By the early 1990s, it was no longer possible for the government of British Columbia to ignore the legitimacy of Indigenous claims. Legal decisions consistently suggested that political negotiations, and not the courts, were the preferred venue in which to sort out the implications of Indigenous title and rights. On December 3, 1990, representatives for BC First Nations, the government of British Columbia, and the government of Canada authorized the BC Claims Task Force to research and recommend how treaties could be negotiated in BC. The Task Force was made up of individuals appointed by each of the three parties: the provincial and federal appointees all had some knowledge of, or experience in the historical treaties, law, Indigenous affairs, or negotiating modern agreements. Similarly, the three Indigenous appointees all had some experience of negotiating with various levels of government; these included Squamish Chief Joe Mathias, lawyer and hereditary Chief Edward John, and then-President of the Council of the Haida Nation, Miles Richardson.<sup>16</sup>

In a report issued on June 28<sup>th</sup>, 1991, the Task Force recommended the establishment of an independent third party – the BC Treaty Commission – to manage the financing and administration of the treaty process, while also offering support to the negotiating parties. Treaty

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<sup>15</sup> For example, the Oka Crisis (1990), the American Indian Movement (AIM) in the United States (1970s onwards), *Mabo v. Queensland* in Australia (1992), etc....

<sup>16</sup> Christopher McKee, *Treaty Talks in British Columbia: Building a New Relationship*. 3rd ed. (Vancouver: UBC Press, 2009), 33-6.

negotiations, as described by the Task Force, would be a six-stage process, open to any self-defined First Nation on a voluntary basis (i.e., First Nations were not required to engage in negotiations). For the most part, the recommendations of the Task Force were used to create the BC treaty process, which formally began in 1993. In a recent conversation, Miles Richardson highlighted the report's first recommendation: to "establish a new relationship based on mutual trust, respect, and understanding—through political negotiations."<sup>17</sup> He observes that the original spirit and intent of treaty negotiations, as laid out in the Task Force report, has not been honoured by subsequent provincial and federal governments, who, shortly after publicly announcing the creation of the BC treaty process, met to discuss what the governments would and would not be willing to negotiate.<sup>18</sup> From the perspective of most First Nations and critics of the process, the state's limited mandate has proven to be biggest obstacle to the development of satisfactory agreements. The process was initially received with some enthusiasm, especially because it did not oblige participating First Nations to 'prove' the historical and continued existence of their title, as is still required in the adversarial setting of title claims pursued through the courts. However, today the process is all too often mired in controversy, mistrust, and criticism, with many early First Nations participants having long since abandoned it.<sup>19</sup>

### **Indigenous-State Relationships: Power and Agency**

All of the encounters examined in this dissertation occurred through communicative processes that were, to varying degrees, sanctioned by the state, and records of these encounters were preserved because it was important to the state to do so. In any period, a specific set of power relations constituted the mechanisms available for Indigenous Peoples to speak to the

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<sup>17</sup> Ministry of Aboriginal Affairs, British Columbia, *The Report of the British Columbia Claims Task Force*, (June 1, 1991), 29.

<sup>18</sup> Miles Richardson, personal conversation, 10 April 2015.

<sup>19</sup> The BC treaty process will be discussed in more depth in Chapter 3.

state, and informed how Indigenous Peoples engaged these mechanisms. Part of the work of this dissertation is to examine how the communicative venues sanctioned by the state derive from a specific set of narrative-based assumptions in each period about how Indigenous and state actors could speak to one another. A petition or a public hearing provided a script, often tightly managed, for how communication could be performed. However, as James Scott asserts, “[w]e must never assume that local practice conforms with state theory.”<sup>20</sup> I was curious about how Indigenous Peoples occupied these spaces, many of which were created as a result of Indigenous activism, and I found that they took full advantage of the venues available to them to make their voices heard. In all four encounters I study, Indigenous participants exceeded the spaces made available for them, drew upon and/or re-framed the stories being told by the state, and acted from their own scripts. In each encounter, the parties engaged with one another’s stories, from and through their own stories. In short, these were encounters of narrative.

I understand ‘the state’ as “that vexed institution that is the ground of both our freedoms and our unfreedoms.”<sup>21</sup> The state makes available or leaves open spaces in which Indigenous Peoples can make themselves heard, but only in tightly constrained forms and forums. The nature of these forms and forums has changed over time, according to broader social transformations in the articulations of liberal democracy in Canada from the late 19<sup>th</sup> to the 21<sup>st</sup> centuries. When Indigenous Peoples were barred from pursuing land claims through the Canadian legal system between 1927 and the late 1950s, the courts were not available to Indigenous Peoples to make themselves heard. Notwithstanding the considerable freedoms achieved since this time, there remains much in Indigenous-state relations that is imperial in its character, expression, and experience, especially with respect to the state’s possession of

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<sup>20</sup> James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*, Yale Agrarian Studies, (New Haven: Yale University Press, 1998), 49.

<sup>21</sup> Scott, *Seeing Like a State*, 7.

Indigenous lands. In the mid-twentieth century, relationships between Indigenous Peoples and the state shifted from one of formal to informal imperialism.<sup>22</sup> This shift, in large part a product of international decolonization and civil rights movements, was also precipitated by more local manifestations of Indigenous rights activism in a variety of social, legal, and political forums. Most notably, the Indigenous legal challenges to the state's assumption of sovereignty, which began in Canada in the 1960s and have continued right up to the present day, have significantly transformed the political landscape of this country.<sup>23</sup>

While it is common enough to refer to 'the state' in the abstract, in the encounters I explore in this work, the state appears as individuals and organizations representing the colonial, national, or provincial governments that have been in direct negotiations with Indigenous Peoples. For example, in the nineteenth century petitions that are the subject of Chapter 2, the state is represented by the governors of the colony of British Columbia and federal officials. For the blockades at Lyell Island, in Chapter 4, the state manifests as Royal Canadian Mounted Police (RCMP) officers and court Justice Harry McKay. In each encounter, 'the state' appears in the form of specific human actors, who are diversely positioned within, and operationalize the networks of power that constitute the state's governing processes. Through its representatives – people – the state tells stories. Most often these stories draw on a shared corpus that represents the 'common sense' view of politicians and senior bureaucrats, but sometimes, individual representatives go 'off script' and create new story lines or even affirm counter narratives. In their contestations of colonial and Canadian possession of their lands, Indigenous Peoples have

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<sup>22</sup> James Tully, *Public Philosophy in a New Key: Volume 2, Imperialism and Civic Freedom*, 1 edition, (Cambridge ; New York: Cambridge University Press, 2009), 300-1.

<sup>23</sup> For example, see *Calder v. Attorney-General of British Columbia* (1973), *Delgamuukw v. British Columbia* (1997), and most recently, *Tsilhqot'in Nation v. British Columbia* (2014). For more on Indigenous assertions of title and rights in the courts, see Asch, "From Calder," 1999.; Foster, Raven & Webber, *Let Right Be Done*, 2007; Sarah Ann Nickel, "*United we stand, divided we perish*": *Negotiating Pan-Tribal Unity in the Union of BC Indian Chiefs*, (Ph.D. Dissertation, Simon Fraser University, 2015). For a discussion of the ways that international decolonization movements helped to create informal imperialism, see Tully, *Public Philosophy Vol. 2*, 127-65.

drawn upon colonial and Canadian narratives and legal frameworks but they also often reference and draw upon sources of authority they perceive as beyond that of the state. In doing so, they variously recognize how they are tangled up in the state's delimitations of their 'freedoms and unfreedoms', while operating in relationship to other sources of authority and power that mark out how they can and should act. For example, such 'other sources' are invoked in Haida Chief Ronald Wilson's statement to the Joint Review Panel evaluating the Enbridge Northern Gateway oil pipeline project in 2012, when he asserts, "the foods that we are...bid me to stop you."<sup>24</sup>

The oppositional structure with which I have framed this project has risks. Marking out 'Indigenous-state relationships' as an object of study appears to suggest that Indigenous people cannot also be part of 'the state.'<sup>25</sup> Or that those working 'for' the state (Indigenous and otherwise) have not also attempted to act or are incapable of working against the institutional cultures and frameworks that oppress and subjugate Indigenous Peoples, by acting from their positions within the state bureaucracy. Indeed, the following encounters offer at least one example of a representative of the state bending the rules of engagement in order to make space for Indigenous voices. Juxtaposing the categories of 'Indigenous' and 'state' risks overlooking the people who are diversely positioned within these categories, and fails to acknowledge that friendship and kinship is possible in the spaces where categories overlap or border one another.<sup>26</sup>

It also means I risk losing sight of those who have been located between or operated

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<sup>24</sup> National Energy Board, Canada, *Joint Review Panel for the Enbridge Northern Gateway Project/Commission D'Examen Conjoint Du Projet Enbridge Northern Gateway, Hearing Order OH-4-2011, Volume 57*, (Ottawa, ON: International Reporting Inc.), 14 June 2012, lines 7507. <<https://apps.neb-one.gc.ca/REGDOCS/File/Download/824538>>

<sup>25</sup> For example, the current Minister of Justice and Attorney General of Canada Jodie Wilson-Raybould, *Puglaas*, NEB Joint Review Panel member Kenneth Bateman, and former Lieutenant Governor of British Columbia Steven Lewis Point, *Xwě lī qwěł těl*, are all Indigenous.

<sup>26</sup> One former employee of the Ministry of Forests and long-term resident of Haida Gwaii that I know was adopted into a Haida clan – a relationship all parties continue to sustain even after he and his family moved off-island.

simultaneously from both categories of ‘state’ and ‘Indigenous’ in complex ways.<sup>27</sup> Furthermore, these categories risk obscuring the fact that many Indigenous people may, at one time or another, perceive their own band or tribal governments, as well as historical or hereditary systems of status as governing institutions that define their freedoms and unfreedoms in ways that do not represent their interests. At the same time, however, ‘the state’ and ‘Indigenous Peoples’ are often imagined, experienced, and engaged as monoliths, and denote very active social categories that were created by and sustain structural relations of power. I have attempted to retain the awareness of these complexities, but I recognize there are places where I have been more and less successful in achieving this.

In assembling my own narrative about Indigenous-state relations, I have tried not to be bound by a state power versus Indigenous resistance model, construing all ‘state’ actions as dominance or all Indigenous actions as resistance. While the encounters I examine fall more easily into this framework than not, I attempt to show where its usefulness for understanding the nature of the relationship breaks down. Identifying what constitutes resistance can be difficult. For example, critics of the BC treaty process are wary of engaging in such negotiations and sceptical of the process’ ability to meaningfully change the imperial nature of Indigenous-state relations. And yet, as I suggest in Chapter 3, those operating within the process also ‘resist’, or rather, challenge and attempt to transform the assumptions embedded in the structure of the process, thereby re-writing the terms of their engagement. These actors perceive negotiations as a form of ‘direct action’ related, and not opposed to other means of resistance or public protest.

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<sup>27</sup> Haida Gwaii offers many examples: Colin Richardson was the first Haida person to take up a position with the provincial Ministry of Forests, now working for the Council of the Haida Nation. I know of at least one individual who holds concurrent positions with both the provincial Ministry of Forests as well as the Council of the Haida Nation tribal government. Chapter 4 notes the presence of two Haida RCMP officers at the logging blockades at Lyell Island in the 1980s. The co-management of Gwaii Haanas National Park and Haida Heritage Site offers many more examples of people working under the joint authority of Canadian and Haida governments.

Agency is the capacity to act from, upon, and in relation to one's circumstances; it is the ability to exert some form of power.<sup>28</sup> The most useful thinking on the subject of power and agency with respect to political relationships that I have found comes from political philosopher James Tully's sustained meditation on what he terms civic, rather than civil citizenship. For Tully, where civil freedoms denote those legally enshrined liberties guaranteed by the state ("institutionalized rights"), whereas civic freedom describes people's capacity to participate in, act upon, and thereby constitute the relationships of governance of which they are a part.<sup>29</sup> In this sense, citizens are not simply "governed subjects" but always agents, capable of negotiating and to varying degrees defining the terms of their citizenship and participation in governance relationships.<sup>30</sup> Tully's formulation insists on apprehending citizens as *actors*, engaging in a range of relationship practices while negotiating and defining their freedom. He states:

'Practices of civic freedom' comprise the vast repertoire of ways of citizens acting together on the field of governance relationships and against the oppressive and unjust dimensions of them. These range from ways of 'acting otherwise' within the space of governance relationships to contesting, negotiating, confronting and seeking to transform them. The general aim of these diverse civic activities is to bring oppressive and unjust governance relationships under the ongoing shared authority of the citizenry subject to them; namely, to civicise and democratise them from below.<sup>31</sup>

In Tully's formulation, such practices are not the exclusive domain of members of marginalized communities or even the governed, but rather, can be enacted by citizens operating from any

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<sup>28</sup> The Oxford English Dictionary definition notes agency as the "[a]bility or capacity to act or exert power; active working or operation; action, activity." See "agency, n.", *OED Online*. December 2016. Oxford University Press. <<http://www.oed.com.ezproxy.library.uvic.ca/view/Entry/3851?redirectedFrom=agency>> (accessed February 09, 2017).

<sup>29</sup> See Tully, *Public Philosophy Vol. 2*, 273, 276-96.

<sup>30</sup> Tully, *Public Philosophy Vol. 2*, 276. Tully defines governance relationships as comprising "the relationships of normativity, power and subjectivity in which humans find themselves constrained to recognize themselves and each other, coordinate interaction, distribute goods, act on the environment and relate to the spiritual realm." Tully, *Public Philosophy Vol. 2*, 3-4. In my view, this has much in common with Scott's definition of the state cited above, and describes the ways in which the colonial and Canadian state have sought to regulate Indigenous Peoples.

<sup>31</sup> See Tully, *Public Philosophy Vol. 2*, 4.

position in the networks of power that constitute state and society.<sup>32</sup> I have found a great deal of resonance between my focus in this dissertation, which is the narrative dynamics of Indigenous-state relations in colonial and post-colonial British Columbia, and Tully's description of the nature of relationships of power and agency in governance relationships.<sup>33</sup> In each of the encounters I studied for this work, Indigenous and state actors operate from specific narrative worlds, and attempt to draw each other into their own respective narrative frameworks or story-worlds. They each use story to lay out the parameters of what is possible in the relationship at any given time, and, at times, to challenge these parameters by describing alternate futures. Throughout, Indigenous people actively attempt to shape their relationships, and their material conditions, through narrative.

### **Power, Narrative and Story**

As mentioned above, I am examining story for how it is operationalized in social practices. The concept of discourse and the literature that has grown up around it point us towards how stories operate in and through our social relations, but for my purposes, the terms story and narrative suggest an added dimension of agency that I have seen and wanted to account for with respect to people's *uses* of story in political negotiations. When we engage one another, we engage each other's stories. In the encounters I study, people bring stories about themselves, each other, and in this case, about what land is, what its uses are, and what it represents. We hear stories, we tell stories, we have the capacity to reflect on the stories we have about ourselves and others, and we make (or can make) choices about what stories we tell or believe. In the

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<sup>32</sup> Ibid. See also Tully, *Public Philosophy Vol. 2*, 243-309.

<sup>33</sup> Here I use the term post-colonial to refer to the age in which colonialism shifted from formal to informal imperialism, following from Tully. However, I fully recognize the usefulness of pointing to current-day relationships between Indigenous Peoples and the state as colonial in character.

encounters I look at, this narrative dimension – the stories themselves and their deployment – is often seen and engaged, and it is this I am attempting to highlight.

All stories have tellers and audiences, however private or public such stories are. For the most part, I focus on the kinds of stories that are shared publicly, intentionally, and for some rhetorical purpose. But I also point to the existence of more private stories that inform these public tellings, where such private stories are present and shareable. In the following chapters, I explore how storytelling happens through many different mediums, and how the mediums themselves tell a kind of story. For example, one can ‘read’ a story about the state’s view of itself through the assumptions about power and relationships that are built into the acceptance of a petition, or testimony at an environmental review hearing and in the courtroom. Similarly, *how* Indigenous people operate in these sites is as rich a source of storytelling as what they say. In the encounters I examine, both the state and Indigenous people address themselves, in the main, to one another; but as public acts of storytelling, their narratives have multiple audiences, and do different kinds of narrative work for each of these audiences. In each chapter, I consider how state stories and Indigenous Peoples’ stories are received, how they are listened to and heard (or not heard), and what kinds of action result from the experience of telling, listening, and – when applicable – hearing.<sup>34</sup>

By using the language of story, narrative, drama, and script, my intention is not to present stories or storytelling as fabrications in the sense of being untrue, fake, made up, or illegitimate. In political rhetoric, some versions of the matter at hand are deployed in some instances and not others, for a specific effect. However, to show how certain tellings are situated is not the same as

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<sup>34</sup> For a thoughtful discussion of the distinction between listening and hearing, see J. Edward Chamberlin, “Close Encounters of the First Kind,” *Myth & Memory: Stories of Indigenous-European Contact*, John Sutton Lutz, Ed., (Vancouver, BC: UBC Press, 2007), 15-29.; and J. Edward Chamberlin, *Living Language and Dead Reckoning: Navigating Oral and Written Traditions*, The 2005 Garnett Sedgewick Memorial Lecture, (Ronsdale Press, 2006).

suggesting that such stories are not accurate representations of the teller's reality, or that people do not deeply believe the stories they tell. Rather, my intention in using this language is to create enough space to allow for reflection on how stories constitute all of our lives, and to make the point that we have a certain amount of agency over what we choose to believe or choose not to. We can expand the scope of our agency with respect to narrative by becoming more conscious of the ways stories function in our lives and in our relationships – to ourselves, one another, and the places we inhabit. Agency is defined in part as the capacity to act; and an 'act' is "behaviour shaped by and answering to the needs of the moment."<sup>35</sup> Thus an analysis of how stories are operationalized in social life must employ a vocabulary in which story is a verb as well as a noun, in order to grasp hold of the fact that stories are something we are as well as something that we do. My argument is that the conflicts over land that have characterized Indigenous-state relations in BC were and are also conflicts over story that happened *through* story: narrative was and remains a primary means through which material dispossessions were and are effected and contested in the relationships between Indigenous and state authorities.

I come to an interest in narrative in cross-cultural encounters in part because I began my academic career steeped in anthropology and literary studies before arriving in history for my graduate work. In formulating my approach to this research, I have been influenced by the interpretive tradition in anthropology and the social sciences, represented most famously by Max Weber and Clifford Geertz, who spent their intellectual lives considering and reconsidering what it meant to be "suspended in webs of significance."<sup>36</sup> Thomas King's meditation on *The Truth About Stories* has been particularly important for the ways that he asks us to pay attention to how stories constitute our realities, make up our beliefs, and other people's beliefs about us. I also

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<sup>35</sup> Vibert, *Traders' Tales*, 16.

<sup>36</sup> Clifford Geertz, *The Interpretation of Cultures: Selected Essays*, (Basic Books: 1973), 5.

take my cues from psychologist Jerome Bruner's broad-thinking works on narrative in psychological and social processes, and, as mentioned earlier, Said's foundational work on narrative and empire.<sup>37</sup> I am interested in the ways we – as a species – variously socialize the landscapes and marine environments we inhabit into the worlds of meaning that are so essential to our survival, and how we do so from social positions that are, in turn, the products of very powerful narratives about self and other. Stories are what make us socially functional (and dysfunctional) beings, and to consider the dynamics of their activation, silencing, and transformation is not to dismiss them as artificial or untrue, but to take them seriously as very powerful dimensions of our lives.

Thanks to the wide reach of the narrative turn in the social sciences and humanities that began in the 1970s and 1980s, and because of the interdisciplinarity of Indigenous studies, my interest in story, land conflicts, and Indigenous-state relations has been fed by a broad and diverse literature. I came to this research already attuned to the importance of story in the colonial project and its disassembly: the stories Europeans formed about peoples in the worlds they encountered (or expected to encounter);<sup>38</sup> the stories that legitimated the colonial project for these same actors and how these changed over time or varied according the social location of the colonial actor;<sup>39</sup> the ways the experiences of early traders, explorers, and missionaries were

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<sup>37</sup> Jerome S. Bruner, *Acts of Meaning*, Jerusalem-Harvard Lectures, (Cambridge, Mass: Harvard University Press, 1990).; Jerome Seymour Bruner, *Making Stories: Law, Literature, Life*, (Harvard University Press, 2003).; Edward W. Said, *Orientalism*, (Knopf Doubleday Publishing Group, 1974, 2014).; Edward W. Said, *Culture and Imperialism*, 1993.

<sup>38</sup> Julie Cruikshank, "Discovery of Gold on the Klondike: Perspectives from Native Oral Tradition," In *Reading Beyond Words: Native History in Text and Context*, 2nd edition, Elizabeth Vibert and Jennifer Brown, eds., (Broadview Press, 2003), 435-58.; Pratt, *Imperial Eyes*, 1992.; Vibert, *Traders' Tales*, 2000.

<sup>39</sup> Bruce G. Miller, "The Story of Peter Pan: Or Middle Ground Lost," *BC Studies: The British Columbian Quarterly* 0, no. 131 (2001): 25-28.; Furniss, *The Burden of History*, 1999).; John S. Lutz, *Makúk: A New History of Aboriginal-White Relations*, (Vancouver ; Toronto: UBC Press, 2008).; Renisa Mawani, *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871-1921*, (UBC Press, 2010).; Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871*, (University of Toronto Press, 2001).; Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, (Cambridge University Press, 2010).

translated into storied accounts for those at home in letters, reports, and travel accounts;<sup>40</sup> the rejection of colonial narratives and narrative reclamations decolonization has required;<sup>41</sup> and the ways colonial histories have been remembered and forgotten.<sup>42</sup> I have also been influenced by the literature on the role of story in Indigenous-white relations: works that have drawn attention to the ways Indigenous and settler people drew one another into each other's stories, or built partial, functional narratives together for the sake of the needs of the moment,<sup>43</sup> as well as accounts of how Indigenous Peoples first made sense of newcomers in the context of their own story archives or prophecies.<sup>44</sup> There is also an extensive literature on how Indigenous Peoples'

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<sup>40</sup> Pratt, *Imperial Eyes*, 1992; Laura Ishiguro, "How I Wish I Might Be Near: Distance And The Epistolary Family In Late Nineteenth-Century Condolence Letters", in *Within and Without the Nation: Canadian History as Transnational History*, K. Dubinsky, A. Perry, and H. Yu, (Toronto: University of Toronto Press, 2015), 212-227.; Vibert, *Traders' Tales*, 2000.

<sup>41</sup> Alfred, Taiaiake, *Was Se: Indigenous Pathways of Action and Freedom*, (University of Toronto Press, 2005).; Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, Indigenous Americas, (Minneapolis, MN: University of Minnesota Press, 2014).; Vine Deloria Jr., *Custer Died for Your Sins: An Indian Manifesto*, (University of Oklahoma Press, 2014).; Margery Fee, *Literary Land Claims: The "Indian Land Question" from Pontiac's War to Attawapiskat*, (Wilfrid Laurier Univ. Press, 2015).; Leela Gandhi, *Affective Communities: Anticolonial Thought, Fin-de-Siècle Radicalism, and the Politics of Friendship*, (Duke University Press, 2005).; Thomas King, *The Inconvenient Indian: A Curious Account of Native People in North America*, (Doubleday Canada, 2012).; Lutz, *Makúk*, 2008.; Johnny Mack, "Hoquotist: Reorienting Through Storied Practice," in Jeremy H. A. Webber, Rebecca Johnson, and Hester Lessard, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, (Vancouver: UBC Press, 2011), 287-307.; Naxaxalhts'i, Albert (Sonny) McHalsie, "We Have to Take Care of Everything That Belongs to Us," in *Be of Good Mind: Essays on the Coast Salish*, Bruce Granville Miller, ed., (Vancouver: UBC Press, 2011), 82-130.; Arthur Manuel and Grand Chief Ronald M. Derrickson, *Unsettling Canada: A National Wake-Up Call*. (Between the Lines, 2015).; N. Scott Momaday, *The Names: A Memoir*, (University of Arizona Press, 1976).; Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada*, (Vancouver: UBC Press, 2010).; Said, *Culture and Imperialism*, 1993; Leslie Marmon Silko, *Ceremony*, (Penguin Books, 1977).; Leanne Simpson, *Islands of Decolonial Love: Stories & Songs*, (Arbeiter Ring Publishing, 2013).; Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, (Zed Books, 1999).

<sup>42</sup> The literature on this is now too expansive to list here. Works that have particularly influenced me are: Renée L. Bergland, *The National Uncanny: Indian Ghosts and American Subjects*, (Dartmouth College Press, 2015).; Chamberlin, *If This Is Your Land*, 2003.; John S. Lutz, ed., *Myth and Memory: Stories of Indigenous-European Contact*, (Vancouver: UBC Press, 2007).; Harry Robinson, *Living by Stories: A Journey of Landscape and Memory*, (Talonbooks, 2005).; Jenny Sharpe, *Ghosts of Slavery: A Literary Archaeology of Black Women's Lives*, (University of Minnesota Press, 2002).; Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History*, (Beacon Press, 1995).

<sup>43</sup> Philip J. Deloria, "What Is the Middle Ground, Anyway?" *The William and Mary Quarterly* 63, no. 1 (January 31, 2006), 15.; Lutz, *Makúk*, 2008.; Thomas, *Entangled Objects*, 1991.; White, *The Middle Ground*, 2010.

<sup>44</sup> Keith Thor Carlson, "Orality About Literacy: The 'Black and White' of Salish History," in *Orality and Literacy: Reflections across Disciplines*, by Keith Thor Carlson, Kristina Rose Fagan, and Natalia Khanenko-Friesen, (Toronto: University of Toronto Press, 2011), 43-72.; Julie Cruikshank, *Do Glaciers Listen?: Local Knowledge, Colonial Encounters, and Social Imagination*, Brenda and David McLean Canadian Studies Series, (Vancouver:

relationships to their territories operate through story, which was confirmed in my own conversations with Indigenous people about land and their negotiations with the state about that land.<sup>45</sup> More recently, legal scholars have been working with Indigenous communities (in some cases, these scholars' own communities) to explore how Indigenous legal traditions are embedded in the stories and storytelling practices of specific nations.<sup>46</sup> Pulling all these strands together, my approach to the subject of Indigenous-state relations and land claims through story proposes narrative as a lens through which we can see the deployment of different forms of social power in discrete social encounters.

In his work on Indigenous-white relations, John S. Lutz found Mikhail Bakhtin's concept of dialogism useful for understanding "the interactive aspect of speech" and the many different types of exchange that occur in cross-cultural communicative encounters.<sup>47</sup> Dialogism helps us account for the ways that speech is oriented to the understandings – insofar as they are known or imagined – of the listener, while at the same time attempting to convey the intended meanings of the speaker.<sup>48</sup> Following from Lutz, I too am interested in how people can communicate using the same language – and indeed, at times, the very same words – and yet retain different and even opposing interpretations as to the meaning of their shared vocabulary.<sup>49</sup> Importantly, Lutz

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UBC Press, 2005).; Robinson, *Living by stories*, 2005.; Wendy C. Wickwire, "To See Ourselves as the Other's Other: Nlaka'pamux Contact Narratives," *Canadian Historical Review* 75, no. 1 (March 1, 1994), 1–20.

<sup>45</sup> Keith H. Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache*, (UNM Press, 1996).; Naxaxalhts'i, "We Have to Take Care," 2011.; Elizabeth A. Povinelli, *Labor's Lot: The Power, History, and Culture of Aboriginal Action*, (University of Chicago Press, 1993).; Silko, *Ceremony*, 1977.;

<sup>46</sup> John Borrows, *Canada's Indigenous Constitution*, (Toronto: University of Toronto Press, 2010).; John Borrows, *Drawing Out Law: A Spirit's Guide*, (University of Toronto Press, 2010).; John Borrows, *Freedom and Indigenous Constitutionalism*, (University of Toronto Press, 2016).; Valerie Ruth Napoleon, "Ayook: Gitksan Legal Order, Law, and Legal Theory," (University of Victoria, Ph.D. Thesis, 2009).

<sup>47</sup> Lutz, *Makik*, 21.

<sup>48</sup> Ibid. See also: M. M. Bakhtin, *The Dialogic Imagination: Four Essays*, (University of Texas Press, 2010).

<sup>49</sup> For example, Indigenous and Canadian governments highlight the importance of consulting Indigenous Peoples in relation to resource extraction projects, but may have very different definitions of what constitutes adequate consultation. Similarly, achieving 'certainty' is a shared goal of treaty negotiations, but what certainty means to the respective parties may vary widely. See: Carole Blackburn, "Searching for Guarantees in the Midst of Uncertainty: Negotiating Aboriginal Rights and Title in British Columbia," *American Anthropologist* 107, no. 4 (2005), 586–

operates from the recognition that such dialogic encounters functioned in relationships in which the distribution of power was uneven.<sup>50</sup>

It is the ongoing power imbalances in Indigenous-state encounters in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries that trouble scholars of modern land claims and co-management negotiations, scholars such as anthropologist Paul Nadasdy.<sup>51</sup> Nadasdy has shown that in many of the state-sanctioned mechanisms for addressing the so-called 'land question' (through litigation, negotiation, etc.), the onus has been on Indigenous Peoples to make themselves legible to the state, in part by learning to address the state on its own terms. The risk of this, he argues, is that in attempting to protect a land-based ancestral way of life, Indigenous Peoples are becoming more and more distanced from that life; in order to become skilled navigators of state bureaucracies, they must become bureaucrats themselves. In other words, they cease to perform, or spend less time doing the things that connect them to the land, as they become preoccupied with the many demands of becoming and being fluent in state processes and vocabularies. Another way of framing this process is that through this new bureaucratic assimilative force, Indigenous Peoples risk losing touch with their stories, and the forms of social interaction and places that sustain them, as they are drawn into the narrative logics of the Canadian nation-state.

Others have shown how liberal settler states, after decades (in some cases centuries) of operating under explicit assimilationist policies, have come to accept some form of Indigeneity

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596.; Megan Harvey, *Speaking in S'ólh Téméxw: Language Dynamics in Stó:lō Approaches to the BC Treaty Process*, Report prepared for the Stó:lō Ethnohistory Field School, (2009).

<<http://web.uvic.ca/vv/stolo/pdf/MHarvey%20FS%20Report%20FINAL.pdf>>

<sup>50</sup> Michael E. Harkin, *The Heiltsuks: Dialogues of Culture and History on the Northwest Coast*, (University of Nebraska Press, 2000), vii-viii.

<sup>51</sup> Paul Nadasdy, *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon*, (Vancouver ; Toronto: UBC Press, 2003). See also: Taiaiake Alfred, "Deconstructing the British Columbia Treaty process," *Balayi: Culture, Law And Colonialism*, 3 (2001): 37-65.; Blackburn, "Searching for Guarantees" 2005.; Stephanie Irlbacher-Fox, *Finding Dahshaa: Self-Government, Social Suffering, and Aboriginal Policy in Canada*, (Vancouver; Toronto: UBC Press, 2009).; Johnny Camille Mack, "Thickening Totems and Thinning Imperialism," (LL.B. thesis, University of Victoria, 2007).; Andrew Woolford, *Between Justice and Certainty: Treaty Making in British Columbia*. Law and Society Series, (Vancouver: UBC Press, 2005).

and offer limited state recognition of Indigenous Peoples. For example, through existing land and self-government agreements made in Canada, participating First Nations and Inuit have extinguished title to their larger territories in exchange for title to smaller portions of land and cash settlements. In relation to self-government, some of these agreements re-allocate governing jurisdiction and law-making authority over certain dimensions of Indigenous social life (health, child and family services), but not others. Such arrangements have been criticized for configuring First Nations as municipalities rather than co-sovereigns. While holding open some spaces of possibility for Indigenous self-management, such recognition practices have been condemned for the ways they reify the state's authority to define the terms upon which it will accommodate Indigenous 'difference', and neutralize Indigenous bids for nationhood status. In this framing, what appear to be hard won routes to self-determination represent a re-entrenchment of state sovereignty, and a reification of its authority to adjudicate Indigenous claims upon the state. This 'recognition trap' has been extensively discussed in the Canadian context by Glen Coulthard, Taiaiake Alfred, Johnny Mack, Stephanie Irlbacher-Fox, among others, and internationally by Elizabeth Povinelli and Isabel Altamirano-Ramirez, among others.<sup>52</sup>

The warnings sounded by all these authors are about the dangers and operations of informal imperialism, and the ways it perpetuates a history of violence through the assimilation and erasure of Indigenous Peoples, lands, and cultures in Canada and beyond. It is crucial that scholars and citizens alike develop the necessary vocabularies for understanding the ways the state works to build and maintain its own networks of power, and how it continues to be highly

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<sup>52</sup> Alfred, "Deconstructing," 2001.; Isabel Altamirano-Jiménez, *Indigenous Encounters with Neoliberalism: Place, Women, and the Environment in Canada and Mexico*, Women and Indigenous Studies Series, (Vancouver: UBC Press, 2013).; Coulthard, *Red Skin*, 2014.; Irlbacher-Fox, *Finding Dahshaa*, 2009; Mack, "Thickening Totems," 2007.; Elizabeth A. Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*, Politics, History, and Culture, (Durham N.C.: Duke University Press, 2002).

exclusionary even and perhaps especially in its gestures of inclusion. However, such critical vocabularies will not necessarily help us to explain how individuals and groups erode the power of the state or assume it for themselves, nor do they help us to understand the significant achievements Indigenous Peoples have made in terms of repossessing their territories and their status as nations in and with respect to Canada. I would suggest we also need expanded vocabularies in order to witness and articulate how Indigenous Peoples deploy different forms of social power in their relationships with the state, both in the past and in the present. To this effect, I argue that although First Nations have and continue to speak with the state's terms when they engage the Crown through the state's own mechanisms, they are also doing a lot more this. The outcomes of these acts are multiple and various, and cannot be contained within a teleological analysis of whether such engagements represent a re-entrenchment in or liberation from the imperial relations that have shaped the bulk of our shared histories. The challenge as I see it is how we – as scholar-storytellers – can account for the 'other productions' of such encounters in our own narratives of these relationships and encounters.

In this, I am inspired by James Clifford's observation that "[g]lobal capital and the state are active forces, but not determining structures."<sup>53</sup> Without dismissing the considerable power of state institutions, the global market economy, the ideology of consumer capitalism, or dominant discourses, Clifford resists concluding that all Indigenous performances of self are "simply a matter of turning towards power."<sup>54</sup> Rather, he insists that if we apprehend the subject

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<sup>53</sup> Clifford, *Returns*, 37.

<sup>54</sup> Clifford, *Returns*, 47. In this, he refers to Louis Althusser's famous scenario describing the formation of the subject through interpellation, in which one becomes that which is hailed, in responding to being called. Althusser's explanatory scene is that of a policeman hailing an individual on the street; in that moment, the person recognizes herself as guilty or suspect. Franz Fanon's version is a moment from his own experience in Paris, in which he did not understand himself primarily as black (rather than a French citizen) until a stranger on the street points to him and calls out 'Look a Negro!' In responding to this call, Fanon comes to recognize himself as reduced to his skin colour and its attendant meanings through the racially objectifying call of the normative white, French subject. Clifford's point, as above, is that Indigenous people (and, one would assume, all other people) are 'hailed' by any

as constituted by its performances for powerful audiences, then we must acknowledge the diverse range of such audiences, and thus the inherent plurality of the subject. Clifford notes that cultural subjects ‘play themselves’ for audiences as varied as

the police, state agencies, schools, churches, NGOs, tourists; [but] they also perform for family, friends, generations, ancestors, the tribe, animals, and a personal God...[and such performances] can also involve turning away, falling silent, keeping secrets, using more than one name, being different in changing situations.<sup>55</sup>

The ethnohistorical approach relies upon archival documents (including recorded oral histories) as well as conversations and interviews with, in the case of my research, Indigenous and non-Indigenous people who are or have been on the front lines of negotiating Indigenous-state relations. This approach to research has required me to deal with the fact that people routinely think and behave in unexpected ways, hold views of themselves and of others that do not allow me to understand them only, or even primarily, as victims of dominant discourses, history, or the state – even while they operate within social conditions structured by all these phenomena.

Historians have long rejected the idea that Indigenous Peoples can be considered victims of the fur trade, or were made obsolete by the establishment of settler economies reliant on wage-labour and industrial capitalism.<sup>56</sup> We have likewise rejected the theory that Indigenous oral cultures were replaced by the introduction of literacy, or that Indigenous spiritualities and belief systems were lost altogether as a result of missionization and conversion to Christian

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number of authorities, individuals, and social and spiritual forces, and thus cannot only be reduced to a single, racialized subject. See Louis Althusser, “Ideology and Ideological State Apparatuses,” in *Lenin and Philosophy and Other Essays*, (New York: Monthly Review Press, 1972), 127-186.; Frantz Fanon, *The Wretched of the Earth*, (Grove Press, 1968).

<sup>55</sup> Clifford, *Returns*, 47.

<sup>56</sup> Keith Thor Carlson, *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism*, (Toronto: University of Toronto Press, 2010).; Lutz, *Makúk*, 2008.; Andrew Parnaby, “‘The Best Men That Ever Worked the Lumber’: Aboriginal Longshoremen on Burrard Inlet, BC, 1863-1939,” *The Canadian Historical Review* 87, no. 1 (March 23, 2006): 53–78.; Ray, Arthur J. *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay, 1660-1870 : With a New Introduction*. University of Toronto Press, 1998.; Vibert, *Trader’s Tales*, 1997; White, *Middle Ground*, 2001.

religions.<sup>57</sup> In all such processes, cultural changes occurred, many extraordinary, many characterized by great loss, but cultures have also endured, transformed, and adapted to ever-shifting circumstances. In the same vein, I suggest that we should question the predictions that Indigenous Peoples' ways of governing themselves, their aspirations for meaningful forms of self-determination, and their assertions of sovereignty in their own territories can be so easily lost as a result of their engagements with the Canadian nation-state, even in state-sanctioned forums for doing so. Rather, the task is to acknowledge Indigenous Peoples' demonstrated capacity for collective cultural endurance, and attempt to understand it, while at the same time recognizing the forces acting to assimilate and subsume Indigenous difference within the normative structures of settler society.<sup>58</sup>

In this work, I attempt to get a sense of the nature of this endurance by looking closely at specific encounters between Indigenous Peoples and state. In each of these encounters, Indigenous Peoples inhabit the mechanisms available to them for speaking with the state, and exceed the spaces available to them. In all these contexts, Indigenous and state representatives are engaged in a struggle for power, but regardless of the medium – whether it be a petition, a roadblock, a public hearing, or treaty negotiations – the power struggle appears as a struggle over narrative. Nigerian writer Ben Okri observes that

[i]n a fractured age, when cynicism is god, here is a possible heresy: we live by stories, we also live in them. One way or another we are living the stories planted in us early or along the way, we are also living the stories we planted - knowingly or unknowingly - in ourselves. We live the stories that either give our lives meaning, or negate it with meaninglessness. If we change the stories we live by, quite possibly we change our lives.<sup>59</sup>

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<sup>57</sup> Carlson, "Orality About Literacy," 2011.; Jean Comaroff and John L. Comaroff, *Of Revelation and Revolution, Volume 1: Christianity, Colonialism, and Consciousness in South Africa*, (University of Chicago Press, 1991).; Cruikshank, *The Social Life*, 1998.; Susan Neylan, *The Heavens Are Changing: Nineteenth-Century Protestant Missions and Tsimshian Christianity*, (McGill-Queen's Press, 2003).

<sup>58</sup> Which is not to gloss over the fact that countless Indigenous individuals have not survived their cultural, economic, racial, political, social, and spiritual marginalization within the nation-state.

<sup>59</sup> Ben Okri, *A Way of Being Free*, (Head of Zeus, 2015), 46.

In all four of the encounters I examine here, this is precisely what Indigenous people are attempting to do: shift the narrative of their relationships with the state, and refashion the stories they tell about who they are in order to possess a greater freedom in their relationships with and in their territories. At a broad level, the narrative they are attempting to change is about power; specifically, they seek to change the narrative that insists it is the state that sets the terms for how Indigenous people can relate to the nation-state and to their own lands. Sometimes, such engagements prove successful, as in Chapter 4. In most cases, however, such outcomes have proven elusive. I would further suggest, though, that these encounters have more to offer than simply stories of triumph or tragedy; it is in part the ‘other productions’ of these encounters that I seek to understand in this dissertation.

### **Chapters Description**

As Julie Cruikshank has observed, storytelling is a social activity, and it is important to look closely at the social contexts in which stories are told.<sup>60</sup> In order to understand how Indigenous Peoples were engaging the state around the subject of land, I sought out examples of encounters that captured some kind of communicative exchange between Indigenous and state representatives. Too often, analyses of Indigenous-state relations have treated Indigenous Peoples as reactors to, rather than influencers of, state policies. I wanted to look at contexts that preserved an exchange of some kind in hopes of seeing how state representatives reacted and modified their narratives in relation to Indigenous actors, and not just the other way around. In the interests of understanding how Indigenous Peoples expressed their agency in their relationships with the state, I sought out instances in which Indigenous voices were recorded or accessible, in order to amplify these in the historical record.

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<sup>60</sup> Cruikshank, *Social Life of Stories*, xiii.

All four chapters show how Indigenous people acted within and against the received mechanisms for communicating with the state, as well as within and against the narrative assumptions embedded in these mechanisms. The chapters are organized as two pairs, but each can be read independently of the others. Chapters 2 and 3 are focused on encounters between the Stó:lō – the Indigenous people of what is now the lower Fraser Valley of south western British Columbia – and the state, representing examples of their earliest and most recent exchanges with government actors about the state’s possession of their lands. In Chapters 4 and 5, I shift focus to Haida Gwaii, formerly known as the Queen Charlotte Islands, and to Haida encounters with the state in the latter half of the 20<sup>th</sup> and early part of the 21<sup>st</sup> centuries.

From the outset, I wanted to work with more than one community in order to understand the range of Indigenous experiences of encounter in BC. While I had originally planned four to five chapters, each on different cultural groups, I quickly realized that this breadth would come at too great a cost. Informed by the principles of community-based and decolonizing research methodologies, it is important to me that my research emerges out of, and produces meaningful relationships of learning and reciprocity. These kinds of relationships necessarily take time to develop and even longer to deepen, far more than what is available in the process of researching and writing a doctoral dissertation. To this end, I chose to restrict my focus to two communities that represent some of the geographic, cultural, and historical diversity that has shaped Indigenous-state encounters in BC.

When the first significant waves of settlers were establishing themselves in the Fraser Valley, also known as S’ólh Téméxw to Coast Salish people, the Stó:lō were alarmed. Chapter 2 focuses on four petitions authored by chiefs from Stó:lō and neighbouring tribes between 1864 and 1874 to the local representatives of first the colonial, and later the federal government, and

the stories these petitions tell.<sup>61</sup> In a relatively brief period, while settler authorities rapidly increased control over both lands and people, Indigenous people in the region swiftly developed new cultural literacies, among which was a facility with one of the central technologies of settler power: writing. In taking up petitioning, the chiefs were using a very European medium for communicating with settler society's political authorities, although the ways in which they engaged with petitioning was at the same time distinctly Stó:lō . This chapter explores why and how the authors of the petitions highlighted and aligned themselves with British narratives of colonialism as a benevolent project of racial uplift and inclusion – one of the main stories they were being told over and over again by settler authorities.

When there was irrefutable evidence that the promises of this narrative would not be kept, the Stó:lō signatories used this same story to show the illegitimacy of the state's assumed authority, offering clear evidence of the gap between the words and deeds of settler authorities. In the process, the petitioners emphasized their own contrasting moral integrity, flipping the narrative of colonial superiority on its head. Along the way, Stó:lō people were becoming fluent in the written word and recognizing the practical and symbolic power of Euro-settler society's textual culture. Understanding how orality and literacy intersected in sometimes unexpected ways helps us better comprehend how Stó:lō people attempted to manage their relationships to the state and regain some control over their relationships to their own territories in this period. This series of petitions traces an important shift in settler-Indigenous relations, while also revealing a great deal about Indigenous ideas around literacy. This chapter explores how

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<sup>61</sup> The meaning of the term 'Chief' can be somewhat ambiguous, especially in the nineteenth and early twentieth centuries. While today it can designate an internally-recognized hereditary leader, in the nineteenth century people referred to as 'chiefs' could have been leaders recognized by churches, colonial and Canadian political authorities, and/or members of their Indigenous communities. I will discuss this term in more depth in Chapter 2.

Indigenous people used stories, often the settlers' own stories, to challenge settler appropriation of Stó:lō land from the very earliest days.

A hundred and thirty years later, the Stó:lō were still using story in their engagements with the state through the BC treaty process. Chapter 3 revisits Stó:lō-state relations and the question of land in the early twenty-first century, and is based on observations of stories told at the main treaty negotiations meetings between federal and provincial representatives and the *Stó:lō Xwexwilmexw Treaty Association* (SXTA). Treaty making is a very powerful process of story-making, with treaty negotiations being, ideally, a venue in which Indigenous people and the state can come together to create a common story for how they will relate in the future. I discuss some of the ways in which the old stories guiding Indigenous-state relations are embedded in the routine procedures of treaty-making, and offer three examples of how the SXTA attempt to widen the spaces of narrative possibility in treaty-making in order to make room for a Stó:lō world view.

In these three examples, I discuss how the SXTA attempts to assert their own culturally grounded narrative logics into a process that tends to be dominated by the language and cultural logics of the Canadian state. As the process is ongoing, the outcomes of such interventions remain inconclusive, and surely full of risk, as critics of the process have adeptly pointed out. Treaty making produces more than the treaty itself, but determining what its other productions are is no simple task. I approach treaty as one site in which Indigenous Peoples are rebuilding themselves by re-writing the story of who they are and what their relationships will be to the state and to their territories, as well as among one another. While the balance of power appears tipped in favour of the state's objectives for treaty making, this chapter offers examples of people's capacity to, in Tully's formulation, 'act otherwise' in relation to oppressive dimensions

of the current form of Indigenous-state relations. The chapter traces how such acts are, fundamentally, narrative ones. It also acknowledges that the field of relationships that must be negotiated includes, but also extends far beyond, the binary model of Indigenous Peoples versus the state.

Chapter 4 focuses on the dynamics of the Haida logging blockade at Lyell Island/Athlii Gwaii in 1985, both at the frontline of the blockade and in the Vancouver courtroom where a group of Haida responded to the injunction brought against them by two logging companies. I explore how Haida people ‘acted into being’ a story of the Haida as owners and caretakers of their territories, and how they were able to gain control of the narrative of the conflict, and draw a multitude of others into their story. Although it did not begin this way, the Haida action ended up being a turning point in the story of the Haida Nation, galvanizing Haida and their allies and becoming one of only a few genuine success stories in Indigenous struggles to regain control over their territories in BC. In telling a story of their sovereignty to a very broad audience, they were also telling it to themselves, and indeed, I suggest that perhaps the most powerful effect of this standoff is what it has done for Haida people.

Colonialism hinged upon dispossessing Indigenous Peoples of their stories as well as, or perhaps through, a dispossession of their lands. This chapter offers a very concrete example of how decolonization involves a reversal of this process: a simultaneous repossession of Indigenous stories and lands. In the blockade, the Haida repossession of their stories was enacted and bodily performed; both the blockade and the injunction hearings became powerful venues for a Haida storytelling process, in which Haida people showed up *as Haida*, enframed state and industry logics within Haida historiographies, and occupied the land and the law with Haida narratives. Throughout, the demonstrators were acting into being a story with very old roots

about what it meant to be Haida and what it meant to understand the land as Haida territory. Nor was theirs simply a re-engagement with their old stories, but a very public repossession of the ability to tell their stories in contemporary contexts.

Telling a story does not mean it is going to be heard, or at least heard in the way that one hopes for. The importance of understanding this element of storytelling is beautifully illustrated in the Haida engagement of the Joint Review of the Enbridge Northern Gateway Pipeline Project between 2012 and 2014. Chapter 5 explores four aspects of a very recent example of Haida and state storytelling: the way the state-sponsored review process opened spaces for Indigenous stories in an attempt to confine and appropriate them; the way the Haida tried to take control of the stage and the use of the stories; how the Joint Review Panel's (JRP) final report attempts to reframe and neutralize Haida and other dissenting participants' testimony; and finally, how these competing stories are weighed in the court of public opinion.

### **Indigenous Agency in the Archival Record**

Only the smallest fraction of social or political exchanges are written down and preserved in a place where they can be retrieved years or centuries later. Evidence of Indigenous people expressing their agency in written historical records remains rare, especially in comparison to the vast archival collections containing the official and personal correspondence of major (and many quite minor) government actors. Even in comparison to the amount of personal correspondence, diaries, and photographs early settlers left behind, records of Indigenous voices from the same period are exceptionally uncommon. As has been noted by historians and anthropologists, relations of power with respect to race, gender, and class shape what archives preserve and

contain.<sup>62</sup> Archives in British Columbia possess the correspondence, diaries, and photographs the descendants of early settlers saw fit to hold onto, and were then identified as valuable by those who founded and maintained archival institutions. With such documents, scholars can attempt to trace a line of thinking, make educated guesses as to people's motivations or reasoning behind their actions, and reconstruct a sense of what happened in the past. With many limitations, depending on what it is we want to understand, we can learn what these historical figures did and sometimes why they did it. The same cannot be said for the thoughts, feelings, reflections, strategies, or actions of Indigenous Peoples.

For this reason, like many scholars of colonialism before me, I have attempted to make the most of the rare documents preserving Indigenous voices, and expand my sources beyond textual records where possible. While archival evidence of Indigenous voices is relatively rare for the nineteenth century, those voices become more common in the twentieth, as Indigenous Peoples become more fluent in the languages and cultures of settler society, and more able to speak and mobilize on their own behalf, without the mediation of missionaries or other settler intermediaries. Studying events in the latter half of the twentieth century expanded my opportunities to access people's lived experiences through recorded oral histories or conversations with people directly. My original intention was to focus equally on the perspectives of Indigenous and state actors in my analyses of the encounters described above. However, I have not been as successful in exploring the state dimension of the relationship as I had hoped, in part due to constraints of time and resources, but also because accessing the perspectives of state actors currently working in government has proven more difficult than their counterparts working for First Nations communities. While the colonial and early records in

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<sup>62</sup> Ann Laura Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2, no. 1-2 (March 1, 2002): 87-109.; Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*, (Princeton University Press, 2010).; Trouillot, *Silencing the Past*, 31-69.

many ways amplify the voices of state actors, currently active or even retired government workers have proven more wary of speaking with me, and less free in what they can speak about.

As much as possible, my research has attempted to make good use of records that have already been made public, through court and hearings transcripts or media. In addition, I have attempted (and in most cases succeeded) to base my research on discussions and interviews with people who were involved in the encounters I have studied. Building research relationships with Indigenous communities takes time, but I was fortunate to have participated in the graduate-level Stó:lō Ethnohistory Field School in the spring of 2009, co-sponsored by the Stó:lō Research and Resource Management Center, the University of Victoria, and the University of Saskatchewan.<sup>63</sup> In its eleventh year at the time that I attended, the field school continues to offer its students a remarkable introduction to Stó:lō history and culture while assigning students research projects identified as valuable by the community. Somewhat unusually, the research for the dissertation began as a project I proposed, which was approved by those running the field school. Focused on offering students experiential learning opportunities in community-based research, the field school also provided me with access to the excellent research resources maintained through the Stó:lō Library and Archives, as well as community contacts for oral history research. More than anything, the field school offers its students a rare opportunity to develop meaningful relationships that, in many cases, extend beyond the context of research. While this experience greatly facilitated my research with Stó:lō communities, it also gave me the training, sensitivity, and good manners necessary for initiating research relationships with other Indigenous communities, which helped me in my discussions with Haida people on Haida Gwaii and in Vancouver. Chapters 2 and 3 are based on research that began in 2009 with the Stó:lō and lasted over several years. In particular, I am indebted to the Stó:lō treaty team, who supported my

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<sup>63</sup> To learn more about the field school, and read student reports please see: < [www.ethnohist.ca](http://www.ethnohist.ca). >

attendance at the main table treaty negotiation meetings from 2014-2015, and, along with several other individuals currently or formerly active in the treaty process, have been very generous in making the time to speak with me.

Chapters 4 and 5 are based on two research trips I made to Haida Gwaii in 2013 and 2014, respectively, as well as conversations with former Haida leadership based in Vancouver over a somewhat longer period. I have made sure to check back with those who participated in my research through informal conversations or formal interviews, in order to obtain their feedback on my interpretations, as well as to correct any errors I may have overlooked in converting research to writing. In several cases, participants chose to withhold their signatures on my participant consent forms until they were able to see what I had done with what they told me. Although unorthodox, and perhaps inadvisable from the perspective of university ethics procedures, I respect this approach, and found it a useful way of being held accountable while also interpreting it as a generous offer on the part of the participants to be active resources for my research and writing process.

Also unorthodox, particularly for a history dissertation, is my inclusion of two chapters on ongoing (Chapter 3) or very recent (Chapter 5) Indigenous-state encounters. This format is intentional on my part. Too often, historical wrongs are acknowledged after the fact, as has been the case with Indian residential schools in Canada. The 2008 federal apology, the Truth and Reconciliation Commission, Indigenous activism and that of several of the churches involved in running residential schools has raised the public profile of this brutal product of the state's policy of assimilation, which was only officially repealed in the late 1960s.<sup>64</sup> However, much of the public discourse surrounding residential schools continues to understand them as a "sad" or

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<sup>64</sup> Regan, *Unsettling the Settler*, 2010.

“dark” chapter in Canadian history.<sup>65</sup> Less understood are the ongoing effects of residential schools on Indigenous families, cultures, politics, and communities. Similarly, analyses of the state’s dispossession of Indigenous lands that restricts their focus to the nineteenth or the early twentieth centuries fail to account for the fact that such dispossessions continue up to the present day. Indigenous Peoples and cultures continue to be made vulnerable by the state; conflicts over land, territory, and sovereignty remain at the heart of the Indigenous-state relations; and story is still key to these conflicts. By bringing Indigenous experiences of, and approaches to, recent encounters under the same analytical lens as historical encounters of a similar nature, my research purposely looks forward and backward in order to offer deeper understandings of Indigenous-state relations in the past, while providing historical reflections on current-day processes and relationships.

More immediately, this structure changed the way I approached the research. Speaking with people working on the front lines of current-day negotiations with the state (through treaty and other platforms) allowed me to witness firsthand the complexity of these encounters, as well as the creativity and commitment of many of those involved. Without collapsing the obvious distances and differences between the late nineteenth century and the late twentieth and early twenty first centuries, this experience helped me to ‘read against the grain’ of the early colonial documents, in which Indigenous actors are too often infantilized or presented as political naïfs. Along with a growing literature that takes the agency and humanity of Indigenous actors seriously, I am indebted to those who spoke openly and frankly with me about the never simple process of trying to shift the dominant narrative in their day to day dealings with the Canadian state.

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<sup>65</sup> The phrase ‘sad chapter’ is the language used in the generally very powerfully worded federal apology issued by Prime Minister Stephen Harper in June of 2008. For the full transcript, see: <<http://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>>

## **Positioning Myself in the Research**

We are and are more than the sum of our parts. But some of those parts are especially important to highlight, because of the ways they shape the stories we know and how we know them, and those we do not. In so many ways, I am a product of the events that I have studied in this dissertation. By which I mean that as a white, urban, middle-class Canadian woman, the descendent of Anglo-Irish parents, born, raised, and living on the west coast of British Columbia, my very presence in this place speaks to the privileges I have inherited from a history of colonial violence and the state's dispossession of Indigenous lands. The fact that I learnt nothing about this history in my public school education until I began attending college classes a full ten years after the establishment of the BC treaty process, means I am also a product of the historical denial that has characterized BC and Canada. Like so many newcomers, it is likely that I could have lived most of my life without being compelled to learn about the past and present of the politics of land in this country. However, I am also a product of the 'land claims era', in the sense that many of the events that shaped my teenage environmentalist sensibilities were initiated by Indigenous activism against logging on the west coast, and the desecration of sacred lands at Oka in the 1980s and 1990s. Raised by an avid outdoorswoman, environmental consciousness came easily to me, and laid the groundwork for me to begin thinking about the connections between environmentalism and the social justice dimensions of Indigenous land rights later in life. That outdoorswoman was also a single mother, who took in foster children as a way of making a living, and to allow her to be at home for my twin brothers and me when we were young. Over the twelve years that we were a foster family, only two of the many, mainly teenage girls who lived with us were Indigenous. It is a mark of my privilege – and a general public ignorance – that these young women could live with us, and that my family could camp

every year at Hobuck Beach on the Makah reserve in Neah Bay, Washington, and yet I remained mostly ignorant of the conditions that placed those girls with us in the first place, and that defined the boundaries of the reserve at Neah Bay.

In April 2016, the Stó:lō Ethnohistory Field School was honoured by the Society for Applied Anthropology for being at the forefront of the applied social sciences. Usually highlighting the work of a single professional, the Robert Hackenberg Memorial Lecture hosted a panel of speakers, several of whom were the original founders of the Field School. One of these was Stó:lō Grand Chief Clarence “Kat” Pennier, who was chief treaty negotiator for the Stó:lō Nation in the late 1990s, when the Field School first began. Now in his seventies, Pennier explained how the Field School grew out of Stó:lō title and rights research, as well as how he, too, was shaped by the historical denial in British Columbia, in that he was not taught anything about his own history through his early education. Part of the impetus for the Field School was to have the students help gather information about Stó:lō histories, from archival sources as well as from Stó:lō elders, as a way to help Stó:lō people to learn about themselves. As Pennier said that day with respect to Stó:lō-state relations and title and rights, “the government doesn’t know what it is they have to recognize and affirm.”<sup>66</sup> The Field School was originally intended to be one tool with which Stó:lō people could gather and mobilize knowledge about Stó:lō histories of dispossession and self-determination, with a view to restoring Stó:lō people as leaders in and of their own territories. As Pennier noted, “if we are going to own this country, how are we going to manage it properly?”<sup>67</sup>

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<sup>66</sup> Grand Chief Clarence “Kat” Pennier, “The Hackenberg Memorial Lecture: Unexpected Consequences: How a Good Idea Changed Worlds,” (presentation, Annual Meeting of the Society for Applied Anthropology, Vancouver, BC, April 1, 2016).

<sup>67</sup> Ibid.

A second intended objective of the Field School was oriented towards reconciliation. By offering young people (Indigenous and non-Indigenous) an access point to get to know Stó:lō people and their histories, as well as the shared histories of Stó:lō and settler people, the Field School was intended to support reconciliation. My experience was that the Field School provided a rare and transformative means for students to learn about and reflect on the stories that make up who we are, as individuals and as peoples, and where we have been. Going forward, how we hold these stories – our own and each other’s – is a central part of the work of reconciliation, if it is to be meaningful. Pennier asked, “how are we going to reconcile if we don’t know each other? How are your grandkids going to live well in our territories if they don’t know us?”<sup>68</sup>

There is a fine line, in academic scholarship, between learning about and ‘loudening up’ the stories that have been left out of the official narrative, on the one hand, and on the other, telling someone else’s stories in a way that recruits too much to the scholar’s own narrative. I have tried to walk this line carefully, but it has, at times, appeared blurred to me. Ultimately, and inescapably, what follows is my own interpretation of the stories I have learned about and been told. Throughout this work, my guiding intention has been to find a way to ‘live well’ in the place that I live in and in relation to the stories this place holds. To this end, the following chapters describe how stories are not simply a by-product of power relations, but make up their very foundation. For this reason, story offers a powerful lens through which to understand the past and present of Indigenous-state relations, and the issues at the heart of these relationships.

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<sup>68</sup> Ibid.

## Chapter 2

### Story People:

#### **Stó:lō-State Relations and Indigenous Literacies in British Columbia, 1864–1874**

In 1864, a petition from 55 Coast Salish leaders told a story to the new governor of the Colony of British Columbia, Frederick Seymour; an aspirational story about who Salish people were and wanted to be, who they thought Seymour's people were, and what the Salish leaders thought would allow them all to live well together.<sup>1</sup> They wrote:

We know the good heart of the Queen for the Indians. You bring that good heart with you, so we are happy to welcome you. We wish to become good Indians, and to be friends with the white people.... Please to protect our land, that it will not be small for us: many are well pleased with their reservations, and many wish that their reservations be marked out for them.<sup>2</sup>

Just ten years later, another much longer petition authored by many of the same Salish leaders told a very different story, showing a striking shift in attitude towards settler authorities. In this second petition, Indigenous leaders from the Upper and Central Fraser Valley describe a pattern of genocide caused by bureaucratic obstructionism that would come to characterize Indian policy over the next century and a half:

For many years we have been complaining of the land left to us being too small. We have laid our complaints before the Government officials nearest to us: they sent us to some others; so we had no redress up to the present; and we have felt like men being trampled on, and are commencing to believe that the aim of the white men is to exterminate us as soon as they can, although we have always been quiet, obedient, kind, and friendly to the whites.<sup>3</sup>

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<sup>1</sup> An earlier version of this chapter was published in the *Journal of the Canadian Historical Association*: Megan Harvey, "Story People: Stó:lō-State Relations and Indigenous Literacies in British Columbia, 1864-1874," *Journal of the Canadian Historical Association*, Vol.24, Issue 1 (2013): 51-88.

<sup>2</sup> British Columbia Archives (hereafter, B.C. Archives), Stó:lō Speech to Governor Seymour, Great Britain Colonial Correspondence, CO 60-19, Seymour to Cardwell, 31 August 1864.

<sup>3</sup> Richard Wolfenden, Government Printer, Petition to Superintendent of Indian Affairs, *Papers Related to the Indian Land Question 1850–1875*, 1875, (Reprint, Victoria, 1987), 14 July 1874.

In this brief, ten-year period, colonial and then provincial authorities asserted unprecedented control over both lands and people in the emerging settler colony, dramatically reducing the same central Fraser Valley reserves that the 1864 petition had asked Seymour to protect. Simultaneously, Coast Salish peoples in the region swiftly developed new cultural literacies, among which was a facility with the written word, one of the central technologies of settler power, which allowed them to communicate more directly with settler authorities.

This chapter analyzes these and two other petitions written between 1864 and 1874 by Coast Salish people living in what is now known as *S'ólh Téméxw* to many of its Indigenous inhabitants, and the Fraser Valley to the general public.<sup>4</sup> In the early twentieth century, Coast Salish people living in the upper and central Fraser Valley were increasingly identified by themselves and others as ‘Stalo’ or, in current day orthography, ‘Stó:lō.’<sup>5</sup> At the time of the petitions examined here, the term most commonly used by settler authorities was ‘Fraser Indians’; on the petitions the signatories were identified by Anglicized versions of their hereditary names (e.g., “Tahoulacha”), or by their Christian names, often followed by the name of the community they represented (e.g., “Etienne – Squahla”).<sup>6</sup> Settlers too, were named by the Halkomelem-speaking peoples of this region: *Xwelítem* is Halkomelem term often used to denote

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<sup>4</sup> Please see appendix for transcriptions of the petitions.

<sup>5</sup> The Stó:lō today are generally recognized as a group of 28 culturally and linguistically affiliated Coast Salish Indigenous communities along the lower Fraser River and its tributaries. Halkomelem is the generic term for the traditional language spoken in a broader region that stretches south into the Washington state, and west to Southern Vancouver Island. It contains three distinct dialects: Halq'eméylem (Yale to Abbotsford), Hun'qumyi'num' (Abbotsford to Vancouver), and Hul'q'umín'um' (southern parts of what is now Vancouver Island and the southern Gulf Islands). The signatories of the petitions discussed here represented communities throughout these and neighbouring regions. In this paper, I refer to the signatories of the petitions somewhat interchangeably as Stó:lō, Coast Salish, Salish, or Halkomelem-speaking peoples. While the petitions seem to have been spearheaded by communities in the Lower Fraser Valley and therefore more concretely within Stó:lō territory, the signatories represent a much broader expanse of Salish community identities. For a discussion of the history of waxing and waning group affiliation in this region, see Keith Carlson, *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2011). See also Amanda Fehr, “Relationships: A Study Of Memory, Change, and Identity at a Place Called I:yem,” *The University of the Fraser Valley Research Review Online Journal*, 2, no. 2, (April 2009).

<sup>6</sup> Wolfenden, *Papers Related*, 1874.

non-Indigenous people, especially those perceived to be of European descent. Roughly translated as “hungry to the point of starving” or “the starving ones” in Halq’eméylem, this term derives from Stó:lō peoples’ experience of early explorers and gold miners in the late 1850s gold rush, and describes a people who were often quite literally starving. But the metaphoric evaluation of the newcomers’ character cannot be overlooked — a people whose approach to land and the things on and in it appeared to be driven by an insatiable and, perhaps especially in the case of the gold miners, obsessive appetite.<sup>7</sup> Like the names given to and adopted by Indigenous Peoples and settlers, the petitions also reveal competing narratives, in this case about the place of Indigenous Peoples in the social and geographical landscapes of the time. They also illustrate how Indigenous Peoples’ early engagements with western literacy enabled them to use and inscribe their own stories onto the changing terrain of Indigenous-settler relations. Indigenous petitions can be seen as a specific kind of discursive or narrative “contact moment”, and through them we can attempt to understand the dynamic and entangled ways in which story forms the context for cross-cultural encounters while being one of the main products of such communications.

The earliest forms of Indigenous writing we have from this period pertain to land and Indigenous Peoples’ relationships with settler authorities. Between 1864 and 1874, Stó:lō and neighbouring tribes presented four petitions to the British Columbia colonial and (after 1871) federal government.<sup>8</sup> The first two, delivered in 1864 and 1866, were signed by 55 and 70 Coast Salish leaders, respectively, and were addressed to Frederick Seymour, governor of what was then the colony of British Columbia. These earliest petitions were relatively brief and generally

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<sup>7</sup> Carlson, *Power of Place*, 161.

<sup>8</sup> Between 1866 and 1873 another five petitions referencing land from individual Stó:lō tribes were sent to settler authorities. These were followed by a further five from either individual tribes or a number of tribes between 1875 and 1876. The petitions examined in depth in this paper were signed by leaders representing between 55 and 76 communities. Stó:lō petitioning continued at least until 1923, becoming ever more lengthy and pointed.

deferential in stating the petitioners' desires. After British Columbia joined confederation with Canada in 1871, another two petitions were sent to Israel Wood Powell, Superintendent of Indian Affairs. Written in 1873 and 1874 and signed by leaders representing 73 and 56 communities, respectively, these petitions demonstrate Salish peoples' increasing linguistic fluency, as well as an acute awareness of the ways in which they were being marginalized in the emerging settler culture. The tone of these later two petitions is more explicitly confrontational than the earlier ones.

The survival of even four Indigenous texts from this era offers a rare interpretive opportunity. These petitions are important not only for what they suggest about how Indigenous Peoples were responding to colonization; they also reveal the discursive dimensions of Indigenous-state relations, and in particular, of Indigenous Peoples' political strategies for dealing with the state. The petitioners position themselves (and increasingly, their demands) in relation to a set of settler stories or meta-narratives, which were, in turn, also undergoing change. Historians agree that this period represented the shift during which British Columbia transformed from a fur-trading society to a full-blown settler colony.<sup>9</sup> Indigenous Peoples, especially those occupying what settlers perceived as the highly desirable arable and range-lands along the Fraser River, were encountering a new form of colonial enterprise — settlement — and with it, a settler government and populace with growing hunger for land.<sup>10</sup> Earlier scholarship has provided rich historical portraits of Indigenous-settler relations for this period through which we can understand the narrative shift evident in the petitions as a reasonable response to Salish peoples' changing political and material circumstances. As legal historian Hamar Foster has shown, Indigenous petitions in the late nineteenth century had not yet adopted British forms of legal

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<sup>9</sup> Most notably, see Harris, *Making Native Space*, 2002.; Tennant, *Aboriginal Peoples*, 1990.

<sup>10</sup> Harris, *Making Native Space*, 24.

argumentation that would come to characterize early twentieth-century Indigenous activism, and instead oriented their messages to British colonial narratives about the promise of racial uplift and inclusion.<sup>11</sup> They did so, however, from the perspective of their own legal traditions, in which formalized, public performances of storytelling played a central role in governance practices and diplomatic relations. While in colonial correspondence Indigenous Peoples were frequently portrayed as political naïfs, appeased with public ceremonies involving lofty promises and minor acts of gift giving, the petitions demonstrate Coast Salish people's clear grasp of the material and narrative dimensions of the power dynamics in their relationships with settler authorities, and evidence their attempts to adapt to rapidly changing circumstances.

The petitions also raise a host of questions about the conditions in which Indigenous writing takes shape in this period. How did Indigenous Peoples engage the very European tradition of petitioning as a medium through which they could make themselves heard by settler authorities? In what ways was this tradition folded into existing Salish understandings of how to conduct political affairs and authorize important speech? Nineteenth-century petition writing was a cross-cultural collaborative enterprise, involving Indigenous people and non-Indigenous supporters, so how should we conceive of Indigenous authorship? Many critics of recent mechanisms for resolving land conflicts in Canada have noted that the onus has been on First Nations to speak the language of the state in order to be heard, meaning that First Nations have had to adopt the agendas, concerns, terminology, and communicative style of the state to even begin a dialogue.<sup>12</sup> In the 1860s and 1870s, still early in the history of Indigenous-state relations

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<sup>11</sup> Hamar Foster, and Benjamin L. Berger, "From Humble Prayers to Legal Demands: The Cowichan Petition of 1909 and the British Columbia Indian Land Question," in *The Grand Experiment: Law and Legal Culture in British Settler Societies*, edited by Hamar Foster, Benjamin L. Berger, and A. R. Buck. Law and Society, (Vancouver: Published for the Osgoode Society for Canadian Legal History by UBC Press, 2008), 240-67.

<sup>12</sup> Blackburn, "Searching for Guarantees," 2005.; Nadasdy, *Hunters and Bureaucrats*, 2003.; Woolford, *Between Justice*, 2005.

in what would become Canada's Pacific province, Stó:lō people and their neighbours quite literally had to learn the language of the state by mastering English and becoming skilled readers and writers so as to navigate and communicate with an increasingly established and bureaucratic government.

In short, between 1864 and 1874, three things were happening at once: the context of Indigenous-state relations was changing — the 1860s and 1870s marked a key moment in the dispossession of Indigenous Peoples and the solidification of settler power over the material and relational landscape of southwestern British Columbia; by necessity, Indigenous Peoples were developing a greater familiarity with governmental processes and the legitimating narratives of settler society; and finally, the stories Indigenous Peoples were telling about their relationships with settler authorities and settler society were changing. This series of petitions traces an important shift in Indigenous-settler relations, Indigenous perspectives on and interventions in the changes taking place, and reveals how Indigenous literacy was used to challenge settler appropriation of Stó:lō land from the very earliest days.

### **The Narrative Worlds of Indigenous-State Relations in the 1860s and 1870s**

With the shift to a settlement economy in the 1860s and 1870s, Indigenous Peoples were faced with the material demands of settler society, in the form of rapidly increased encroachment onto and expropriation of their lands. In the realm of social relations, they were also encountering a set of settler stories about the proper place of Indigenous Peoples in the geographical and political landscape — stories that are referenced in the petitions. The ever-present ideological backdrop for nineteenth-century British colonial theorizing on the status of the Indigenous subject was composed of what seemed to be irrefutable global evidence of the superiority of the white race, as well as a widespread myth that Indigenous Peoples were —

either culturally or physically — a doomed and vanishing race.<sup>13</sup> Colonial philosophies varied on what role Indigenous Peoples might play in a post-fur trade society, but for the sake of this discussion I will focus on three meta-narratives that had the most bearing on Stó:lō people and their neighbours. The first held that Indigenous Peoples could be assimilated into colonial society, providing they adopt the socio-political, religious, and economic values promoted by British society. The region's most influential early governor, James Douglas, of Caribbean-Creole ancestry with a Métis wife, was product and proof of, and a firm believer in this narrative.<sup>14</sup> Underlying Douglas' policies on treaty making and reserve allocation in British Columbia was his faith in the potential integration of Indigenous Peoples into settler society. The relatively large reserves he had originally mapped out in parts of the Lower Fraser Valley and Okanagan and Thompson River valleys on the mainland are evidence of this ideal. As others have discussed at length, Douglas' reserve lands were intended to be supplemented by Indigenous pre-emptions of private fee simple land, as they became integrated into the culture of individually-held private property.<sup>15</sup> In this way, Indigenous Peoples would have sufficient material resources to become gradually incorporated into British settler society.

A second pervasive colonial meta-narrative operating at this time, widely subscribed to by the region's emerging settler population, held that Indigenous Peoples were, at best, obstacles to a bold new settler society. Prior to his retirement in the spring of 1864, Douglas appointed Joseph Trutch to the position of Chief Commissioner of Lands and Works, a position he would

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<sup>13</sup> The idea of the inevitable 'vanishing' of Indigenous Peoples was a pervasive idea in the 19<sup>th</sup> and early 20<sup>th</sup> century, in the British and other European empires. Brian Dippie famously explores this narrative construction with respect to the American context: Dippie, *The Vanishing American*, 12–31. See also: Patrick Brantlinger, *Dark Vanishings: Discourse on the Extinction of Primitive Races, 1800–1930*, (Ithaca, NY: Cornell University Press, 2003).

<sup>14</sup> See Adele Perry's brilliant exploration of the Douglas-Connolly family: Adele Perry, *Colonial Relations: The Douglas-Connolly Family and the Nineteenth-Century Imperial World*, (Cambridge University Press, 2015).

<sup>15</sup> See especially, Carlson, *The Power of Place*, 168–73; Harris, *Making Native Space*, 35–6; Tennant, *Aboriginal Peoples*, 34–6; Lynn Blake, "Oblate Missionaries and the 'Indian Land Question'" *BC Studies: The British Columbian Quarterly*, no. 119 (1998): 30–2.

continue to occupy under the leadership of Frederick Seymour, Douglas' successor.<sup>16</sup> As Brian Dippie has shown with regard to the closely-related meta-narrative of the vanishing American in the United States, Trutch can be seen as both product and promoter of this second colonial narrative, first in his capacity as Chief Commissioner of Lands and Works, and then as the province's first lieutenant governor (1871–1876). Raised partly in Jamaica where his father was a slave-owning landowner, Trutch was an aspiring capitalist who made his fortune in the relatively small, close-knit colonial society of Victoria and mainland British Columbia.<sup>17</sup> If Douglas is remembered for attempting to balance the needs of a growing settler society while ensuring Indigenous Peoples possessed sufficient resources for successful integration into that society, Trutch is now notorious for developing, implementing, and vigorously defending an Indigenous lands policy derived from a narrative that depicted Indigenous Peoples as incapable of integrating into a capitalist society, and thus an impediment to white settlement.<sup>18</sup>

By the end of 1867 (just three years after the first petition quoted above), Trutch had reduced the relatively large Stó:lō reserves in the Lower Fraser Valley originally mapped out at Douglas' request by 92 percent, or approximately 40,000 acres — where they remain today.<sup>19</sup> Throughout British Columbia, Trutch established a ten-acre per family maximum to determine reserve size, and revoked the right of Indigenous people to pre-empt “unoccupied, unsurveyed, or unreserved land” without special permission, which was virtually never granted.<sup>20</sup> This standard stood in marked contrast to the 160-acres per family that was used as the basis to create

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<sup>16</sup> Immediately after Douglas' retirement, Seymour became governor of the mainland colony of British Colony (1864–66), and then the combined colonies of British Columbia and Vancouver Island (1866–69).

<sup>17</sup> Harris, *Making Native Space*, 45–6.

<sup>18</sup> See Carlson, *The Power of Place*, 173–5; Harris, *Making Native Space*, 56–69.

<sup>19</sup> Tennant, *Aboriginal Peoples*, 45. Some adjustments have been made to the Fraser Valley reserves since this time, but Stó:lō people have seen no major increases in their reserve lands. The acre, rather than the metric hectare, is used as a unit of measurement in the petitions and thus has been retained here. 40,000 acres is equivalent to approximately 16,188 hectares.

<sup>20</sup> British Columbia, “An Ordinance further to define the law regulating acquisition of Land in British Columbia,” 31 March 1966. Cited in Tennant, *Aboriginal Peoples*, 42.

reserves on the Canadian prairies and was allotted to white settler pre-emptions in British Columbia. After British Columbia entered Confederation, provincial-dominion relations with respect to Indigenous policy would be characterized by protracted debates over what acreage should determine reserve allotment. Remarkably, the province's stubborn refusal to conform to first imperial and then federal policies on Indigenous lands would persist right up to the late twentieth century. The federal government would eventually acquiesce to the province's position, but not before several decades of disputes between federal and provincial authorities, amidst increasingly powerful and vocal Indigenous discontent.

The representatives of settler society that were closest to them, church missionaries from a range of Christian denominations, operated from a third, distinct but related narrative vision emphasizing a divine plan for Indigenous Peoples' roles in the new society. This led many church representatives in the region to support Indigenous rights to larger reserves at the same time that they worked in collaboration with settler governments to fix Stó:lō people upon the landscape and impose their own structures of community authority in ways that ran counter to pre-existing practices for allocating land use and access rights.<sup>21</sup> Roman Catholic missionaries of the order of Missionary Oblates of Mary Immaculate (OMI) were an early and prominent presence in the Fraser Valley, and were co-authors on the first two petitions examined here. The deeply evangelical Oblates began visiting the area in 1840, and by 1862 had established a mission school for boys, St. Mary's, in what is now Mission, British Columbia, admitting 42 male students in its first year.<sup>22</sup> As historical geographer Lynn Blake has shown, the Oblates operated from a worldview in which God put certain people in particular places of the world for a specific purpose, a vision they would have communicated to those Stó:lō who listened to

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<sup>21</sup> Carlson, *Power of Place*, 181-208.

<sup>22</sup> Stó:lō Heritage Trust, *A Stó:lō-Coast Salish Historical Atlas*, (Vancouver; Seattle: Douglas & McIntyre; University of Washington Press, 2001), 68.

them.<sup>23</sup> In many ways, this cosmological order may have resonated with Coast Salish people, whose relationships to place were historically (and in many ways continue to be) defined through kinship connections to spiritual ancestors, and imbued with a strong sense of purpose, rights, and responsibilities.<sup>24</sup> As we will see, Oblate missionaries played an important role in Stó:lō communications with the state around land issues, but they did so from the perspective of their own civilizing agendas. While their support for Stó:lō land rights grew in the 1870s, the Oblates perceived the unrest among Indigenous Peoples about land as a threat to their authority and the successful realization of their civilizing mission.<sup>25</sup>

In 1864, however, Indigenous Peoples were not necessarily clear on which of these meta-narratives held more weight within the settler world and therefore had more economic clout. As evidenced in the petitions, Stó:lō people in the 1860s and 1870s were engaging a “multiplicity of...colonial discourses” and “colonial projects” promoted by different corners of the emerging settler-colonial society.<sup>26</sup> Such engagements became increasingly urgent as they witnessed the sudden reduction of their own lands in direct relationship to the expanding areas claimed by their white neighbours, a phenomenon which they contested in increasingly unequivocal means – the petitions primary among these means. As ethnohistorian Keith Thor Carlson has shown, the reserve reductions of the 1860s were met by Stó:lō people and their neighbours with an opposition that was being organized along progressively more collective lines. Mid-nineteenth-century Salish social organization was characterized by a decentralized network of family-based political authority, where the traditional forces that demarcated people and communities (e.g.,

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<sup>23</sup> Blake, “Oblate Missionaries,” 1998.; Vincent J. McNally, *The Lord’s Distant Vineyard: A History of the Oblates and the Catholic Community in British Columbia* (Edmonton: University of Alberta Press, 2000). See also Carlson, *Power of Place*, 323n78.

<sup>24</sup> Crisca Bierwert, *Brushed by Cedar, Living by the River: Coast Salish Figures of Power* (Tucson: University of Arizona Press, 1999); Carlson, *The Power of Place*, 2010.; *Naxaxalhts’i*, “We Have to Take Care,” 2011.

<sup>25</sup> Blake, “Oblate Missionaries,” 33.

<sup>26</sup> *Ibid.*, 43.

family lineages, status) were combining with colonial forces that disrupted existing networks and introduced new social divisions (e.g., religious affiliations, reserve membership lists). Despite many barriers to collective self-identification and social action, Trutch's policies represented a general threat and were met as such,<sup>27</sup> evidence of which is provided by the petitions analyzed here, which were signed by chiefs representing an enormous expanse of territory and supra-tribal affiliation. We know from later correspondence that colonial officials took such expressions of Indigenous political unity quite seriously, and often acknowledged that successful colonial settlement hinged on a lack of tribal (let alone supra-tribal) unity in British Columbia.<sup>28</sup> Ironically, Trutch's reserve policies — which represented an indiscriminate assault on an Indigenous population with a long history of fluid and flexible ways of self-identifying — instigated the very shift towards greater Indigenous political unity across a large expanse of territory that was so feared by settler authorities.<sup>29</sup>

Drawing on Stó:lō oral history helps us understand what may have been a broadly-shared narrative informing how Stó:lō people approached colonial society at this still-early stage in the relationship. Contrary to the tendency to emphasize the oppositions between oral and literate cultures, or the inevitability of Indigenous literacy displacing oral traditions, Stó:lō people may have understood Western-style writing as an indigenous extension of, rather than a threat to, their existing means of communicating powerful speech. Carlson recounts a series of Coast and Interior Salish oral histories that represent writing as something that had been possessed by

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<sup>27</sup> Carlson, *The Power of Place*, 175. For similar point about Coast Salish tribal-based collective activism see also Tennant, *Aboriginal Peoples*, 55.

<sup>28</sup> For example: Carlson, *Power of Place*, 168–71, 236–41, and 250–55. See also Gilbert Malcolm Sproat cited in Harris, *Making Native Space*, 102.

<sup>29</sup> This observation is Carlson's, which he explores at length in *Power of Place*. Carlson is careful to note that supra-tribal organization among Stó:lō communities and their neighbours occurred prior to European contact, and thus cannot be interpreted solely as a "product of colonialism"; rather, the move towards broad regional identities seen in this period is better perceived as the resurrection of earlier existing patterns of political organization in response to the generalized threat presented by colonial society. See especially, Carlson, *Power of Place*, 270–1.

Salish people, but was lost either through the neglectful conduct of their own leaders or the duplicity of white people.<sup>30</sup> Among these, Mrs. Bertha Peters tells of her great-great-great-great grandfather, St'a'asaluk, a nineteenth-century Stó:lō prophet who received a sacred paper from God that foretold the arrival of Europeans and offered guidance on how Stó:lō people should foster good relations with the new people to benefit from the many positive things they would bring. As Carlson notes, such prophecies stand in contrast to many other New World prophetic narratives from the same period that advised a rejection of whites and their technologies.<sup>31</sup> This narrative invites us to reconsider the naturalized opposition between oral and literate cultures, while also providing some insight into the stories that may have informed Salish peoples' approach to their relationships with both settler society and written petitions.

As with Indigenous oral cultures across the continent, Stó:lō people have a long narrative tradition that creates and is connected with law. Scholars of Indigenous legal orders describe how Indigenous laws are embedded in place names and the narratives connected to them, in the cultural practices specific to each group, as well as in people's relationships with one another.<sup>32</sup> In such contexts, law is enacted in part through Indigenous people's public engagement with story as a means to deal with conflicts, by using narratives to reason about, negotiate, and achieve consensus, or define the parameters of a disagreement. Thus, insofar as the petitions evidence Salish people's attempts to speak with and upon terms that would resonate with settler authorities, they also evidence how the signatories were speaking from their own legal and political cultures, and were speaking to the other Indigenous Peoples gathered at the often very public presentations of these four petitions. In my reading, the petitioners are sharply attuned to the stories being presented to them by settler authorities, and incorporate these into their

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<sup>30</sup> Carlson, "Orality About Literacy," 2011.

<sup>31</sup> *Ibid.*, 54.

<sup>32</sup> *Naxaxalhts'i*, "We Have to Take Care," 2011.; Napoleon, "Ayook," 2009.

narrative attempts to negotiate with the most powerful members of settler society that they can access. Their familiarity with settler narratives and their grasp of the English language and literacy developed simultaneously, which is reflected in the petitions.

### **The Narrative Dynamics of Indigenous Petitioning**

As other scholars have observed, early Indigenous petitions provide windows into the ways in which Indigenous Peoples fashioned new socio-political identities and represented themselves to settler communities and authorities throughout the British Empire.<sup>33</sup> Some have noted that such self-representations were strategic and relational, but no one has yet discussed their storied nature. Petitions were venues in which alternative forms of relationship could be defined and asserted, or identified and rejected. The petitioners positioned themselves — and their requests — in relation to the petitioned, and from this we can learn something of how colonial authorities' self-presentations (and representations of the colonial enterprise) were being read by Indigenous Peoples and incorporated into their negotiations with state authorities. In these early Indigenous texts, Stó:lō peoples' stories about self, other, and relationship were intimately connected to their attempts to hold their ground, materially and narratively-speaking. Looking at stories in relation allows us to get at what literary historian Penny van Toorn nicely terms the “nitty-gritty of hybridity” with respect to particular ways Indigenous Peoples engaged writing from deeply local vantage points.<sup>34</sup> Indigenous Peoples brought their own specific understandings to the act of writing, as they brought specific stories to how they made sense of and negotiated their relationships with settler authorities. But these stories and adopted forms

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<sup>33</sup> Carlson, *The Power of Place*, 2010; Ravi de Costa, “Identity, Authority, and the Moral Worlds of Indigenous Petitions,” *Comparative Studies in Society and History* 48, no. 3 (1 July 2006), 669–98; Penny van Toorn, *Writing Never Arrives Naked: Early Aboriginal Cultures of Writing in Australia* (Canberra: Aboriginal Studies Press, 2006); Penny van Toorn, “Authors, Scribes and Owners: The Sociology of Nineteenth-century Aboriginal Writing on Coranderrk and Lake Condah Reserves,” *Continuum* 13, no. 3 (1999), 333–43; Foster and Berger, “From Humble Prayers,” 240–67.

<sup>34</sup> van Toorn, *Writing Never Arrives*, 226.

were articulated in relation to — and often in anticipation of — the colonial other. What emerges is a complex of narrative dynamics that are hybrid and dialogic in both content (what stories they tell) and form (how writing is employed).

By the 1860s, petitions were an integral part of Britain's imperial culture, as a means through which colonial subjects could appeal to and communicate with socially and geographically distant authorities.<sup>35</sup> Petitions were perhaps most notably and effectively used in eighteenth- and early nineteenth-century abolitionist and anti-slavery campaigns. While many anti-slavery petitions were authored and signed by white abolitionists and their supporters in Britain, former slaves and free blacks across the imperial world petitioned for freedom, compensation (among Black loyalists), and an end to the slave trade and to slavery.<sup>36</sup> Similarly, Indigenous petitions to British colonial authorities emerged from all parts of the commonwealth, and can be found in the documentary records from the earliest periods of Canadian history.<sup>37</sup> Although the act of petitioning and certainly the language of conventional salutations used in most petitions suggests a tacit acknowledgment of the distribution of power in the petitioner-petitioned relationship, petitions also provide a venue in which the very relationship between the two parties can be reframed and contested from the perspective of the petitioner.

In some ways, petitions present challenges for an interpretive project premised on the notion of encounter or exchange: petitions are not guaranteed to garner a response, and if they

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<sup>35</sup> David Zaret, *Origins of Democratic Culture: Printing, Petitions, and the Public Sphere in Early-modern England*, Princeton Studies in Cultural Sociology (Princeton, N.J.: Princeton University Press, 2000).

<sup>36</sup> For example, see the digitized collection of Black Loyalist petitions: Archives, Atlantic Canada Virtual, and Archives virtuelles du Canada atlantique, "Black Loyalists in New Brunswick, 1783-1854," <http://atlanticportal.hil.unb.ca/acva/blackloyalists>, <viewed 30 August 2013>. I am indebted to Dr. Elizabeth Vibert for introducing me to these petitions. Kathleen Brown also discusses early African-American petitions: Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: Institute of Early American History and Culture by the University of North Carolina Press, 1996), 223–25.

<sup>37</sup> There are rich opportunities for international comparisons of Indigenous petitioning in settler colonies; unfortunately these are beyond the scope of this paper. De Costa's 2006 article (cited in fn. 28) is an earlier step in this direction.

do, it may not have survived for historical interpretation. The petitions examined here have been preserved thanks to their appearance in official colonial correspondence, and as a result, come down to us with varying degrees of contextual information. For example, there remains very little information on authorship, or the contexts in which the petitions were composed and delivered. This is particularly the case for the 1866 petition. The identity of the scribe is known only thanks to a note written in the margin of a letter forwarding the petitions to the British Colonial Office. Historians of early Indigenous-state relations, however, rarely have access to complete records of an exchange so much as fragments of an encounter. Archived colonial correspondence allows us to peek into, and thereby re-inscribe, the existence of an animated world of political communication and relation beyond the surface rhetoric that often characterizes the official record of encounter. The comparative lack of equivalent textual entry-points into Indigenous political worlds is a commonly recognized problem in history writing, and one that perpetuates archival silences.

The reason so few Indigenous-authored texts remain from this place and period is in part due to the fact that Stó:lō peoples were only very recently becoming participants in western-style literacy. While the finer details of Indigenous Peoples' thoughts, opinions, and internal disagreements may remain hidden from view, we can at least begin from the assumption that, in this period of rapid change, Indigenous people were thinking, talking, and strategizing about the best ways to handle their relationships with settler societies. The petitions cannot describe these worlds in full, but they certainly point to their existence. Through a close reading of these textual fragments, we can see how the diplomatic interactions between Indigenous Peoples and settler authorities were shaped by a combination of best guesses as to the other's meanings and intentions and their own desires and aspirations. The petitions reveal Indigenous Peoples'

rhetorical strategies as well as the way they engaged and incorporated textual communication into their expanding vocabulary of political conduct.

Given that the petitions — in these early days of Indigenous literacy — were often written with the assistance of non-Indigenous people, we must ask: whose voices are we able to read and hear in these multivocal texts? Early communications between Indigenous Peoples and state authorities involve many different kinds of translation, transcription, and mediation. The four petitions considered here demonstrate a range of experimentation with composition and authorship. Working with limited information on how the original petitions were written or who they were written by, the one thing that is clear is that those who signed the petitions — the petitioners — were not necessarily ‘authors’ in the conventional sense of putting pen to paper. Van Toorn variously dubs those who actually wrote such petitions “scribes,” “collaborators,” or “co-writers” as a way to draw attention to the social conditions and political climates that made co-authored speech a necessity at this time, and to reverse the erasures of Indigenous people from colonial texts.<sup>38</sup> As was the case with the Stó:lō petitions, missionaries often acted as intermediaries in the communications between Indigenous and colonial authorities. Although in these specific petitions we see Indigenous leaders’ growing efforts to speak directly to settler authorities, it does not follow that greater Indigenous textual literacy eliminated the need for non-Indigenous mediators. Missionary assistance persisted into the early twentieth century and was combined with (or in some cases replaced by) legally trained outsiders, as land claims were increasingly framed in legal terms.<sup>39</sup> To this day, Indigenous and non-Indigenous community outsiders are hired to assist in Indigenous Peoples’ dealings with the state with respect to land conflicts, and there remains a preference for individuals with some degree of familiarity with

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<sup>38</sup> Van Toorn, “Authors, Scribes and Owners”; van Toorn, *Writing Never Arrives*, 5–6, 208, 218–9.

<sup>39</sup> Foster and Berger, “From Humble Prayers,” 2008; Tennant, *Aboriginal Peoples*, 55–6.

communities and community interests, as missionaries would have had in the mid-to-late nineteenth century. That such assistance was and still is necessary is worth some reflection. The need to employ outside representatives can be partly construed as a product of limited resources and capacity within many communities to engage the state on the terms it demands, although this is certainly changing.<sup>40</sup> However, the nineteenth-century petitions, with their many layers of voice and non-Indigenous interlocutors, may have also resonated culturally with Salish signatories: in the context of longhouse ceremonies, hosting families did not (and still do not) speak on their own behalf, but rather through an unrelated professional speaker specially secured for the occasion.

The question remains: how did these co-writers shape the message, language, or tone of the four petitions under consideration here? Certainly some of the language we see in the first petition about ‘good and bad Indians’ comes from local Catholic missionary discourse, as I discuss below. The apparent shift away from missionary co-authorship that we see occurring over time in the petitions could be interpreted in at least two ways. First, Indigenous petitioners may very well have recognized that their own objectives did not perfectly match those of their missionary allies, and as a result attempted to gain more control over their message and communications with settler authorities. Alternately — or perhaps additionally — the move towards more direct Indigenous self-representation may have been a strategy developed in consultation with missionaries to avoid having their grievances dismissed as the work of outside agitators stirring up unrest among an otherwise content Indigenous populace.<sup>41</sup> Certainly, this

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<sup>40</sup> As van Toorn correctly observes, “[n]ow, as in the past, individual textual collaborations are symptomatic of political and economic inequality.” Van Toorn, *Writing Never Arrives*, 228.

<sup>41</sup> Blake, “Oblate Missionaries,” 37.

was found to be the case by Lynne Blake with respect to the Oblates operating in the interior in the mid-1870s.<sup>42</sup>

State denials of Indigenous dissatisfaction would become increasingly common among settler authorities as land claims activism became more widespread over the coming decades.<sup>43</sup> Van Toorn notes a similar tendency in response to Indigenous petitions from Australia in the same period, noting the impossible logic of such prejudicial readings of Indigenous activism: without assistance, Indigenous Peoples could not effectively communicate their views to those in power; with it, the authenticity of their message was suspect.<sup>44</sup> It is especially because of the suspicion of Indigenous voices in early petitions that we must flag similar anxieties around authenticity and voice in current-day interpretations of such texts. As literary scholar Sophie McCall has insisted, such narratives “cannot be romanticized as unmediated oral tradition, nor can they be dismissed as corrupted texts.”<sup>45</sup> The petitions are multivocal in more ways than one, but this multivocality should not lead us to deny their status as Indigenous textual products; rather, it points us to a closer consideration of the conditions in which marginalized peoples are able to make themselves heard.

### **The 1864 Petition**

A few weeks prior to Douglas’ retirement, a large group of Stó:lō leaders met him on the lawn of Government House at New Westminster to express their concerns about his retirement and the potential insecurity of their lands.<sup>46</sup> Douglas’ response was to send surveyor William McColl to mark out relatively large reserves for many (but not all) tribes in the Lower Fraser

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<sup>42</sup> Blake cites Oblate Father Durieu recommending to fellow missionaries that the government not realize it was the Oblates who had “done everything” with respect to a series of petitions on reserve lands. I would contend that here, too, the Oblates assume more influence than they actually had. See Blake, “Oblate Missionaries,” 37.

<sup>43</sup> Tennant, *Aboriginal Peoples*, 56.

<sup>44</sup> van Toorn, *Writing Never Arrives*, 137.

<sup>45</sup> Sophie McCall, *First Person Plural: Aboriginal Storytelling and the Ethics of Collaborative Authorship*, (Vancouver; Toronto: UBC Press, 2011), 13.

<sup>46</sup> Carlson, *The Power of Place*, 215.

Valley. McColl was completing his maps and reports at the end of May when the Stó:lō chiefs publically addressed Douglas' replacement, Governor Seymour, at a huge gathering Seymour had orchestrated on the occasion of Queen Victoria's birthday. The 1864 petition began its life as a series of speeches made by three Salish chiefs at an elaborate public performance welcoming the newly arrived Governor Seymour. Seymour expressly invited the region's Indigenous inhabitants, and their response was overwhelming. That first year of the birthday celebration, between 3,500 and 4,000 Indigenous people travelled to the event from a surrounding 200-kilometre radius, outnumbering the resident settler population of New Westminster by at least a thousand. The diplomatic exchanges between the three chiefs and Governor Seymour that day must have seemed a remarkable communicative performance for all concerned, at least in scale. Seymour's ship was escorted to shore by almost 700 canoes bearing colourful flags. Once all were assembled near the governor's house, each chief delivered a speech in his own dialect. These were then translated into the simple Chinook trade jargon by three Indigenous translators, and then again rendered into English by the Oblate Father Léon Fouquet. Seymour's brief reply travelled back along the same circuitous route, ending with his message conveyed to the crowd by the original interpreters, who spoke "with loud bellowing voices in order to be heard by the people far in the distance."<sup>47</sup> In these speaking conditions, the complexity of what could be communicated was necessarily limited.

According to Father Florimond Gendre, one of the resident Oblate priests at the recently established St. Mary's Mission, it was he and Father Fouquet who were responsible for organizing the considerable pageantry of the day. In an account to his superiors in France,

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<sup>47</sup> Stó:lō Research and Resource Management Centre, Library and Archive, Chilliwack, B.C. (hereafter SRRMC Library and Archive), *Missions de la Congrégation des Missionnaires Oblats de Marie Immaculée*, Vol. 4, 1865, 301. (English Translation by Lara von Waldenburg for Stó:lō Nation Department of Aboriginal Rights and Title, 10 March 2001.)

Gendre notes that along with their many other responsibilities, he and Fouquet composed the speeches made by the three chiefs. Further, from his account we know that he and Fouquet were instrumental in creating the petition that comes down to us today, which is a condensed version of the three speeches that were subsequently published in local newspapers. Rather than accept this image of the Salish chiefs as mere conduits for communication between white men, we need to address the context in which Gendre represented the missionary role in these events. His account of the Queen's birthday is one part of a report to his superiors in which he provides evidence of a highly successful mission to encourage continued support of their work in the colony. In this sense, his text is self-promotional. He boasted that Seymour favoured their Catholic mission over the local Protestant ministries for the task of coordinating both the events of the day and for ensuring Indigenous attendance. He frequently noted the amount of work the event required of the resident missionaries, and proudly pronounced its outcome in no uncertain terms: "Everything has thus far been perfect; three thousand five hundred savages are the friends of the priest. The good triumph, the weak are strengthened, and the bad are covered with guilt."<sup>48</sup> For Gendre, good, bad, and weak were designations assigned according to one's allegiance to the Catholic mission and its faith: "good Indians" referred to members of the Catholic community, whereas "bad" or "weak" characterized individuals who retained a known affiliation to traditional practices or had fallen under the spell of western vices.<sup>49</sup> Missionaries such as Fathers Gendre, Fouquet, and others were early, earnest, and vocal promoters of local Indigenous efforts to increase reserve sizes at this time, but this assistance was shaped by their own evangelizing

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<sup>48</sup> SRRMC Library and Archive, *Missions*, 301.

<sup>49</sup> See Carlson's insightful discussion of Oblate programs for 'rehabilitating' Stó:lō people, and the subsequent effects of these efforts on fracturing community identities. Keith Thor Carlson, "Familial Cohesion and Colonial Atomization: Governance and Authority in a Coast Salish Community," *Native Studies Review* 19, no. 2 (December 2010): 1-42.

and civilizing agendas.<sup>50</sup>

In the same terms, the petitioners asked that the governor protect them from “bad Indians” and “bad white men.” It is difficult to determine what additional meanings the Indigenous signatories would have used to define what constituted a “good” or a “bad” “Indian.” More revealing perhaps is the absence of Stó:lō peoples’ own origin stories that would come to characterize later protests against the alienation of their lands. Instead, they seem to be identifying and deploying a very British story about the colonial project as one of racial uplift. Using the settlers’ own story to protect a land base could be interpreted as an earnest recognition of their vulnerable position vis-à-vis settlers at this stage, or as a strategic use of settler stories as the basis for their claim, in that they were owed this ‘help’ in return for the land that had already been taken. When the chiefs stated that some were satisfied with their lands, and asked that other lands be protected and marked out for them, they were likely referring to the reserves marked out by McColl only days earlier.<sup>51</sup> The petitioners asked, “Please to give us good things as to make us become as the good white man, as an exchange for our land occupied by white men.”<sup>52</sup> Here we should see the petitioners making an assertion of territory, and an opening offer to the newest authority in what they regarded as a negotiation of land, resources, and relationship that had been underway since Xwelítem arrived in their territories.<sup>53</sup>

The petitioners may also have been referring to the Douglas treaties on Vancouver Island, which were signed between 1850 and 1854, well within the living memory of many of those assembled at the 1864 event, some of whom witnessed the signing of these treaties.<sup>54</sup> In many

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<sup>50</sup> Carlson, *The Power of Place*, 181–208; Carlson, “Familial Cohesion”; also Blake; Harris, *Making Native Space*, 79–84.

<sup>51</sup> Carlson, *The Power of Place*, 227.

<sup>52</sup> B.C. Archives, Seymour to Cardwell, 31 August 1864.

<sup>53</sup> Carlson, *The Power of Place*, 161.

<sup>54</sup> Carlson, *A Stó:lō-Coast Salish Historical Atlas*, 94.

ways, the message of this early petition was that Salish peoples were willing to continue the relationship with settler authorities on the terms recently laid out by Douglas and his representatives: government protection of relatively large tracts of land, promises of assistance to be better able to take their place as equals in settler society, guarantees to be able to hunt on unsettled lands and fish “as formerly”, and compensation for the lands outside the reserves, which were increasingly being occupied by whites moving into the region.<sup>55</sup>

By Seymour’s own account, this interpretation was affirmed in his brief response: “I replied merely according to their own mode of expression, that my heart was as good to the Indian as to the white man.”<sup>56</sup> Seymour advised the Stó:lō to listen to and believe the missionaries — missionaries who had been telling them that they could be integrated, that they could and should become farmers, and that they should have an honourable place within, or at least beside, colonial society in a ‘separate but equal’ model:

As you say, there is plenty of land here, for both White men and Indians. You shall not be disturbed in your reserves. I shall protect you from both bad White men and from bad Indians. I am glad you want to be civilized and raised to an equality with the White Men. Cultivate your Lands; send your children to school; listen to what the clergymen tell you, and believe in it.<sup>57</sup>

At this time, it would seem that both settlers, as represented by the Governor, and the Stó:lō, as represented in the petitions, found common utility in the third variant of the settler stories in which the missionaries would help to bring Indigenous People into the world of the settlers on a basis of equality.

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<sup>55</sup> For more on the language on hunting and fishing rights, see: Douglas Colebrook Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia*, (University of Toronto Press, 2001): 4-68.

<sup>56</sup> B.C. Archives, Seymour to Cardwell, 31 August 1864.

<sup>57</sup> Ibid.

## The 1866 Petition

In his correspondence, Seymour showed no particular dissatisfaction with the stilted communicative conditions of the day, but it would seem that his Indigenous counterparts may have felt otherwise. In each subsequent petition, Salish leaders attempted to shorten the communicative distance between them and settler authorities. Less than a year and a half later, Seymour received another petition, this one delivered at a large protest gathering of chiefs at New Westminster. As he reported to the Colonial Secretary:

The Indian Chiefs came down from Lytton on the North, Douglas on the West, the whole of the Lower Fraser in our proximity, and even from the land of the Euclataws on the Coast, to see me and protest against certain action proposed to be taken by some members of the Legislative Council ... All the Chiefs who set their mark to the Petition and many others assembled on the Lawn of Government House.<sup>58</sup>

As van Toorn observes in relation to the Australian context of early Indigenous petitioning, both colonial authorities and Indigenous petitioners valued the hand-delivery of such documents, albeit for different reasons. For colonial authorities often suspicious of the authenticity of Indigenous Peoples' claims, "the physical presence of the signatories verified the authenticity of their petition"; Indigenous Peoples, while conscious of the need to "satisfy the white man's criterion of authenticity" were also acting in accordance with their own oral traditions of publically witnessed speaking.<sup>59</sup> Indeed, Seymour and subsequent authorities routinely made note of the petitions signed in their presence, and whether all the signatories were present to deliver the petition. All four of the Stó:lō petitions submitted in this decade were either successfully presented in person or there was an attempt to do so.

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<sup>58</sup> B.C. Archives, Seymour to Cardwell, 19 February 1867. The 'certain actions' Seymour mentions were likely in reference to a motion by the Legislative Council to reduce the reserve lands originally laid out by Douglas.

<sup>59</sup> van Toorn, *Writing Never Arrives*, 335. Tennant also briefly notes the distinction between a mailed and publically presented petition by a team of delegates. Tennant, *Aboriginal Peoples*, 56.

We can also see traditional Indigenous practices of oral sanctioning at work here. Throughout the Salish world and beyond, important events, including political claims and statements, were given credence through the practice of witnessing, in which guests — preferably honoured ones representing as wide a territory as possible — bear witness to and commit to memory the details of an important gathering or ceremony, including who attended, what was said, who supported the work, and who did not. These witnesses were named and acknowledged as part of the work done in such gatherings, and could be called on at a later date to settle a dispute over the claims made. In this sense, witnessing at public events was, and is, integral to the practice of law in Coast Salish contexts. Thus it is likely that the presentation of the petition at a large public gathering was significant for the petitioners in that it accorded with Salish protocols for conducting and recording important political communications and for enacting law. In this regard, Seymour has not been remembered fondly. In Stó:lō oral histories recorded from Tilly Gutierrez in the late 1990s, “Si:mo” is remembered as someone who broke promises; he has long been dubbed “Wel qel mestiyexw,” meaning “a bad person.”<sup>60</sup>

In other words, the 1866 petition seems uniquely crafted to meet all available criteria of authenticity, and is interesting for the ways in which it evidences Stó:lō peoples’ experimentations in combining distinct communicative traditions. Not only was it hand-delivered in the presence of all the signing chiefs as well as Governor Seymour, this second official petition on record from the Fraser Valley tribes was written by a young Salish boy, in tiny,

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<sup>60</sup> Seymour is also remembered in Stó:lō oral history as having broken what is known as the ‘Crown’s Promise,’ a pledge with no known documentary record, in which he told Stó:lō people that they would receive 25 to 30 cents from every dollar earned from use of their lands: “‘Si:mo’: I used to hear my granddad talk about Si:mo. They didn’t say Seymour, they said Si:mo ... Wel qel mestiyexw, that’s all he said, qel mestiyexw, means a bad person, I guess cause he wasn’t keeping his promise for them. The way I heard it was that a, Queen Victoria was the one, gave it to the government to make sure that we get it. And hey, out of every industry, is that what they call it, and a, we were supposed to get that kind of percentage for the native and there was lots of money in there, so I hear, but where is it, where is it?” Mr. & Mrs. Albert and Mathilda Gutierrez, quoted in: SRRMC Library and Archives, Jody Woods, *The Crown’s Promise*, Report Submitted to Stó:lō Nation Aboriginal Rights and Title, 30 November 2001, 5.

meticulous handwriting, on behalf of his elders (Figure 1).<sup>61</sup> Each line in English is followed by its translation in Chinook; it is signed by 70 chiefs, and witnessed (in both cultural senses) by the prominent Oblate missionary, Father Fouquet. Here we can see how Indigenous petitioners, in van Toorn's words, "were not only working in two verbal media, they were consciously working within two quite different discursive regimes, one vesting final authority in the written word, the other in the spoken word."<sup>62</sup> That the petition was penned by a Stó:lō youth rather than a missionary-intermediary can be seen as a response to the state's growing suspicion of 'outside agitators' as well as Stó:lō desires for more direct control over the means of communication and the message being conveyed. The inclusion of English and Chinook translations mirrors the oral format we saw in the 1864 Queen's birthday celebrations, which would have been common at a time when the language barriers between Indigenous and settler authorities were stark. In this way, the petition contains multiple translations: it offers a literal translation between spoken languages (Chinook and English), while transposing the central communicative features of an oral exchange onto written text.

In 1866, the petitioners asked the governor to prevent white men from selling liquor to their people; they asked that Indigenous people be exempt from tolls for transporting goods on the Fraser River; and they asked Seymour to protect Indigenous lands and fishing rights. As in 1864, the petitioners here obliquely invoke the story that they are in the process of becoming 'civilized' (by sending their children to local schools) and so deserve protection of their lands: "The white men tell many things about taking our lands: our hearts become very sick. We wish

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<sup>61</sup> B.C. Archives, Seymour to Cardwell, 19 February 1867.

<sup>62</sup> van Toorn, "Authors, Scribes and Owners," 335.

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British Columbia

Enclosure  
 in Despatch No. 33. of 19<sup>th</sup> Feb. 1867.

To the Colonial Secretary for Governor Seymour

The Indian Chiefs thank Governor Seymour for not allowing the white men to sell liquor to the Indian. There are no policemen nor guards in our villages as there are amongst the white men we know that the liquor destroy the Indians every where they drink liquor  
 nika, Gwark Takya rusaia muci kapa Governor Seymour pas yala ruka tika pas tika man makook tum kapa sivash. halo jelic man halo skeloom kowu kapa nika eliki nika kowu pas tum mamook tikako halo sivash kapa tanawa kaka mutum tum Haska.

The white men tell many things about taking our lands our hearts beam very sick We wish to say to Governor Seymour: please protect our lands many of our children and some go to school one of them has written this.  
 Takap man rusan ayo kapa isham nika eliki tonton tikako ayo sick. nika tikako rusaia kapa Governor Seymour: Hask nika tikak namtik nika eliki ayo Haska nika tanas tanas Haska Haska kapa school ord yala mamook school tum.

We do not like to pay money to carry lumber and other things in our canoes on the river of our ancestors nika ruka tikako mash tikidoma pas lolo Laplanche kowu iktas kapa nika kowu kapa Haska tikak nika ankab oldman

We like to fish where our fathers fished. nika tikako mamook kaka nika papa mamook fish

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|-------------------------------------|--------------------------------|
| mevzauket of Skazin *               | Chowilretre of Kwakwaka *      |
| Pol of Skoltizan x 25               | Chenunkan of Khatkhatan *      |
| Walak of Kwakwaka x                 | Neperokan of Kewenew *         |
| Samota of Spuzzum x                 | Kouiken of Cherenkan *         |
| 5. Kikwarleu of Port Jale x         | Tarapa of Uialak *             |
| Liquitum of Port Jale x             | Chwaetana of Katen *           |
| Frevelentem of Ravlatle x           | 30. Seatenet of Soowalen *     |
| Nensetalech of Kwaway x             | Spelkenam of Kowwagafer *      |
| Skokemeltro of Port Hope x          | Chowenent of Kwiyala *         |
| 10. Skolatchia of Chouamal x        | Gamselch of Koyokowen *        |
| Opelam of Kistaten x                | Gaten of Uoalle *              |
| Subotamot of Kipatordick of Unham * | 35. Uelan of Kuyas (Lake) *    |
| Haral of Kwa x                      | Ketrelam of Kuyas (Cobouk) *   |
| Skolremetra of Kwaoret *            | Kelameltro of Kikamal *        |
| 15. Kelapatchia of Kwaen x          | Uthwemetro of Warwag *         |
| Koania of Kwaen x                   | Kdarsen of Hurok *             |
| Namten of Fort Douglas x            | 20. Gaten of Fort Langley *    |
| Chiwren of Chwachkaten x            | Michol of Kety *               |
| Gancom of Kematch x                 | Gapensor of Kewenew *          |
| 20. Opalant Samakowen x             | Elakom one of the Kowwagafer * |
| Gatches of Kalarhan x               | Waten of Katalak (Kuwishuch) * |
| Katchchas of Kalarhan x             | Kelortle of Kelenet *          |
| Kalarhan of Kelpadten x             | 30. Snet one of Kalamal *      |

Figure 1. The 1866 petition, handwritten by a young Salish boy, in Chinook and English, on behalf of his elders.<sup>63</sup>

<sup>63</sup> B.C. Archives, Seymour to Cardwell, 19 February 1867.

to say to Governor Seymour: please protect our lands: many are our children and some go to school one of them as written this.”<sup>64</sup>

While they again invoke a settler story about civilization, this petition contains narrative departures from the earlier one penned by missionaries Gendre and Fouquet. Two brief references point to a story of Indigenous title in the sense of ownership and on-going rights on the basis of Salish people’s long occupation of the territory: “We do not like to pay money to carry ... things in our canoes on the river of our ancestors. We like to fish where our fathers fished.”<sup>65</sup> In the hands of a young, missionary-educated Stó:lō boy and the leadership he represented, petitioning appears to refer to a desire for cultural continuity between the past and the present that may not have fit as easily into the forward-looking, conversion-oriented evangelism evident in Gendre’s correspondence. At this time, settlers were beginning to map their own regimes of ownership and management onto the landscape by surveying, fencing, and farming, and by creating reserves. The petition’s invocation of ancestral lineages in association with landscapes and resources points to the persistence of Salish laws governing people’s access and use rights of territories they recognized as their own.

### **The 1873 Petition**

By 1868, Trutch’s resurveying of the Fraser Valley reserves reduced them by 92 percent, and in response to complaints about the pace at which Indigenous people in the region were pre-empting land, he further eroded Douglas’ policies by making Indigenous pre-emption illegal.<sup>66</sup>

As Carlson notes, in 1872, the year after British Columbia joined confederation with the Dominion of Canada, “[h]undreds of Halkomelem speakers gathered outside the provincial land

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<sup>64</sup> B.C. Archives, Seymour to Cardwell, 19 February 1867.

<sup>65</sup> Ibid.

<sup>66</sup> Carlson, *Stó:lō-Coast Salish*, 163

registry in New Westminster seeking settlement of the ‘land question.’”<sup>67</sup> A year later, Stó:lō people and their neighbours voiced similar concerns at the now annual celebrations for Queen Victoria’s birthday. In contrast to the first such celebrations in 1864, in 1873 it was the government officials who were urgently invited to New Westminster by 73 chiefs representing Indigenous communities throughout the Fraser watershed and beyond. The presence of Trutch (by now lieutenant governor of British Columbia) and the recently federally-appointed Superintendent of Indian Affairs for British Columbia, Israel Wood Powell, was requested “for the purpose of celebrating the Queen’s birthday and of stating their wishes to the Indian Commissioner.”<sup>68</sup> Powell’s description of the gathering is similar to Seymour’s from a decade before, noting the extraordinary pageantry: “We anchored ... in the evening of the 26th and were saluted by grand volleys of Musketry from three or four thousand Indians who crowded the wharves and streets of the Town to witness our arrival.”<sup>69</sup> Although settlers perhaps experienced the gatherings as a kind of entertaining spectacle, for Indigenous attendees the birthday celebrations provided opportunities for prominent people representing a large territory to meet and discuss their collective opposition to government policies on land issues, and to do so in a way that would not seem threatening to settler society.<sup>70</sup> Furthermore, and despite the petition’s polite phrasing, its text suggests that such outwardly patriotic celebrations could be subverted by providing Salish peoples with opportunities to hold settler authorities publicly accountable.

It is clear that for the petitioners, Powell initially represented a new possibility for having their claims met. Powell presented himself and was approached as a conduit through which the

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<sup>67</sup> Ibid., 164. Unlike settlers, Indigenous people had to apply to colonial authorities for permission to apply to pre-empt land.

<sup>68</sup> Library and Archives Canada (hereafter LAC), RG10, Black Series, Vol.3602, File No.1794, Reel C-10104, I.W. Powell, Superintendent of Indian Affairs to Secretary of State for the Provinces, 25 June 1873.

<sup>69</sup> Ibid.

<sup>70</sup> Although it seems plausible that a few thousand Salish people firing muskets in and around New Westminster could have had an unsettling effect on at least some observers. Carlson, *The Power of Place*, 227, also in fn.36, 334.

superior authority of the federal government (as the new representatives of the Queen) could be brought to bear on the unruly child that was British Columbia. Indeed, provincial-Dominion relations on the issue of the so-called ‘Land Question’ would remain tense for the next several decades, as Ottawa and its representatives pushed (to varying degrees, depending on who was involved) for British Columbia to settle the lands issue, whether by making treaties and extinguishing Indigenous title, or by granting reserves large enough to satisfy the Indigenous populace and prevent unrest among them.<sup>71</sup> This tension is significant for our reading of the next two petitions because they show how Indigenous leaders oriented their speech to the dissonance between provincial and federal policies.

Given the events since the early 1860s, it is perhaps unsurprising that the 1873 petition is, from the outset, much more direct in its message than the 1864 and 1866 petitions. According to Powell, the 1873 petition was “very creditably read in English by one of the assembled Chiefs.”<sup>72</sup> Powell — and through him, Canada’s authority — was politely welcomed, but in a way that made explicit the petitioners’ expectations of him and the federal government: “We the Chiefs of various villages ... are truly happy to welcome you our new Chief sent by Canada to take in hand the interests of the poor Indians ... we have been longing for a Chief, who will truly have at heart our Interests so long neglected for the past.”<sup>73</sup> As Powell reported to his superiors in Ottawa, his meeting with individual chiefs the next day revealed a highly focused message: “They all had

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<sup>71</sup> See Harris, *Making Native Space*, 45–69; Hamar Foster and Alan Grove, “‘Trespassers on the Soil’: United States V. Tom and a New Perspective on the Short History of Treaty Making in Nineteenth-Century British Columbia” In *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, edited by Alexandra Harmon, 89–127 (The Emil and Kathleen Sick Lecture-book Series in Western History and Biography, Seattle: Center for the Study of the Pacific Northwest: In association with University of Washington Press, Seattle and London, 2008).

<sup>72</sup> LAC, Powell to Secretary of State, 25 June 1873. The chief he mentions was likely Ayessik, the petition’s first signatory.

<sup>73</sup> Carlson, *Stó:lō-Coast Salish*, 172.

complaints, the burden of which was their land, having either an insufficiency of reserve land or in many cases no land at all.”<sup>74</sup> These ‘complaints’ were presented unequivocally in the petition:

The white men have taken our land and no compensation has been given us, though we have been told many times that the great Queen was so good she would help her distant children the Indians. White men have surrounded our Villages so much as in many instances especially on Fraser River but a few acres of Land have been left us.<sup>75</sup>

Here, a story of the Queen as a mother to her Indigenous subjects is invoked in a way that highlights the contrast between the stated promises of British settler colonialism and what it actually delivered.

However, the language of family used in this petition is significant from the perspective of a Salish legal order. As with many other Indigenous groups on the Pacific Northwest coast, kin groups were central to Stó:lō society and the laws guiding rights and responsibilities in people’s relationships to one another, and to place. In reference to the Gitksan legal order, Val Napoleon notes that “[w]herever one is within the Gitksan kinship network, there are definite roles and reciprocal obligations to others through that network.”<sup>76</sup> Similarly, in a Coast Salish context, one’s kinship position guides one’s rights of access to and use of fishing and salmon drying spots or resource gathering sites, while also identifying who is responsible for looking after such places and resources.<sup>77</sup> Using the language they had been given by colonial authorities identifying the Queen as a mother figure, and pointing out her failure to act in a responsible way with respect to her ‘children’, the petitioners were rhetorically highlighting the Queen’s failure to

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<sup>74</sup> LAC, Powell to Secretary of State, 25 June 1873.

<sup>75</sup> Carlson, *Stó:lō-Coast Salish*, 172.

<sup>76</sup> Napoleon, *Thinking About Indigenous Legal Orders*, Report prepared for the National Center for First Nations Governance, (West Vancouver, BC, Canada: National Centre for First Nations Governance, 2007): 15.

<sup>77</sup> *Naxaxalhts’i* echoes this language of ‘roles and reciprocal obligations’ in his description of Stó:lō people’s ancestral connections to land and resources. For *Naxaxalhts’i*, knowing how one is connected to the territory through one’s family is also a description of Stó:lō title and rights. See *Naxaxalhts’i*, “We Have to Take Care,” 2011.

fulfill her “legal obligations” within the idiom of a kinship-based legal order.<sup>78</sup> That they were doing so in a public, ritualized manner, and addressing themselves to someone they deemed the most direct conduit to the monarch, is evidence of the signatories acting from within their own legal vocabularies in order to hold the settler state accountable to its own laws as well as theirs.

Stó:lō people’s initial optimism about Powell was not necessarily unfounded. Relative to many of his peers, scholars now consider Powell to have been an earnest supporter of Indian land rights to the extent that he doggedly fought provincial resistance to the expansion of reserves. This commitment, however ultimately unfruitful, was evident in Powell’s 1873 report to the Secretary of State for the Province of British Columbia, in which he detailed the surprisingly concrete assurances he offered Salish petitioners in response to their presentation to him in May of that same year. By his own account, he asserted the following to those gathered: “I had been commanded by Her Majesty to see that every Indian family had land and it was my intention to procure this for them as soon as possible, that each family should have sufficient land for their maintenance to be their own [sic] property and that of their children for ever.”<sup>79</sup> In the face of a great deal of evidence to the contrary, Powell echoed Seymour’s sentiment from almost ten years earlier, reassuring them of the Queen’s honour: “Her Majesty their Great mother had the same kind care for the Redmen as she had for the White.”<sup>80</sup> Powell’s inability to provide sufficient evidence of this sentiment would add him to a growing number of settler authorities who were perceived by Indigenous Peoples as either unwilling or unable to adequately defend Indigenous rights, or even implement the state’s own policies.

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<sup>78</sup> Ibid.

<sup>79</sup> LAC, Powell to Secretary of State, 25 June 1873.

<sup>80</sup> Ibid.

## The 1874 Petition

The second quote cited at the beginning of this paper is taken from a petition written in 1874 by “a young female residential school alumna” on behalf of 56 communities from Bute Inlet to Douglas Portage, the whole southwest of the province including most of the Fraser Valley communities.<sup>81</sup> In contrast to the earlier petitions, this one is eight pages long, organized as a series of numbered and clearly detailed points of grievance, and its 56 signatures were witnessed — not by Father Fouquet — but by Peter Ayessik, chief of Hope. Ayessik was also one of the petition’s two primary authors, along with Alexis, chief of Cheam. Both young men, Ayessik and Alexis spoke English and possessed at least basic reading and writing skills.<sup>82</sup> Ayessik and Alexis represent a new generation of leaders appearing at this time, whose distinguishing feature was an increased fluency in the language and culture of settler society. As Carlson observes, although Ayessik is remembered as a devoted Catholic and prominent “Church Chief,” leaders such as Ayessik and Alexis emerged not necessarily in opposition to, but as “protégés of the older elite.”<sup>83</sup> Both Ayessik and Alexis were related to the powerful Liquitem of Yale, an experienced diplomat who was instrumental in negotiating a peaceful resolution to violent conflicts between the gold rush migrants and local Stó:lō people in 1858.<sup>84</sup> The presence of an older generation of leaders in the lives of people such as Ayessik and Alexis suggests an intergenerational continuity of, rather than a sudden rupture with existing leadership structures. As Carlson notes, what the generic designation “Chief” meant to Stó:lō peoples at the time did not necessarily correspond to what it may have meant to settlers. In some instances, the term and the new authority it conveyed, especially after the institution of the Indian Act in 1876,

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<sup>81</sup> Carlson, *The Power of Place*, 178.

<sup>82</sup> See Carlson, *Power of Place*, 235 and 336fn.16.

<sup>83</sup> Carlson, *Power of Place*, 235.

<sup>84</sup> *Ibid.*, 167.

was used to promote people to positions of authority they may not otherwise have been able to achieve. In the case of Ayessik and Alexis, however, we see examples of people with new skills and elite ancestry being internally promoted by their communities to act in accordance with the same responsibilities as leaders of earlier generations: that is, “to look after community interests as best they could.”<sup>85</sup>

As Stó:lō, Alexis and Ayessik witnessed the aggressive pace with which settlers were acquiring their lands; as leaders able to access the communicative technologies of settler culture, they were aware of how settler governments were ensuring white settlement succeeded at the expense of Indigenous people. The stakes involved in developing a cross-cultural fluency had never been higher than they were at this moment. Of the Stó:lō petitions to date, the 1874 petition is the best expression of such fluency, characterized by a painfully and clearly communicated consciousness of how their place in the new settler society was being envisioned by settler authorities. At the outset, the petition asserts Salish people’s broad awareness of Canada’s federal policy on reserve creation, and British Columbia’s stubborn exceptionalism in resisting federal policy. In what seems a strategically flattering characterization of the moral integrity of the Dominion government, the petitioners state:

[W]e are fully aware that the Government of Canada has always taken good care of Indians, and treated them liberally, allowing more than one hundred acres per family; and we have been at a loss to understand the views of the Local Government of British Columbia, in curtailing our land so much as to leave in many instances but a few acres of land per family.<sup>86</sup>

With evident urgency, the petition exposes the inconsistent and arbitrary way in which reserves were being defined and allocated (when allocated at all) by provincial authorities, even by the meager standards of ten acres per family promoted by Trutch:

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<sup>85</sup> Ibid., 235–236, also 194–208, and 232–6.

<sup>86</sup> Wolfenden, Petition to Superintendent, 14 July 1874.

Chamiel, ten miles below Hope, is allowed 488 acres of good land for the use of twenty families: at the rate of 24 acres per family; Popkum, eighteen miles below Hope, is allowed 375 acres of bad, dry, and mountainous land for the use of twenty-seven families: at the rate of 13 acres per family; Yuk-yuk-y-yoose, on Chilliwhack River, with a population of seven families, is allowed 42 acres: 5 acres per family; Sumass, (at the junction of Sumass River and Fraser) with a population of seventeen families, is allowed 43 acres of meadow for their hay, and 32 acres of dry land; Keatsy, numbering more than one hundred inhabitants, is allowed 108 acres of land. Langley and Hope have not yet got land secured to them, and white men are encroaching on them on all sides.<sup>87</sup>

The petitioners also displayed an awareness of the racial narratives settlers used to justify the expropriation of their lands. In the 1874 petition, Indigenous leaders explicitly challenged such narratives, asserting that they were not “lazy, roaming about people” but were attempting to follow the path that had been laid out for them by settler representatives such as Douglas and the Oblate missionaries by clearing and farming their lands, only to have the same lands preempted by whites.<sup>88</sup> The petition demonstrates an acute awareness of the injustice of their situation:

We are now obliged to clear heavy timbered land, all prairies having been taken from us by white men. We see our white neighbors cultivate wheat, peas, &c., and raise large stocks of cattle on our pasture lands, and we are giving them our money to buy the flour manufactured from the wheat they have grown on same prairies.<sup>89</sup>

They registered the effects of these injustices on their people in collective and affective terms, speaking of their “wounded hearts” at the government’s ill use of the Stó:lō and the ways in which “[d]iscouragement and depression have come upon [their] people.”<sup>90</sup> The petitioners’ conclusions about settler intentions (“the aim of the white men is to exterminate us as soon as they can”) mark a dramatic shift in how they had earlier represented the settler stories that had so much power to shape their futures. At the same time, however, they continued to orient their speech towards the narratives at the heart of British colonialism: that its supposed promise was not extermination or exclusion, as with American and other imperial forces, but inclusion “with

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<sup>87</sup> Ibid.

<sup>88</sup> Ibid. Carlson makes the same observation in “Familial Cohesion,” 22.

<sup>89</sup> Wolfenden, Petition to Superintendent, 14 July 1874.

<sup>90</sup> Ibid.

your kind assistance ... into the path of civilization.”<sup>91</sup> The 1874 petition asked that the promise of British justice for Indigenous people be honoured: “We humbly pray that this our petition be forwarded to the Secretary of State for the Provinces in Ottawa ... [to] see that justice be done us.”<sup>92</sup>

Here we glimpse into Indigenous experiences of what Lutz has termed “peaceable subordination” in reference to the “techniques of power that the British used to secure the colonies, all the while decrying the violence used by other colonial powers.”<sup>93</sup> Lutz and others have explored the narrative of benevolent conquest at the heart of the British colonial enterprise.<sup>94</sup> To what extent settler authorities in British Columbia believed this story in relation to the pressures of what historical geographer Cole Harris aptly terms “raw self-interest” is difficult to determine.<sup>95</sup> Certainly, there are revealing passages in official correspondence, as seen in Seymour’s exchange with Lord Carnarvon in which he forwards the original 1864 petition to the Colonial Secretary. No doubt with the recent Tsilhqot’in uprising fresh in his mind, Seymour writes: “I think it is a very satisfactory state of things when the Aborigines who so vastly outnumber us in this colony where no troops are stationed, thus adopt the mode of petitioning instead of redressing their real or imaginary grievances by force.”<sup>96</sup> As an indication of how state officials received such petitions, however, this statement should be read with caution. As Lutz notes, although subjugation was the ultimate objective of peaceable subordination, it was never perfectly realized.

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Lutz, *Makúk*, 24–5. Several scholars, most notably Foster, have expertly discussed Indigenous Peoples attempts to access British justice from a legal history standpoint. For example, see Hamar Foster, “‘We Are Not O’Meara’s Children’: Law, Lawyers, and the First Campaign for Aboriginal Title in British Columbia, 1908–28,” in *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*, ed. by Hamar Foster, Heather Raven, and Jeremy Webber, (Vancouver; Toronto: UBC Press, 2007): 61–84.

<sup>94</sup> Furniss, *Burden of History*, 1999.

<sup>95</sup> Harris, *Making Native Space*, 51.

<sup>96</sup> B.C. Archives, Seymour to Cardwell, 31 August 1864.

Ayessik continued to sign petitions and testified at the McKenna-McBride Commission in 1914 at the age of 64. Alexis of Cheam would go on to be the primary representative for several subsequent petitions. In 1875, he wrote to Assistant Superintendent of Indian Affairs James Lenihan, with the request that Lenihan reject the Dominion funds sent for the Queen's birthday celebration, as the chiefs of the Lower Fraser refused to celebrate a Queen who "has not said a word in our favour," calling into question the power of a monarch who appeared unable to compel the provincial government to follow her own policies.<sup>97</sup> Less than a year after their initial address to him, and with obvious outrage, the petitioners also rejected Powell as a trusted representative of their cause:

We write to you [Lenihan] as we have no confidence in the other Indian Commissioner [Powell]. He has been pulling along with British Columbia Government. He willingly accepted in our name the allowance of the local Government 20 acres for a family of five members — four acres per head!!! and he went on helping the local Government. Sent surveyors to divide some Indian Reserves in 20 acre lots. Not telling us a word about it — not asking our consent, though he was perfectly aware that we would never agree to such terms. Alexis, one of the Chiefs, proved to him at Yale in July that 20 acres of[sic] family of five members or four acres per head was a mockery, was destruction of the Indian races.<sup>98</sup>

Their request to have their petition forwarded to the lieutenant governor was forcefully denied by the provincial secretary, who stated that he "had no intention of forwarding a petition that was disrespectful to the Queen and potentially seditious."<sup>99</sup>

## **Conclusion**

The Salish petitions discussed here signal the beginning of what would become a widespread pattern of Indigenous lands activism in British Columbia, in which Indigenous Peoples incorporated the state's languages, technologies, and narratives into their strategies for

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<sup>97</sup> LAC, RG10, Vol. 1001, Reel T1455. Also located in RG10 Vol. 3612, file 3763, Stó:lō Chiefs to Indian Commissioner Lenihan, 15 May 1875.

<sup>98</sup> Ibid.

<sup>99</sup> Harris, *Making Native Space*, 86.

dealing with settler authorities. The main narrative work of the 1874 petition was to identify and hold state authorities accountable to the founding stories that settlers claimed characterized their relations with Indigenous Peoples. Judging by state responses to this and similar actions, it would seem that this rhetorical strategy was an effective if not necessarily a successful one. Crafted several years before Indigenous Peoples in the province would begin basing their demands on sophisticated legal arguments, these early Stó:lō petitions were emblematic of an emerging pattern of progressively more collective forms of protest and political organization that would eventually produce the first of several joint federal-provincial commissions on Indian lands.<sup>100</sup> The final report of the 1878 Dominion-Provincial Joint Reserve Commission recommended increasing reserve sizes in most parts of the province, but like many such reports to come, the province was largely successful in undermining the authority of the Commission and blocking attempts to implement its findings. By the mid-1920s, Indigenous Peoples in British Columbia were becoming so proficient in deploying the legal and moral languages understood by the majority of British Columbians, that the federal and provincial governments moved to silence them altogether.

The 1927 addition of section 141 to the Indian Act made it impossible for Indigenous people or their representatives to pursue land claims in any form without prior approval from the minister of Indian Affairs. As Paul Tennant describes, section 141 was broadly interpreted by those responsible for its implementation, such as Powell, Lenihan, and the broader network of Indian Agents in British Columbia. The amendment made it illegal

for any Indian or other person acting for [an Indigenous organization to] request or receive from any registered Indian any fee for legal or other services or any money for postage, travel, advertising, hall rental, refreshments, research expenses, legal fees, or court costs.<sup>101</sup>

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<sup>100</sup> See Harris, *Making Native Space*, 104–135, 136–166; Tennant, *Aboriginal Peoples*, 39–52, 53–67.

<sup>101</sup> Tennant, *Aboriginal Peoples*, 112.

Although activism did continue in various forms on an underground basis, it is difficult to overstate the effectiveness of this single action in impeding Indigenous Peoples' ability to communicate their grievances about land to the state or to a broader Canadian public.<sup>102</sup> Section 141 was just one component of a document that transformed the lives of Indigenous Peoples throughout Canada. It is worth noting that the authority of the Indian Act as law relies on a very specific and culturally-rooted founding story about the power and sanctity of text, a story that Stó:lō peoples were becoming painfully cognizant of in the latter half of the nineteenth century.

Evident in the petitions examined here are the many ways in which Halkomelem-speaking peoples attempted to hold their ground in their communications with settler authorities. They were attempting to hold their ground in a material sense: by defending and struggling to maintain the right to people the land, to move about on and access the physical landscape and the meanings they understood it represented and contained. But they were also holding their ground in a narrative and relational sense, sometimes by aligning themselves with, at other times by identifying and countering the stories that had increasing power to shape their lives, by asserting stories of their own, and pointing to the narrative infidelity of settler authorities. They did so in this case through the medium of petitions, one of the only available mechanisms through which Indigenous Peoples could make themselves heard by settler authorities at this time. As we have seen here, by developing a mastery of the petition as an instrument of political communication, Salish leaders were confronting settler authorities with and on their own terms, their own language, and their own narratives.

Between 1864 and 1874, we see not a simple transition from oral to literate, but rather, Indigenous Peoples' adaptation to a significant shift in the balance of power between Indigenous

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<sup>102</sup> This has been well documented by Tennant, who also notes the renewal of Indigenous Peoples' legal pursuit of their claims after section 141 was unceremoniously dropped from the Indian Act in the early 1950s.

and settler societies. That same shift created the conditions in which Indigenous literacy became a matter of necessity. Even if Trutch had not terminated Douglas' pre-emption system, successful applications for pre-emptions required a degree of literacy and familiarity with colonial bureaucracy that few Indigenous people would have possessed.<sup>103</sup> Coast Salish people recognized the connections between settler power and its textual culture. This awareness was evidenced in the very act of petitioning, but also occasionally mentioned more directly in the petitions themselves. Two petitions from individual tribes in 1868 (the year in which Trutch so drastically reduced the Fraser Valley reserves) make direct references to the power of the written form. The first, addressed to Seymour by members of the Stó:lō Whonuck tribe, referred to the edict sanctioning the reductions:

Some days ago came new men who told us by order of their Chief they have to curtail our small Reservation, and so did to our greatest grief; not only they shortened our land but *by their new paper* they set aside our best land, some of our gardens, and gave us in place, some hilly and sandy land, where it is next to impossible to raise any potatoes.<sup>104</sup>

The second raises similar concerns around the reserve cut-offs, this time from Matsqui chiefs to Seymour, and ends by investing hope and power in the petition itself: "It is then with confidence, that in these Days of sorrow, *we send [this] paper* to your Excellency praying that you may be good enough to remove the cause of our grief."<sup>105</sup> Whether or not Stó:lō people conceived of textual literacy as something indigenous or introduced, they were recognizing that it was fast becoming a medium through which powerful speech occurred, at least with respect to their relationships with settler authorities.

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<sup>103</sup> Harris, *Making Native Space*, 36

<sup>104</sup> B.C. Archives, British Columbia Colonial Correspondence, P. Durieu, F503/2, Durieu to Seymour, Petition of the Whonuck Indians, 6 December 1868. Emphasis added.

<sup>105</sup> B.C. Archives, British Columbia Colonial Correspondence, P. Durieu, F503/2, Durieu to Seymour, Petition of the Matsqui Indians, 6 December 1868. Emphasis added.

The expression and contestation of power through narrative remained a constitutive feature of Indigenous-state relations throughout nineteenth- and twentieth-century British Columbia. Writing was a technology at the heart of the transformative process colonialism represented, and a central mechanism through which colonial forces had the power to actualize their stories. In the 1860s and 1870s, we see the early attempts of Stó:lō and Coast Salish people to intervene in this powerful process and become skilled story writers themselves, on their own terms, and to accomplish their own objectives. To a great extent, they continued to story their worlds in the manner and mediums they had developed long before Xwelítem came to shore. But in engaging settler states through petitions and, later, a much wider spectrum of the textual world, they were also attempting to inscribe their own stories in the minds of those they understood as the most influential members of settler society; stories about who they were, what their place was upon on the land, and what constituted a just relationship.

### Chapter 3

#### Trying to Get the Story Right: The Stó:lō Xwewelmexw Treaty Association and the Crown

*“Control of narrative representation, like transfers of land, carries material consequences”<sup>1</sup>*

In a break the first morning I attended main table meetings between the Stó:lō Xwewelmexw Treaty Association (SXTA) and the BC and federal governments, one of the government representatives said to me “I’m glad you’re here, no one has managed to get the story right yet.”<sup>2</sup> I heard this again from a representative of the BC Treaty Commission at a later meeting, and to a certain extent, this is one of the main messages coming from the SXTA as well: that treaty-making is generally misunderstood and misrepresented. At the time, I somewhat anxiously reminded the speaker that treaty negotiations was the focus of just one chapter of my dissertation, and that it was quite likely that I would not ‘get the story right’ in her eyes any more than anyone else had. The statement has stuck in my mind ever since, partly because of the considerable responsibility it places on my shoulders, but also because of what it expresses.

To me, this seems to be something people say when they are involved in an event or process that is so heavily storied that those at the center of it feel obscured by the weight of other people’s accounts of who they are and what they are up to. Perhaps this is what happens when an event or experience takes on the proportions of an epic. In literature, epics have a narrative pattern involving a conflict and a resolution, often a battle of good versus evil, with winners and losers, patterns that overtake the actual stories that they are supposed to describe. In comparing

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<sup>1</sup> Cruikshank, *Social Life of Stories*, 163.

<sup>2</sup> I have heard this in relation to the events of Lyell Island as well. For more information on the SXTA, see: <http://sxta.bc.ca/>

the genre of epic to that of the novel, Mikhail Bakhtin notes the ways epic abstracts time in relation to its author and audience.<sup>3</sup> The temporal moment in which the epic is situated is always distant, removed from, and inaccessible to those who are contemporaries to the act of telling. For Bakhtin, epic is “as closed as a circle...[t]here is no place in the epic for any open-endedness, indecision, indeterminacy.”<sup>4</sup> In epic form, the story is written in advance and the micro stories are swept aside. Understandably, those who are conscripted as the main characters in such a narrative cannot help but feel the jarring lack of fit between their own experiences and the stories that purport to explain them. Grand narratives are ill equipped to catch the details, the micro stories that constitute the whole, and the partial or attempted resolutions to epic conflicts. Who is to say, though, that these are not also critical to the story?

This chapter does not aim to get the story right, but it shows the influence of this initial injunction. There are almost as many stories about treaty-making as there are people that treaties will impact, and mine is that of a relative newcomer to the politics and process of treaty negotiations. Instead, I offer the more modest observation that treaty-making is a process of story making, and seek to describe some of the roles story plays in the negotiation process. In principle, treaties are one of the most powerful stories a nation can tell, and are among the founding documents that allow Canada to exist, as a discrete territory and as an idea. Ideally, modern treaties are supposed to create models for Indigenous and Canadian co-existence, to retire the old stories that have governed this relationship, and build up new and more just ones in their place. This, at least, was the vision of the authors of the Report of the BC Claims Task Force, released in 1991.<sup>5</sup> However, as other analyses of land and self-government negotiations have shown,

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<sup>3</sup> Bakhtin, *The Dialogic Imagination*, 13-8.

<sup>4</sup> *Ibid.*, 16.

<sup>5</sup> Ministry of Aboriginal Affairs, *Report of the British Columbia Claims*, 1991.; Miles G. Richardson, Personal communication, 10 April, 2015.

exorcising the old narratives from the structure and process of formal negotiations is no simple matter, even when the parties concerned attempt to do so with best of intentions.<sup>6</sup> In the following, I will discuss some of the ways in which the old stories guiding Indigenous-state relations are embedded in the routine procedures of treaty-making. I will offer three examples of how the SXTA confront these old stories, and widen the spaces of narrative possibility in treaty-making in order to make room for references to Stó:lō stories. In doing so, the SXTA is working to re-write the master narrative of Stó:lō-state relations.

Thus this chapter tracks some of the complex narrative labour the SXTA undertakes through treaty. First, I will discuss Stó:lō insertions of key *Halq'eméylem* terms and concepts into the treaty's legal glossary; second, their reconfiguration of the statement of claim area maps to reflect Stó:lō understandings of the social relationships that constitute their territory; and third, how they layer a Stó:lō sacred geography onto the types of land tenure typically represented on maps in the day-to-day business of treaty meetings. These interventions in the received narrative frameworks of the treaty process should be read as attempts to re-orient the process so that it reflects Stó:lō understandings of their foundational stories, their epistemologies as well as the state's. Each demonstrates the SXTA's attempts to think deeply about relationship through cultural engagement, as well as creative adaptations of Stó:lō traditions to the demands of current contexts. As with the petitions, such adaptations always carry the risk of becoming – but do not necessarily lead to – assimilation. The difficulty, especially for a historian, is that we do not know the end to this story, so there is no way of knowing now where the SXTA's efforts will

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<sup>6</sup> Woolford, Nadasdy, Irlbacher-Fox all note the intentions of individual state actors to do good work in treaties, but also observe how limited they are in accomplishing this for reasons related to limited mandates from higher up in government, their inability to understand how their actions are consistent with a historically oppressive state, and/or the general influence of established dominant discourses on their perceptions, behaviours, and decision-making. Blackburn offers a view from a more traditional discourse analysis. See: Blackburn, "Searching for Guarantees," 2005.; Irlbacher-Fox, *Finding Dahshaa*, 2009.; Nadasdy, *Hunters and Bureaucrats*, 2003.; Woolford, *Between Justice*, 2005.

take them and those they represent. Notwithstanding this fundamental uncertainty, examining the treaty process as a narrative process presents an important addition to the ‘story’ of what treaty is and what it can involve.

### **Stó:lō Treaty Negotiations**

This chapter is concerned with the SXTA’s engagements with the British Columbia Treaty Process. I draw on interviews with current and former members of the SXTA’s treaty negotiation team, as well as interviews with a former negotiator for the Maa-nulth Treaty Society, the current Director of the BC Treaty Commission, and informal conversations with one of the original members of the BC Claims Task Force. These conversations have been supplemented by approximately a year-long period of observing the SXTA’s main table negotiations. If some voices seem prioritized over others in what follows, this is primarily an effect of access and scope, rather than my intention.<sup>7</sup> The Stó:lō, descendants of many of the signatories to the petitions discussed in the last chapter, have been doing the work of treaty-making with the federal and provincial governments for almost two decades now, although the participants have changed over time.<sup>8</sup> Federal and provincial governments have come and gone, and although more consistent on the Stó:lō side, those doing the actual work of negotiating around the table have also changed over time. When the Stó:lō first entered the treaty process in 1995, they were 19 bands under the collective tribal government designation of the Stó:lō Nation.<sup>9</sup> After a political split in 2004, which stemmed in part (but not wholly) from debates over the merits of the treaty process, seven bands remained in treaty negotiations under the Stó:lō

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<sup>7</sup> See footnote 21.

<sup>8</sup> On who Stó:lō are and have been over the nineteenth and twentieth centuries, see: Bierwert, *Brushed by Cedar*, 1999.; Carlson, *Power of Place*, 2010.; Naxaxalhts’i, “We Have to Take Care,” 2007.; Schaepe, “Stó:lō Identity,” 2007.; Stó:lō Heritage Trust, *You Are Asked to Witness: The Stó:lō in Canada’s Pacific Coast History*, (Chilliwack, B.C: Stó:lō Heritage Trust, 1997).; Stó:lō Heritage Trust. *A Stó:lō-Coast Salish*, 2001.; Tennant, *Aboriginal Peoples*, 1990.

<sup>9</sup> Dave Schaepe describes the Stó:lō Nation as “an Aboriginal government and service delivery provider.” Schaepe, “Stó:lō Identity,” 237.

Xwewelmexw Treaty Association, seven bands gathered under the Stó:lō Tribal Council<sup>10</sup> which was not in the treaty process, and several went independent.<sup>11</sup> Those in treaty negotiations are claiming “1.2 million hectares in the Lower Fraser watershed” parts of which are shared with neighbouring First Nations.<sup>12</sup> The urgency felt around the need to secure land rights is driven by the fact that the territory claimed includes Vancouver, BC’s largest city, which has experienced tremendous population growth since the late 1980s, growth that has in turn resulted in the urbanization of the surrounding areas, including the Fraser Valley.<sup>13</sup> In this sense, current-day Stó:lō are experiencing a rapid in-migration of settlers in ways that are both similar to and distinct from their ancestors in the 1860s and 1870s.

Through a treaty, the SXTA is trying to write a new story about Stó:lō-state relations, and about who Stó:lō people are if not defined by the story evoked in the Indian Act. Like Indigenous Peoples in and outside of land and self-government negotiations across Canada, the SXTA member bands are experimenting in how to rebuild themselves after over a century and a half of state-imposed management, through which they were consigned to wardship status vis-a-vis the state and in significant ways cut off (economically and otherwise) from their traditional territories. Creating a narrative alternative to the Indian Act means, in part, re-imagining the

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<sup>10</sup> The Stó:lō Tribal Council bands are: Chowéthel, Lexwchíyó:m, Qw’ó:ntl’an, Qweqwe’ópelhp, Sq’éwlets, Sq’éwqel, Shxw’ówhámél, and Th’ewá:lí (anglicized spellings: Chawathil, Cheam, Kwantlen, Kwaw Kwaw A Pilt, Scowlitz, Seabird Island, Shxw’owhamel, and Soowhalie). See: <<http://stó:lōtribalcouncil.ca/about-us/communities/>>

<sup>11</sup> See Andrée Boisselle, *Emerging From Colonial Quicksands: Cultural Hybridity and The Stó:lō Transition To Self-Rule: Examining Stó:lō Discourse Around The Experience Of Taking Responsibility For The Delivery of Child And Family Services*, Report prepared for Stó:lō Ethnohistory Field School, (Stó:lō Research and Resource Management Center Archives, Chilliwack, B.C., 2007): 21. <[http://web.uvic.ca/vv/stolo/pdf/Boisselle\\_Emerging\\_from\\_quicksands\\_2008.pdf](http://web.uvic.ca/vv/stolo/pdf/Boisselle_Emerging_from_quicksands_2008.pdf)>; Martin Hoffman, “A Meeting of the Minds”: *Stó:lō Political History, 1969-1989*, Report prepared for the Stó:lō Ethnohistory Field School, (Stó:lō Research and Resource Management Center Archives, Chilliwack, B.C., 2011). <[http://web.uvic.ca/stolo/pdf/Hoffman\\_Political\\_History\\_2011.pdf](http://web.uvic.ca/stolo/pdf/Hoffman_Political_History_2011.pdf)>; Schaepe, “Stó:lō Identity,” 2007. The community of Chehalis is not affiliated with either supra-tribal organization. The SXTA bands are: Leq’á:mél, Ch’iyáqtel, Sq’ewqéyl, Yeqwyeqwí:ws, Áthelets, and Sq’ewá:lxw (until 2017, the SXTA also included Popkum). On the SXTA website, these are organized by their affiliation with linguistically-based tribes. For more information, see <<http://sxta.bc.ca/about-us/sxta-first-nations/>>.

<sup>12</sup> Schaepe, “Stó:lō Identity,” 246.

<sup>13</sup> Ibid.

jurisdictional boundaries of Indigenous-state relationships at every point of contact, be it territorial, economic, cultural, or educational. For two to three days a month, nine to ten months a year, the SXTA's treaty negotiation team meets with representatives from the federal and provincial governments. These meetings most often take place in the main boardroom of the Stó:lō Research and Resource Management Centre (SRRMC) building on the former Coqualeetza residential school site off Vedder Road, in Chilliwack, BC.<sup>14</sup> A non-negotiating representative of the Fraser Valley Regional District joins them most meeting days, for observation and consultation purposes. Less frequently, a representative or two from the British Columbia Treaty Commission also joins the table.<sup>15</sup> In these meetings, the parties essentially co-write a lengthy document that will form the basis of the Final Agreement. The Stó:lō Framework Agreement identifies twenty-eight chapters organized around 'substantive issues' to be negotiated, including economic development; language, culture, and heritage; lands, lands access, and land use planning; justice and policing.<sup>16</sup> The SXTA is in a very active phase of stage four, meaning that the parties meet monthly and negotiate, chapter by chapter, essentially line by line, and word by word, the foreseeable implications of the language of an Agreement-In-Principle. Borrowed text from earlier treaties forms the initial template, which is projected onto a Smart board and then repeatedly revised, as the parties each highlight language or a particular section

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<sup>14</sup> The SRRMC has a broad mandate and provides services to the entire Stó:lō population as well as to other First Nations and non-First Nations individuals and organizations. The latest iteration of the Stó:lō Nation includes the Stó:lō Service Agency, which helps to provide clear boundaries between political activities and service delivery in areas such as health and family services, early childhood education, employment training, and, through the SRRMC, land, research, and resource management services. For more information on the SRRMC and the Stó:lō Nation, see: <http://www.srrmcentre.com/> and <http://www.stolonation.bc.ca/>

<sup>15</sup> The BCTC is an organization independent of Canadian or Indigenous governments, but funded by the federal government. It is charged with facilitating treaty negotiations, and its responsibilities include handling funds and funding decisions, providing conflict resolution resources, and public education. See < <http://www.bctreaty.ca/>>

<sup>16</sup> The Agreement can be found online via the BCTC website:  
<[http://www.bctreaty.net/nations/agreements/Stó:lō\\_framework.pdf](http://www.bctreaty.net/nations/agreements/Stó:lō_framework.pdf)>

that is problematic, not relevant to their circumstances, or raises issues that require further research or clarification of its meaning for all those concerned.

### **Power and Narrative in the BC Treaty Process**

As sociologist Andrew Woolford observes, treaty-making is an attempt to create a shared story about the future without formally airing and understanding the parties' differing stories about the past, or even necessarily their stories about what treaty is and is meant to produce.<sup>17</sup> James Tully has noted there are at least two opposing narratives operating in the treaty process.<sup>18</sup> The general view from a First Nations perspective is that the process is for creating relationship agreements, with the understanding that such relationship negotiations will be ongoing. Tully suggests that most First Nations believe that treaties should expand their jurisdictions over their territories and address issues of historical injustice in some form. The narrative coming from the Crown, Tully argues, has generally conceived of treaty as a once and for all resolution of conflicting jurisdictional debates, a way to delineate firmly and finally, "what's mine, what's yours, now stay away", as characterized by former SXTA Chief Negotiator Grand Chief Joe Hall, *Skw'omkw'emexw*.<sup>19</sup>

These and many other stories structure the negotiation process and follow each of the participants into the negotiation room, stories that appear and must be dealt with or put down to pick up another day. I found it interesting how the macro-level re-structuring of Stó:lō-state relationships that is the main task of the treaty process occurs in part through day-to-day exchanges over seemingly minor details, in which representatives from each of the parties explain the fear that, for example, a certain wording about estate law will re-situate the ultimate

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<sup>17</sup> Woolford, *Between Justice*, 117-8.

<sup>18</sup> James Tully, "Reconsidering The B.C. Treaty Process," in *Speaking Truth to Power: A Treaty Forum*, British Columbia Treaty Commission, (Law Commission of Canada, 2001): 7-14.

<sup>19</sup> *Skw'omkw'emexw* Grand Chief Joe Hall, Personal interview by author, 19 May 2009. Hall acted as Chief Negotiator from 2006 to 2017. At the time of writing, the current Chief Negotiator is Jean Teillet.

jurisdiction over ‘X’ with the federal government, or that the First Nation will not be subject to the laws of Canada in ways that make the Canadian governments both epistemologically and practically nervous. Thus the process of re-designing the macro-level narrative of the relationship involves dealing (or failing to deal) with these narrative inheritances as they appear and arise in the micro-level, day-to-day requirements of negotiating a treaty. Moreover, it is not just historical narratives that must be contended with, but also the many stories that the process has helped to produce or has become subject to over the almost twenty years that the BCTP has been underway. Almost from its inception, the risks and benefits of the BC treaty process have been fiercely debated within Indigenous and (to a lesser degree) non-Indigenous communities, debates that continue apace today, signaling how important it is to find a way out of the narratives of the past, and how difficult it is to do so. Nor has the process enjoyed unequivocal support from the federal and provincial governments over the years.<sup>20</sup>

In principle, the parties at the table work to co-create a relationship script – a kind of story they can all live by. In practice, the narrative dynamics of treaty-making extend far beyond the negotiating room. For example, each of the negotiating parties at the table represents and is accountable to multiple and intersecting relationship networks including but not restricted to those at the table. At each of these relationship nodes, the story about treaty must be constantly negotiated and to a certain extent managed. Both the provincial and federal representatives are given mandates to negotiate on some issues but not others, and must work within these mandates while also testing their parameters at times (depending on the willingness of the negotiators to do so). As Woolford notes, “[i]t is commonplace for chief federal negotiators to say that they are

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<sup>20</sup> In 2001, the newly elected provincial Liberal government under Premier Gordon Campbell organized a public referendum on the BC treaty process. Although the referendum was promoted as a way to engage a broader population of the province in a discussion about the future of treaty in BC, it was widely condemned as a way of enabling the majority to rule on a matter of rights already enshrined and protected in the Constitution. Interestingly, Campbell later became a major advocate for the value of the treaty process in BC. See Woolford, *Between Justice*, 109-10.

engaged in three sets of negotiations: one with the parties at the table, a second with the public, and a third with their own bureaucracy.”<sup>21</sup> When those at the table develop a project that may affect other ministries (such as the BC Ministry of Transportation and Infrastructure, or Parks Canada, which are called ‘line ministries’) then the representatives from the provincial Ministry of Aboriginal Relations and Reconciliation (MARR) or the federal Department of Indigenous and Northern Affairs must story their proposal in a way that is designed to successfully bring those line ministries ‘on side.’ Failing to do so can affect provincial and federal negotiations with First Nations.

Similarly, negotiating First Nations are accountable to their own membership as well as to neighbouring nations or non-treaty bands that may be affected by decisions made at the treaty table. The Stó:lō representatives also have various mandating authorities they consult when developing a project at the table and who must be kept informed throughout the process.<sup>22</sup> As with the other government representatives, the treaty negotiation team is given mandates to negotiate substantive issues, and must work within these mandates. As with any authorizing group, community members have ways of making changes to their mandates known. Extreme examples are seen when an agreement in principle fails to pass the community ratification vote, perhaps because the community feels the agreement is unsatisfactory, or because of a sense that the community’s governing infrastructure is not yet developed enough to move into an implementation stage. Thus a failed ratification vote may not necessarily signal a rejection of

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<sup>21</sup> Ibid., 111.

<sup>22</sup> The SXTA have kept communities in and outside of the treaty group apprised of treaty matters through the Treaty Outreach Team. This is a two-way mechanism for sharing concerns: from the treaty table out to the communities and from the communities back to the treaty table. Additionally, the Stó:lō working groups, such as the Land and Governance Working Group, have been convened to inform the negotiations on topics that require more research and information than can be provided by SXTA representatives alone. Members of the working groups include respected knowledge holders as well as elders. The work done by the SXTA Outreach Team is supplemented by meetings between the treaty negotiation team and the Chiefs and Councils, as well as presentations made to band council meetings, which are open to all membership.

treaty negotiations as a whole, but could instead be a message from the community for the negotiators to return to negotiations to amend certain aspects of the agreement, or develop a stronger, perhaps more gradual implementation plan. Alternately, communities can show a more complete loss of faith in the value of the negotiations process at band or tribal level elections, by voting in a new Chief and band council who may have campaigned on an anti-treaty platform. The Stó:lō political split that occurred in 2004, although not only about treaty negotiations, can be read partly as an example of the latter situation, where some bands voted to withdraw from treaty completely.

In this way, the negotiation of a treaty involves multiple and ongoing micro-negotiations rippling outwards from the main parties. Different kinds of narrative labour is required at each of these relationship nodes, and all of the representatives at the table find themselves – at one time or another – working with, in, and/or against a given narrative or relationship dynamic. A certain amount of story management outward from the table, and inward from each representative’s respective authorities, is required in order for the negotiating teams to carry out their day-to-day work. This chapter focuses mainly on the narrative labour performed by the SXTA, in part because it was so much more visible and accessible to me than that performed by the state representatives.<sup>23</sup> My time observing the SXTA negotiations suggests to me that although there is no doubt that the process is riddled with subtle and overt power struggles, the complex

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<sup>23</sup> In general, gaining access to and having conversations with people from the SXTA and the BC Treaty Commission was limited only by the busy schedules of those working for these organizations, and even these were opened up enough to accommodate repeat interviews with me. I found the tone of these conversations to be surprisingly frank and open. Gaining access to provincial and federal representatives was considerably more difficult. When I approached these individuals, my requests were met uneasily, or I was directed to former negotiators, now retired, who were considered more able to speak with me. In this chapter and others, I regret not being able to have written into this account more from those representing the provincial and federal governments, as I believe it would have enabled a different, perhaps more useful perspective on these encounters. However, the general absence of these voices is an effect of scope as well as access, as it became clear as the research progressed that I would have to restrict my focus somewhat. For this same reason, I did not seek out voices from non-treaty Stó:lō communities, or from those further removed from the negotiations within SXTA communities. Again, I believe the inclusion of such perspectives would have enriched the following discussion, but the resulting work would have required more than a single chapter.

narrative dynamics I have seen happening in treaty cannot be encapsulated by either celebratory or terminal readings of Indigenous engagements of the process.

Much of the work of treaty-making, and the widespread anxieties about this work, is fundamentally about how or whether the treaty process will bring meaningful equity to what has been a relationship based largely on the state's marginalization and exploitation of Indigenous Peoples and their lands. In the following, I will revisit the ever-present themes of vulnerability and power with respect to three relationship dynamics at the heart of treaty-making. First, concerns have been raised about the unequal distribution of and access to power between the negotiating parties in land and self-government negotiations, making participating First Nations vulnerable with respect to the state. As anthropologist Paul Nadasdy has shown, this inequality can manifest itself in relatively subtle ways. He suggests that one of the challenges facing Aboriginal Peoples in their dealings with the state is that the onus has been on First Nations to frame all their communications in a language that the government can understand. He has shown how First Nations have been flexible and able to learn this 'bureaucratic speak' but he has also shown a more subtle effect. Forced to speak in this language and communicate with officials who have a very limited scope and must apply for funding in targeted envelopes (highways, water, forests), Indigenous groups have organized themselves into bureaucracies that mirror government agendas and are increasingly adopting 'government' and 'corporate' speak. The result, Nadasdy contends, has been the undermining of First Nations' longstanding ways of thinking, and, along with this, the displacement of traditional priorities. He argues "that the current restructuring of Aboriginal-state relations, which on the surface appears to be empowering First Nations peoples, may in fact be having the opposite effect...these processes may...be acting as subtle extensions of empire, replacing local Aboriginal ways of talking,

thinking, and acting with those specifically sanctioned by the state.”<sup>24</sup> In short, the concern is that such prolonged negotiations, which are intended to expand Indigenous Peoples’ ability to act as self-determining peoples, will instead end by assimilating them further into the bureaucratic logics of the state.

A second concern surrounds the vulnerable position of non-treaty First Nations or those further behind in the negotiations process than their neighbours. First Nations in treaty negotiations gain access to the ears of the state, but also to capacity-development funds and interim-projects financing not available to those outside of, or those at an earlier stage in the process. Some critics suggest that in this way the treaty process pits neighbouring nations against one another in a competition for fiscal resources as well as lands, thereby creating new divisions among Indigenous Peoples and potentially aggravating the phenomenon of have and have-not First Nations. The impact of the SXTA treaty on non-treaty neighbouring Stó:lō bands is a topic of concern that seems to wax and wane within the broader Stó:lō community. Certainly, the Yale First Nation treaty, which was ratified in 2014 despite ongoing disagreements and failed mediation with surrounding Stó:lō tribes, proved a divisive force between the community of Yale in the upper Fraser canyon and the lower Fraser Stó:lō tribes. The SXTA, who were among a broader network of Stó:lō bands and tribal councils who vocally opposed Yale’s treaty claims to what is known as the ‘Five mile fishery’ in the upper Fraser Canyon, see themselves as taking a

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<sup>24</sup> Nadasdy, *Hunters and Bureaucrats*, 9. Cruikshank makes a similar point about Indigenous Peoples framing their knowledge in terms of ‘Traditional Ecological Knowledge’ (TEK) in order to engage in co-management discussions. Cruikshank shows how TEK and other technocratic languages “submerge [Indigenous] narratives while claiming to learn from them”, while compelling Indigenous people to speak in “uncharacteristic ways” in order to “claim a legitimate voice in late twentieth-century encounters.” See Cruikshank, *Social Life*, xv and 45-70. I would contend that this characterization is perhaps becoming less descriptive of younger generations working today than for earlier generations who were less fluent in the technocratic and environmentalist discourses, although the tendency for the state, private companies, and environmental organization to submerge Indigenous knowledges is still very real, as I discuss in chapter 5.

very different approach to inter-Stó:lō relations in their treaty process. Convincing non-treaty Stó:lō citizens of this is one of their main challenges.

Finally, and less understood outside of those participating in the treaty process, are the many ways in which the process is vulnerable to the agendas and priorities of changing federal or provincial governments. For example, in the lead-up to the 2015 federal election, there were rumours that Stephen Harper's conservative government was planning to remove decision-making authority from the BCTC with respect to funding decisions. The BCTC, which was created when the BC treaty process was first designed, is mandated to handle the funding aspect of the treaty process. This was meant to remove funding decisions from provincial or federal level governments, which could have conflicting agendas for supporting or withdrawing support for a particular First Nation. In BC, where oil and gas development is an extremely contentious issue for many First Nations, the ability of a pro-oil sands government to make treaty-funding contingent upon Indigenous cooperation with or approval of energy development projects undermines the democratic integrity of the BC treaty process.

In recent years, Christy Clark's provincial government has made several moves that suggest a lack of support for the treaty process. In March of 2015, Clark's Liberal government unilaterally reversed its support for incoming Treaty Commissioner George Abbott, and shortly thereafter refused to appoint any new commissioner to the BCTC.<sup>25</sup> It was suggested in the media that the Premier's reasons for this unprecedented act were at least partly due to the fact that Abbott ran against Clark for the Liberal party leadership in 2013, and, as some speculate,

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<sup>25</sup> Justine Hunter, "B.C. Treaty Process In Limbo After Province Pulls Chief Commissioner," *Globe and Mail*, 25 March 2015. <<http://www.theglobeandmail.com/news/british-columbia/bc-treaty-process-in-limbo-after-province-pulls-chief-commissioner/article23627604/>> (1 February 2017).; Justine Hunter, "Christy Clark's Surprise Shift Undermines Treaty Process," *Globe and Mail*, 29 March 2015, <<http://www.theglobeandmail.com/news/british-columbia/bc-premiers-shift-undermines-treaty-process/article23680784/>> (1 February 2017).; Judith Sayers, "Christy Clark's Treaty Debacle." *First Nations in BC Knowledge Network*. 30 March 2015. <<http://fnbc.info/blogs/judith-sayers/christy-clarks-treaty-debacle>> (1 February 2017).

perhaps because Abbott was a self-professed believer in the treaty process and the value of long-term permanent agreements for First Nations.<sup>26</sup> Since their re-election in 2013, the provincial Liberals have prioritized the development of liquefied natural gas (LNG) in the province as a major party objective. Many if not most of the proposed LNG projects are in regions where treaties have not been settled with First Nations, and as a result, the provincial government has been negotiating revenue sharing liquefied natural gas (LNG) contracts with local First Nations. One result of this has been that several of the province's most senior treaty negotiators have been tempted away from their work at the treaty tables in order to pursue well-funded positions negotiating LNG revenue sharing contracts.<sup>27</sup> On a larger scale, this amounts to a kind of brain drain from treaty negotiations, and is another contributing factor to the high rate of staff turnover among crown negotiators, thus creating instability at treaty tables.

Moreover, these revenue-sharing contracts are predicated upon the assumption of Aboriginal title but take no responsibility for evaluating or supporting resolutions of conflicting territorial claims among Nations. Such agreements are seen by many as 'buying consent', as shared revenues are contingent upon the First Nation's agreement not to oppose the project or pursue legal action against the government for any negative impacts that may result from it.<sup>28</sup> Treaty advocates argue that while treaties may contain similar provisions, as well as setting out limitations on the potential expression of the signing First Nation's rights and title, they at least have the advantage of being constitutionally protected, which provides the signing First Nation

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<sup>26</sup> Vaughn Palmer, "Vaughn Palmer: Was Abbott's Passion for the Treaty Process His Fatal Flaw?" *The Vancouver Sun*, (26 March, 2015). <http://www.vancouversun.com/news/Vaughn+Palmer+Abbott+passion+treaty+process+fatal+flaw/10920038/story.html> (Accessed February 22, 2017).

<sup>27</sup> The SXTA recently lost the BC negotiator they have had for several years.

<sup>28</sup> Judith Sayers, "Revenue Sharing with First Nations in BC," *First Nations in BC Knowledge Network*, 5 February 2015. <http://fnbc.info/blogs/judith-sayers/christy-clarks-treaty-debacle> (Accessed 15 February 2015)

with more legal protection with respect to holding the state accountable to the treaty's other provisions.

Since the treaty process began, critics have been calling for the BC Treaty Commission (BCTC) to be given expanded powers and a broader mandate in order to prevent such political tampering with the process, as well as to tailor the process to fit the changing needs of First Nations in the process.<sup>29</sup> Then interim Commissioner Celeste Haldane spoke to me about the need to expand the mandate of the BCTC so that it could support First Nations for whom the treaty process is not the right model.<sup>30</sup> For Haldane, the main priority is to support First Nations in their attempts to rebuild themselves, not to remain wedded to a particular process at any cost. To date, it is not at all clear that the provincial and federal governments will prove flexible enough to accommodate such priorities, despite state rhetoric on 'new relationships' and reconciliation.<sup>31</sup>

### **Power and Story in the Literature on Modern Negotiations Processes**

Over the last decade or so, there have emerged a number of scholarly critiques of the BC treaty process, as well as land and self-government negotiations in other parts of Canada and the settler-colonial world. To varying degrees, all of these analyses are concerned with how state power and Indigenous vulnerability are created and maintained through modern negotiations

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<sup>29</sup> Foster, "Getting There!" 168-172.; Woolford, *Between Justice*, 119-20.

<sup>30</sup> In 2017, Haldane was appointed Commissioner of the BC Treaty Commission.

<sup>31</sup> In 2005, meetings between BC Premier Gordon Campbell and Indigenous leadership in BC resulted in The New Relationship Accord, which promised provincial recognition of Indigenous rights and title, Indigenous self-government and the importance of reconciliation. Within two years, Indigenous Peoples across BC were questioning the provincial government's commitment to the document. Reconciliation is a stated priority for BC and federal governments, evidenced in the title of the BC Ministry of Aboriginal Relations and Reconciliation, federal policy documents, and political rhetoric in general. However, what reconciliation should involve is much debated. British Columbia, *The New Relationship Accord*, 2005. <[http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/new\\_relationship\\_accord.pdf](http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/new_relationship_accord.pdf)> (Accessed 12 February 2014); Justine Hunter, "How Campbell Changed His View," *The Globe and Mail*, 13 October, 2007. <<http://www.theglobeandmail.com/news/national/how-campbell-changed-his-view/article695589/>> (Accessed 15 April, 2016). Indigenous and Northern Affairs Canada, "Reconciliation," (15 February, 2017). <<https://www.aadnc-aandc.gc.ca/eng/1400782178444/1400782270488>> (Accessed 22 February 2017).

processes. These works highlight the ways in which land and self-government negotiations offer Indigenous Peoples limited forms of self-determination while extending the reach of the state into Indigenous lives;<sup>32</sup> assimilate Indigenous Peoples into governance models that are legible to the state while excluding Indigenous forms governance or environmental management;<sup>33</sup> or create some degree of certainty with respect to jurisdiction (in terms of territorial boundaries and what settler states can and cannot be held responsible for), but fail to provide meaningful justice to First Nations.<sup>34</sup> These critiques are crucial for understanding the power imbalances that structure modern negotiations and the risks they pose for Indigenous Peoples. In this way, they echo the concerns of those in and outside of the process in Indigenous communities wherever such negotiations are taking place. This literature has developed our critical vocabularies for describing how the processes developed to negotiate land and self-government claims intentionally and unintentionally, consciously and unconsciously work to protect the status quo in Indigenous-state relations. At the same time, however, many of these works tell us more about how state power is expressed and maintained than they do about how Indigenous Peoples express, maintain, and perhaps even expand their own sources of power through, or in spite of such processes.<sup>35</sup>

With a particular focus on the dynamics of narrative and power in treaty-making, this chapter attempts to demonstrate, as James Clifford notes, how the current neoliberal hegemony

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<sup>32</sup> Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, Indigenous Americas, (Minneapolis, MN: University of Minnesota Press, 2014).; Irlbacher-Fox, *Finding Dasha*, 2009; Nadasdy, *Hunters and Bureaucrats*, 2003.

<sup>33</sup> Taiaiake Alfred, "Deconstructing the British Columbia Treaty process," *Balayi: Culture, Law And Colonialism* 3 (2001): 37-65.; Blackburn, "Searching for Guarantees," 2005.; Johnny Camille Mack, "Thickening Totems and Thinning Imperialism," (LL.B. thesis, University of Victoria, 2007).; Nadasdy, *Hunters and Bureaucrats*, 2003.

<sup>34</sup> Alfred, "Deconstructing," 2005; Woolford, *Between Justice*, 2005..

<sup>35</sup> Notable examples of writing working in this direction include: Isabel Altamirano-Jiménez, *Indigenous Encounters with Neoliberalism: Place, Women, and the Environment in Canada and Mexico*, Women and Indigenous Studies Series, (Vancouver: UBC Press, 2013).; Rachel Ariss with John Cutfeet, *Keeping the Land: Kitchenuhmaykoosib Inninuwug, Reconciliation and Canadian Law*, (Halifax ; Winnipeg: Fernwood Pub, 2012).; Borrows, *Canada's Indigenous Constitution*, 2010.; Borrows, *Drawing Out Law*, 2010.; Borrows, *Freedom and Indigenous*, 2016.; Irlbacher-Fox, *Finding Dasha*, 2009.; Napoleon, "Ayook," 2009.

“holds both opportunities and dangers” for Indigenous Peoples.<sup>36</sup> In the following discussion, I pay special attention to the ways in which the SXTA recognizes such dangers and attempt to expand their zones of opportunity through the BC treaty process. From what I witnessed, the work the SXTA is attempting to do is, at root, narrative: it is attempting to resist being subsumed within the state’s narrative frameworks while asserting Stó:lō ones, which articulate a culturally-rooted story about who Stó:lō people are. These narratives of collective identity are also, inherently, articulations of Stó:lō title to and responsibility for their territory. I focus on such attempted narrative occupations because there is a general shortage of documentation in the literature of how First Nations in treaty perceive and navigate the process, and what literature there is primarily demonstrates how their engagements of the treaty process end by drawing them deeper into a colonial relationship. While I do not dispute the accuracy of such critical readings in general or in the specific cases that have been examined, I am wary of the idea that these are the only stories that can be told about treaty or that the main product of treaty negotiations is always the further marginalization of Indigenous Peoples within their homelands.

Indigenous Peoples’ struggles against the theft of their lands and their political, economic, and cultural marginalization has been a predominant feature of the history of British Columbia (if not, until relatively recently, a predominant feature of how that history has been written).

Their successes in this struggle have been many and remarkable, considering the strength of structural opposition they have faced. Scholarly works analyzing the forces acting against

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<sup>36</sup> Clifford, *Returns*, 18. Anthropologist Elizabeth Povinelli offers us the term late liberalism in the latest extension of her work on recognition politics. Late liberalism denotes “the governance of social difference in the wake of anticolonial movements and the emergence of new social movements”, and thus describes a form of governmentality – the way liberalism has responded to certain social justice challenges – rather than a temporal period. Povinelli observes that in late liberalism “[t]he subjects of recognition are called to present difference in a form that feels like difference but does not permit any real difference to confront a normative world.” See: Elizabeth A. Povinelli, *Economies of Abandonment: Social Belonging and Endurance in Late Liberalism*, (Duke University Press, 2011): ix, 31. The main focal points of this dissertation are the ways in which Indigenous Peoples have confronted the colonial and Canadian states with articulations of ‘real difference’, whether or not they have been successful in transforming or altering the ‘normative world’ of state operations or their underlying frameworks.

Indigenous attempts to be self-directing are very important, but they do not necessarily help us to account for the enduring presence of Indigenous Peoples, politics, and ever-expanding aspirations within, apart from, and in spite of the Canadian state.<sup>37</sup> In considering the ways the SXTA has engaged the treaty process – at the level of narrative – I hope to offer examples of micro-instances in one (prolonged) encounter of how Indigenous Peoples refuse to be subsumed within the Canadian nation-state. I believe these instances, however unfinished and uncertain, offer one angle from which to understand the many forms of social action and resistance that represent the advances Indigenous Peoples have made in securing their rights and title over the last century and a half. It is critical that we understand what such advances – however partial – look like on the ground and in various processes through which Indigenous people attempt to rebuild themselves, while also observing the forces that work against such efforts. In short, I wish to begin to address the limited vocabulary that exists in the literature for telling a story about the ways in which Indigenous Peoples and their assertions of territory and place-based authority remain present, and appear to be gaining momentum. I seek to do so without dismissing or in any way downplaying the simultaneous and co-existing conditions of marginalization and oppression they continue to experience within settler states.

This chapter is in part inspired by scholars who caution against adopting a ‘fatal-impact’ thesis with respect to understanding the outcomes of Indigenous engagements of the state or other external forces, whether it be participating in the global art market, settler legal cultures, or late stage capitalism. It is not enough, James Clifford argues, to narrate Indigenous pasts, presents, or futures simply as components of global forces. Rather, Clifford insists that such encounters and their effects be understood in terms of their “intersecting historicities”, lest

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<sup>37</sup> Or what Gerald Vizenor has termed ‘survivance.’ Gerald Vizenor, *Survivance: Narratives of Native Presence*, (U of Nebraska Press, 2008).

Indigenous Peoples be cast once again as always already on the verge of vanishing as a result of their relationships with settler societies.<sup>38</sup> Drawing on Stuart Hall's concept of articulation, Clifford observes that in order

[t]o grasp the specific dialectics of innovation and constraint in [Indigenous] countercultures, a Gramscian analysis of changing hegemonies and struggles for relative power is far more historically concrete than before-after narratives of cultural loss, social assimilation, or inevitable economic subsumption. Hegemony is not domination, but rather a historical process: unfinished struggles, contingent alliances, and accommodations in an evolving field of unequal forces.<sup>39</sup>

Hegemony remains incomplete, but why and how?

By way of explanation, James Tully offers a model of social change that can look quite different from more readily understood revolutionary models, which make for appealing stories *because* they tend to simplify, for a short time, what are complex, ambiguous, and open-ended social relationships. Tully notes how human agents can and do 'act otherwise' than the dominant structures of power decree in any number of possible circumstances, and that these acts need not take the form of outright revolution against the existing system in order to qualify as making a difference, although they may prove harder to detect.<sup>40</sup> Indeed, Tully notes the difficulty in drawing "a sharp distinction between negotiation and confrontation" asking:

When does a negotiation tactic become an act of confrontation? [...] [o]n what grounds other than the binary paradigm, could one say that a reforming negotiator who takes [the] courageous step [of confrontation in some form] within the negotiations is necessarily co-opted and ineffective, whereas the citizens who refuse to enter into negotiations and organise for the revolution from the outside are necessarily confrontational and effective? Even retrospectively, it is difficult to say which confrontation activities precipitated an overall change or transformation.<sup>41</sup>

According to Saulteaux, Cree, and Dunne's legal scholar Val Napoleon, one way that communities can guard against the coercive or co-opting tendencies of the state is to maintain a

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<sup>38</sup> Clifford, *Returns*, 34.

<sup>39</sup> Clifford, *Returns*, 32.

<sup>40</sup> Tully, *Public Philosophy*, 280.

<sup>41</sup> *Ibid.*, 298.

focus on how a given process – be it a major litigation case or long-term treaty negotiations – fits within and serves the larger political project, and not allow any specific process to become an end in itself.<sup>42</sup> This is by no means a simple task, as Napoleon explains in her analysis of the impacts of the decade-long Delgamuukw land claims case upon Gitksan traditional authorities and legal orders. She explains:

A legal action, even one as inspiring and all encompassing as Delgamuukw, cannot sustain a political movement for a people. It has to be a tool for the accomplishment of a larger political aim. In this case, failure to thoroughly ground the litigation in the over-arching aboriginal political struggle could easily create a situation where the legal action becomes an end in itself, absorbing all the aboriginal group's resources – time, energy, and finances. Despite many persons' best efforts, this may have occurred in Delgamuukw.<sup>43</sup>

Following from Clifford, Napoleon questions the utility of the 'fatal impact thesis' of Indigenous engagements of the state and its logics. This notion presumes that Indigenous Peoples, cultures, and legal orders do not have the integrity to withstand challenges from encounters with other peoples, cultures, and legal orders, and cannot change in adaptive ways that maintain their integrity and distinctiveness.<sup>44</sup> Napoleon maintains that there are (and have been) concrete and identifiable ways in which Indigenous cultures are undermined, and concrete and identifiable ways to counteract such forces. The task – by no means an easy one – is to identify both and deepen the practices around the latter. Napoleon advises rooting one's actions in the grounded precepts of Indigenous philosophy and law as a way to prevent slipping into the languages and logics of the Canadian legal system, certainly a risk of long-term litigation and political negotiations. But this effort need not exclude productive and strategic borrowings from that system, where it serves the broader political project. It can be difficult to anticipate in advance the long-term effects of actions taken in the present. However, the SXTA's attempts to expand

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<sup>42</sup> Napoleon, "Ayook", 236.

<sup>43</sup> Ibid.

<sup>44</sup> See Clifford, *Returns*, 2013.; Napoleon, "Ayook", 327-8.

the received parameters of the treaty process suggest that the Stó:lō treaty team, and those they represent, have been adept at identifying problematic aspects of the process, and are attempting to use the process to protect the relationships and landscapes upon which Stó:lō ceremonial culture, and thus the traditional sources of Stó:lō law and governance, depends. Whether this and a possible treaty will be judged satisfactory by future generations of Stó:lō citizens remains to be seen, but in order to understand the stories told in the final text of a treaty, we must first consider what stories people tried to tell in the process of treaty-making.

### **I. Defining the Terms of Engagement**

What kind of story can we write together, about our relationship with one another, using only one of our languages? In his thoughtful critique of the BC treaty process, Andrew Woolford urges us to consider how its “power imbalances are already inscribed into language”, as well as how such imbalances “are particularly noticeable in intercultural negotiations in which a dominant culture is reluctant or unable to understand the other culture except in terms provided by the former.”<sup>45</sup> Words are symbols: for ideas, concepts, principles, ways of understanding people and places, and the relationships between them. From what I observed, the power of language pervades every dimension of the treaty-making process. Indeed, the primary focus of negotiations at the main table meetings is on language, as the parties sift through specific terms, their assumptions, meanings, and potential implications for what kinds of stories they tell.<sup>46</sup> The

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<sup>45</sup> Woolford, *Between Justice*, 38.

<sup>46</sup> The semantic dimensions of treaty-making have been discussed by Blackburn (2005) and Woolford (2005). The intended meanings of historical treaties continue to be contentiously debated, as seen with the Douglas Treaties in BC, and with respect to the numbered treaties that spread out over the other Canadian provinces. See: Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*, First Edition, (Toronto; Buffalo; London: University of Toronto Press, 2014).; Nicholas Xemtoltw Claxton and Jason Matthew Cameron Price, “To Fish as Formerly: A Resurgent Journey Back to the Saanich Reef Net Fishery,” (Ph.D. Dissertation, University of Victoria, 2015).; Alexandra Harmon, ed., *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, The Emil and Kathleen Sick Lecture-Book Series in Western History and Biography, (Seattle: Center for the Study of the Pacific Northwest: In association with University of Washington Press, Seattle and London, 2008).; Neil Vallance, “Sharing the Land: The Formation of the Vancouver Island (or ‘Douglas’) Treaties of 1850-1854 in Historical, Legal and Comparative Context,” (Ph.D. Dissertation, University of Victoria, 2015).

received language (English, legalistic) for treaty-making remains fundamentally culturally-rooted, no matter how much it is at this point a common language that all parties are more or less fluent in. Terms such as ‘fiduciary duty’, ‘fee simple’, and ‘subsurface resources’ inherit more from western vocabularies of law and practices of contract negotiation than Stó:lō practices for conflict resolution. Which is not to say that the SXTA necessarily or always finds such terms to be an imposition, or that parallel concepts cannot be found within *Halq’eméylem*. Sometimes, even when we are speaking in a shared language, we may not always mean the same thing.<sup>47</sup>

The SXTA recognize the practical and symbolic consequences of how language is used in the treaty, and in conceptualizing what kinds of relationships treaty-making is intended to produce. In 2009, Hall observed that even the term ‘treaty’ carries with it associations with the isolationist reserve-creation that has come to characterize the numbered treaties: “Okay, we’re going to push you guys over here and here’s the treaty...that’s basically going to spell out the rules that we shall not interfere with you but you shall not interfere with us.”<sup>48</sup> Indeed, the language of a ‘Final Agreement’ (the technical term for the treaty document), has been criticized for the way it speaks to an impossible desire to ‘settle the land question’ once and for all, seeking to create certainty by locking First Nations into a definition of their rights and title that is frozen in time.<sup>49</sup> Instead, Hall and other members of the treaty team envision treaties as co-existence or relationship agreements, meant to establish the guidelines for how the different authorities will engage with one another over time. One of the challenges is to create a relationship roadmap that

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<sup>47</sup> Blackburn, “Searching for Guarantees”, 2005.; Harvey, “Speaking in *S’ólh Téméxw*”, 2009. Schaepe observes the “fissures” that exist between Stó:lō and state understands of their relationships with the land. Schaepe suggests that Stó:lō consider themselves ‘of’ the land, whereas Canadian governments are best conceived as operating from the position of being ‘on’ the land. Schaepe, “Making the World Right”, 243-54.

<sup>48</sup> Hall, Personal Interview, 2009. See also Asch’s thoughtful historicization of what treaties have come to represent in the Canadian public imagination, versus what they may have meant at the time of their creation, and what they could mean in the future: Asch, *On Being Here*, 2014.

<sup>49</sup> Hall, Personal Interview, 2009.; Schaepe, “Making the World Right”, 2007.; Tully, “Reconsidering The BC”, 2001.

is open enough to accommodate unknown but inevitably changing future relationship contexts. Colonialist approaches to Indigenous-state relations in the form of direct assimilation policies (we will relate better if you are more like us; e.g., the Indian Act) or isolate and manage policies (the reserve system) have been tried and failed, so what is needed, Hall and others argue, is a sustained conversation about how to live together in shared lands and shared futures.

The effects of the SXTA's attempts to correct power imbalances where they are detected in strategic parts of the process are, as yet, inconclusive, but the treaty team is acutely aware that such representational practices matter. When the SXTA was formed after the political split in 2004, they focused on developing the Culture and Heritage chapter of the treaty first, as a way to, in the words of Technical Advisor/General Manager, and Treaty Operations Director for the SXTA, Dr. David Schaepe, *Tl'elqtelemexw*, "develop a screen or filter that was uniquely Stó:lō, through which everything else would pass."<sup>50</sup> Their work on this chapter drew heavily upon the Stó:lō Heritage Policy Manual, first developed in 1995, and then reworked in 1999 by Schaepe and *Naxaxalhts'i*, Dr. Albert "Sonny" McHalsie, Cultural Advisor for the SXTA on behalf of the Stó:lō Nation, which at that time represented 19 bands.<sup>51</sup> It is this chapter that grounds the SXTA's approach to treaty-making, guided by the statement of title and responsibility *S'ólh Téméxw te ikw'élò. Xólhmet te mekw'stám ít kwelát* (This is our land. We have to look after everything that belongs to us).<sup>52</sup>

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<sup>50</sup> David M. Schaepe, Personal Interview by author, 11 May, 2009.

<sup>51</sup> *Naxaxalhts'i* is also Cultural Advisor/Historian of the Stó:lō Research and Resource Management Centre. Schaepe discusses the development of the Stó:lō Heritage Policy Manual, and describes how it has become central to the SXTA's approach to treaty negotiations. The latest edition is authored by the Stó:lō Nation and Stó:lō Tribal Council and approved by LYSS. See: Schaepe, "Making the World Right", 248.; Stó:lō Nation/Stó:lō Tribal Council, *Stó:lō Heritage Policy Manual*, Approved by the Stó:lō Nation Lalems ye Stó:lō Si:ya:m (LYSS), (5 May, 2003). <http://www.srrmcentre.com/files/File/Stolo%20Heritage%20Policy%20Manual%20-%20May%202003%20-%20v1.2.pdf>.

<sup>52</sup> *Naxaxalhts'i* cites Stó:lō elder Tilly Gutierrez, who remembered her elders saying this when talking about the land question when they gathered at the fish camps in the Fraser Canyon in the early 1900s. *Naxaxalhts'i*, "We Have to Take Care", 85. See also: Stó:lō Nation/Stó:lō Tribal Council, *Stó:lō Heritage*, 2003.

Another critical chapter in the SXTA negotiations is the Definitions chapter, which is compiled at Stage Four of the process and provides legal definitions for key terminology such as ‘First Nation’, ‘consultation’, ‘forest resource’, and so on. Early on in their re-engagement with treaty, the SXTA pushed to have as many *Halq’eméylem* terms as possible included in the glossary, describing the defined terms as “the centerpieces around which less formal language is written” in the treaty.<sup>53</sup> Schaepe notes that for all parties, “[t]hat initiative, just taking the first step in laying out language is offensive in nature.”<sup>54</sup> At this juncture, the Definitions chapter is the first chapter in the treaty, laying out the treaty’s terms and concepts at the outset.<sup>55</sup> The SXTA’s guiding principle for the Definitions chapter has been to include *Halq’eméylem* terminology if an appropriate parallel term in English does not exist.<sup>56</sup> Introducing *Halq’eméylem* terms for key Stó:lō concepts into the definitions chapter is an assertion of Stó:lō values, beliefs, and practices as part of the conceptual vocabulary with which the treaty will be negotiated. Such inclusions are meant to shape the process as well as the outcome of treaty-making. Rather than referring to other modern treaties or case law, these terms reference *a set of relationships* that originate from Stó:lō history and culture, relationships that constitute a Stó:lō vision of their rights and title. Like the work of mapping place names in Indigenous territories, inserting *Halq’eméylem* terms into the Definitions chapter attempts to repopulate the conceptual landscape of treaty-making with Stó:lō vocabularies.

Indeed, working with place names in *S’ólh Téméxw* for many years has helped Naxaxalhts’i to understand and articulate the complex linkages between Stó:lō people and their

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<sup>53</sup> Schaepe, Personal Interview, 2009.

<sup>54</sup> Ibid. Schaepe is also Director and Senior Archaeologist for the Stó:lō Research and Resource Management Center. He has been working as a community-based researcher for the Stó:lō for fifteen years.

<sup>55</sup> The position of the Definitions chapter in a modern treaty can vary. In the Maa-nulth Final Agreement, it is the very last chapter.

<sup>56</sup> Naxaxalhts’i identified this as the suggestion of the SXTA’s legal representative and current Chief Negotiator, Jean Teillet. Naxaxalhts’i, Personal Interview by author, 31 July 2015.

territory.<sup>57</sup> The connective threads are narrative and spiritual in nature: the *sxwōxwiyám* (the oral histories that “account for the origins and connections of Stó:lō, their land, resources and *sxoxomes*” – ‘gifts from the creator’), the *sqwelqwel* (true stories or personal or family narratives), and *shxweli* (the spirit or life force that connects all things in *S’ólh Téméxw*).<sup>58</sup> In conversations I have had with him, Naxaxalhts’i describes the ways place names contain clues to the stories – the *sxwōxwiyám* and *sqwelqwel* – that cluster in specific places. In his chapter in the edited collection *Be of Good Mind: Essays on the Coast Salish*, Naxaxalhts’i describes in more depth how such stories can teach Stó:lō people today about how they are each connected to a large territory through personal and sacred genealogies.<sup>59</sup> Using himself as an example, Naxaxalhts’i’s account outlines how Stó:lō people’s relationships to place and to one another were organized through these personal and sacred histories, how the stories were remembered and who kept track of them, how they helped people make decisions in instances of conflict, and how they offer the outlines of a Stó:lō legal order and a Stó:lō articulation of title.

In the Definitions chapter, *Halq’eméylem* terms are intended to orient the negotiations towards the relationships they invoke and describe. *Tómiyeqw* is a *Halq’eméylem* word that in English means both great-great-great-great-grandparent and great-great-great-great-grandchild, expressing the relationships that exist between Stó:lō people seven generations on either side of those living in the present, who are responsible for maintaining the connections between past and future ancestors.<sup>60</sup> Schaepe explains that *tómiyeqw* has been brought into treaty negotiations as a principle to inform decision-making processes. Whether the topic is governance or resource management, *tómiyeqw* reminds Stó:lō participants of their obligations to their past and future

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<sup>57</sup> *S’ólh Téméxw* translates roughly as ‘our land.’

<sup>58</sup> Stó:lō Nation/ Stó:lō Tribal Council, *Stó:lō Heritage Policy Manual*, 8. *Shxweli* has not, as yet, been accepted into the draft Definitions chapter by the provincial and federal government representatives.

<sup>59</sup> Naxaxalhts’i, “We Have to Take Care”, 2007.

<sup>60</sup> Stó:lō Nation/ Stó:lō Tribal Council, *Stó:lō Heritage Policy Manual*, 1-2.

relations and that the treaty “should really benefit people [for] seven generations, it should stand for a long, long time.”<sup>61</sup> In this way, *Halq’eméylem* terms introduce culturally-rooted principles of relationship into the treaty process so they can, alongside their English counterparts, inform the conceptual language with which treaty is created. In many cases, these terms also present a challenge to the primacy given to their English alternatives. Schaepe explains by comparing ‘resource’ and ‘*sxoxomes*’:

So to look at the environment as not just...the provincial landscape of resource, resource money, you know, value for extraction and conversion into a capital market system...there are deeper sense[s] of relationships that govern how you use things, things like cedar and so on going back to understanding their origin within *sxwōxwiyám*, and as *sxoxomes*, gifts of the creator, to which you have different sets of relationships altogether than are recognized by either BC or Canada.<sup>62</sup>

Schaepe and Naxaxalhts’i both spoke to the SXTA’s deliberate emphasis on language and culture as an attempt to make a concerted shift away from relying on non-Indigenous narrative frameworks for understanding who Stó:lō people are, where and what they come from, what they want to achieve, and how they are going to do it. Instead of falling into or maintaining a sense that, as Hall noted in 2009, Stó:lō people ‘exist because the government allows them to,’ the SXTA is providing Stó:lō points of reference to guide them in their approach to treaty-making. As I have heard him say over and over, Naxaxalhts’i notes the importance of grounding Stó:lō people’s understandings of their rights and title in a Stó:lō narrative framework, not a Canadian one:

[M]y line of thinking is that, you know, people start talking about Aboriginal rights and title, and a lot people think of section 35 of the constitution, right? And I like to remind everyone that that’s not the source of our Aboriginal rights and title, that’s the burden upon the crown to recognize our right and title. So that’s why, in ‘Be of Good Mind’, I talk about what is our rights and title, it’s all those things. From a *Halq’eméylem* perspective or

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<sup>61</sup> Schaepe, Personal Interview, 2009.

<sup>62</sup> Ibid. *Sxwōxwiyám* are oral histories that describe the distant past and that “account for the origins and connections of the Stó:lō, their land, resources and *sxoxomes*.” For more information see citation in footnote below and: Stó:lō Nation/ Stó:lō Tribal Council, *Stó:lō Heritage Policy Manual*, 8.

a Stó:lō perspective, all those different things that are out there on the land, I mean that's who we are. As long as we have the faith and the belief in those things, that defines our Aboriginal rights and title. That's why I feel that we – with whatever words we negotiate, I think we should incorporate as much of our language as we can and as much of the perspectives we have towards the land, based on the teachings our elders have left behind for us with the language.<sup>63</sup>

Importantly, despite the intractability of the federal and provincial governments' mandates on some central issues, what a treaty is – that is to say, people's story about treaty – changes over time. The presence of such changes became clear to me over the course of the two main rounds of research that fed this chapter. The first occurred in 2009, when I was a student in the graduate-level Ethnohistory Field School with the Stó:lō. The second took place between the autumns of 2014 and 2015, when I attended monthly treaty meetings as an observer, and had further formal and informal conversations with members of the treaty team and the BC Treaty Commission. One of the most surprising consequences of this gap between my discussions with members of the treaty negotiating team, is that it showed a significant shift in people's perception of the process. In 2009, Naxaxalhts'i expressed concern about the risks of including *Halq'eméylem* terms and concepts in the list of defined terms, concerns that I think at the time conveyed a lack of faith in the negotiations process, and in the state's ability to accommodate and support Stó:lō objectives. In retrospect, I believe these concerns in some ways conveyed a sense that Stó:lō people's engagement with their culture was fragile and therefore vulnerable to state manipulation. In 2009, Naxaxalhts'i was disturbed by the pressures coming from the provincial government to define Stó:lō terms and concepts in fixed ways, as well as the consequences of hardening the interpretive meanings of concepts which in Stó:lō oral tradition are more fluid and negotiated in relation to specific contexts. In an interview from that period, Naxaxalhts'i explained:

They're legal definitions, that's what B.C. wants – to be able to define it, legally. So in the end, there's no vagueness there. But to me it's being drafted to their advantage in the end.

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<sup>63</sup> Naxaxalhts'i, Albert 'Sonny' McHalsie, Personal Interview by Author, 19 May 2009.

Another way to erode whatever strength of rights or title that we have to our own language that they can define it and then just erode it so that it matches to their definition, their legal definition. It erodes our rights and title and that's what they want, right?

If there's another way we can define it, right away that breaks down our language, our use of the language in the treaty. So in the end it's answerable to their courts not answerable to ours. So in the end they want to make sure they can define that word in a court setting; what's the legal definition of that *Halq'eméylem* word in English? Like, you know? [laughs] So. Yeah, so it seems to me that's what they're trying to do.<sup>64</sup>

Naxaxalhts'i's wariness here was partly about whether Stó:lō people would be able to maintain jurisdiction over *Halq'eméylem* terms and principles once they have been translated into a legal framework of meaning. This wariness speaks to a fundamental mistrust of the state's ability to accommodate or be reconciled to Stó:lō priorities, understandings, and processes:

To me...if the province and Canada are able to define it or even explain it in their legal definitions, then it's almost like they pull it away from us, like they pull the jurisdiction or the power from it away. Like, 'it's okay, we can do this – it all fits within our system,' right? And to me, it seems like the more we extract things from our culture or our language or our perspective or adapt it or translate it to their language it seems like the more that it is pulling away from us and it becomes under their jurisdiction. That's the way I see it. That's what I'm concerned about. Because you even hear the elders saying that: 'our whole constitution should be in our language.' 'The whole treaty should be in our language.' Right? And I think they're right. I think it should be. Yeah. Because the more it's not in our language, the more it's in the English legal language, that just erodes almost everything that we have.<sup>65</sup>

However, when I asked Naxaxalhts'i about issues of translation, jurisdiction and *Halq'eméylem* in the definitions chapter again in 2015, his views had changed significantly. The anxieties he expressed in 2009 were absent, which he attributed in large part to Stó:lō people's growing engagement with their own culture. Naxaxalhts'i perceived Stó:lō people's strengthening connection to their culture as expanding their ability to remain strong in themselves while navigating through processes such as treaty negotiations. For him, understanding the *sxwōxwiyám*, *sqwelqwel*, and how they are connected to the places in their

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

territory through their *shxweli*, means that Stó:lō people will be able to articulate their rights and title in relation to those things, and not in relation to Canadian case law, the Royal Proclamation, or section 35 of the constitution. For Naxaxalhts'i, understanding who they are in a Stó:lō epistemology ensures that people will be able to evaluate whether or not a treaty is good for them, based on how it aligns with or diverges from their understanding of where their title derives from. In short, as long as Stó:lō people are firmly grounded in their own stories of who they are, what relationships of rights and responsibility connect them to their territory and to one another, they will be less vulnerable to getting pulled into anyone else's narrative frameworks.

In some ways, Naxaxalhts'i's shifting attitude speaks to the general zeitgeist of cultural resurgence among Indigenous Peoples in Canada that has been building since the 1960s, but has become especially public in the last few years. Broad social movements such as *Idle No More* are collective expressions on a large scale of numerous smaller, more local re-engagements with Indigenous cultures. Naxaxalhts'i's observations of a Stó:lō cultural resurgence are grounded in local examples, such as the relaxation of the protocol against creating visual representations of the *sxwó:yxwey* mask, which is danced at important ceremonial events including the winter dance. Unlike many north west coast cultures, *sxwó:yxwey* masks in Stó:lō ceremonial practices have been closely guarded, with relatively few outsiders permitted to see them or the dances of which they are a part. For decades, Stó:lō people have observed the cultural protocol against photographs or other visual representations of the *sxwó:yxwey*, and the publication or circulation of historical photos have been met with deep disapproval. However, Naxaxalhts'i notes instances of a softening of this protocol in recent years, illustrated most explicitly in a house-post style carving commissioned for the entrance of what used to be a residential school building at

Mission Heritage Park. The carvings depict two *sxwó:yxwey* dancers in full detail, standing across from one another with a beam above them.<sup>66</sup>

At first, Naxaxalhts'i was surprised that the carvings were being made for public display, rather than for inside of a Sumas longhouse, as they would have been in the past. After giving it some thought, he came to the conclusion that it was very appropriate, given the role the mask plays in blessing and preparing the beginning of a new phase in someone's life. He explained:

So when you're first born, [the *sxwó:yxwey*] blesses you for your childhood. Puberty: blesses you for your adulthood. Marriage: blesses you for your new relationship. New ancestral name: blesses you for your identity. When you die: blesses you so that your spirit can go join the other ancestor spirits. So the whole thing about residential school, where they're trying to put that thing behind them, it's like the mask is there to bless them, prepare them for their new life, and dropping all those bad things that have happened to them at residential school. So it made a lot of sense.<sup>67</sup>

For Naxaxalhts'i, the fact that this role of the mask and dancers was being publicly displayed also told another story, to a broader audience. In short:

To me, it's like a statement, a very subtle statement but strong statement to the general public saying that you know, our *sxwó:yxwey* yes, is very important is very sacred to us, but it's so strong in us right now, that we're not scared to put it out there anymore. We know, right, you can't take this away from us, this is ours, we're hanging onto it, we're keeping it, but here you can have a look at these things, right.<sup>68</sup>

Not only can people look, they can take pictures as well. Naxaxalhts'i shared his recent reflections on the idea, once widespread among Stó:lō knowledge holders, that photographs would 'take the spirit away' from the mask:

I thought about that so much, I was like, I can't see that. I can't see some little gadget, made by western society, would have any sort of power to come in and do a click and that takes your spirit. You know? [laughs] That's just too far out for me. So I expressed that, and a lot of the members of the house agreed. They said yeah, it can't. You know,

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<sup>66</sup> The carver of the houseposts is Raphael Silver, from the Sumas First Nation. Adrian MacNair, "Sumas Monument to Be Erected at Fraser River Heritage Park - Mission City News," *Mission City Record*, 18 May, 2012, <<http://www.missioncityrecord.com/community/152100455.html>> (Accessed 16 April 2016).

<sup>67</sup> Naxaxalhts'i, Personal Interview, 31 July.

<sup>68</sup> Ibid.

because our spirit is so strong. There's no way that some little metal box or plastic or whatever is going to come and take it away.<sup>69</sup>

Naxaxalhts'i's reflective evaluation of Stó:lō cultural protocols not only demonstrates a living culture (that is considered, debated, and undergoes change) it also suggests a growing sense that the culture is made stronger through sharing it more broadly. In this and other examples he discussed with me, Naxaxalhts'i sees more and more Stó:lō people immersing themselves in the knowledge and practices of Stó:lō traditions, creating culturally-rooted self-affirming narratives of who they are and where their strengths derive from. For Naxaxalhts'i, this represents a level of cultural confidence that he finds personally heartening and informed the way he was thinking about treaty in 2015.

Thus for Naxaxalhts'i, having *Halq'eméylem* terms in the Definitions chapter is a way of ensuring that Stó:lō perspectives are at the center of the treaty. At this stage in the process, the draft of the Definitions chapter is still provisional and *Halq'eméylem* terms have yet to be accepted by the federal or provincial government. Significantly, some terms and expressions are absent. Namely, the primary statement of Stó:lō people's title and responsibility to their territory: *S'ólh Téméxw te ikw'élò. Xólhmet te mekw'stám ít kwelát*. It matters – to the negotiations and to the treaty – whether these terms and phrases are accepted in the final draft, but regardless, the narrative work they have done and are doing for Stó:lō people and the SXTA is important. It is one of many ways that the SXTA team is working to articulate, for the purposes of land and self-government negotiations, the lines of relationship to place that interweave family genealogies, creation stories, and personal and collective histories. These stories mutually invest land in people and people in the land.

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<sup>69</sup> Ibid.

## II. Mapping Stó:lō Title and Territory

Partly instigated by the requirements of land claims processes, Indigenous Peoples across Canada are using mapping technologies of all kinds to visually represent their relationships to place which are also, inevitably, assertions of belonging and territory. Such assertions can create territorial conflicts among and between First Nations at the same time that they are affirmative of Indigenous Peoples' sense of authority in and belonging to territory. In Stage 1 of the BC treaty process, claimants must prepare and submit a Statement of Intent (SOI) and an accompanying map of claimed territories. On the BCTC website, A First Nation's claimed territory is marked by a solid black line or a shaded blue area superimposed upon a digital rendition of a topographical map. The regions claimed on these maps usually encompass the broadest possible territory the First Nations can claim. In a 2009 conversation, Dave Schaepe recognized that the hard visual and textual terminology seen in the standard SOI map format reflected the language of a land title map (e.g., "it's yours inside, it's not yours outside"), rather than conveying Stó:lō notions of title as based on relationships – among people, and with places.<sup>70</sup> When the original Stó:lō Nation Treaty Table was dissolved and reconfigured into the SXTA after the 2004 political split, the SXTA resubmitted a Statement of Intent and SOI map (Figure 2) to reflect what SXTA members felt was a more nuanced representation of Stó:lō inter-community relations in the region. Addressing these relationships was crucial for the SXTA, conscious as they were that having only some Stó:lō bands in treaty created significant anxieties for those not in treaty, especially in a territory where the Yale example was a constant reminder of what treaty could

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<sup>70</sup> Schaepe, Personal Interview, 2009. Standard SOI maps available on the Treaty Commission website offer an image of the relevant region of British Columbia in which claimed lands are either outlined in bold black lines, or shaded in pale blue. The style of map submitted by the SXTA is the only one available on the site that departs from this standard format. See < [http://www.bctreaty.net/files/first\\_nations.php](http://www.bctreaty.net/files/first_nations.php) > for links to the individual Treaty Commission pages of all First Nations in treaty and to access their SOI maps.

produce.<sup>71</sup>

Thus the SXTA team worked to create a map that would tell a more accurate story of Stó:lō relationships in the region, among peoples and with the land, that would help nuance the hard lines of claimed territory required in SOI maps. The revised map shows the large territory historically accessed by the broader community of Stó:lō people, including those descendants currently members of SXTA bands, marked by a red dotted line. This is what most Stó:lō people would refer to as *S'ólh Téméxw*, or “Our Land”, but which is referred to on the map as the “Statement of Intent” and “Shared Interest” areas, in which “most interests/substantive issues [are] largely shared with other First Nations.”<sup>72</sup> Within this, pink shaded areas denote the SXTA’s ‘Core Interest Area,’ which is defined as a “[m]anifestation of all interests/substantive issues in the area, largely without ‘overlap.’”<sup>73</sup> Both the shared and core interest areas contain SXTA and non-SXTA bands, which are identified on the map, along with dialect and micro-dialect regions, Stó:lō collective fishing reserves, cities, and major features of the geographical landscape such as streams and rivers. As Schaepe explains,

I think we still call it the statement of intent, we have to. But we added a lot of internal definition to it, including *Halq'eméylem* terms for the language... So we said, we can't do this with just one line... we wanted to show something in the – some substance within the outer boundary that shows the nature of relationships and we were going to use this relationship between language and tribal areas, and then a core area, so we're going to add at least two or three or more layers of additional information to, to get at who the Stó:lō *Xwexwilmexw* are, what their interests are how they're going to relate to others, whether

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<sup>71</sup> Schaepe observed this in 2009: “I mean the terminology itself is so prone to conflict, and this is nothing new, but just the way it's drawn, the guidelines for drawing the map, the terminology of the map, what it is... it's just inherently conflicting... so that's what happened, there's a lot of tension and conflict coming out of whether a group's in treaty or out of treaty, seeing these lines and claims to territory and the assumption that it's all exclusive, statements of intent frames it in a way that's not within Stó:lō society or negotiation of use of land and resources, but almost like a land title map, right... *it's yours inside, it's not yours outside*. That's pretty much the parallel, which is very different than a Stó:lō reckoning of land title and relationships with others.” Schaepe, Personal Interview, 2009.

<sup>72</sup> Stó:lō Nation, *Stó:lō Nation Treaty Table Statement of Intent*, SOI Map, (Stó:lō Research and Resource Management Center Archives, 1 May, 2006).

<sup>73</sup> *Ibid.*

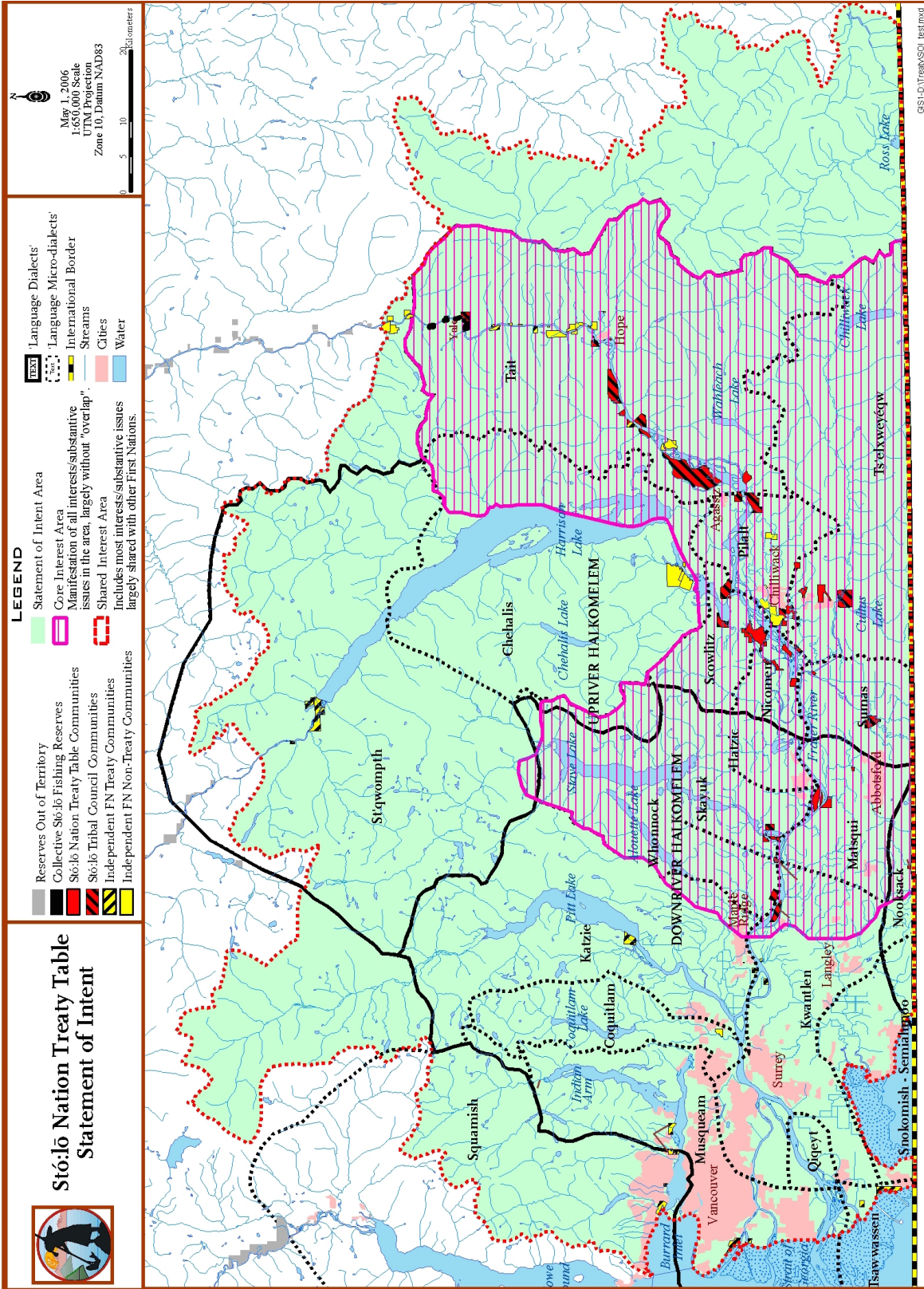


Figure 2. The Statement of Intent map used by the SXTA.

they're inside or outside of treaty...And mapping is one sort of approach to laying this out.<sup>74</sup>

This intentionally nuanced map was submitted to the BCTC for public presentation on its website, but when I first discussed the map with Schaepe in 2009, he and the treaty negotiation team were troubled at how long it was taking for the map to be uploaded to the site. Schaepe expressed the team's frustration with these external limitations on their attempts to communicate outward a less confrontational approach to their treaty negotiations. Schaepe described their mapping as "within parameters that go beyond what the BC Treaty Commission is looking for or even willing to accept."<sup>75</sup> For a period after 2009, the map was accepted and was viewable on the BCTC website. Since then, however, the hyperlink to the map went dead, and as of October 2016 the map shown on the BCTC website appears to have reverted back to the Stó:lō Nation's original SOI map showing only a thick black line around the maximum claimed area.<sup>76</sup>

Stó:lō communities have engaged in other kinds of map-making as part of their treaty-related work – work that has required the mobilization of different forms of cultural knowledge, including protocols for accessing and sharing such knowledge. The *Stó:lō-Coast Salish Historical Atlas*, published in 2001, contains maps showing cultural, linguistic, and socio-spiritual geographies in conjunction with maps representing glacial migration, historical inter-Indigenous raiding and trade routes, as well as pre-and post-contact transformations to the territory. The beautifully produced *Atlas* was intended to make accessible to Stó:lō and non-Stó:lō publics some of the research that had been conducted by the Stó:lō Nation's Aboriginal

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<sup>74</sup> Schaepe, Personal Interview, 2009.

<sup>75</sup> Ibid.

<sup>76</sup> See [http://www.bctreaty.net/sites/default/files/Stó:lō\\_SOI\\_Map.pdf](http://www.bctreaty.net/sites/default/files/Stó:lō_SOI_Map.pdf). The contact information is also extremely out of date, showing former negotiator Grand Chief Clarence Pennier's email as a primary contact for the SXTA. Pennier has not been the Chief Negotiator for the Stó:lō Nation since before the split in 2004.

Rights and Title department as part of its preparation for treaty negotiations.<sup>77</sup> In some ways, the *Atlas* represents in long form the complexity of relationships that the SXTA's SOI map is attempting to show. The *Atlas*' various map plates visualize historical change over time in people's relationships to one another and to place, the varied impacts of colonization and settlement upon Stó:lō populations, cultural practices, and local ecologies. In the *Atlas*, as in other communications outward within and beyond treaty, the act of describing who Stó:lō people are is at the same time an assertion of Stó:lō belonging to and jurisdiction over their territory. Moreover, the knowledge sharing required to produce such knowledge products themselves required Stó:lō and non-Stó:lō people to learn about and observe cultural protocols for how to appropriately share different forms of knowledge, when, and with whom. Such encounters, so often about learning how to listen to and for stories, involve extensive relationship building.

No matter what the context, maps that delineate territory are perhaps the most fraught. As Schaepe explained in 2009, whether dotted or bold, published in a book or drafted for treaty negotiation, the line that marks out *S'ólh Téméxw*,

[is] not the boundary, it's not the title line, it's a set of relationships between people and places and things within that define who the Stó:lō are, who the Stó:lō Xwexwilmexw are, what they're looking to achieve in establishing their rights and title within and to *S'ólh Téméxw*. So it's not just a geography, it's much more than that.<sup>78</sup>

Whether the SXTA is effective in communicating this vision outwards to the audiences that matter most – which are both other Stó:lō and state representatives – visual products such as the SOI map represent an attempt to articulate ways of relating that cannot be communicated through the standard mechanisms of the treaty process. In proposing a new style of claim map, the SXTA

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<sup>77</sup> Keith Thor Carlson, "Preface," in *A Stó:lō-Coast Salish Historical Atlas*, Stó:lō Heritage Trust and Keith Thor Carlson et al., eds. (Vancouver; Seattle: Douglas & McIntyre; University of Washington Press, 2001): xv. Like Naxaxalhts'i above, Carlson also notes the growing cultural confidence of Stó:lō people, and cites the shared cultural information contained in the *Atlas* as an expression of such confidence.

<sup>78</sup> Schaepe, Personal Interview, 2009.

is articulating – to multiple audiences – a Stó:lō notion of title and land-use sharing relationships, and in doing so is proposing a different story of what ‘territory’ consists of (i.e., relationships that must be negotiated and maintained rather than defined once and for all). In attempting to change the story of what territory is in a treaty framework, they are also attempting to change the story of treaty that is presented outwards to other Stó:lō communities and neighbouring First Nations. This is all story work.

*Overlaps vs. Shared Territory: An Emerging Story of Stó:lō Title*

As with the treaty’s legal glossary, language matters in claims maps. The SXTA’s SOI map attempts to reduce its potential for creating conflicts with other Stó:lō at the level of terminology as well as visually, most noticeably by making a distinction between the language of ‘overlap’ versus ‘shared territory.’ The issue these terms address is competing assertions of title between neighbouring First Nations or, as in the case of the SXTA, within a nation where some communities are in treaty and others are not. Naxaxalhts’i’s view is that overlap is a term that should be applied to Stó:lō relationships with other distinct nations, such as the Nlaka’pamux, Stl’atl’imx, or Okanagan, but not to other Stó:lō tribes, who exist in a shared territory, with shared title to the same lands and waters. For Naxaxalhts’i, Stó:lō title by definition underlies Crown title and is possessed by all Stó:lō people, not just treaty signatories. Even on treaty settlement lands, which within the terms of the treaty are the most wholly ‘owned’ lands of a treaty First Nation, Naxaxalhts’i envisions access rights for all Stó:lō operating in conjunction with traditional sources of authority for determining access and use rights. The treaty, Naxaxalhts’i insists, does not have the power to supplant these prior rights, as Stó:lō title cannot be removed or extinguished because Stó:lō people do not derive their rights and title from the

state, but from their interconnections to *S'ólh Téméxw* (which includes their relationships to one another, and long-term, closely connected occupation and use of the land).

For those on the treaty negotiation team, communicating this vision of Stó:lō title as shared outward to non-treaty Stó:lō communities is a critical but challenging part of the process. The general perception of title as defined within existing treaties is quite the opposite. As Naxaxalhts'i noted in 2015,

[T]hat's what people seem to think, that we're giving up our Aboriginal rights and title, and it's as if they think that we're not just giving up our Aboriginal rights and title, we're giving theirs up as well too. But no, we can't do that. We – no First Nation can do that. No one can give up other people's Aboriginal rights and title [...] We're not just going to go 'Ok it's all SXTA, that's it.' We're going to be in somebody's territory that's shared with some other people, and there's no way that we're going to cancel out their Aboriginal rights and title to that. As far as we're concerned, they're still going to have Aboriginal rights and title the same way that we're going to have Aboriginal rights and title to the land that's not treaty settlement land. Right? ...so it's still there so we still have to deal with it. So whatever developments that we do or partnerships that are formed we still have to get together rather than work against each other. So look at it as an opportunity to work together rather than something to block.<sup>79</sup>

In Naxaxalhts'i's view, the SXTA member communities would not support a treaty that did not uphold this vision of Stó:lō title underlying that of the Crown.

Nor is it any easier to bring the Crown around to a Stó:lō view of title. As yet, the province's definition of treaty settlement lands in existing treaties maintains that provincial Crown title underlies Aboriginal title. In the draft Glossary of Treaty-Related Terms, the province's definition of treaty settlement lands asserts that underlying title will rest with the provincial Crown. Indeed, the Crown has traditionally conceived of and approached treaty as a mechanism to extinguish Aboriginal title, either through explicit cede and surrender language, or less overtly through the modification of what title can mean through its definition in the treaty, creating defined and undefined rights and title. The Crown's position here is that that which is

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<sup>79</sup> Naxaxalhts'i, Personal Interview, 2015.

undefined functionally does not exist and will not be touched. A third, more recently developed approach maintains the Crown's recognition of Indigenous title on lands within and outside those dealt with in a treaty (while still maintaining that the underlying title sits with the Crown), but binds the signing First Nation to a pledge of non-assertion: in this arrangement, title outside that which is defined in the treaty cannot be asserted according to the terms of the final agreement. However, the SXTA's view is that the main purpose of defining the rights and title addressed in the treaty is to help create a means for how Stó:lō and Crown authorities will relate to one another; what remains undefined in the treaty or is (for now) not asserted continues to exist, and may be picked up again in the future as necessary. Thus, a treaty is not conceived of as a means to carve up territory into 'yours and mine' but as a blueprint for how to relate in shared territories.

As yet, the main negotiating parties continue to differ on their definitions of what title is and should be. In the meantime, however, treaty is one of the forces creating the necessity and sometimes the means to do the work of figuring out how to formalize territorial sharing and co-existence between the Stó:lō and the state, the Stó:lō and neighbouring nations, and among Stó:lō people.<sup>80</sup> Seemingly a matter of minor semantics, the distinction between overlap and shared territory helps to express a conception of relationship between peoples belonging to the same places not based on conflict (overlap) but cooperation (shared territory).<sup>81</sup> The project, then, becomes less about starting from an assumption of conflict, but of shared interests and the need to develop ways to work together. This atmosphere of cooperation, however, must be created in

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<sup>80</sup> Ibid.

<sup>81</sup> Snuneymuxw legal scholar Doug White, *Kwul'a'sul'tun, Tlii'shin*, makes the same point in his address to the 2012 Vancouver Island University Conference on The Vancouver Island Treaties of 1850-1854, noting that First Nations have a long and established history of treaty-making and Indigenous inter-national alliances to draw upon, one that preceded the arrival of Europeans in their territories. White urges Indigenous people to draw upon these practices in forging ways of co-existing into the future. Douglas White, *Kwul'a'sul'tun, Tlii'shin*, "Charting a New Course for Treaty Implementation," (presentation, The Vancouver Island Treaties of 1850-1854 Conference, co-hosted by Vancouver Island University and the Snuneymuxw First Nation, Nanaimo, BC, 11-12 May, 2012). See also Napoleon's detailed discussion about practices of Gitksan law in and outside of the formal environment of the feast hall, and the challenges facing the practice of Gitksan law today. Napoleon, "Ayook," 181-239.

the midst of treaty and non-treaty Stó:lō people's fears of what signing a treaty might do to their own title and that of their family, friends, and neighbours.

*Stó:lō Law and Tribal Areas*

Legal scholar Val Napoleon observes that conflict is normal in any society, and is itself not inherently a problem. Nor should internal disagreements about how to be, in the case of Napoleon's work, Gitksan necessarily be read as a sign of cultural dysfunction. In fact, she suggests quite the opposite: "If Gitksan people did not care deeply about being Gitksan in today's world, there would be no disputes about names, territories, intellectual property, kinship, Feasts, governance, or any other aspect of being Gitksan."<sup>82</sup> Rather, problems of extreme dysfunction arise when societies are not equipped with the appropriate mechanisms to resolve conflict in ways that are meaningful to them, a strong Indigenous legal order being at the foundation of such mechanisms. While such legal orders are only beginning to be formally identified for use in emerging governance models and land-use planning, Napoleon makes the point that "[l]aw is something that people actually do" and thus survives in Indigenous Peoples' lives as it is engaged formally and informally through existing practices such as marriage, adoption, management of resource harvesting sites, and the inheritance of names.<sup>83</sup> It also appears in formal inter-community alliances between Indigenous nations. Indeed, such alliances and fence-mending are occurring all up and down the coast, as seen recently in the renewal of alliances made between the Haida and the Heiltsuk Nation with the 2014 Treaty of Peace, Respect, and Responsibility. More local to the Stó:lō is a remarkable expression of Indigenous law is seen in the 2012 *Save the Fraser Declaration*, a document declaring unity among 130

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<sup>82</sup> Napoleon, "Ayook," 182.

<sup>83</sup> Napoleon, *Thinking About*, 3.

signing Indigenous nations against the Enbridge Northern Gateway Pipeline Project, and related transportation of Alberta tar sands products through the Fraser watershed.<sup>84</sup>

The wider Stó:lō community has been experimenting with how to renew forms of identity that draw upon pre-colonial collective organization, so as to move away from the fragmenting effects of Indian Act band governments and reserves on peoples' self-identifications, effects that have become sedimented in people's consciousness over time.<sup>85</sup> Stó:lō-driven research, aspects of which have been partially supported through treaty-related funding, has identified tribal areas within the larger shared territory of *S'ólh Téméxw* based on *Halq'eméylem* micro-dialects, such as Tít, Ts'elxwéyeqw, Peló:lhwx, Semá:th, Sts'a'íles, and Sq'éwlets.<sup>86</sup> These are quite purposefully represented on the SXTA's SOI map. These tribal/linguistic areas are beginning to be formally used as a means to organize territory and territorial authority, but it will take time to sort out what this should look like, what the scope of their political jurisdiction should be, and, perhaps more importantly, for people to find meaning in these new/old boundary lines.<sup>87</sup>

Naxaxalhts'i envisions how a deeper engagement with the political resurrection of linguistically-based tribal areas could offer Stó:lō people a clearer sense of who has the strongest authority in certain 'core' regions within the larger shared territory of *S'ólh Téméxw*, and can act as a framework for the diverse communities within tribal areas to work together.<sup>88</sup> One of the more established tribal organizations is the Ts'elxwéyeqw tribe, which consists of the band

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<sup>84</sup> See Valine Crist, "A Peace of Mind: Haida Heiltsuk Affirm Historic Relationship," *Haida Laas: Newsletter of the Council of the Haida Nation*, (October 2014): 8-9, 10. See also issues-specific inter-Indigenous alliances, such as the Save the Fraser Declaration (<http://www.savethefraser.ca/>) and the most recent Canada-wide treaty alliance against tar sands expansion (<http://www.treatyalliance.org/>).

<sup>85</sup> Keith Thor Carlson, *Colonial Fracture and Community Cohesion Governance in the Stó:lō Community of Shxw'ōwhámél*, Report prepared for the National Center for First Nations Governance, (West Vancouver, BC, Canada: National Centre for First Nations Governance, July 2007): 1-29.; Keith Thor Carlson, "Familial Cohesion and Colonial Atomization: Governance and Authority in a Coast Salish Community," *Native Studies Review* 19, no. 2 (December 2010): 1-42.

<sup>86</sup> I am grateful to Naxaxalhts'i for his help on the orthography of these names.

<sup>87</sup> I am thankful to Dave Schaepe for the latter insight into people's complex relationships to bands and reserve boundaries.

<sup>88</sup> Naxaxalhts'i himself is a member of Shxw'ōwhámél, which is not an SXTA community.

communities of Áthelets, Sq'ewqéyl, Shxwhá:y, Th'ewá:li, Sxwoyehálá, Ch'iyáqtel, and Yeqwyeqwí:ws.<sup>89</sup> Interestingly, only some of these communities are part of the SXTA, a fact that does not appear to Naxaxalhts'i as a major obstacle, either for the success of the treaty or the strengthening of the tribe as an organizational body. For Naxaxalhts'i, operating from a tribal framework is a way to 'know who you are' in a Stó:lō context, and problems arise from people acting without consideration of this knowledge. Naxaxalhts'i pointed to examples of how conflicts are created when people fail to engage with the tribal areas when signing Forest Range Agreements with the Province. The claim areas proposed in these agreements are often quite large, and are accepted with far less scrutiny than territories claimed through the BC treaty process. According to Celeste Haldane, the BC Treaty Commission places more emphasis (and often funding, although still limited) on developing ways for First Nations to determine meaningful and legitimate claim areas and sharing relationships than Resource Benefit Sharing such as the Forest Range Agreements. She feels that the conflict resolution mechanisms developed in treaty for territory disputes should be used more widely in non-treaty related government negotiations.<sup>90</sup> Naxaxalhts'i notes how he advised his nephew, Alfred James, who was working for the Shxw'ōwhámél band, against claiming territory outside of the Tít tribal area to which Shxw'ōwhámél belongs, but noted that many leaders in the region have ignored the tribal areas when pursuing such agreements. Tribal areas do not imply exclusive access to the associated territories; in contrast, many Stó:lō who belong to the Ts'elxwéyeqw tribe, for example, could also trace family connections to several other tribes in the region. Thus the objective is not to recreate new boundary lines to replace those of existing reserves or band communities, but to work out people's relationships to place by deepening their connections to

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<sup>89</sup> Anglicized versions: Aitchelitz, Skowkale, Skway, Soowahlie, Squiala, Tzeachten, and Yakweakwioose. See <http://www.ttml.ca/about-us/our-communities>.

<sup>90</sup> Celeste Haldane, Personal Interview by Author, 23 July, 2015.

their extended families. In the case of the potential for Forest Range Agreements to create territorial conflicts, Naxaxalhts'i holds both the applicants and the reviewing authorities in the provincial government responsible. Improperly researched Agreements, he suggests, will create the need for more negotiations in the long term than if both sides had done more of this work when reviewing the strength of such claims in the context of historical tribal territories.<sup>91</sup>

It cannot be denied that it is tremendously advantageous for Stó:lō people to act in unified ways when dealing with the provincial and federal governments. However, doing this requires the diverse communities of Stó:lō people to have a strong sense of how they relate together within a shared territory and have robust mechanisms for resolving internal territorial conflicts. The treaty process is by no means the only venue in which to develop relationship models in shared territories, nor is such work necessarily dependent on the resources made available through treaty funding, but treaty is one site in which this work is happening. Moreover, as the Forest Range Agreements show, treaties are not the only form of territorial agreements Indigenous Peoples are signing with settler states that have the potential to create conflicts within and between First Nations. It would seem that the SXTA team is acutely aware of how and why some Stó:lō people oppose treaty negotiations, and are working to address these concerns and make treaty support broader Stó:lō objectives of developing formalized ways for Stó:lō people to live together in their shared territory. The SOI map is a way of doing this work and of visually representing outwards the SXTA's intention to do this work. In this sense, the SOI map also illustrates the types of narrative labour at the heart of treaty negotiations, in that it shows how the SXTA recognizes the need to be alert to the diverse stories about what treaty is, its risks and potential, and how it will shape the relationships within *S'ólh Téméxw*, and between Stó:lō and neighbouring First Nations.

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<sup>91</sup> Naxaxalhts'i, Personal Interview, 2015.

### III. Locating Sacred Heritage and Preserving Stories as Law

S'ólh Téméxw identifies a spiritual geography, and a set of cultural relationships that connect people to a physical place through stories and narrative practices. For those who are knowledgeable in this way, stories cluster around specific places in and features on the landscape. According to the *Stó:lō Heritage Policy Manual*, these include sites that relate to the *sxwóxwiyám*, the stories from the distant past that connect Stó:lō people to their land, such as *Iyoqthet*, or transformer sites, which are “features of the landscape created through the transformations of *Xexá:ls* [the Transformers], *Tel Swayel* [the Sky-Borne People] or any other agent of *Chichel Siya:m* [the Creator].”<sup>92</sup> They may also include *xá:xa* sites (spiritually potent or ‘taboo’), which can be places inhabited by powerful *Stl'áleqem* (a type of spiritual being), other types of spiritual beings such as *s'ó:lmexw* (water babies) or *mimestiyexw* (Little People), or places used ceremonially by initiates into the *syúwél* (winter dance) and *sxwó:yxwey* dancers.<sup>93</sup> Over the last century and a half, many of these sites have been destroyed or damaged through road and railway construction, logging, mining, farming, and more recently, the expanding housing developments creeping across the valley, and forms of environmental pollution.

The ‘head of the dog’ (Sqwema:y) transformer site in the Fraser River was destroyed by logging.<sup>94</sup> ‘Mómet’es’ was mostly destroyed during the construction of the Canadian National Railway as recently as 1999.<sup>95</sup> Stone *T'xwelátse*, a rare transportable ancestor transformer stone, was ‘lost’ when the land he was on was taken up by *Xwelitem* farmers in the late 1800s, and later

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<sup>92</sup> Stó:lō Nation/Stó:lō Tribal Council, *Stó:lō Heritage*, 9.

<sup>93</sup> See Carlson, *The Power of Place*, 64-76.; also Naxaxalhts'i, “We Have to Take Care,” 126-30.; Schaepe, “Stó:lō Identity,” 249.; Stó:lō Nation/Stó:lō Tribal Council, *Stó:lō Heritage*, 7-9.

<sup>94</sup> Albert Phillips cited in Keith Thor Carlson, “A Legacy of Broken Promises: The *Xwelitem* Exploration and Settlement of *Solh Temexw* (Our Land),” in Stó:lō Heritage Trust. *You Are Asked to Witness: The Stó:lō in Canada's Pacific Coast History* (Chilliwack, B.C: Stó:lō Heritage Trust, 1997): 71.

<sup>95</sup> Pemberton cited in Schaepe, “Stó:lō Identity”, 248.

sold to a “dime store museum” in Washington state.<sup>96</sup> *Stl’áleqem* sites such as the Devil’s Lake woman “disappeared when the Canadian Pacific Railway was constructed.”<sup>97</sup> In a 2009 traditional use study conducted for an Environment Canada-funded research project into the cultural impacts of air pollution in the Fraser Valley, many elders noted their inability to point out even the largest transformer sites on some summer days, such as *Lhílheqey* (Mount Cheam), while telling her story to young people, due to the thick smog that accumulates at the narrow eastern edge of the funnel-like shape of the valley.<sup>98</sup> In addition to noting the damaging effects upon fish, wildlife, and people’s health, Stó:lō people interviewed for the same study observed that the *shxwelí*, the soul or spirit, of the air and water was being eroded through air pollution, making the land less spiritually potent.<sup>99</sup>

As Naxaxalhts’i explains, Stó:lō people need these places in order to know the stories – the *sxwōxwiyám* – they are associated with; knowing the stories is critical to knowing how Stó:lō people are connected to their territory, and knowing how they are connected to their territory and

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<sup>96</sup> Stone T’xwelátse was originally left unattended by the Semá:th (Sumas) villagers looking after him due to American vigilante attacks against the Semá:th, including the lynching of a young boy, Louie Sam. Stone T’xwelátse was repatriated in October 2006. For more on his story, see the online exhibit and book co-produced by the Stó:lō Nation, the Stó:lō Research and Resource Management Centre, and the Reach Gallery Museum in Abbotsford, BC: Stone T’xwelátse, the T’xwelátse Family, T’xwelátse (Herb Joe), David Champion, Sandra Shields, Scott Marsden, David M. Schaepe, *Naxaxalhts’i* (Albert “Sonny” McHalsie), “*The Loss and Return of Stone T’xwelátse*,” *Man Turned to Stone: T’xwelátse* (2012). <<http://www.srrmcentre.com/StoneT'xwelatse/15Sqwelqwel.html>>. ; Stone T’xwelátse, the T’xwelátse Family, T’xwelátse (Herb Joe), David Champion, Sandra Shields, Scott Marsden, David M. Schaepe, *Naxaxalhts’i* (Albert “Sonny” McHalsie), *Man Turned to Stone: T’xwelátse*, (Victoria, B.C.: Friesen Press, 2012). For information on the lynching of Louie Sam, see: Keith Thor Carlson, “The Lynching of Louis Sam,” *BC Studies*, no. 109 (Spring 1996): 63–79.; Carlson, *The Power of Place*, 255-61.; David McIlwraith, Director, *The Lynching of Louie Sam*, Wild Zone Films, 2005.

<sup>97</sup> Albert (Sonny) McHalsie, “Stl’áleqem Sites: Spiritually Potent Places in S’ólh Teméxw,” in *A Stó:lō-Coast Salish Historical Atlas*, Keith Thor Carlson et al. eds., (Vancouver; Seattle: Douglas & McIntyre; University of Washington Press, 2001): 8-9.

<sup>98</sup> Keith Thor Carlson, *Mountains That See, and Need To Be Seen: Aboriginal Perspectives On Degraded Visibility Associated With Air Pollution in The BC Lower Mainland and Fraser Valley*, Traditional Knowledge Study Prepared for Environment Canada, (May 2009). Accessible at: <<http://www.clearairbc.ca/visibility/Documents/Aboriginalperspectives.pdf>>

<sup>99</sup> *Shxwelí* is defined as a “spirit; life force; spiritual bond connecting all things.” As it has been explained to me, the erosion of the *shxwelí* of the air and water erodes the strength of the connection between things in a Stó:lō socio-spiritual geography. See: Stó:lō Nation/The Reach Gallery Museum Abbotsford. “A Note on the Halq’eméylem Language,” *Man Turned to Stone: T’xwelátse* (2012). <http://www.srrmcentre.com/StoneT'xwelatse/06NoteHalq.html> (Accessed 16 October 2016).

to each other is at the foundation of a Stó:lō definition of title and a Stó:lō legal order. As *Xwelixweltel*, Judge Steven Point has said, the Stó:lō constitution is written into the sacred geography of the landscape:

The Creator, in his wisdom, decided to take certain people and make an example of them. So throughout the Nation you have these stone figures which represent rules or values... Our Constitution has always been here. Our rules of conduct, our rules of behavior, the way that we think, our moral values... and they are actually situated around the Stó:lō Nation. They not only define our Nation but they define how we are supposed to conduct ourselves. Our Constitution has been there and it really is written in stone.<sup>100</sup>

At a November 2014 treaty meeting, the treaty negotiation team proposed a way to protect sacred sites in Stó:lō territory through a project they had been working on under Schaepe's direction with representatives from the federal and provincial governments in a Lands and Technical Working Group side table for some months.<sup>101</sup> The objective of this Working Group was to use existing provincial legislation – such as the BC Heritage Conservation Act – and other existing mechanisms to protect spiritual or sacred sites in the territory from further damage. Using existing legislation was a way of achieving protection while bypassing the need to create brand new legal mechanisms, a laborious and time-consuming endeavor. At one end of the SRRMC boardroom, a section of *S'ólh Téméxw* was projected onto a Smart board using Google earth imaging. This technology allowed the group to zoom in and out from this view from space get a better look at specific features of the landscape represented on the screen. In their work in earlier side-table meetings, the SRRMC, in support of the SXTA, had compiled and created maps showing the different kinds of land tenures that exist on this site. With a click of

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<sup>100</sup> Herb Joe, David M. Schaepe, Albert (Sonny) McHalsie, and Sandra Pederson. *T'welátse is Finally Home*. Chilliwack, BC: Stó:lō Research & Resource Management Centre/Bear Image Productions, 2006. Documentary Film. See also: <http://sxta.bc.ca/treaty-negotiations/constitution/>

<sup>101</sup> “The Working Groups are created by and placed under the supervision of the Main Table to produce work that must be approved by the Chief Negotiators. This model works well because it leaves technical issues to experts who can work out practical solutions to particular problems. Often, Working Groups can find solutions to problems that seem almost insurmountable to Chief Negotiators. In addition, Working Groups are responsible for narrowing down the scope of issues before these are brought to the Main Table for further discussion and decision-making.” See: <http://www.aadnc-aandc.gc.ca/eng/1100100014174/1100100014179>

the mouse, the map highlighted all the forestry tenures that had been granted; another showed us mining tenures, private properties, existing reserve lands, and provincial parkland. Here we could see where there is a gravel mine operation, which might be purchased for one of the SXTA member nations as a resource revenue sharing measure.

These maps were then replaced by little dots and shaded areas on the same stretch of land, representing sacred places in this small patch of *S'ólh Téméxw*. The treaty negotiation team took us through a chart listing just over 200 sacred sites in the wider territory, with a corresponding column describing what kind of protection each site or object required. Some places were specifically pinpointed on the map, others alluded to in shaded areas because their precise location must not be widely known, even among Stó:lō people.<sup>102</sup> Indeed, for many decades, keeping sacred places secret seemed the most effective way for Stó:lō people to keep them safe from settlers (to some extent, this is still considered the best policy).<sup>103</sup> That day, however, we were shown a creek running through one section of the landscape on the Smart board, a creek that longhouse initiates use in the winter months as a ritual bathing pool.

Later that afternoon, we all piled into two cars to go visit the site. After a brief tour through some of the local reserves, showing where a critical salmon river had been diverted, or where lands had been expropriated for municipal roadways and major power lines, we parked off a dirt road. Starting up a small muddy trail, we noticed evidence of ATV and mountain bike tire treads crisscrossing the path. We looked at two pools in the creek: one was almost at the foot of a recently constructed pedestrian bridge, where we were asked to imagine bathers being interrupted by people going by. Walking a little further upstream through the woods we reached

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<sup>102</sup> The spiritual potency of some of these sites is believed to be so strong that they must not be disturbed, even by most Stó:lō. They can include places where ceremonial objects are left after their use, as they are believed to be dangerous objects.

<sup>103</sup> Carlson, "A Legacy of Broken," 71.

a low cliff overlooking another bathing site. This one was undisturbed, and beautiful: clear, turquoise waters gathered to form a small pool where the creek widened; the rock bordering the sandy-bottomed pool had unusual striations, and everywhere on the banks were ferns and bright green moss. Across the water, we could see a recently used path down the muddy bank to the pool, presumably from the bathers who had been using it already that season, possibly even earlier that same morning. For me, this path down to the water was striking physical evidence of an active spiritual practice that I knew took place in environments such as these, but had never come across or witnessed myself. What we were doing there in the woods, on that cold and drizzly day, was an up close version of what the SXTA's negotiation team was attempting to do on the Smart board earlier that morning: to make visible a Stó:lō sacred geography on a landscape already marked by (and marked for) other forms of land use. Out there by the edge of the creek, we were encouraged to visually re-imagine what kinds of relationships can be had with and to a place. In the boardroom, the treaty negotiation team was layering this relationship to place onto the type of digital maps used for land-use planning.

The November meeting was the first time the Lands Working Group had presented their work back to the main table. The project drew upon efforts to map places of cultural importance undertaken by the SRRMC over many years, so the information was new only to the main negotiators for the federal and provincial governments. The BC Heritage Act's definition of 'heritage' includes objects or sites that have "heritage value" to aboriginal people, which appears to offer an opening (albeit narrowly defined) for Indigenous definitions of what could be considered 'heritage.' It seemed clear from the discussion at the SRRMC boardroom that what the SXTA was proposing with their sacred sites project would involve exploring and expanding

the outer limits of the Act's provisions.<sup>104</sup> The SXTA's definition of heritage, which draws on the *Stó:lō Heritage Policy Manual* issued by the supra-tribal organizations Stó:lō Nation and Stó:lō Tribal Council in 2003, is much broader than the province's, including not just landscape features, but songs, language, and dances.<sup>105</sup> The sacred sites project is focused primarily on landscape features, ceremonial sites, and 'spirited places' but even these have some interesting implications when thinking of conservation.

The protection required by some sites would be fairly straightforward: for transformer sites that are discrete stone formations, the objective would be to protect these from destruction, as with a designated heritage house in nearby urban Vancouver. For the more dynamic sites, protection could have much wider implications. The bathing pool we visited offers a good example, as its value (its *shxwelí*) is dependent on the ecological integrity of the surrounding environment. Logging or mining in the valley upstream, or ATV use locally would silt the water and damage the clarity and spiritual potency of the pool. Other recreational users of the area such as hikers and mountain bikers risk interrupting the bathers in practicing their sacred activity. In this way, Stó:lō relationships to and uses of specific sites on the landscape have the potential to come into conflict with other ways of relating to and using the landscape. It is in relation to specific problems of land-use sharing that the macro questions of treaty – i.e., how can we live together in the same territories? – are grounded in and worked out through context-specific

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<sup>104</sup> For example, in the BC Heritage Act, "'heritage object' means, whether designated or not, personal property that has heritage value to British Columbia, a community or an aboriginal people; 'heritage site' means, whether designated or not, land, including land covered by water, that has heritage value to British Columbia, a community or an aboriginal people." See: <[http://www.bclaws.ca/civix/document/id/complete/statreg/96187\\_01#section4](http://www.bclaws.ca/civix/document/id/complete/statreg/96187_01#section4)>

<sup>105</sup> "Stó:lō Heritage: all aspects of Stó:lō culture and lifeways – both tangible and intangible - of the past, present and future, including but not limited to: language, physical / spiritual landscapes; place names; ceremonial sites; burials and burial sites; spirited places; songs; dances; art; craft; design; religious / spiritual / ceremonial practices; places and materials; subsistence and material gathering practices and sites; oral histories including all sqwelqwel and sxwōxwiyám; traditional / historical knowledge; family names; archaeological sites, features and objects; historic sites, documents and objects. Stó:lō Heritage can be classified by 'type', such as Sxwōxwiyám, *xá:xa*, Ceremonial Regalia, etc., as presented in section 4.0. Also referred to as 'Stó:lō Heritage Resources' in relation to resource management (see section 6.0)." See Stó:lō Nation/Stó:lō Tribal Council, *Stó:lō Heritage*, 7. In this formulation, Stó:lō heritage could also include 'resources' such as salmon, cedar, and air quality.

negotiations of, in this case, how economic, recreational, and Stó:lō spiritual relationships to place can be looked after. From what I have seen, it is these specific, negotiated resolutions that have the potential to lead to shifts in the narrative of Indigenous-state relationships, whether it be an expanded understanding of what could constitute ‘heritage’, or what we understand as the types of land-use that must be protected and enabled.

*Convincing The State (Narrative Strategies)*

When the sacred sites project was initially presented to the main table, the federal and provincial representatives appeared to balk at the numbers and implications of protecting so many places – perhaps because of the potential work involved in bringing all the necessary ministers, line ministries, and other government agencies on side to implement such a proposal – by no means a simple task. The treaty negotiation team anticipated this reaction. By pointing to a similar local use of heritage legislation in the past, the team used precedent as a narrative strategy to frame the project as achievable – identifying the work to be done as a renovation of existing policy applications, and removing the need to craft altogether new policy. Pointing to precedent is a rhetorical strategy that crosses many cultural lines. But in this case, because the precedent given is a use of state policy, I present it is an example of the SXTA using the state’s own legal principles to make their case. As Jerome Bruner has noted in his examination of the narrative dimensions of law, precedent is law’s version of “tradition” in the sense of inherited practices that shape how and on what bases we recognize good decision-making.<sup>106</sup> Showing precedent is a form of reasoning reliant on the demonstration of similarity: “[i]n offering an interpretation, a legal storyteller appeals principally to the likeness between her interpretation of the relevant facts in the present case and interpretations of what she claims are similar cases in

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<sup>106</sup> Bruner, *Making Stories*, 39.

the past.”<sup>107</sup> For Bruner, law is a deeply narrative practice, in which establishing “lines of precedent is akin to locating a story in a literary genre.”<sup>108</sup> In this case, the SXTA sought to locate their objectives within a prior practice of publicly supported, state-sanctioned protection of local sites of recognized social value.

One precedent identified by Schaepe was Charlie’s tree.<sup>109</sup> In the early 1960s, WWI veteran Charlie Perkins discovered with alarm that the route of the new Trans-Canada Highway was set to go right through his property in Surrey, BC. Perkins’ main objection to this was that the highway construction would require the removal of a 210-foot Douglas Fir that he had transformed into a memorial to two of his childhood friends who died in the war, and all those who never made it back. When Perkins returned home to his family’s property in 1919, he cleared the underbrush away from around the base of the tree and planted some ivy to grow up it. The local legend is that an elderly Perkins protested the highway plans by sitting in a folding chair in the path of the construction with a gun across his lap, but it turns out his was a campaign of letter writing and raising support from the local community.<sup>110</sup> This less dramatic course of action was eventually rewarded, and the highway re-routed to go around the tree. Charlie’s Tree, as it is now known, still stands, although as an ivy-covered stump bedecked with wreaths and crosses, on the south side of the eastbound lanes of Highway 1.<sup>111</sup>

From the treaty negotiation team’s point of view, the cultural and social value of Stó:lō sacred sites exceeds that of a tree-turned-war memorial. As Naxaxalhts’i notes:

The province, they made their freeway go around Charlie’s tree. I mean, when you think of the huge bureaucracy that was needed for them to do that, but here they’re protecting this

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<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> See: Amy Reid, “Charlie’s Tree: A Surrey Pilot’s Tribute to Those Lost in War - Surrey News,” *The Now Newspaper* (5 November 2015) <http://www.thenownewspaper.com/community/340975081.html> (Accessed 15 April 2016).

<sup>110</sup> Ibid.

<sup>111</sup> Naxaxalhts’i, Personal Interview, 2015.

tree stump that's not even a tree, it's a stump...so why can't they be looking at our spiritual areas the same way and protect our spiritual areas the same way? So that no highway goes over it or no forestry goes over it or whatever. Right? You're already doing it with Charlie's tree so why can't you do it with our things too?<sup>112</sup>

In the SXTA treaty negotiations, the example of Charlie's tree acted as a means of moving the state bureaucracy off an instinctive response of 'no, we can't do that, there's no precedent, it's not in our mandate' to 'ok, you've done some of the story work for us, and we can bring this back to our ministers and line ministries and try to sell it to them.' Along with the SRRMC's hard work of accumulating and mapping the information on sacred sites and what kinds of protection they each required, pointing to the precedent of Charlie's tree helped convince the federal and provincial representatives to resource a working group to develop a pilot project version in order to explore its feasibility. If successful, such a project could be picked up by other treaty tables and perhaps even non-treaty First Nations looking to use the existing legislation such as the BC Heritage Conservation Act to protect sacred sites in their respective territories.

In the short term, however, the sacred sites project suggests treaty has the potential to work to the advantage of the broader Stó:lō and Coast Salish community in some instances. The treaty negotiation team was adamant in insisting that the sacred sites lands not be protected as SXTA Treaty Settlement Lands; that is, lands that would be owned and managed by the SXTA member communities. This way, there would be no restrictions, real or perceived, on the broader Stó:lō community's access to the sites, nor would the SXTA member communities manage or control access in any way. For the SXTA, this helps complicate a prevalent local story about treaty: that it threatens Indigenous community cohesion by pitting groups against each other in a competition for scarce resources. Instead, the sacred sites project is perceived by the SXTA as a

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<sup>112</sup> Ibid.

natural outgrowth of the principles set out in the *Stó:lō Heritage Policy Manual*, as well as a means to strengthen Stó:lō title and law for the broader Stó:lō community.

To be sure, mapping a sacred Indigenous landscape for circulation carries with it a degree of risk, even the limited circulation for presentation at the treaty table in which a great deal of specific information was held back by advising elders. However, the Stó:lō perception of such risks has shifted somewhat over the last thirty years. As discussed above, until recently, the general protocol was to keep the location of such places secret from non-Stó:lō people.<sup>113</sup> In 1984, Albert Phillips spoke about the importance of secrecy to a people whose trust has been violated in the past:

I'm reluctant to tell you of these spots because the last time a logging company tried to take "the head of the dog" (a transformer site made by *Xexá:ls*) and destroyed the whole thing... You know, I'm a proud man, and these places are sacred to me. I was taught all of this by four Elder Chiefs. If I tell you about these places and they are recorded, then people will go there and destroy what is there. So I'm reluctant to tell you. Enough damage has been done.<sup>114</sup>

That such knowledge is now being shared, however carefully and purposefully, points to a narrative shift in how people understand themselves and their relationships to *Xwelitem*, as Naxaxalhts'i suggested above in relation to cultural confidence. The vision statement of the *Stó:lō Heritage Policy Manual* evidences this shift quite explicitly:

We, the Stó:lō, make public our Stó:lō Heritage Policy Manual. We do this with the intent that all who live here and care about the future of S'ólh T'éméxw will come to understand and respect us - our concerns, our heritage, our land and its treatment. We are determined to promote the integrity and well being of our Stó:lō heritage in all its forms. We wish to share our heritage with our neighbours. We promote better understanding between peoples in order to create a better and healthier way of life for all living within S'ólh T'éméxw. We believe this policy manual will aid us in these endeavours.<sup>115</sup>

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<sup>113</sup> In fact, many of the sites – especially those used to store ceremonial regalia – are not necessarily common knowledge among Stó:lō people.

<sup>114</sup> Carlson, *A Legacy of Broken*, 71.

<sup>115</sup> Stó:lō Nation/Stó:lō Tribal Council, *Stó:lō Heritage*, 2.

The mapping of Stó:lō sacred sites epitomizes this concept of ‘sharing in order to protect’ the culture by asserting a layer of sacred topography on top of the maps representing other kinds of engagement with the same territory.

The map showing sacred sites represents a relationship to place and land use that derive from a narrative world endemic to this specific landscape; a narrative order to the world of this specific place – S’ólh Téméxw – that pre-exists the presence of settler people, and settler narratives of the place and its people. As Naxaxalhts’i, Schaepe, and Carlson note, “[m]etaphorically, transformer sites are akin to Catholic stations of the cross, each a unique and integral feature of a larger narrative, each physically embodying the Creator’s existence, actions, and relationship to mankind.”<sup>116</sup> Critically, for the purposes of self-determination and re-writing the story of who Stó:lō people are in the 21<sup>st</sup> century, transformer and sacred sites are also evidence of Stó:lō law and Stó:lō title in that they point to a ‘larger narrative’ guiding moral behavior and proper conduct in one’s relationships to place and people. Bringing the knowledge of such sites into treaty negotiations is an attempt to prioritize the protection of these sites – and through them the continuity of Stó:lō culture, spiritual practices, legal orders, and forms of governance – over forms of land use activities that have taken precedence in the past (mainly, agricultural and resource extractive industries). At the time of writing, the sacred sites project had progressed to the point of expanding beyond the treaty table. It now involves agencies and Stó:lō communities associated with the Stó:lō Strategic Engagement Agreement and the BC government.

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<sup>116</sup> Albert (Sonny) McHalsie, David M. Schaepe, and Keith Thor Carlson, “Making the World Right Through Transformations,” in *A Stó:lō-Coast Salish Historical Atlas*, Stó:lō Heritage Trust, (Vancouver; Seattle: Douglas & McIntyre; University of Washington Press, 2001): 6.

## Conclusion

Across British Columbia, Indigenous Peoples are engaged in land and self-government negotiations, knowing that such processes are deeply flawed and that the odds are, in many ways, stacked against them. In order to understand these processes, we must understand what it is that participating First Nations are doing in them, and how they are engaging or disengaging from them. In considering the SXTA's approach to the treaty process from the perspective of narrative, I have explored what I believe to be representative micro-instances in one (prolonged) encounter of how Indigenous Peoples refuse to be vanished or subsumed within the Canadian nation-state. I believe these instances, however unfinished and uncertain, are a microcosm of the types of action that have contributed to the many advances Indigenous Peoples have made over the last century and a half in securing their rights and title, largely through political processes inhospitable to their aims. It is important that we understand what such advances – however partial – look like on the ground while also observing the forces that work against such efforts. There are many venues in which Indigenous people are doing the work of rebuilding themselves. In short, this work attempts to tell a story about the ways in which Indigenous Peoples and their assertions of territory and place-based authority remain present in and through their negotiations with settler states, notwithstanding the fact that such processes are weighted against them.

My argument in this chapter has been that treaty-making is, at heart, a process of story-making. Narrative plays many roles in the negotiations process. The SXTA's approach to treaty involves inhabiting the routine procedures of treaty-making with Stó:lō stories: asserting *Halq'eméylem* terms and concepts into the treaty's legal glossary; redesigning the statement of intent map to reflect Stó:lō ways of relating to territory and to people within that territory; re-imagining the reach of provincial heritage policy in order to protect sacred sites that hold stories

of Stó:lō law. In some cases, as with Charlie's tree, storytelling is a tactic to create space for the kinds of stories the SXTA wants to tell. In all three examples discussed here, the story of who Stó:lō people are is also inextricably an articulation of Stó:lō title – of Stó:lō jurisdiction in, belonging to, and responsibility for their territory. All these projects represent the SXTA's attempts to make treaty – to make their relationships with the Canadian state – a place where Stó:lō stories of who Stó:lō people are can find expression. The effects of the SXTA's attempts upon the state's story or the Final Agreement are, at this point, inconclusive and uncertain. The story the SXTA's treaty will tell remains to be seen. Notwithstanding this uncertainty, the SXTA's approach to treaty represents attempts to indigenize the BC treaty process, and is thus an important part of the story of treaty-making in BC.

State stories are infamously slow to change, but Stó:lō stories about how to be Stó:lō and be self-determining are developing rapidly. The slow pace of transformation of the state's story remains troubling. The ongoing inhospitality of existing negotiation processes to articulations of Stó:lō being risks frustrating and limiting Stó:lō people's ability to actualize their stories. In my time at the table, I was struck by the treaty negotiation team's energy and imagination for creative problem solving, but they need engaged partners, who are mandated to negotiate widely and sufficiently resourced to meet this energy and create meaningful change. The specific negotiators for the federal and provincial crowns working at the SXTA's table in 2014-15 were generally well thought of by the negotiation team. At times, however, it was clear that they were limited in what they could promise or accomplish by their mandates and the directions set by those higher up in government. Critics of treaty-making in BC have made similar observations

about governmental intransigence and the lack of political will at the top levels of government since early on in the process.<sup>117</sup>

What are the consequences of the SXTA outpacing the state's imaginative capacity for telling stories about the future that are different from those told in the past? As former treaty director for the Stó:lō Nation, Grand Chief Clarence Pennier, said recently in relation to Section 35 of the Canadian constitution, "the government doesn't know what it is they have to recognize and affirm."<sup>118</sup> I would suggest that the SXTA and, prior to 2004, a broader network of Stó:lō, have harnessed the resources made available by treaty and found creative ways to put them to work in the effort to define, in their own idioms, what Stó:lō title and rights are, and how they might be implemented in the management of their territories. Critically, these are stories they are already telling, and finding ways to live by in their communities. But in the treaty process and their relationships with the Canadian state, the SXTA needs the crowns – and really, the parties need one another – in order to tell a new story.

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<sup>117</sup> British Columbia Treaty Commission, *Speaking Truth to Power*, 2001.; Tully, "Reconsidering," 2001.; Woolford, *Between Justice*, 2005.

<sup>118</sup> Pennier, "The Hackenberg Memorial," 2016.

## Chapter 4

### **‘We Build the Road as We Go’: The Haida Blockade at Athlii Gwaii, 1985**

On August 15, 2013, the forty-two-foot Gwaii Haanas Legacy Pole was raised at Hlk’yah GaawGa (Windy Bay), on Athlii Gwaii (Lyell Island).<sup>1</sup> This was the first pole to be raised in the southern portion of Haida Gwaii since widespread epidemics and colonial government policies had pushed the surviving Haida north to settle in and around the two villages of Old Masset and Skidegate over 130 years ago, effectively emptying the southern islands of long-term Haida inhabitants. The pole was commissioned by the Gwaii Haanas Archipelago Management Board (AMB), a co-management organization made up of an equal number of representatives of the Canadian and Haida governments, which is responsible for the Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site. The pole raising commemorated twenty years of co-operative co-management of Gwaii Haanas, and the anniversary of the Gwaii Haanas Agreement, a remarkable document in which Haida and the Crown each assert sovereignty and governing jurisdiction over the southern portion of the Haida Archipelago. Unprecedented in Canada, in this document the parties recognize “the convergence of viewpoints with respect to objectives for the care, protection and enjoyment of the Archipelago, [and] agree to constructively and co-operatively share in the planning, operation and management of the Archipelago” notwithstanding their fundamental disagreement with respect to sovereignty. In effect, this agreement states that the Haida and federal governments have come to a shared story about the protection and planning for the archipelago while

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<sup>1</sup> In this chapter, I use the place names Lyell Island and Athlii Gwaii interchangeably. In official government of Canada maps, Lyell Island is still used. However, the island continues to be referred to with both names by Haida and non-Haida Islanders alike.

admitting, and setting aside, the fact that they have different stories about who owns the territory.<sup>2</sup>

I had badly wanted to go to Windy Bay to witness the pole raising, which was open to the public, but had left it so late that flights were prohibitively expensive. Instead, I watched the live streaming of the event online, at my mother's home in Vancouver. She had recently had a hip replacement, and was resting on the extra sofa we had moved into living room, so she could rest and recuperate in the central space of the main floor of the house, able to receive visitors when they came by. It felt good to be there with her, and to watch this momentous event taking place in a distant coastal bay on the southern tip of Haida Gwaii. Witnessing the pole raising, even so remotely, was a wonderful opportunity for both of us. We watched as the over 200 people present were organized into teams lined up alongside long ropes waiting for the signal to pull, as I scanned the crowd shots, looking for familiar faces from recent trips to Haida Gwaii. We listened to the speeches and the Haida songs and dances marking the occasion, and watched the carvers come out to dance blessings and blow eagle down over the pole.

I had seen a smaller pole raised once before, in front of the Lieutenant Governor's House in Victoria, as Stó:lō Grand Chief Steven Point was nearing the end of his term as British Columbia's first Indigenous Lieutenant Governor. No matter how many more I may be lucky enough to witness, I think it will be impossible to get used to the brief moment when a pole is pulled to standing. The Legacy Pole creaked as it was lifted off the ground, giving off a tremendous groaning sound that rang out in the sheltered bay, twisting and rising until its base thudded into the deep hole that had been dug for it. The gathered crowd gasped at this moment; I imagine they could feel the tremor in the earth they stood on, and then cheered as it was brought fully to standing. Even from our vantage point in my mum's living room in Vancouver, we both

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<sup>2</sup> Council of the Haida Nation/Ministry of Environment, *Gwaii Haanas Agreement*, (1993): 1-2.

felt a thrill as the pole was first lifted off the ground, when it appears to become animate, a living creature lifting *itself* to standing, even though it is the many strong hands and arms of the people, coordinated by a leader calling out instructions, that physically raises it up. In that moment, it seemed to me that the pole was an independent being, while also obviously dependent on all the bodies below to help it come alive. The pole exists because of those people, it represents them, and the hard work of those present over many years. In that first brief moment of its movement upward, however, I was struck by the feeling of something very powerful coming to life, something that was not pulled up, but rose up, almost of its own accord.

Monumental poles such as the one raised at Windy Bay “hold histories, mark events, and tell stories.”<sup>3</sup> Carved into the Legacy Pole is the now-iconic story of the Haida struggle during the 1970s and 1980s to protect the southern part of their territory from further logging, and reclaim jurisdiction over their territory – a struggle that played out at and near Windy Bay. The November 1985 confrontation has been framed in many different ways: as a battle between logging companies determined to turn the forests into cash and Haida elders making a last stand determined to prevent the logging, or as a momentous struggle of which the Haida were one part, to save a piece of wilderness quickly disappearing from the earth. It has been told and retold as an epic of right over might, but it is a multifaceted story, and understanding why the Haida were so successful can be approached from several angles.<sup>4</sup>

Here I explore the narrative dimensions of the Haida victory at Lyell Island, suggesting that part of the Haida success is attributable to the fact that they managed to gain control of the narrative about the blockade. In large part because of the elders’ support of the blockade, the

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<sup>3</sup> Carver Jaalen Edenshaw, cited in a video jointly issued by the Council of the Haida Nation and Parks Canada: <https://www.youtube.com/watch?v=vT4Yc9ask58>

<sup>4</sup> See especially: Elizabeth May, *Paradise Won: The Struggle for South Moresby*, (Toronto, ON: McClelland & Stewart, 1990).

Haida shifted the story from one about a politicized minority of young Indigenous men and women defying the law and blocking hard-working loggers from going to work, into a story about an Indigenous people struggling against incredible odds to protect a culture and the fragile environment this culture relied upon. In this latter story, Haida were playing leadership roles in protecting a precious local ecology from an out-of-control industry, a negligent government, and outside interests, preserving that environment for themselves as well as for future generations of all Canadians. In telling this story to the loggers, the police, the court, and the media, the Haida were also, importantly, telling a story of Haida sovereignty to themselves. This chapter considers not just the story being told, which was a powerful one, but also *how* that story was enacted or performed, focusing in on some of the work this story did, and how. By acting as traditional owners and protectors of the land – “being who we are”, in the words of former President of the Council of the Haida Nation (CHN), Miles Richardson – the Haida brought their stories into being.<sup>5</sup> By doing so in multiple public and private venues, the Haida extended the reach of their narrative beyond their immediate audiences, making theirs a story that could resonate broadly.

Accessing a wide audience was certainly part of their success, and a conscious part of their strategy. In 1992, Guujaaw, one of the Lyell Island protesters and another former CHN president, explained the Haida position in the following way: “What we have is a dispute that needs to be dealt with – and jumping up and down and saying “Deal with it” is not getting it resolved. We needed other people to say the same thing.”<sup>6</sup> Jerome Bruner has observed that “it is the conventionalization of narrative that converts individual experience into collective coin which can be circulated, as it were, on a base wider than a merely interpersonal one.”<sup>7</sup> In this

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<sup>5</sup> Richardson, Personal Communication, 2015.

<sup>6</sup> Guujaaw quoted in: Sean Hennessey, “Gwaii Haanas: How Non-Violence Works,” *CBC Ideas*, transcript (20 October 1992): 5.

<sup>7</sup> Bruner, *Making Stories*, 16.

respect, the Haida were successful. As Guujaaw observed, their victory would have been impossible without a support base beyond their own communities. Their ability to build support by aligning with, or finding overlap between their own struggles and those of the growing environmental movement has been well documented.<sup>8</sup> What is remarkable is that even as their story was picked up by ever more distant audiences, the Haida appear to have maintained control over the narrative's impacts at home. I focus on how the Haida nation told a story of Haida jurisdiction over their territory through their conduct – how they showed up as Haida in both what story they were telling and how they told it. In sum, this chapter examines the narrative dimensions of the Haida struggle to repossess their land in reference to two sites of action from the Haida protest: at the blockade on Lyell Island and in the related injunction hearings in a downtown Vancouver courtroom.

### *Historical Context*

The 1980s and 1990s in BC were the decades of the so-called 'wars in the woods,' which saw large scale protests in Clayoquot Sound, the Stein Valley, and other sites where old growth forests remained. Industrial logging was at a specific point in its historical trajectory: increasingly sophisticated technology was allowing forests in ever more remote regions to be cut and transported more quickly and with less labour than before, producing massive rates of deforestation both locally and globally. In these decades, images of unsightly clear-cut hillsides were a regular feature in the news media, which the environmental movement used effectively to alert Canadians to the visual and ecological impacts of the modern logging industry. The Haida blockade was partly inspired by this new environmental movement and was also part of broader and increasingly public Indigenous protest movements across North America that had first

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<sup>8</sup> Such alliances were recognized at the time, and are evidenced in some media descriptions of the protestors as a group of 'hippies and Haidas' as well as in David Suzuki's very public support of the Haida in their efforts to prevent logging in South Moresby.

gained prominence in the 1960s with the Red Power movement. In Canada, the ban on legal representation and pursuance of land claims had been quietly dropped from the federal Indian Act in the late 1950s. This allowed Indigenous Peoples to legally defend their lands from unwanted ‘development’ projects such as the James Bay hydroelectric project, which was opposed by the James Bay Cree in the 1970s.<sup>9</sup> All were media-rich events, which meant that by the 1980s, North American (and to a certain extent, global) publics were sensitized to the conjunction of environmental and Indigenous rights activism in a way that was absent in the earlier part of the century.

Indigenous court challenges resulted in an unprecedented degree of legal recognition of the substance of Indigenous claims, seen most notably in the path-breaking Calder case (1973), in which the Nisga’a lost their claim to title in their traditional territories on a technicality but helped to instigate Canada’s first comprehensive land claims process.<sup>10</sup> With Calder, the Supreme Court decision acknowledged the legal existence of Aboriginal Title for the first time, with half the judges finding that it had never been extinguished in BC. The decision directly helped to transform Prime Minister Pierre Elliot Trudeau’s understanding of social equality as based on individual rather than collective rights, and how Indigenous Peoples fit into his vision of a “just society.”<sup>11</sup> The effects of Calder were felt in Indigenous communities across the country.

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<sup>9</sup> Hans M. Carlson, *Home Is the Hunter: The James Bay Cree and Their Land*, (Vancouver, BC: UBC Press, 2009).; Toby Elaine Morantz, *The White Man’s Gonna Getcha: The Colonial Challenge to the Crees in Quebec*, McGill-Queen’s Press, 2002.; Boyce Richardson, *Strangers Devour the Land*. Chelsea Green Publishing, 2008.

<sup>10</sup> See: Foster, Raven & Webber, *Let Right Be Done*, 2007.

<sup>11</sup> See Christina Godlewska and Jeremy Webber, “The Calder Decision, Aboriginal Title, Treaties, and the Nisga’a,” in *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*, ed. by Hamar Foster, Heather Raven, and Jeremy Webber. (Vancouver; Toronto: UBC Press, 2007): 3.; Hamar Foster, Jeremy H. A. Webber, and Heather Raven, eds., “Frank Calder and Thomas Berger: A Conversation,” in *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*, (Vancouver, Toronto: UBC Press, 2007: 46-7.; Altamirano-Jiménez, *Indigenous Encounters*, 121-148.

On Haida Gwaii, then known as the Queen Charlotte Islands, activism against logging in South Moresby began in the 1970s. At this time, Haida and non-Haida, many of whom had some connection to the logging industry, became alert to the impacts of clear cutting large swathes of land upon Haida cultural heritage and local ecologies, particularly with respect to salmon spawning beds in sensitive watersheds. In 1974, the Islands Protection Society was formed and, with the support of the Skidegate Band Council, put forward the *South Moresby Island Wilderness Proposal*, which proposed a complete ban on logging south of the Tangil Peninsula.<sup>12</sup> From this point right up until October of 1985, the Society and the Haida campaigned widely, and engaged all levels of government who periodically proposed compromise plans for the region.<sup>13</sup> However, the Haida remained firm in their resolution to halt all logging activity south of their original perimeter line. In the 1980s then, “environmental activism became a means for the Haida to pursue decolonization outside the official channels of the land claims process” – a process that was moving at a glacial pace, while exploitation of Indigenous lands continued apace.<sup>14</sup>

Today, the Gwaii Haanas archives just south of the community of Skidegate contain boxes of letter-writing campaigns, minutes from meetings with various provincial and federal ministers, and reports prepared for ministers, planning teams, and committees documenting the ecological and cultural importance of South Moresby. To this could be added a number of high profile accounts of their struggle, including a visit by renowned Canadian scientist and public personality David Suzuki, who dedicated an episode of his widely viewed CBC television

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<sup>12</sup> Gwaii Haanas Archives, Province of British Columbia, Environment and Land Use Committee Secretariat, *South Moresby Island Wilderness Proposal: An Overview Study*, (March 1979): 4. According to May, the Islands Protection Society was created by a young Haida man, Guujaaw, and Thom (Huck) Henley, an American draft dodger and kayaker who had taken up residence on the Queen Charlottes in the 1970s. May, *Paradise Won*, 19-21.

<sup>13</sup> This included an unsuccessful attempt to halt logging by taking the BC Minister of Forests to court in 1978. See Michael Dean, “What They are Doing to the Land, They are Doing to Us”: Environmental Politics on Haida Gwaii,” (MA Thesis, University of Victoria, 2009), 22.

<sup>14</sup> Dean, “What They are Doing,” ii.

program *The Nature of Things* to the ecological riches and vulnerability of the Queen Charlottes and the Haida fight to protect them.<sup>15</sup> Published in 1984, *Islands at the Edge: Preserving the Queen Charlotte Islands Wilderness*, is a beautifully produced collection of photography and essays documenting the islands' terrestrial and marine environments, with starkly contrasting images of clear cut logging.<sup>16</sup> Such high profile public campaigns were by all accounts very successful in gaining recognition of the region's ecological and cultural importance, evidenced by the 1981 designation of the ancestral Haida village site of Ninstints, or SGang Gwaay Llnaagay as a UNESCO World Heritage Site. In early 1985, however, and notwithstanding the genuine efforts of some ministers however, Haida negotiations with the government were proving fruitless.<sup>17</sup>

Frustratingly, throughout all their efforts to raise awareness and negotiate with provincial and federal governments – which included Haida participation in a four-year environment and land use study, a public advisory committee that was eventually abandoned by the Haida, and another four years working on the South Moresby Planning Team – logging continued on the islands.<sup>18</sup> In mid-October of 1985, when many anticipated the announcement of a national park designation for South Moresby, BC Minister of Environment and Parks Austin Pelton instead

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<sup>15</sup> BC Archives (hereafter BCA), Ministry of Forests Films and Videotapes, GR-3366, Item AAAA2051, Canadian Broadcasting Corporation, "The Nature of Things: Windy Bay," (1982); BCA, Ministry of Forests Films and Videotapes, GR-3366, Item AAAA2050, Canadian Broadcasting Corporation, "The Nature of Things: Islands at the Edge," (1986).

<sup>16</sup> Islands Protection Society, ed., *Islands at the Edge: Preserving the Queen Charlotte Islands Wilderness*, (Vancouver: Douglas & McIntyre, 1984). The forward is by internationally renowned ocean explorer and scientist Jacques Cousteau.

<sup>17</sup> Then a young civil servant working for the federal Minister of Environment, Elizabeth May's book offers many insights into those working behind the scenes in government in an effort to secure protection for South Moresby. See May, *Paradise Won*, 1990.

<sup>18</sup> For more in-depth accounts of the Haida campaigns and political negotiations over the ten years leading up to the blockade, See May, *Paradise Won*, 106-9.; Louise Takeda, *Islands' Spirit Rising: Reclaiming the Forests of Haida Gwaii*, (Vancouver, BC: UBC Press, 2014): 49-78.

announced the creation of yet another Wilderness Advisory Committee. That same day, the minister of forests approved new cutting permits for Lyell Island in the disputed area.<sup>19</sup>

For this reason, the Council of the Haida Nation decided to take a highly public stand by blocking the logging access road on Lyell Island (Athlii Gwaii) and preventing Western Forest Products and their locally-based contractor Beban Logging from continuing to log. Already practiced in getting their story out into the world, the Haida saw a blockade as a means to very publicly express the strength of their convictions as a collective. As Guujaaw relayed to a CBC journalist in 1992:

We looked at all the different options, including armed confrontation. We talked about everything, you know, and we talked about it with a broad cross-section of our people, that is, everybody was talking about it [...] until we finally came onto that we would do a blockade; people would get arrested, and the story would be told again; and we would demonstrate our belief in what we're doing and we would show the government of Canada for what it is.<sup>20</sup>

Windy Bay on Lyell Island had long been identified as a critical place requiring protection from both an ecological and cultural standpoint, especially since logging the steep slopes of a watershed in the region had resulted in an important stream being blocked with logging debris during the spawning season earlier that same year.<sup>21</sup> While not unprecedented in BC in the 1980s, the Haida blockade of a remote logging road was rare enough to get the attention of a media that had already been documenting the very public campaigns for the protection of South Moresby for quite some time.<sup>22</sup> When a group of young Haida men and women stepped out in front of the logging trucks on the road on Lyell Island on October 30<sup>th</sup>, journalists and news cameras were

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<sup>19</sup> Dean, "What They are Doing," 25-31.; Hennesey, "Gwaii Haanas," 1992.; May, *Paradise Won*, 108.

<sup>20</sup> Hennesey, "Gwaii Haanas," 4.

<sup>21</sup> *Ravens and Eagles: Athlii Gwaii: The Line at Lyell, Part I*, Jeff Bear and Marianne Jones, dirs., Urbanrez Productions, 2003.

<sup>22</sup> In 1984, the Nuu-Cha-Nuulth tribe, along with environmentalists and other supporters blocked a logging access road on Meares Island in Clayoquot Sound, in protest of a cutting permit that had been issued to MacMillan Bloedel. See Takeda, *Islands' Spirit*, 73.

there to document it, in large part because they had been invited by the Haida, who, along with their allies in the environmental movement, had made their cause widely known.

After the first day of the blockade, the companies filed for an injunction against the protestors in order to remove them from the roads and resume logging. In early November, 1985, the media's focus shifted from the wet and cold gravel roads on Athlii Gwaii to the law courts in downtown Vancouver. There, several of the Haida protestors, wearing their traditional button blankets, managed to transform what would normally have been a simple injunction hearing into a highly public – and very powerful – forum for Haida story-telling. The Haida defendants refused legal representation and convinced the presiding Justice McKay to bend several procedural rules in order to allow them to speak in accordance with Haida protocol for important public speech, and to tell a story that situated logging on the Queen Charlottes in a distinctly Haida historiography. In the end, Justice McKay granted the injunction against the protestors, but his final decision against the Haida blockade did not alter the narrative power the Haida had already won in and through his courtroom.

With the injunction granted, the blockade was made illegal and the protestors liable for arrest and criminal charges. On a grey November afternoon, as the young people 'on the line' at Lyell prepared themselves to be arrested, they were surprised to hear the sounds of a helicopter approaching. They were even more surprised when four of their elders dismounted and insisted *they* be the first to be arrested. Their arrival would mark a turning point in the drama. In the courtroom and at the blockade, the Haida enacted a powerful story about who they were in relation to the land – for the media, the logging companies, the state, and for themselves. This chapter focuses on the story Haida were telling and how they performed it, drawing out some of the ways in which the various parties engaged in a high-profile campaign for narrative authority.

## *People, Stories, and Land*

When people act upon the land, or upon one another, they are also acting from and upon story. Among many other students of colonialism, John Fielder observes that the colonial possession of land and resources was as much an ideational process as it was a material one, in which Indigenous cultural logics – representing alternative territorial authorities – were framed as antithetical to European sensibilities about the proper relationship to and use of place. The Indigenous possession of their lands was what constituted the main challenge to Europe’s colonial projects, but it was the conviction of a superior European logic (a set of interwoven stories), in combination with a narrative of the inevitability of Indigenous extinction, that vested in settlers the moral authority to dispossess Indigenous Peoples of their lands.<sup>23</sup> As Fielder notes for the Australian context,

[t]he colonial process commenced by assuming that the "natives" did not possess the land, did not map it, did not farm it in any way. These assumptions can be made when European logic is imposed on others as an absolute standard – when no alternative logic is allowed. The colonial process continues as this logic is imposed on the indigenous people as the only legitimate logic. So dispossession must always be understood in very broad terms, not simply in the act of taking land.<sup>24</sup>

While treaties in Canada represent the Crown’s recognition that Indigenous Peoples possessed the land prior to European arrival, this acknowledgment was quickly (and in some cases almost simultaneously) disavowed, largely slipping from Canadian public consciousness over the twentieth century. Until modern land claims negotiations began in the 1970s, treaties were even

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<sup>23</sup> As Paige Raibmon observes, such dispossessions involved not only the imposition of colonial logic and law, but also routine violations of both by those on the frontlines of settlement (settlers and Indian agents). Cumulatively, such violations amount to what she terms the “microtechniques” through which settlers dispossessed Indigenous Peoples of their lands. As Raibmon rightly demonstrates, making reserves into Native spaces also involved unmaking Native spaces in the broader landscape, a process that preceded, coincided with, and enabled the creation of reserve lands. I am indebted to Elizabeth Vibert for reminding me of this dimension of dispossession. Please see: Harris, *Making Native Space*, 2002.; Paige Raibmon, “Unmaking Native Space: A Genealogy of Indian Policy, Settler Practice, and the Microtechniques of Dispossession,” in *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, ed. Alexandra Harmon, (Seattle, WA: University of Washington Press, 2008): 56-85.

<sup>24</sup> John Fielder, 'Sacred Sites and the City: Urban Aboriginality, Ambivalence and Modernity', *Boundary* 221 (1994), 71.

less of a feature in the historical consciousness of British Columbians, where only small patches of the landscape fell under treaty. But treaties and reserve creation were not the only ways the Crown assumed control over the territories that became Canada. The dispossession of Indigenous stories through Canada's explicit policy of assimilation was a critical part of the Crown's dispossession of Indigenous lands.

The importance of story in the perpetuation of culture is the crucial and often under-remarked linkage between residential schools and the colonial land grab. One of the most striking expressions of Canadian assimilation policy, residential schools were intended to overwrite Indigenous stories with Euro-Canadian stories. Indigenous children removed to residential schools had little to no access to the cultural environments of their families, the narrative knowledges that sustained Indigenous ways of relating to and inhabiting place, or the local and family-based systems of governance that constituted an established alternative territorial authority to colonial and settler states. The reserve system worked to physically empty the land of Indigenous Peoples by keeping them contained within tightly defined and policed geographic boundaries.<sup>25</sup> Simultaneously, attempts to culturally assimilate Indigenous children through church-run and state-funded residential schools (and adults, through other means) worked to empty the land not just of Indigenous Peoples but of Indigenous stories and knowledges that sustained Indigenous ways of being in relation to the land. Both reserves and residential schools constrained Indigenous Peoples' abilities to animate the land with the narrative worlds that form the central cultural connections between people and place in any society. In turn, both constrained Indigenous Peoples' opportunities to be animated – and constituted – by such connections to place. In the eyes of many subsequent generations of non-Indigenous Canadians, the result was that the land was effectively emptied of Indigenous

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<sup>25</sup> See Harris, *Making Native Space*, 2002; Carlson, *The Power of Place*, 156-81.

spiritual and legal geographies – geographies that marked the land as Indigenous – and re-  
animated as a place for European expansion, opportunity, and futures.<sup>26</sup>

So when the Haida embarked on their efforts to end industrial logging in South Moresby in the 1980s, the struggle was about logging, but also much more. The Haida were repossessing the land as well as themselves, which required a repossession of their stories.<sup>27</sup> In short, they were acting to decolonize both themselves and their territories, and story was critical to this work in both inner and outer landscapes. The blockade and the injunction hearings became powerful venues for a Haida storytelling process, in which Haida showed up *as Haida*, enframed state and industry logics within Haida historiographies, and occupied the land and the law with Haida narratives. Throughout, the demonstrators were acting into being a new story with very old roots about what it meant to be Haida and what it meant to understand the land as Haida territory.

### *Performances Are Not Fabrications*

In this chapter – as throughout this dissertation – it is especially the active dimensions of story that are my focus: the ways we act upon our stories, the ways they act upon us, and, especially, how we act upon one another through story. For this same reason, and because it is a crucial aspect of Haida narrative success in their struggles against logging in the 1980s, I highlight the performative dimensions of narrative in this chapter, using language such as ‘drama’ and ‘script.’ For many people, performance, like story, is evocative of fiction or fabrication, something that is made up: stories are invented, performances are pre-meditated and strategic,

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<sup>26</sup> As Lutz observes, such replacements – as forms of subjugation – remain incomplete. Others have observed how North American landscapes and literary imaginations remain haunted by “Indian ghosts,” representing the spectral history of settler oppression, and evidencing the fact that the colonial aim of possessing the land is unfinished business. Of course, as this dissertation intends to demonstrate, many living breathing Indigenous people never stopped fighting to repossess their territories. See: Renée L. Bergland, *The National Uncanny: Indian Ghosts and American Subjects*, Dartmouth College Press, 2015.; Lutz, *Makúk*, 15-30.

<sup>27</sup> Leslie Marmon Silko makes this point in her justly celebrated novel, *Ceremony*, suggesting that Indigenous Peoples’ liberation from colonial thinking requires that they repossess, but also that they allow themselves to be repossessed *by*, their stories and/as their land. See Silko, *Ceremony*, 1977.

rather than genuine. These are not the meanings I intend to summon for the purposes of this discussion. To acknowledge that there were strategic dimensions to Haida self-presentation at the blockade and the injunction hearings is very different from suggesting that such presentations were inauthentic or untrue.

Moreover, this strategic dimension is crucial to understanding the ways that story and power operated in such encounters, as is the fact that there were narrative strategies being performed on all sides, and that the presence of the media throughout heightened the performative dimension for everyone involved. The work I intend to do by using the language of performance is to make explicit the ways in which people were living a story as a form of social action. By telling and re-telling a story through their speech as well as their conduct, Haida were acting from a set of meanings deeply rooted in historical practices of Haida governance and law, and transforming these in relation to the needs and circumstances of the moment. When Haida now reflect on the events at Lyell, they often say that logging woke a sleeping giant that was the Haida Nation. That giant – that storied idea – was something that came to life in and through the actions of specific Haida, in specific circumstances and relationships. Just as the colonial dispossession of the Haida was something *enacted* by specific settlers and was experienced, internalized, and embodied, so too has the re- or self-possession of the Haida Nation as a collective been experienced, enacted, internalized, and embodied in specific circumstances. In this chapter, I consider two such contact moments in which the Haida engaged the state through narrative and performance in order to end logging in South Moresby, and reclaim decision-making authority over Haida territory.

My emphasis on ‘acting a story into being’ is inspired in part by what Val Napoleon has framed as “becoming self-governing by being self-governing.”<sup>28</sup> This concept highlights the actions, and not just the ideas or principles, necessary to create self-governance (in Indigenous contexts or otherwise). A story of nationhood is not enough for an entity to be a nation; the imagined nation’s citizens need to behave as if that story was true. Nor do they need to wait for the settler state’s recognition of them as self-governing in order to act as self-governing peoples. While doing so does not guarantee people liberation from an oppressive regime, acting as if a thing were true, as the phrase suggests, is a powerful way to help make it true. Napoleon outlines the imaginative preconditions for a renewal of democracy in an age in which democratic processes – especially as they function with respect to Indigenous Peoples – are clearly in crisis:

First, people must possess a sense that they can act together, and for this they need to trust in one another and an imagination in which they can see themselves acting together. Second, people need *a repertoire of language, stories, and collective actions* from which to draw in order to create social coherence. And finally, people need a social imaginary that allows for democratic conflict and a sense of civility that limits violence.<sup>29</sup>

The story of Lyell Island has become part of the ‘repertoire’ that maintains the strength and coherence of the Haida collective.<sup>30</sup> At the time, however, this story was brought into being bit by bit, in small and large gestures, embodied and performed intimately among and for Haida, as well as for local communities, broader Canadian and international publics, and the state. It is this key connection between narrative and performance – acting a story into being – that I wish to highlight in the following.

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<sup>28</sup> My thanks to Dr. Val Napoleon for sharing a draft copy of the following: Val Napoleon, “Demanding More From Ourselves: Indigenous Civility and Incivility”, in Dimitrios Karmis et al, eds., *Civic Freedom in an Age of Diversity* (working title, forthcoming), 2.

<sup>29</sup> *Ibid.*, 1 (emphasis mine).

<sup>30</sup> Stories of Haida collective strength and resistance to colonization and subjugation were already being shared intergenerationally among Haida prior to the blockade, and these were an important source of inspiration for the anti-logging actions that took place in the 1970s and 1980s, and remain so. But the blockade, which involved large numbers of Haida people contributing in many different ways, represented a significant addition to and strengthening of this legacy, and as a result has become a founding narrative for the modern Haida Nation that continues to inspire and spark the imaginations of younger generations of Haida.

## The Injunction Hearings

Courts are powerful places for people to tell powerful stories, and to have those stories adjudicated by the state's highest authorities.<sup>31</sup> Evidence and rules of procedure are part of the way cases are won or lost, but a convincing narrative must be crafted from each party's interpretation of the ingredients of evidence and procedure. In their injunction hearing, the Haida defendants occupied and successfully expanded the space made available for them to speak, and managed to convince the presiding Justice to bend, if not break, the customary rules of procedure for a Canadian courtroom. The story they told, and how they told it, was so successful that the industry lawyers in some respects could not avoid orienting their arguments to the narrative framings the Haida introduced into the courtroom. The Haida defendants redefined the legal terms the industry lawyers used to make their arguments, recasting legal concepts such as 'the balance of convenience' and 'irreparable harm' in a Haida frame, and described an alternate historical context in which to locate logging at Lyell. In the end, Justice McKay granted the injunction against the protestors, but not before he allowed every space possible for the Haida defendants to tell their story.

The courts are places of ritualized public performance, where people speak and clothe themselves in particular ways, refer to each other with specific forms of address, rise and sit and argue and stay silent all according to a time honoured tradition, adherence to which acknowledges the activities of the courts as processes of great power and legitimacy.<sup>32</sup> In Justice Harold McKay's courtroom, the Haida defendants conducted themselves in ways that both conformed to and deviated from common court rituals. While they observed many of the court's rules of procedure, they also brought with them Haida protocols, forms of speech, address, and

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<sup>31</sup> See Bruner, *Making Stories*, 31-62.

<sup>32</sup> See Bruner for a discussion of ritual in establishing law's legitimacy. *Ibid.*, 44-45.

dress, thereby introducing and performing the legitimacy of Haida law into the ritualized legal space of the Canadian courtroom.

The transcripts from the injunction hearings show that the Haida were not prepared to successfully contest the injunction on legal grounds. Then-President of the newly-formed Council of the Haida Nation, Miles Richardson, noted that although they were consulting with their lawyers outside of the courtroom, their approach was to “be who they were” – to be Haida, irrespective of what situation they found themselves in.<sup>33</sup> The first unusual move by the Haida defendants was to refuse legal representation in the injunction hearing, a decision that, at first, produced in Justice McKay some considerable consternation, as he could not understand how they would be well served in the existing process without lawyers present. The Haida defendants, for their part, explained the rationale for their decision in several ways. They had not had time to prepare legal counsel to adequately speak on their behalf, but with an emphasis on self-representation that characterizes Haida political strategies to this day, several defendants made a point of stating that the issues at hand were too important to be represented by anyone other than themselves.<sup>34</sup> As Richardson stated on the second day by way of explanation for their actions, “[w]e did not want anyone interceding between what we have to say and what the court hears.”<sup>35</sup> This attention to the importance of maintaining control over the way their message was

communicated is significant, and was reiterated by Diane Brown at the opening of her testimony:

I was aware that I could go through a lawyer, but I feel you lose if you go through another person. My first language is Haida. My second language is English. Therefore I can express myself better in English. I feel through another person, a lawyer, they also

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<sup>33</sup> Miles Richardson, Personal Conversation, April 10<sup>th</sup>, 2015.

<sup>34</sup> On 5 November, Miles Richardson stated to the court: “I will tell you that, and with all due respect, I have sought legal advice. With the complexity and the seriousness of this matter I am not throwing a lawyer in here to represent me unprepared. This is a very serious matter to me.” See: *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 5 November, 9. I am indebted to Prof. Hamar Foster for generously sharing with me his copies of the original transcripts of the injunction’s court proceedings.

<sup>35</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 6 November, 20.

...speak another language, and I would have lost what I hope to help Kilsli [Justice McKay] understand and feel.<sup>36</sup>

Here, Brown suggests that a lawyer would add a level of translation that would obstruct the effective communication of what she wanted to express. Oral argument also aligns with how important matters have been dealt with historically in big house settings, and in this way (among others) the defendants were bringing Haida protocols – as practices of Haida law – into the Canadian courtroom.

By insisting that they would rely entirely on their orally given testimony rather than submitting written evidence, which would have been more in accordance with Canadian legal conventions, the Haida worked to make space for their participation in the hearings as Haida. Miles Richardson requested of the presiding judge that they be able to swear in as Haida, rather than on the bible, which McKay agreed to.<sup>37</sup> Many, especially the Haida chiefs, wore their ceremonial button blankets, which identify their family crests and are worn at events in which important matters are discussed. Ceremonial regalia were so important that *Iljuwas*, Reynold Russ, began his testimony by apologizing to his fellow chiefs for not having his robe with him.<sup>38</sup> The order of the speakers was significant as well. *Gitkun*, Nathan Young, was the first to testify after Richardson's opening remarks, as he was the hereditary chief of Lyell Island. Following him were the other hereditary chiefs present, Dempsey Collinson (Skidegate), Miles Richardson Sr., Reynold Russ (Masset). Significantly, several of the older people, although fluent in English, chose to speak in Haida with the aid of a translator, another way of presenting as Haida – and presenting Haida strength – in the courtroom.

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<sup>36</sup> Ibid., 40-1. The Haida referred to McKay with the Haida honoured term *Kilsli*, discussed in more detail below.

<sup>37</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 6 November.

<sup>38</sup> Ibid., 32.

Haida language was also used to great effect in how the Haida defendants referred to Justice McKay. At the outset, Miles Richardson asked McKay's permission to refer to him with the Haida honorific *Kilsli* instead of the customary 'your Honour.' Richardson explained:

I had a bit of a problem on how to address you. I definitely am respectful of the position you hold, and we discussed it. Our speakers have asked your approval for addressing you as Kilsli, which is a very honorable high addressing of an important person in our own way.<sup>39</sup>

In this renaming, the Haida defendants framed the legal process as unrepresentative of the Haida but enfolded McKay within their own system of acknowledging rank and authority; in doing so they rejected the structure of which McKay was a part without alienating him as an individual. The Justice agreed to this shift in address, although it is possible he was unprepared for the significance or the effects of this act of naming, which I return to below.

When describing their connection to their territory, Haida defendants emphasized the interconnections between their identities, the land, and Haida law. Robert Davidson, today one of the best-known living Haida artists, discussed the importance of eagle down to potlatching:

Lyell Island has the highest density of eagle nests in Canada. The sacred eagle down that we use during our ceremonies will be lost [if Lyell is logged]. Potlatches, as we practice them, is our way of demonstrating law. It's our way of creating law. It's a public statement that we make during a potlatch and the witnesses, the guests who are invited are there to validate it as law. The eagle down is used. The sacred eagle down is used to welcome the guests. It is used to represent that we come in good will and we come in peace. The eagle is my uncle. He is my crest. My concern is to save my uncle's place of dwelling.<sup>40</sup>

Gwaganaad, Diane Brown, talked about Haida law in terms of her own adoption, noting how powerful it had been in shaping her life:

We had laws, much like yours here today. Laws for adoption, laws for marriage. The potlatch is a form of law. I was adopted. Not in the courts, but it was agreed and it was more strong than any paper any of us could ever have [...] There is many more laws. I don't need to go into all of them, but like I said...that's the kind of culture we had. We

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<sup>39</sup> Western Forest Products v. Skidegate Indian Band, [1985] BCSC, 574, 6 November, 20.

<sup>40</sup> Western Forest Products v. Skidegate Indian Band, [1985] BCSC, 574, 7 November, 21-22.

had everything covered. So I want to stress that it's the land that helps us maintain our culture. Without that land I fear very much for the future of the Haida nation.<sup>41</sup>

Several Haida defendants demonstrated law by recounting the oral history of their family lineages. In keeping with Haida practices of distributing rights of use and access to places and resources through descent, Russ Jones defended his right to be on Lyell Island by talking about his maternal grandparents, Amos and Agnes Russ, as well as his memory of Agnes as a “remarkable woman” who taught him and other children Haida dances.<sup>42</sup> Agnes was significant in Jones’ testimony because she was born on Frederick Island, in the north-western part of the archipelago, and was a part of the large-scale migrations of Haida to the villages of Old Masset and Skidegate around the turn of the twentieth century. For Jones, Agnes’ role in this migration indicated that his land and resource rights (inherited historically along the maternal line) extended far beyond Skidegate to incorporate the entire territory, including Lyell Island. He ended this segment of his testimony by stating “those are my rights and that’s where the oral history ends.”<sup>43</sup> Jones then spoke at length about the need for the Haida to explore the diverse economic potential of their territory – including tourism, abalone and herring-roe-on-kelp harvests, and fisheries conservation – and the threat that contemporary logging practices posed to all of these industries. Russ closed by stating his belief “that the Haida people should have the opportunity to plan their future before some of the resources that we have claim to are squandered.”<sup>44</sup> Throughout the hearings, the Haida told a story of themselves as respectful, law-abiding people who had been failed by the Canadian political system, and so were compelled to

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<sup>41</sup> Western Forest Products v. Skidegate Indian Band, [1985] BCSC, 574, 6 November, 44.

<sup>42</sup> Western Forest Products v. Skidegate Indian Band, [1985] BCSC, 574, 7 November, 2-3. Amos Russ testified at the McKenna-McBride Commission on reserve lands in 1913.

<sup>43</sup> Ibid., 3.

<sup>44</sup> Ibid, 8.

act in accordance with their own laws in order to defend the land and waters that sustained them as a people.

The main theme in what people said, repeatedly and in different ways, is that the land is where their identity as Haida came from; that they needed the land in order to live as Haida. As Miles Richardson expressed so directly in his opening statements:

[F]or us to exist as a people, for us to exist as a culture, there needed to be certain areas of our island, of our domain, the only rightful place that we have on this earth, to remain in their natural state.

It's never been the position of our people that we curtailed logging totally, that we curtail the resource development totally. We all know that any society needs an economy to operate. We live in a rich land that's rich in resources. But we also realize that our identity as a people was directly linked to that land.<sup>45</sup>

In his testimony, Chief *Cheekial*, Miles Richardson Senior, began by talking about his experience at the day school in Skidegate and then Prince Rupert, where he realized that he would “never be assimilated” into the European way of living.<sup>46</sup> In his later years, as he took his place as a hereditary chief of the Wolf Clan in the Raven Tribe of Tanu, he came to realize the importance of cultural continuity for himself and for the Haida:

I was a logger. I cut down many trees. I did every little job in the woods. I worked. But in later years I realized there was no future. There is no future for our people under that system. That we have to preserve our way of life. A continuity of the Haida way is to me today more important than anything [...] what we are worried about today is the preservation of our culture as Haida people and we must foremost remember that the Haida nation can only exist if they have this particular area of the Queen Charlotte Islands preserved for the continuity way of our life.<sup>47</sup>

In doing so, Miles Richardson Senior highlighted an important shift in his own story, marked by his changing understandings of the logging industry and what it meant for the Haida.

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<sup>45</sup> Ibid, 22.

<sup>46</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 6 November, 29-30.

<sup>47</sup> Ibid.

When Lily Bell from Masset took the stand, she spoke extensively about the many ways that places such as Lyell Island (and its surrounding marine environment) provide Haida people with food. She cited elders' references to the land as akin to a 'deepfreeze', in the sense that their food is stored in the lands and waters of the islands. Bell also described Lyell Island as sacred ground, because of the old village sites:

Our people are buried there, our ancestors, our forefathers. It was their homeland. They lived and they died there. And what our people believe is where our ancestors walked, because our people were holy people. The land they walked on, it was holy. Today it is still holy.<sup>48</sup>

*Tlowkegewlth*, Levina Lightbown, described Lyell Island as a "classroom" integral to the perpetuation of Haida culture, where children are taught from an early age about their multifaceted reliance upon the environment:

The people of Skidegate bring their children down there [Lyell Island] to learn how to harvest the foods and to be able to recognize the medicines, the plants that exist there and the roots that they use for their utensils, baskets and so on. They learn to go to the areas such as Lyell Island. We have very few [of such places] left because of the encroachment on our lands. They bring their children there to rejuvenate their spirits.<sup>49</sup>

In these ways, Haida testimony at the injunction highlighted their multifaceted connections to place. Interestingly, the stories they told and how they told them appear to have greatly affected Justice McKay.

#### *Narrative Dynamics with Justice McKay*

By referring to McKay as *Kilsli* and not 'your Honour', the Haida did much more than simply refuse acknowledgment of the ritualized terms customary to Canadian court proceedings. They enveloped and included McKay within Haida a semantic order while simultaneously asserting the legitimacy and authority of that semantic order; they gave him a place and a role in their system, and a privileged place at that. They recognized him as an honourable person,

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<sup>48</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 6 November, 39-40.

<sup>49</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 7 November, 43.

alongside their other honourable people (elders, hereditary chiefs, ‘ladies held in high esteem’), and the effect of this appears to be that the term became more meaningful in terms of honorifics than the more conventional term.

According to Miles Richardson, bestowing the name *Kilsli* upon Justice McKay was not simply a strategic move; it was a very genuine way of acknowledging McKay’s accommodation of Haida requests to respond in their own way to the injunction against their roadblock.

Richardson emphasizes that McKay had earned the name *Kilsli* through his honourable behavior towards the Haida defendants, and the idea of naming him in this way was perceived by the Haida as a way of offering thanks and recognition to him.<sup>50</sup> Indeed, McKay appears to go through a significant transformation in his attitude towards the Haida defendants over the four days of the hearing. At first he was clearly frustrated by the Haida defendants’ unconventional approach, especially with respect to their refusal of legal representation. On the first day, he asked the industry lawyers to speak with the Haida, “so that they appreciate that it’s not just a matter of standing up and talking.”<sup>51</sup> He attempted to explain to the Haida his own position and the position of the court with respect to the ‘special treatment’ the Haida appeared to be asking for:

See, there are certain rules that have to be followed and I can’t deviate from those rules and I will not deviate from those rules. You are not entitled to any consideration except that which any litigant is entitled to. And I really do think you ought to have counsel.<sup>52</sup>

However, in spite of the objections of the industry lawyers, McKay seemed to relax these rules to a remarkable extent, carving out a middle ground that all parties would find more or less workable. McKay accepted that the Haida would give their ‘evidence’ orally and that they would have multiple (but also a manageable number of) speakers, providing their testimony would not

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<sup>50</sup> Miles G. Richardson, Personal communication, 10 April, 2015.

<sup>51</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 5 November, 9).

<sup>52</sup> *Ibid.*

be overly repetitive, and on the condition that the Haida met with the industry lawyers to give the latter a sense of what they would present or argue, in lieu of written material that the plaintiffs could have reviewed and responded to. The result was a surprisingly cooperative (although still generally oppositional) courtroom dynamic.

While on the first and part of the second day of the hearings, McKay appeared somewhat put out by the Haida requests, his subsequent commentary indicates that he was transformed by the experience of listening to what the Haida had to say, and witnessing their conduct in his courtroom. For their part, the Haida defendants were careful to extend to McKay every sign of respect while holding firm to their position against continued logging in their territory. Miles Richardson made a point of not villainizing McKay, or necessarily even the legal system, taking issue rather with the state's failure to engage them in good faith negotiations with respect to their land claim and logging industry practices in South Moresby. In his opening statement, Richardson observed: "I think it's unfortunate that in some sense your court is being...a scapegoat for a political process. We have stated constantly, we have stated to you yesterday that the issues that we have before you don't really have any place in a courtroom."<sup>53</sup> The Haida defendants were clear in demonstrating that their issue was less with the law – according to which they argued they had many rights – but with the political figures who had, over a hundred years, failed to uphold the law with respect to the Haida. However, they also appealed to McKay personally to exert the power he had in defending their rights as they saw them.

This appeal was made all the more powerful given their respectful conduct towards McKay, and their naming of him as Kilsli. Moreover, it is clear that McKay recognized what the Haida defendants were asking of him, and while he pointed to the limitations upon his actions, he also became more and more sympathetic to the Haida cause. A telling exchange occurred when

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<sup>53</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 6 November, 24.

Guujaaw (Gary Edenshaw) pointed to the apparent coziness of the BC Ministry of Forests and the forestry industry, which is worth quoting at length:

[Mr. Edanshaw(sic):] [T]he people that are in Victoria and the professional foresters[sic] are on the same boat as the man who was deputy minister of forests became head of the Council of Forest Industries. They are a very close group of people. I would say that the professional foresters run the Ministry of Forests without any doubt in my mind.

The Court: Part of the problem of this whole hearing is something that Mr. Richardson put his finger on very early and he has made [the] point in his opening that this court is not really the proper arena for many of the concerns that I have been hearing. The proper arena as Mr. Richardson said, and I agree with him one hundred percent, is the political arena and I am here to try to the best of my ability to administer the law. I do not make government policy. It would be highly improper for me to step into that area or to attempt to step into that area. I would be stepped on very quickly. I think you have to keep that in mind.

Mr. Edanshaw: I only raise that because of what he [Mr. Hunter, counsel for Western Forest Products] said.

The Court: I understand. And many of the things – I’m not going to stop you but many of the things that are being said here as Mr. Richardson said, this is really not the proper forum. It happens to be the only one that you have available to you.

Mr. Edanshaw: I think by the time we finish you will see the relevance to the legal system.

The Court: I’ll be listening right to the end.

McKay’s mounting sympathy is seen again, at the end of *GwaaGanad*, Dianne Brown’s testimony:

Mrs. Brown: So when the logging is gone, is done, if it goes through and there is stumps left, the loggers will have gone and we will be there as we have been since the beginning of time, left with very little to work with as a people. Again I want to thank Kilsli for this opportunity to speak and share my culture. Thank you very much.

The Court: Thank you. And, Mrs. Brown, the Haidas will in my view always be a strong and proud people so long as they keep producing young Haidas like you.<sup>54</sup>

On November 7<sup>th</sup>, when Russ Jones supported his right to be at Lyell by describing his lineage, but appeared to regret that he did not know more, McKay commented, “I wish I knew my roots

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<sup>54</sup> Ibid., 45.

as well.”<sup>55</sup> The height of McKay’s kind feeling towards the Haida defendants is seen in his response to *Ulungawait*, Mrs. Pansy Collinson’s invitation to him to visit Haida Gwaii. Collinson spoke about her family and the importance of the territory in upholding their traditions, and then sang a Haida song about Haida respect for the land. She closed her testimony with the following:

[O]ur Haidas would give and share with everyone, their friends, their neighbours and I would like to invite you to the islands, Lyell Island, so that you could see with your eyes how beautiful the islands are and I thank you very much for giving me the opportunity to speak.

The Court: I thank you for the invitation. What I can probably do when I went up there is to take with me three or four of the Haida totem poles that I have in my house. We have a tradition in our family when for instance my son married a young girl and she became a Canadian citizen I gave her a carved Haida pole. She as a young English girl picked up the tradition and as each member of her family came to Canada and became citizens they received a carved Haida pole. My young son just graduated law school recently. He is now articling and he has in his office the thunderbird. So your culture spreads beyond the Charlottes. I thank you for your invitation.

Mr. Richardson: I hope that those totem poles and that art is a manifestation of our culture and I certainly hope that your family is able to carry on that tradition for many more generations to come.<sup>56</sup>

At several points in his closing statements, Miles Richardson acknowledged the limitations of McKay’s ability to act in their favour, given the constraints of the legal process, but he also emphasized the power of McKay’s position, and appealed to his personal – rather than institutional – capacity to act justly.

Mr. Richardson: I think it’s very clear cut for you how justice can be delivered in this case. It’s open. It’s very clear. But it is a big decision that you have to make and we, Kilsli, know that you are an honourable man and that this decision you will make according to your best judgment in that spirit of rightness and in that spirit of understanding. So I would like to thank you on behalf of our people for the opportunity to speak to you, to speak to this court. We are going to resolve these issues and I know that we walked in here with dignity, we will face whatever comes. We will walk out of here with dignity.

The Court: I never doubted that.

Mr. Richardson: So, Kilsli, I leave it in your hands. Thank you.<sup>57</sup>

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<sup>55</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 7 November, 3.

<sup>56</sup> *Ibid.*, 41-42.

At the end, it appears to be Richardson and the Haida who bestowed a great responsibility upon McKay's shoulders.

It would seem from the way McKay delivered his reasons for judgment that he felt the weight of the personal responsibility and respect the Haida had given him. He reserved the full explanation of his reasons for his judgment, deferring this to a later date, but made the somewhat unusual decision to deliver his decision that day, before the court and the Haida, out of respect for the defendants. His response was framed as an acknowledgment of the honour and obligation bestowed upon him by the Haida. Prior to delivering his decision, McKay stated:

I am, of course, going to have to reserve with respect to my reasons. It's going to take me a bit of time, because I listened and I have listened with care the last few days. I have never – I have been on the bench a good many years and I can tell you that the last few days have been about the roughest that I have ever had on the bench. Sometimes people think that judges have great powers and we can do what we want. Of course that is not the case. We must act according to law. And I didn't want to reserve and then come down with a decision not facing the Haida people.<sup>58</sup>

After a brief adjournment, McKay returned to deliver his decision:

Much of the evidence I have heard from the Haidas would not in the usual case have been considered or led on an interlocutory application. I sensed, however, the frustration of the Haidas and I felt they should be heard. I could reserve my decision but I feel it necessary to face those Haidas who have travelled so far and who have spoken with such deep feeling, reverence and eloquence of the lands they cherish and of their concerns for the future of those lands and of the Haida people. I have heard a great deal in the last few days and I am sure you appreciate that I have been very moved, very impressed, and I want some time to prepare my formal reasons. But I will deliver them as soon as I reasonably can. I have concluded, however, that on the law which I am sworn to uphold I have no alternative but to grant the injunctions sought. Thank you.<sup>59</sup>

Some might question whether all this kind feeling matters if it failed to recognize and uphold Haida rights. However, McKay's handling of the hearings clearly mattered to the Haida, as was evidenced on the line at Lyell in the following days. Once they returned to the blockade,

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<sup>57</sup> Western Forest Products v. Skidegate Indian Band, [1985] BCSC, 574, 8 November, 27.

<sup>58</sup> Ibid., 27-8.

<sup>59</sup> Ibid, 28.

the demonstrators stood aside and let the logging trucks pass on the first day as a sign of respect for Justice McKay.<sup>60</sup> If the Justice's actual but limited act of hospitality failed to produce different results in the application or interpretation of the law, why was his receptivity to Haida in the courtroom valued?

Part of the answer depends on how we conceive of power and the structures of domination. Political philosopher James Tully prefers to envision global structural power as a network rather than as a system. This network of power is imperial in its character and its historical development, and made up of a variety of interconnected and unequal "nodes" that constitute structural relationships as we experience them.<sup>61</sup> Critically, these nodes "are composed of humans networking in a variety of different forms of association, all of which rest ultimately on the negotiated practices of the participants in their relationships with one another."<sup>62</sup> Tully suggests that these relationship nodes represent both the resilience and the potential downfall of global power structures:

[W]hat keeps the imperial network going and the structural relationships of domination in their background place is nothing more (nor nothing less) than the activities of powerfully situated actors to resist, contain, roll back and circumscribe the uncontrollable democratising negotiations and confrontations of civic citizens in a multiplicity of local nodes. These sites of civic activity are the Achilles heel of informal imperialism. To see dominating relationships as a systemic structure and to organise confrontation accordingly is to misrepresent the field of local and global citizenship and to overlook the concrete possibilities available on it for creative and effective negotiations and confrontations of civicisation and de-imperialisation.<sup>63</sup>

Seen in this light, the circumscribed and delimited performances by the Haida defendants and by McKay constitute the kinds of 'practices of civic freedom' that are necessary, in Tully's

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<sup>60</sup> Miles G. Richardson, Personal communication, 10 April, 2015.

<sup>61</sup> Tully, *Public Philosophy*, 299-300.

<sup>62</sup> *Ibid.* 300.

<sup>63</sup> *Ibid.*

proposed scenario, to effect meaningful social change and a more democratic society.<sup>64</sup>

The strategies of confrontation employed by The Haida at this time were diverse and included many forms of direct action that were engaged only after they had exhausted the limits of political negotiation. In their attempts to achieve the immediate goal of halting logging in South Moresby and in pursuit of the longer-term objective of re-establishing themselves as a nation with decision-making authority over their territories, the Haida needed to change the conditions in which such political negotiations occurred. The specific way that the Haida engaged McKay and the injunction hearings represents an effort to pry open a space to speak and be listened to – simultaneously working within *and* against the normative legal processes available to them. McKay’s receptivity to these efforts, however constrained, represented his recognition of what relationship they sought and was an expression of reciprocity. In his own minor way and in the limited space of his courtroom, McKay enacted the kind of relationship the Haida were attempting to establish more broadly in order to achieve their larger objective of repossessing their territories.

Miles Richardson emphasized to me that the Haida approach at this time (and since) was about acting from the head *and* the heart. In this sense, it would seem that McKay demonstrated his ability to speak and – to a limited but significant degree – *act* from the heart. McKay was conscious of his limitations and announced them as such, but took unusual steps to act in a way that he considered honourable in relation to the Haida defendants as a means of meeting the honour they extended to him. The Haida knew they would not be successful in having the injunction order overturned, but their secondary objective was *to be heard*; to get on the record and have an opportunity to expose the illegitimacy of the other side (in this instance, not

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<sup>64</sup> Ibid. See also the introduction to this dissertation, page 15.

necessarily the law, but industry and state politics), while asserting the strength and legitimacy of their own positions and claims.<sup>65</sup>

Richardson has insisted that the blockades happened because of the breakdown in the negotiations with the provincial and federal governments, that they were out on the line in order to force the state back to the negotiating tables in earnest, and to re-establish a space for dialogue with governments possessing a strong mandate to negotiate in good faith.<sup>66</sup> McKay could have made the personal choice to use the powers available to him in his courtroom to limit Haida peoples' expression and make them conform to normal courtroom procedures, but he chose otherwise. His actions did not effect a transformation in legal reasoning, but they created a glimmer of an alternative to the status quo in terms of reproducing dominant power relations. No doubt McKay had been paying attention to the legal and political shifts occurring around the idea of Indigenous title, but it seems likely that he was also deeply influenced by the story the Haida were telling and performing in his courtroom. Perhaps, in listening to the Haida defendants, McKay came to understand himself in relation to the role he played in the story they were telling. It is the evidence of this somewhat intangible and minor relational shift that was recognized as valuable by the Haida who testified and those on the line at Lyell Island. In and beyond the injunction hearings, Haida people were alert to, deliberately cultivated, and attended to instances of this type of relationship. As I will discuss later in the chapter, this caretaking approach to their relationships appears to be a key dimension of how the Haida articulated, embodied, and enacted a particular story about what their leadership of their territory would look like.

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

### *Narrative Dynamics With Industry Lawyers*

As is customary in a courtroom, the main potential for narrative fireworks is between the plaintiffs and the defendants. In this case, the main actors were the Haida and the lawyers applying for the injunction against the protestors, with Counsel E.C. Chiasson representing Western Forest Products (WFP) and Counsels J.L. Hunter and P.G. Voith representing WFP's Sandspit-based contractor, Frank Beban Logging Ltd. In different ways, each party oriented their rhetoric to the others', framing and reframing the facts of the case in an attempt to craft the most convincing narrative and win the sympathy of the court. By the end of the hearings, however, it appears that Chiasson and Hunter recognized the power of the Haida testimony as well as the effect it had upon McKay. While it is impossible now to determine whether the industry lawyers appreciated it at the time, the transcripts seem to show that although they won the injunction, the lawyers for WFP and Frank Beban lost the narrative battle in McKay's courtroom.

One of the central components of the narrative dynamics between the Haida and the industry lawyers was their debates over the proper narrative context in which to evaluate the blockade at Lyell. The Haida were constantly widening the scope of significance, situating logging on Lyell as just the latest manifestation of a colonial relationship in which Haida had been unjustly marginalized in their own territory, which was exploited and mismanaged by outside forces who reaped most of the short-term benefits and suffered none of the long-term harmful effects of industrial logging practices. They argued that government and industry leaders were in collusion, conducting logging and resource management in recklessly short sighted and devastating ways that were working against the long-term interests of all local people, but particularly the Haida, for whom the islands are home in a deep and unique way. As we saw above, the Haida defendants established their right to intercede partly on the basis of their long-

standing occupation and relationship to place (which Miles Richardson argued in his final statements is recognized in both Canadian and Haida law), as well as upon their deep ecological knowledge of, and cultural dependence upon the local environment. The Haida situated the blockade at Lyell Island as a stand by a small but strong group of local people against an unjust and enduring colonial relationship with the state, in which their rights, title, and sovereignty (although the term is not used explicitly) had been disregarded by the state for over a hundred years.

The industry lawyers, on the other hand, represented the plaintiffs as innocent third parties unfairly caught in the middle of a broader conflict between the Haida and the state over title and land rights.<sup>67</sup> They argued that their clients contributed to the local and national economies in substantive ways, looked after local ecologies, and were doing their best in trying circumstances. With numbers to support their claim, they asserted that if the injunction against the protestors was not granted, logging operations would be shut down and both WFP and Frank Beban logging – along with the local communities they sustained – would suffer ‘irreparable harm’ and ‘irreparable loss.’ On the basis of these arguments and the fact that they had signed legal contracts with the proper authorities in the provincial Ministry of Forests, the plaintiffs urged the court to uphold the ‘status quo’ and allow logging to continue on Lyell Island.<sup>68</sup>

Part of the advantage and disadvantage of the Haida’s lack of legal representation was that they presented their arguments in lay language. Where this did not serve them in terms of the court’s final decision, their lay interpretation of technical legal terms powerfully communicated to the court and to the public, through the media attending the hearings, how they perceived their

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<sup>67</sup> In his closing arguments, Chiasson contends that “[t]he dispute, the real dispute, here is a dispute between the Haida and the government. My client, Western Forest Products, cannot resolve that dispute.” *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 8 November, 2.

<sup>68</sup> *Ibid.*, 15.

struggle. The ‘irreparable harm’ or ‘loss’ claimed by the plaintiffs was compared to the scale of cultural loss at stake in several people’s testimony, but perhaps most powerfully in Miles Richardson’s closing arguments, in which he argued that it was clearly the Haida who stood to lose the most if logging were allowed to continue. Part of this argument rested on the need for Haida to show historical and continued use and occupation of the territory in their title case, for which evidence of occupation such as culturally modified trees (e.g., through cedar stripping, or test holes bored into trees considered for poles) was necessary. Practically, if such trees were logged, the Haida would have lost crucial evidence needed to make a successful title claim in the courts or in negotiations processes. But as Richardson stated, irreparable harm meant even more than this for the Haida, because their identity as Haida people is dependent upon the land:

Lyell Island is an irreplaceable resource for our people. It’s a place, as had been very clearly stated, to which the Haida people go for food, for medicine. It’s a place where [we cleanse] the spirit of the people. It’s a source of our history. And it’s a security for our future. You have heard evidence that very clearly the primeval forest cannot be replaced. If it’s logged, only the stumps will remain. And I think Diane Brown told you very clearly, and I will quote from what she said. “I do not want my children to inherit only stumps.” This harm to our people cannot be compensated with money. What this is [is] the destruction of an important part, a very crucial component of our identity. And it can’t be destroyed. I think you have to weigh that harm against the harm the plaintiffs, the companies, [who] say they will suffer [harm] to their commercial reputation.<sup>69</sup>

Another legally significant term used by Hunter and Chiasson was ‘status quo.’ In their framing, logging had been a fundamental part of economic life on the Queen Charlottes for decades, and for this reason should be allowed to continue while the Haida pursued their land claim through the courts. Here, the plaintiffs’ and defendants’ differing perceptions of the relevant time frames are significant. Where the industry lawyers spoke in terms of decades, the Haida spoke in terms of generations past and future, millennia that the Haida spent living and sustaining themselves from the lands and waters of their territory. This alternative temporal

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<sup>69</sup> Ibid., 20.

framework found pointed expression in Miles Richardson's redefinition of what the 'status quo' meant with respect to forests:

I heard some mention previously of maintaining the status quo. We agree with that. That's in exercising your discretion we hope that you do preserve the status quo. The land as it's been for thousands of years will stay in that same state if you don't allow this injunction. The trees will still be standing.<sup>70</sup>

The value of whose claim was greater kept returning to the issues of time and rootedness, with the competing value of different communities (or industries) hinging on stories about the duration of their time spent on the islands, and the nature of their dependence on the lands and resources of the territory. Rhetorically, the Haida defendants clearly had the upper hand in this argument, but the industry lawyers attempted to show that they represented the interests of people whose lives and livelihoods had become dependent upon industrial logging, that these interests also had merit that must be acknowledged and defended by the court. Chiasson pointed to the logging community living full time on Lyell Island as made up of families, a school, and teachers, not just transient working men.<sup>71</sup> In contrast, the industry lawyers suggested that it was Haida connections to Lyell Island that were recent and lacked permanence, that the protestors were flying in for a kind of cause célèbre, and had no long-term residency or occupation of the place in living memory. What this characterization of Haida relationships to the area overlooks is why no Haida lived full time in the southern portion of their territory. This argument disregards the fact that it was the epidemics of the 19<sup>th</sup> century and other pressures of colonialism that caused the surviving Haida to leave their village sites in the southern parts of the archipelago and gather in the two villages of Skidegate and Old Masset on Graham Island.

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<sup>70</sup> Ibid, 21.

<sup>71</sup> Ibid., 3-4.

While many of the Haida defendants spoke at length about the nature of their connection to the region, Gary Russ, a former logger himself, quite effectively disrupted the image of Beban's logging camps as deeply attached to and invested in place:

A lot of talk has been brought up pertaining to the people that are employed by Mr. Frank Beban bringing in school teachers, school teachers wages, classrooms, bunk houses, all the facilities that he has got down there. And certainly from the day that he moved into the area, yes, he realized that at one point in time he was going to have to move off and if I'm not mistaken all those facilities have been constructed on skids in the event that they have to move and if the short-term employment of forty to eighty men can take precedence over the culture of six to eight thousand Haidas then there is something wrong with our legal system as far as I'm concerned.<sup>72</sup>

Guujaaw interjected at one point in the hearings to object to what he perceived as one of the narrative strategies being employed by the industry lawyers, which was to frame the conflict as about 'Indians versus jobs', thus portraying Western Forest Products and Frank Beban's company as the better caretakers of local communities. This narrative was vocally promoted on the Islands by Sandspit resident R.L. Smith, who regularly self-published a vitriolic community broadsheet during the height of the conflict. The paper, supported by Beban, was aptly and self-consciously titled *The Redneck News*.<sup>73</sup> In court, Guujaaw rejected this polarizing narrative out of hand, claiming the companies had no real interest in employment, but rather profits, asserting: "That's not the sentiments of our people. That's not what we're trying to do. We are not trying to hurt other people. We are trying to protect ourselves."<sup>74</sup> In her testimony, Gladys Gladstone also effectively rejected this oppositional framing by pointing out that loggers and Haida were one and the same, which was supported by many of the other Haida defendants who identified themselves as former loggers or people whose families worked in the industry. She stated:

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<sup>72</sup> Western Forest Products v. Skidegate Indian Band, [1985] BCSC, 574, 7 November, 14.

<sup>73</sup> John F. Burns, "Sandspit Journal; With Logging Banned, The Logger Is Mourned," *The New York Times*, sec. World, (August 15, 1987). <<http://www.nytimes.com/1987/08/15/world/sandspit-journal-with-logging-banned-the-logger-is-mourned.html>> (Accessed March 2016).; Ian Lordon, "There's This Joke... What Do You Do With Old Rednecks? And I Don't Know How it Ends, But..." *SpruceRoots Magazine*, (July 1998). <<http://www.spruceroots.org/July98/RL.html>> (Accessed August 2015).; May, *Paradise Won*, 308-9.

<sup>74</sup> Western Forest Products v. Skidegate Indian Band, [1985] BCSC, 574, 7 November, 33.

Sitting in this court this morning listening to the lawyers representing Mr. Beban, I kept hearing reference to Mr. Beban's rights and the people's rights, the logger's rights to their jobs. No one in the issue seems to have given consideration to the rights of the Haida people. It didn't seem to be very important to anyone else. That was the first thing I wanted to say.

And the next thing is that we have been made to look as if we are totally insensitive to all these people who are being put out of jobs. We are the same as those people who say they are going to be unemployed.<sup>75</sup>

Mrs. Gladstone then went on to quote at length from the testimony of her grandfather, Amos Russ, at the McKenna-McBride Commission asserting Haida land rights, to give a sense of the multi-generational scope of the land rights struggle within her own family. She further noted that her son was one of the young men on the line at Lyell Island at the time of the injunction hearings.<sup>76</sup>

At several points in the hearings process, the industry lawyers launched a two-pronged attack on the Haida argument. They accomplished this first by portraying industry as the responsible party doing the hard, on-the-ground work of supporting regional economies and ecologies. Secondly, they attempted to cast doubt on the authenticity of Haida claims of connection to place, depicting the conflict as issues-based and temporary, and minimized the scale and impact of permitting logging to continue. Hunter acknowledged the broad scope of the arguments heard in the Haida testimony, in terms of both time and territory, and suggested these to be beyond the court's mandate in an interlocutory hearing. In doing so, he attempted to refocus attention on what was framed as a small matter of allowing logging to continue for a

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<sup>75</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 6 November, 52.

<sup>76</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 6 November, 52-4. Significantly, in the extracts of Amos Russ' testimony from 1913, he also refers to generations of Haida past and future, and in this way an even broader lineage of Haida occupying their territory is brought into McKay's courtroom, further expanding the scope of time in which Haida have been living in their territory. See the CHN's 2010 newsletter, which reprinted Haida testimony to the McKenna-McBride Commission in 1913: Council of the Haida Nation, "Indian Affairs 1913," *Haida Laas: Newsletter of the Council of the Haida Nation*, (September 2010): 1-27.

short time in comparison to the broad, historical and ‘political’ issues raised by the defendants.<sup>77</sup>

Both Chiasson and Hunter referred to the blockade at Lyell Island as “self help”; that is, an illegitimate action upon the part of the Haida, who, as they argued, had mechanisms available to them where they could “easily” have pursued recognition of their Aboriginal title, “if the Haidas wish...to.”<sup>78</sup> In his closing arguments, Council Hunter insisted that

what is not open to [the Haida] is the kind of self help that my friend Mr. Chiasson refers to and that has occurred last week on Lyell Island. In my submission *they are not at liberty under our system to take matters into their own hands*. They do have mechanisms whereby they can have these disputes resolved.<sup>79</sup>

Hunter went on to question the Haida argument that continued logging posed such a great threat to the survival of Haida culture, especially given their impressive display of that culture over the course of the injunction hearings:

In my submission it is simply not tenable to suggest that the continuation for a few more years of logging, which has continued on this logging for ten years and of course many years in the past as well, will make the difference between life and death of Haida culture. We have seen lots of evidence in this court in the last couple of days that Haida culture is alive and well.<sup>80</sup>

In short, the logging industry was presented as quite harmless, and the claims against it overblown.

Using the arguments of one’s opponents against them in a court setting is by no means unusual, so perhaps it is a stretch to claim that the industry lawyers were drawn into the Haida narrative any more than lawyers would be in any other courtroom setting. However, in their closing arguments, both Chiasson and Hunter acknowledged the possibility that McKay might have been swayed by the Haida testimony, evidence of which they saw in the unusual procedures

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<sup>77</sup> *Western Forest Products v. Skidegate Indian Band*, [1985] BCSC, 574, 8 November, 6-8. See also Chiasson’s similar narrowing of the scope of the matter before the court: *Ibid.*, 3.

<sup>78</sup> *Ibid.*, 7. The available mechanisms would have been the federal comprehensive claims process or litigation, neither of which at that time, or now, would proceed quickly enough to halt logging on the islands before they were stripped bare.

<sup>79</sup> *Ibid.*, 8. Emphasis mine.

<sup>80</sup> *Ibid.*

that McKay allowed in lieu of following the conventions for giving evidence.<sup>81</sup> They raised concerns about McKay's bias towards the Haida in order to remind him that he was bound by the court's procedures for providing evidence and the rule of law. The Haida choice to speak in plain terms and in a uniquely Haida idiom about why they were blocking the road turned the court into a forum for the Haida to tell their story, and the effects of this are interesting. In the end, if they won the hearing and defeated the injunction it would have been a tremendous legal and public validation of the legitimacy of their story. If they lost, as they did, it would only add public evidence to their narrative of the Haida as a people who were finding no justice within the state systems in their existing form. In promoting their narrative without vilifying McKay, but instead appealing to his honour and that of the legal system he represented, the Haida defendants bolstered their story of being an honourable but ill-used people.<sup>82</sup>

### **The Blockade at Lyell Island**

With the injunction granted, the Haida protestors at Lyell Island could now be arrested and charged with trespassing, which carried a possible sentence of up to two years in prison.<sup>83</sup> Those who testified in Vancouver returned to the line, and the young people readied themselves for the arrests. Rather than be arrested en masse, their plan was to have a small number of people block the road every day, in order to prolong the blockade and perhaps increase their ability to gain and maintain media attention. And media there was, aplenty, which was only fueled by their appearances in the Vancouver courts. As the events on the line unfolded, the ever-present media heightened everyone's awareness – protestors, RCMP, logging crews – that their actions would be represented in some kind of story form on the nightly news.

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<sup>81</sup> Ibid.

<sup>82</sup> In this way, the Haida approach in the 1980s is similar to that taken in the early Stó:lō petitions, which appealed to the honour of the Crown while noting the frequent failure of its representatives to act honourably. As in the petitions, this rhetorical framing leaves no doubt about who is the truly honourable party.

<sup>83</sup> Miles G. Richardson, Personal communication, 10 April, 2015.

What no one at the protest site anticipated was the arrival of four well-respected Haida elders just before the first arrests were to take place, insisting they be the first to be arrested. The arrival of Ada Yovanovitch (Dianne Brown's mother), Watson Pryce (Yovanovitch's uncle and hereditary chief), *Jaadsaankinlhan* Ethel Jones, and Adolphus "Fussy" Marks (Ethel's cousin) marked a turning point in the drama.<sup>84</sup> Elders in traditional clothes changed the story from a protest by a few activist youth to stop logging to a protest on behalf of the Haida people to protect their traditions and their territory. After this, it appears that the Haida gained control of the script in a subtle but powerful way. Haida actions were carefully considered and discussed among the protestors.<sup>85</sup> Some of these actions were carried out in front of the cameras, others away from them, but throughout, the Haida were performing, embodying, and enacting a model of responsible leadership by maintaining respectful relations with the key players involved in, and affected by, the blockades.

### *Inhabiting Peaceful Disobedience as Haida*

The blockades represented an act of non-violent civil disobedience that was at once strategic, measured, and well tailored to fit the specific relationship needs of the Haida. As Guujaaw observed in 1992,

[W]e have a dispute with Canada that's a longstanding dispute, but it's not the kind of dispute where people are dying in the streets or getting lined up and shot or anything. I mean, we live peacefully beside the people here; we work alongside of them in the logging camps and eat with them in the same restaurants here. We don't have a violent confrontation with them.<sup>86</sup>

That non-violent civil disobedience is associated with Gandhi's struggles against British imperial rule is obviously symbolically significant for Indigenous Peoples. Peaceful protest has seen wide

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<sup>84</sup> May, *Paradise Won*, 118-120.; *Ravens and Eagles: Athlii Gwaii: The Line at Lyell, Parts 1 & 2*. Jeff Bear and Marianne Jones, dirs. Urbanrez Productions, 2003.; Miles G. Richardson, Personal communication, 10 April, 2015..

<sup>85</sup> May, *Paradise Won*, 119-120.; *Ravens and Eagles: Athlii Gwaii: The Line at Lyell, Parts 1 & 2*. Jeff Bear and Marianne Jones, dirs. Urbanrez Productions, 2003.

<sup>86</sup> Hennesey, "Gwaii Haanas," 5.

use in Canada and beyond as a means of resistance against oppressive policies and governments unreceptive to change and accommodation of the needs of a marginalized section of the citizenry (e.g., by suffragettes, labour activists, and African Americans and their allies in the U.S. civil rights movement). In employing non-violent civil disobedience, the Haida were inhabiting this tradition of protest in specifically Haida ways, making it into a vehicle of resistance against industrial logging practices while simultaneously asserting Haida authority and framing the Queen Charlotte Islands as Haida territory.<sup>87</sup> Haida language was used to coordinate the protest on CB radio with those in Skidegate and Masset. Pictures and video accounts of the protests show lines of young men and women, many with their faces marked with black or red paint, drumming, singing, or shaking handmade shell-rattles as they were approached by representatives of the logging companies to be served writs, which were left to fall to the ground, unacknowledged by the protestors.<sup>88</sup>

Even viewing the footage thirty years later, the effects of these seemingly small gestures are powerful. Each also represents a re-engagement with Haida traditions, practices, and stories, which required Haida people, young and old, to engage with one another. As Michael Nicoll Yahgulaanaas observed in retrospect, painting their faces linked the young protestors to their ancestors: “[it] connected us to a past, maybe a distant past. If at anytime in a person’s life there was a time to display your colours, that was the time to do it.”<sup>89</sup> The drums and shell-rattles each required making, by hand, with the right materials harvested locally, and skills acquired and shared among Haida people. Thus it is likely that before they even stepped onto the line to assert themselves as Haida on Haida land, these young men and women were working together as individuals in a collective, sharing time together and with the older people in their community,

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<sup>87</sup> In other words, their engagement of the tradition of peaceful civil disobedience was dialogic.

<sup>88</sup> *Ravens and Eagles*, 2003.

<sup>89</sup> *Ibid.*

building and nourishing interpersonal relationships by re-engaging historical practices in order to deal with current conditions.

### *The Arrival of the Elders*

When asked, Haida people who were at the line recollect with emotion the elders' unexpected arrival at the blockade. Their appearance and insistence on being the first arrested was initially opposed by the young people, and debated and discussed at length after their arrival. The source of this opposition was a deep concern for the elders' well being. The elders who came forward were in their seventies or eighties, and some were reliant on medications for their continued health.<sup>90</sup> People at the time believed that the potential for jail sentences was real, and everyone was uncertain about what reaction the blockade would incite from those opposing them at the line. As Miles Richardson reflected, there was a "huge sense of risk – we didn't know if we were going to get run over by the logging trucks."<sup>91</sup> Thus the young people worried about the physical safety of the elders on the front lines of the blockade, as well as how they would fare in prison because of their age and vulnerability.

For their part, the elders made light of the possible jail sentences for the news cameras, with Ada Yavonavitch stating: "As long as I have some fancy work to do, I won't mind, I won't mind it all."<sup>92</sup> Adolphus Marks' main concern was reputedly whether there would be coffee in prison.<sup>93</sup> However, they were emphatic in their message about what this conflict was about, and why they were there. The elders' stated intention was to step forward after too many years of remaining silent about what they perceived as a long struggle against the exploitation of their lands and marginalization of their peoples. When they first proposed being arrested to the young

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<sup>90</sup> *Ravens and Eagles*, 2003.

<sup>91</sup> Miles G. Richardson, Personal communication, 10 April, 2015.

<sup>92</sup> *Ravens and Eagles*, 2003.

<sup>93</sup> *Ibid.*

Haida, they framed it as a means to shame the government by showing the world that the Canadian government was putting elderly people in jail.<sup>94</sup> As Ethel Jones stated to the RCMP chief, Harry Wallace: “This is our land, and you know, we ain’t afraid of going to jail. Definitely not, maybe that will open our governments’ eyes, look at these old ladies sitting in jail, for what? For protecting their land. We slept long enough.”<sup>95</sup> To the assembled journalists she explained: “People think we are foolish sitting here in the rain. We are trying to save our land. Why can’t the government see this?”<sup>96</sup> When asked by the reporters why he was participating in the blockade, Adolphus ‘Fussy’ Marks emphasized that the land was Haida land long before anyone else came to it, and that they were protecting it not only for future generations of their own people, but for all Canadians:

The answer is that it’s for the both sides...we’re protecting our island... How come the government make a claim on it? I want to know if it’s the government who made this island or the good lord? I want any of you to answer this one. Did the government make the island, now they claim it? We were here thousands and thousands of years before anyone other than Haidas stepped on it...That’s why we’re here. We’re here for both our peoples. For the generations to come.

It’s not only for us, it’s for white man’s new generation to come too. What they gonna make money on when they strip the islands?<sup>97</sup>

I found the elders to be disarmingly relatable in the video footage; they spoke with gravity but also at times with humour. Taking in the image of Ada Yovanovitch smoking in the rain wearing her plastic bonnet and her crochet work in her lap, ‘Fussy’ Marks in his baseball cap and thick glasses, sitting on a bench on the road, I had the feeling that these older people could be anyone’s grandparents. Yet they wore ceremonial button blankets for their arrest, and they spoke as hereditary leaders and law-keepers about Haida history and Haida land, as well as

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<sup>94</sup> May, *Paradise Won*, 119.; *Ravens and Eagles*, 2003.

<sup>95</sup> *Ravens and Eagles*, 2003.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

their responsibility to look after the interests of future generations. In reflecting on what the presence of the elders brought to the blockade, Dianne Brown said “they brought dignity to what we were doing. They brought validation, they brought history, and they brought the future.”<sup>98</sup>

Similarly, Guujaaw stated:

Understanding who we are as a people, who we are as families, who we are in relationship to our land, is given to us by our elders. The elders clearly represent our linkage to all of our history and you know, these are seasoned people who had a lot of living behind them and were not just a radical fringe element going out to raise heck with the government for the sake of doing that.<sup>99</sup>

The elders also gave a lot of credit to the young people, ensuring that theirs be remembered as a collective effort. A very elderly Watson Pryce remembered what happened after their arrest on the road at Lyell Island:

So they loaded three of us on the helicopter. I sat there and said “I guess you’re taking us to jail now.” Policeman stopped and said ‘Who’s talking about sending you to jail?’ They just brought us home and let us go. That’s all I was told.... But there’s a lot of them other ones who did what we did. That’s how they got it stopped. There’s too many of them blocking the road.<sup>100</sup>

### *Story, Drama, and the Media: On and Off-Camera Performances*

The presence of the media at the blockade was necessary and crucial for carrying the Haida message beyond the Queen Charlottes, making witnesses of a broader audience and gaining supporters, of which the Haida had many by this point in their struggle. Elders such as Ethel Jones were clearly conscious of this when she noted that the publicness of their arrests would shame the government. The media spotlight on the events at Lyell brought advantages, but also risks that the story of the conflict would become distorted, or refracted through other people’s political agendas so that it would be unrecognizable from Haida peoples’ view of the events, and what outcomes they were aiming for. The Haida protestors – and to a certain extent

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<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

also the RCMP and the logging crews – had to work against the polarizing narrative of ‘Indians vs. loggers’ that Guujaaw objected to in the industry lawyers’ rhetoric. In her detailed account, *Paradise Won: The Struggle to Save South Moresby*, Elizabeth May describes a moment in which the media approached Jones and Yovanovitch after they were served writs on the road on November 15<sup>th</sup> to ask them if they were angry. This Ethel Jones calmly denied, responding only “[w]e’re not angry. We just don’t like loggers destroying our land.”<sup>101</sup> May suggests that for many of the reporters present, the readiest narrative ran along the lines of “hostile logger confronts militant Haida.”<sup>102</sup> Fodder for such a story, however, was not always forthcoming from the Haida camp.

On and off-screen there was evidence of peoples’ careful handling of what could have easily exploded into a violent standoff. The Haida took steps to acknowledge the importance of their relationships with the RCMP and the logging community – communities they were a part of. Importantly, the RCMP and members of the logging community were often receptive to these overtures, and gestures of respect and affinity on Lyell ran in many directions. Not that this emphasis on common ground was the rule for everyone. Now a respected Chief, Allan Wilson, *Sgaann 7iw7waans*, was one of the young Haida RCMP officers chosen by the elders to make the arrests. He recalls that he was called a ‘traitor’ by some members of the Haida community, although the elders and others showed him a great deal of respect.<sup>103</sup> As mentioned earlier, Smith’s *Redneck News* railed against the ‘Haidas and Hippies’ who he perceived as threats to logging and the communities it supported on the islands.<sup>104</sup>

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<sup>101</sup> May, *Paradise Won*, 121, 113-124.

<sup>102</sup> *Ibid.*, 121.

<sup>103</sup> *Ravens and Eagles*, 2003. Get correct orthography for Sgaann 7iw7waans.

<sup>104</sup> Ian Gill, *All That We Say Is Ours: Guujaaw and the Reawakening of the Haida Nation*, (Douglas & McIntyre, 2010), 114.

Notwithstanding these elements, the Haida worked then, and now, to maintain respectful relations with many of the people and parties involved in the conflict, many of whom could not be easily lumped into a pro- or anti-logging position. In doing so, they performed a form of leadership that was synonymous with the caretaking of place *as well as* the islands' peoples and their interests. Not only was this conduct a matter of good politics, and an assertion of authority, it was also badly needed given the very intimate and interconnected communities that constituted the population of Haida Gwaii. The conflict over logging threatened to divide those communities, and even families, in the process. In working to acknowledge and soften some of these divides, the Haida were showing (or attempting to show) that they would be better, *local* caretakers of the islands than the existing Victoria and Ottawa-based government authorities.

At the time, local views varied on whether or how much of South Moresby should be allocated as park or mixed use. Pat Armstrong, then a mechanic and welder working for forestry company Crown Zellerbach, became a spokesman for a local organization that supported a sixty percent park option for South Moresby (not including Lyell Island) that was tabled in the negotiations leading up to the blockades at Athlii Gwaii.<sup>105</sup> In a 2010 retrospective on Lyell Island, Armstrong is quoted as saying that the members of Moresby Island Concerned Citizens shared the Haida distrust of the existing government's responsible forestry management, and "felt the federal government was arrogant and didn't care about the interests of the local community."<sup>106</sup> Indeed, the Haida objective was not for the government to replace Crown lands

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<sup>105</sup> Larry Pynn, "Lyell Island: 25 Years Later," The Vancouver Sun, (November 17 2010), reprinted on Western Canada Wilderness Website. <[https://www.wildernesscommittee.org/news/lyell\\_island\\_25\\_years\\_later](https://www.wildernesscommittee.org/news/lyell_island_25_years_later)>; The Gwaii Haanas Archives contains transcriptions of some of the meetings held between Haida and state representatives, including one between federal and Haida representatives discussing various proposed protection plans on the table just prior to the blockade. See: Gwaii Haanas National Park Reserve and Haida Heritage Site Archives, "Meeting Minutes, April 24, 1985, Victoria BC," Queen Charlotte, Haida Gwaii.

<sup>106</sup> Pynn, "Lyell Island," 2010.

that were managed by the Provincial Ministry of Forests with a national park managed by Parks Canada. As Guujaaw noted,

All we asked them to do was stop. We didn't ask them to create a park and to manage it. In fact we gave them quite the opposite message, we weren't going to accept that for a moment. It wasn't their place to be managing our lands. It is our lands, the visitors were quite prepared to accept that, and they had no choice but to come up with [the] kind of agreement that we did come up with.<sup>107</sup>

As much as the issue of logging in South Moresby created divisions among families, friends, and co-workers, these same connections meant that people also had reasons to act carefully and with respect. It was these connections that the Haida worked to maintain and even strengthen, insofar as this was possible.<sup>108</sup> Frank Beban, the local contractor who certainly represented the side supporting continued logging on the islands, by all accounts found the whole conflict upsetting. Beban and the logging crews were also part of the mediatized drama of the blockade, and had a role to play in its script. Every day, Beban or some other representative from the logging companies had to walk up to the protestors and ask them to step aside and allow the crews to go to work, a role he performed without apparent relish, according to recorded footage. Beban, too, had friends on the line, including the wife of his best friend who had died in a helicopter accident only a year earlier. Beban himself died shortly after the signing of the South Moresby Agreement, while dismantling his logging camp on Lyell Island. A man who was the subject of mixed feelings among the Haida and environmentalist camps, Frank Beban is often remembered on Haida Gwaii with respect and his early death with regret.<sup>109</sup>

It is the potential for shared ground and recognition of relationship that the Haida were appealing to when they hosted a feast for the loggers and their families on Lyell. Media were

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<sup>107</sup> *Ravens and Eagles*, 2003.

<sup>108</sup> Which is not to say that there was or is universal feeling among residents or former residents about the blockade or its outcomes.

<sup>109</sup> Burns, "Sandspit Journal," 1987.; Lordon, "There's This Joke," 1998.; Pynn, "Lyell Island," 2010.

expressly not invited to this event, an act meant to convey to the logging community on Lyell that the Haida peoples' fight was not with local people but with the government's lack of forestry regulation and with the companies who were benefitting from the existing pace of logging on the islands.<sup>110</sup> To be sure, feasting is also, historically, a way to express one's status and authority in Haida traditions. For this reason, the feast could be read partly as an assertion of territorial authority, but also one that draws the logging community into the cultural practices of the gift economy. That the feast was held off-camera could also be read as an attempt to recognize the common interests that existed among the Haida protestors and the logging community as residents of a shared (although also firmly asserted Haida) territory – casting the logging community as insiders in a way that the off-island based governments and media were not. To some degree, gestures such as this were reciprocal. When the Haida left Lyell Island in the midst of the protests to attend a funeral, the loggers agreed not to proceed with logging in their absence.<sup>111</sup>

The Haida also made efforts to maintain respectful relations and good communication with the RCMP, whom they saw at least in part as in a similar class or power position as themselves and the loggers. For many Haida, the main dividing line was not so much among the Haida and the loggers, or the Haida on the line and the RCMP, but between the residents of the islands and off-island corporate and government interests. As Guujaaw has since stated: “we didn't see the police as the bad guys, or even the loggers particularly, because they were only working people”<sup>112</sup>; and later: “I think the RCMP had a pretty hard position. I think they came to understand our position and had become sympathetic...they understood and got to know everybody, so when the time came for them to go and make arrests it was quite hard, in

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<sup>110</sup> May, *Paradise Won*, 185-91; Miles G. Richardson, Personal communication, 10 April, 2015.

<sup>111</sup> Pynn, “Lyell Island,” 2010.

<sup>112</sup> *Ravens and Eagles*, 2003.

particular because some of the RCMP were Haida.”<sup>113</sup> Allan Wilson, one of the Haida RCMP, was specifically requested by Ethel Jones as an arresting officer, a request that proved difficult for both of them to fulfill. As Ethel recounts in the Lyell Island episode of the Haida-made documentary series *Ravens & Eagles*:

We sat there and waited, and then pretty soon our Allan Wilson came, and it had to be him that come and arrest me. I go like this with my arm. I didn’t want him to grab me, eh? [puts her arm out]. So I go like this, and he put his arm through here. His tears was running too, it wasn’t easy for him at all. Was a hard thing we did on behalf of Masset people.<sup>114</sup>

In the same segment, Allan Wilson shares his memories of the arrest:

It was a long walk. As we approached, I couldn’t hold my tears back as we approached the line. I always remember what Nanaay Ethel said that day, what each one of them said there that day: ‘if anyone’s going to take us away, we’d rather it be you’ ... I had the respect of every person in that camp.<sup>115</sup>

Treating people with respect should not be seen as (or only as) a strategic move on the part of the Haida protestors; it was a genuinely felt product of being in such close relationship with many of the people on all sides of the conflict. Allan Wilson, like Ethel Jones, was from Masset and was thought of as her nephew, as he was her best friend Gracie’s son.<sup>116</sup>

These close relationships were in no way restricted to the Haida. The RCMP Chief on the scene was a family friend of the Yovanovitches, and it is clear from his exchanges with the elders that he handled the situation with as much care as he could within his official capacity.<sup>117</sup> Video footage records him and Ethel Jones communicating about how the arrests would occur, with Wallace reassuring Jones that only those on the road would be arrested, not those down in the Haida camps. He further states, “I think your message is coming across. We want to do it

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> May, *Paradise Won*, 121-2.

<sup>117</sup> Ibid. 121.

with dignity.”<sup>118</sup> In 2010, Guujaaw recalled that the “police were spending a lot of time at our camp because I think we had the better grub...They were doing their part, chopping wood and getting along with everyone.”<sup>119</sup> He also recalled how, after a late night, the Haida slept late and the RCMP came down to their camp to wake them up so they could get up to the road block for the day.<sup>120</sup> A former photographer for *The Vancouver Sun* remembers another event that took place on a Canadian football championship weekend:

The RCMP had brought communications guys in. They realigned the [logging camp] satellite dish so we could get CBC. And the cook flagged down a prawn boat that morning. When the Grey Cup started, she brought in a galvanized tub filled with fresh spotted prawns. It was like the best Grey Cup ever.”<sup>121</sup>

Elsewhere, Guujaaw has noted that the fact that the law enforcement was a local, island-based RCMP detachment and not outside police or military (as with the Oka conflict in 1990) helped to ensure that the blockade and the arrests were peaceful, and did not escalate the conflict.<sup>122</sup> This is a critical point: the RCMP and the Haida blocking the road knew each other, friendships and even family connections existed among them. The pre-existence of these relationships meant that relationship was already the ground upon which they met. They were invested in one another, and understood what was at stake in how the conflict was handled and that many of them would remain on the islands and in relationship long after the media attention moved on.

This account could perhaps be accused of presenting too harmonious a portrait of Haida actions and behaviour in the conflict over Athlii Gwaii. As Napoleon has observed, no culture is immune to the gaps between its social ideals and its practices, and there are reasons why Indigenous and non-Indigenous scholars as well as people within Indigenous communities find it

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<sup>118</sup> *Ravens and Eagles*, 2003.

<sup>119</sup> Pynn, “Lyell Island,” 2010.

<sup>120</sup> *Ibid.*

<sup>121</sup> Pynn, “Lyell Island,” 2010.

<sup>122</sup> Hennesey. “Gwaii Haanas,” 1992.

difficult to talk about instances of “Indigenous incivility.”<sup>123</sup> There is no doubt that I tell only a small part of the story of the blockade at Athlii Gwaii. My account highlights the principled actions of the Haida to the exclusion (due to restrictions of scope and argument) of many other voices and stories of this event, including the principled actions of others, the presence of dissenting voices within and outside of the Haida community, and how these were handled. My intention in highlighting the principled performances of the Haida is to demonstrate how they were building a solid narrative foundation for what Haida leadership of Haida territory would resemble, and that they were performing this narrative for themselves and for other critical audiences in how they conducted themselves both at the blockade and at the injunction hearings in Vancouver. Napoleon notes that “practices of civility [are] a prerequisite for civic citizenship and a strengthened democracy,” and in this sense, there are models here of good stewardship of land and relationships.<sup>124</sup> These days, when asked, Haida people who were involved in the blockade point to the incredibly broad network of allies and supporters without which the existing story of Lyell Island would not have been possible. They acknowledge that the story of Lyell Island became many people’s story. They are also quick to trouble romantic renditions of the conflict that overlook the complex interconnections among people on all sides of the conflict, point to other struggles that preceded Lyell Island, and those they have had since.

The events at Lyell Island now constitute the iconic story of the creation of the modern Haida nation. The CHN, with Miles Richardson as its second president, was created during and in many ways for this struggle. It has endured as a powerful tribal government, handling the national-level affairs of the Haida and Haida Gwaii. Its anthem is the Lyell Island song, a traditional song for welcoming people into the big house. Lyell Island is a story that is invoked

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<sup>123</sup> Napoleon, “Demanding More,” 1-5.

<sup>124</sup> *Ibid.*, 1.

frequently among Haida on and off Haida Gwaii; and its endurance is attributable to how it is both a personal and collective story for many of those who were intimately involved, the younger generation of which is still alive and well. Haida historian Captain Gold offered one such personal story.<sup>125</sup> At a difficult moment his life, Captain Gold ordered a canoe from Sears, which was delivered by boat on the docks in Queen Charlotte City. He broke open the box then and there, lowered the canoe into the water and paddled alone down to South Moresby, through often-treacherous waters, to the old village sites of his ancestors.<sup>126</sup> He soon became the first Haida Watchman, who, with groups of island youth and adults, cleared the brush from village sites including S'Gang Gwaay Llanagaay (also known as Ninstints). During the conflict at Lyell, Captain Gold often 'held the fort' at the cabin the young Haida built that summer at Windy Bay, and has many stories of his time there and at S'Gang Gwaay.<sup>127</sup> The Haida Gwaii Watchmen now operate every summer, showing locals and tourists alike around the old villages, sharing their stories as the official hosts and guides of Gwaii Haanas. The territory, and the action at Lyell, became an integral part of Captain Gold's life story and thus who he is. Nor is he alone in this; almost anyone over a certain age on Haida Gwaii has a story to tell about that time, and how they were touched by their experiences. Cumulatively, these personal stories help to constitute a collective story of the formation of the Haida Nation.

The events at Lyell Island have had many afterlives, transforming the landscape as well as people's relationships, changing the lives of those involved at the time as well as subsequent generations. People talk about how there was more intergenerational sharing after Lyell. The youth asked more questions of the older generations, and more of the older people seemed to

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<sup>125</sup> Captain Gold (Richard Wilson), Interview by Author, 4 July, 2014.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

find value in sharing what they knew with a newly curious generation of young people.<sup>128</sup> Dianne Brown has noted how her father spoke more of the Haida language with her after the blockade.<sup>129</sup> At a recent retrospective exhibit about Lyell Island at the Bill Reid Gallery in downtown Vancouver, Guujaaw's son Gwaii Edenshaw (who along with his brother Jaalen Edenshaw and Tyler York carved the Legacy Pole) spoke about how grateful he was for those in the older generations who stood up in the 1980s, how his life and his work as a Haida artist would not have been possible without their efforts.<sup>130</sup> His wording was that he did not create this story, he got to live its effects.<sup>131</sup> In the more recent island-wide opposition to the proposed Enbridge Northern Gateway Pipeline project, many young people characterized this fight as 'their Lyell.' In doing so, they drew upon the epic success of their parents' generation at Lyell Island as a model of possibility for their own opposition to what they perceived as a similar struggle against a multinational industry operating in tandem with a domineering and potentially corrupt state apparatus without consideration of the local ecological and cultural health of the Haida or Haida Gwaii.<sup>132</sup>

### **Conclusion: Repossessing the Land Through/As a Repossession of Stories**

The Haida brought their story into being bit by bit, through their conduct and their actions. In November 2010, the Haida Nation published a twenty-year retrospective on the Lyell Island blockade in the community newsletter, *Haida Laas* ("My Good People").<sup>133</sup> Above a timeline of

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<sup>128</sup> In a 2012 special episode of CBC radio's BC Almanac, Terri-Lynne Williams-Davidson notes that after Lyell, the older people started sharing more of the culture with the young people. Terri-Lynne Williams-Davidson, interview by Mark Forsyth, "BC Almanac," *CBC Radio 1*, 20 June 2014.

<sup>129</sup> Scott Steedman and Jisgang, Nika Collison, eds., *That Which Makes Us Haida: The Haida Language*, (Haida Gwaii Museum Press, 2011), 125-6.

<sup>130</sup> Edenshaw spoke at the Bill Reid Gallery's opening of "Gwaii Haanas: Land Sea People" on October 28th, 2015, in Vancouver, BC.

<sup>131</sup> I am paraphrasing here.

<sup>132</sup> Valine Crist has written an excellent MA thesis about Haida opposition to Enbridge Northern Gateway Pipeline Project. See: Crist, "A Peace of Mind," 2014.

<sup>133</sup> This translation is from the newsletter's first issue in 1975. See: Council of the Haida Nation, "Editorial Credits," in the July 2012 Reissue of *Haida 'Las* (Originally published in 1975), 24.

the struggle is written, “We build the road as we go.”<sup>134</sup> This is, I think, a concise and honest characterization of the project Haida people are engaged in, which is not just a repossession of their lands and stories, but finding the best ways to do that. These are inseparable dimensions of the project of rebuilding oneself. The timeline documents salient points in the Haida struggle to repossess their lands from 1974 to 2010, reaching right up to the date of the newsletter’s publication, acknowledging that the work of building their road is an ongoing process that remains incomplete.

The struggle against industrial logging in what is now Gwaii Haanas was multifaceted, and its success had many parts to it. In this chapter, I have argued that one important dimension was the Haida people’s repossession of their land through a repossession of their stories; that they acted into being a modern incarnation of an older story of the land as Haida land, and the Haida as the best stewards of that land. They performed and embodied this narrative, expressing it in how they conducted themselves in relationship with one another, the land, and those they encountered along the way. In small and large gestures, they performed a tremendous act of self-realization, ‘becoming self-governing by being self-governing.’ In the process, their acts and decisions converged to form a story that has had lasting effects not only upon Haida and non-Haida residents of the islands, but upon the lands and waters of Haida Gwaii.

The South Moresby Agreement, signed in 1988, includes assertions of the Haida and the Crown’s conflicting but parallel claims to sovereignty over the lands of Gwaii Haanas, while outlining a framework for the co-management of the territory as both a National Park, under Canadian federal jurisdiction, as well as a Haida Heritage Site and Marine Park, under the jurisdiction of the Council of the Haida Nation. This agreement, now known as the Gwaii

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<sup>134</sup> Council of the Haida Nation. “Athlii Gwaii: 25 Years Down the Road,” *Haada Laas: Newsletter of the Council of the Haida Nation*, (November 2010), 4-5.

Haanas Agreement, has been followed by several others, including the Kunst'aa Guu – Kunst'aayah Reconciliation Protocol with the BC government; memorandums of understanding with neighbouring communities of Masset, Port Clements, and Queen Charlotte; a strong title case; and eleven heritage site co-management plans.<sup>135</sup> Further, the legal definition of what constitutes adequate consultation with Indigenous Peoples was significantly advanced with the landmark 2005 Supreme Court of Canada decision on *Haida Nation v. British Columbia (Minister of Forests) and Weyerhaeuser Company Limited* paired with *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*.<sup>136</sup> More recently, Haida lawyer Terri-Lynne Williams Davidson, with Indigenous counterparts in the provincial and federal governments, has been working on developing a title claim to the marine environment surrounding Haida Gwaii, reflecting the extensive environmental planning undertaken by the CHN since the 1980s.<sup>137</sup> Other programs created at that time have continued and expanded. As well as the Haida Gwaii Watchmen Program, the Rediscovery Camps for Haida and Island youth started in part by Thom Henley (an original co-founder of the Islands Protection Society) under the guidance of Haida elders have continued under the Swan Bay Rediscovery Society and the ReDiscovery Haida Gwaii Program.<sup>138</sup> Gwaii Haanas is now managed by the Archipelago Management Board (AMB), which, as mentioned earlier, is made up of equal representatives of Parks Canada and the Council of the Haida Nation. All of these activities represent an expanding and enduring physical and narrative occupation of Haida territory by Haida people.

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<sup>135</sup> See the CHN website for more on their agreements and legal cases: <http://www.haidanation.ca/>

<sup>136</sup> See: E. Ria Tzimas, “*Haida Nation and Taku River: A Commentary on Aboriginal Consultation and Reconciliation*,” *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference*, Vol. 29, Article 22 (2005): 461-84.

<sup>137</sup> Terri-Lynne Williams Davidson “Aboriginal Title To Seabeds, Lake And River Beds,” (presentation to the *Continuing Legal Education Society of BC’s 2015 Aboriginal Law Conference*, Vancouver, BC, 6 November, 2015).; See also: Lynn Lee, “People, Land, and Sea: Environmental Governance on Haida Gwaii,” (paper prepared for the Action Canada Northern Conference, Haida Gwaii, September 2012). <<http://www.actioncanada.ca/wp-content/uploads/2014/04/Haida-Gwaii-Environmental-EN-Oct-2012.pdf>> (Accessed 11 February 2016).

<sup>138</sup> See: <http://www.swanbayrediscovery.ca/> and [http://rediscovery.org/?page\\_id=2](http://rediscovery.org/?page_id=2)

The Legacy Pole is the latest expression of this expansion. On the day of the event itself, Gwaii Haanas Archipelago Management Board representative Jason Alsop, *Gaagwiis*, spoke of how the pole tells a story of the region's past – with the figures in gumboots representing those who stood on the line at Lyell, and the ring of watchmen at the top – as well as its present and its future. In commemorating twenty years of the region's co-management, the pole also acknowledges a story of Haida-state relationships that has been built up over the last two decades, one modeled on the spirit of cooperation among equal partners towards a common cause, which, however imperfect, is nonetheless distinctly different from the relationship and land-management model that brought the Haida to block the logging road at Lyell in the fall of 1985.<sup>139</sup> The Pole was pulled up by almost everyone who was present that day, and everyone was invited to be present: Haida, non-Haida Islanders, members of both governments and the AMB, people who worked for Gwaii Haanas, environmentalists old and new, visitors who were lucky enough to plan their vacations to Haida Gwaii while this was happening, and anyone who was there and on hand. As mentioned at the outset of this chapter, the event was live-streamed online, to reach and include those who could not be there, known and not known, including the possibility of people like myself and my mother, who are still so new to learning about this story.

When a pole rises, ideas and stories rise up with it; and for a moment, they become animate, and we become conscious of their size and their power. Raising a pole is a forceful physical and symbolic representation of land as culture, and culture as land. Poles are a way of inhabiting place in a physical *and* a narrative sense, of representing relationships to place in material and storied form. The Legacy Pole is the first raised in the region since the emptying of

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<sup>139</sup> Which is not to say that the co-management relationship is seamless..During a 2014 visit to the Gwaii Haanas offices, a staff member led me over to a co-worker and asked them to stand up so I could see the official insignia of both the Canadian government and the CHN on his jacket, explaining that it took over seven years for the federal government to grant its approval for this visual representation of shared authority. This despite the fact that Haida and Crown sovereignty is tacitly recognized in the Gwaii Haanas Agreement, signed by a federal minister.

the land of Haida people at the time of the epidemics, in which microbes acted as the advance guard of the colonial experience. Because of this, the Pole symbolizes a repopulation of that land by the Haida and their stories, as well as a turning point in the history of the Haida. The Pole raising is also a hopeful gesture in relation to Haida-state relations, as a way to recognize and hold up a model of positive working relationships with one branch of the federal government. As we will see in the next chapter, the Legacy Pole was raised at a time when the Haida were facing another resource-extractive based threat to their territory, their sovereignty, and the relationship they had built with the federal government.

## Chapter 5

### Story and Belief in the Joint Review of the Enbridge Northern Gateway Pipeline Project on Haida Gwaii

In the 2007 edited collection *Myth & Memory: Stories of Indigenous-European Contact*, literary scholar J. Edward Chamberlin likens stories to currency, in that we simultaneously believe and disbelieve that coin or paper bills have actual worth. We “credit a currency” despite the fact that we know it has no intrinsic value except for that which we collectively extend to it.<sup>1</sup> So too, for stories about who is the rightful authority over peoples and places, the legitimacy of the nation-state being, in many ways, a collective fiction that its citizens may variously believe and disbelieve. The terms credit and credible share a root Latin word, *crēdere*, meaning “to have faith or confidence in, to trust, to believe.”<sup>2</sup> In part, Chamberlin observes, we credit both coins and stories “because we believe that someone or something backs or underwrites it.”<sup>3</sup> What happens, then, when our trust in the backer falters, and with it, our belief in the value of the currency? The story no longer seems credible.

This chapter is about story, listening, and belief. In Canadian culture and law we have some venues for storytelling that give the stories told in them more cultural force than all the others. Parliament is the most powerful of these storytelling spaces. The Supreme Court of Canada and other law courts are also places where the stories told have powerful impacts on the lives of Canadians. Just down from the courts are Royal Commissions, Commissions of Inquiry, and Joint Review Panels, which are established to determine if major infrastructure projects can

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<sup>1</sup> Chamberlin, “Close Encounters,” 15.

<sup>2</sup> “credit, v.”. *OED Online*. December 2016. Oxford University Press.  
<<http://www.oed.com.ezproxy.library.uvic.ca/view/Entry/44114?rskey=pYRByD&result=2&isAdvanced=false>> (accessed 4 March, 2016).

<sup>3</sup> Chamberlin, “Close Encounters,” 15.

proceed. In the following, I explore the very public processes of storytelling that occurred in the federally appointed Joint Review of the Enbridge Northern Gateway Project (ENGP) (2010 - 2014), by looking at the role of story in the community hearings held on Haida Gwaii. The hearings offer opportunities to examine narrative at three stages of the Joint Review Process: first, through the structure of the Joint Review hearings and what spaces were made available for Indigenous stories in the process; second, how Haida people engaged the process, with a focus on their narrative strategies; finally, how the stories Haida people told were and were not represented in the Joint Review Panel's (JRP) own concluding story – their final report – and to what effect. I close with a reflection on story and the status of belief, reviewing recent evidence that, in the eyes of many non-Indigenous Canadians, Indigenous Peoples were telling the more convincing story with respect to the ENGP.

The very structure of the Joint Review process tells stories of its own, about state sovereignty, about who is best qualified to make decisions about resource use and development, and who has the ultimate power to adjudicate the official narrative about such decision making. Other scholars who have examined the Joint Review of the ENGP show how the process worked to contain and subordinate Indigenous narratives through the limited spaces made available for Indigenous voices, and I see a similar dynamic.<sup>4</sup> Importantly, the JRP was as much – and perhaps more – of a venue for state listening than for Indigenous and local storytelling. The term 'hearings' here proves ironic, as the public forums soliciting Indigenous stories appear to have been structured in such a way as to make it very difficult for the Panel members to actually hear the stories Haida people wanted to tell. Looking closely at how the hearings actually unfolded, however, reveals the ways in which Haida people (and their neighbours) used their stories to

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<sup>4</sup> Tyler A. McCreary and Richard A. Milligan, "Pipelines, Permits, and Protests: Carrier Sekani Encounters with the Enbridge Northern Gateway Project" *Cultural Geographies* 21, no. 1 (January 1, 2014): 115–29.

occupy and exceed the parameters of the process, challenging the state's assumed legitimacy as the primary decision maker over territory they assert as their own.

### *Historical Context*

According to the National Energy Board, the proposed Northern Gateway Project required the construction of two pipelines of just under 1200km in length, from the Alberta tar sands (precisely, Bruderheim, Alberta) to a coastal storage and shipping port located at Kitimat, BC.<sup>5</sup> The eastbound pipeline to Bruderheim would have transported approximately 193,000 barrels a day of gas condensate, used to dilute tar sands bitumen. The westbound pipeline would have carried approximately 525,000 barrels of the diluted bitumen (dilbit) per day to the storage tanks at the Kitimat Marine Terminal. From here, the plan was for Very Large Crude Containers – or supertankers – to transport diluted bitumen to international markets.<sup>6</sup> The transportation route of the pipeline and the shipping routes came under criticism from a variety of groups, including Indigenous and non-Indigenous communities, municipal governments across BC, and environmental organizations, all of whom were primarily concerned about the effects of a major oil spill either on land or along the province's coast. On land, the criticisms centered on the fact that the coastal region is highly earthquake-prone, that the pipeline would go through remote and steep mountain passes (susceptible to avalanches and landslides), as well as some of the world's most productive salmon-bearing watersheds.

On the coast, concerns about a spill were even more pronounced, with many noting the inability of such large ships to safely navigate the confined Douglas Channel connecting Kitimat to the open ocean, or the treacherously shallow and storm-prone Hecate Strait that separates

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<sup>5</sup> The National Energy Board is Canada's "independent federal regulatory agency" responsible for regulating "pipelines, energy development and trade in the Canadian public interest." National Energy Board, Canada, "Our History," 1 January, 2017. <<https://www.neb-one.gc.ca/bts/whwr/rhstry-eng.html>> (Accessed 5 March 2013).

<sup>6</sup> National Energy Board, Canadian Environmental Assessment Agency, "The Project," *Enbridge Northern Gateway Project Joint Review Panel*, 18 September 2012. <<http://gatewaypanel.review-examen.gc.ca/clf-nsi/bts/prjct-eng.html>> (Accessed 7 March 2013).

Haida Gwaii from mainland BC.<sup>7</sup> If the project were approved, it was estimated that approximately 220 supertankers would dock at Kitimat annually to deliver condensate and load oil products.<sup>8</sup> For reference, the Russian ship that went adrift off the west coast of Haida Gwaii in October of 2014 was carrying 4,200 barrels of bunker and diesel fuel;<sup>9</sup> the Exxon Valdez was carrying approximately 1.3 million barrels of crude oil, between 256,550 and 750,000 of which were spilled in Prince William Sound off the Alaskan coast.<sup>10</sup> Supertankers can carry between 1.9 million and 2.2 million barrels.<sup>11</sup> There were additional concerns about the impacts of non-spill related routine functioning on local ecologies and marine life. Testimony to the Joint Review Panel made frequent reference to the enormous amounts of ballast water discharged in coastal waters, contaminating local marine environments with oily water from the ships' cargo holds as well as foreign species introduced from remote marine trade destinations where ballast water is taken on.<sup>12</sup> Further concerns surrounded the impact on resident and migratory whale populations from the noise produced by the amount of heavy traffic by such large ships.<sup>13</sup>

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<sup>7</sup> Haida and non-Haida testimony to the JRP is filled with stories of storms witnessed by local fishermen in the Hecate Strait, which is considered among the world's most dangerous waterways.

<sup>8</sup> Canada, National Energy Board, Canadian Environmental Assessment Agency, Canada, "Introduction: Recognizing Connections," *Connections: Report of the Joint Review Panel for the Enbridge Northern Gateway Project Volume 1*, (19 December, 2013), 1. <<http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/remndtnsrprt/remndtnsrprtvlm1-eng.pdf>> (Accessed 3 January 2014).

<sup>9</sup> Canadian Broadcasting Corporation (CBC) News, "Incapacitated Russian Cargo Ship Simushir Towed to Prince Rupert: Russian Cargo Ship Lost Power Late Thursday Night," *CBC News British Columbia*, (20 October 2014). <<http://www.cbc.ca/news/canada/british-columbia/incapacitated-russian-cargo-ship-simushir-towed-to-prince-rupert-1.2805498>> (Accessed 20 October 2014).

<sup>10</sup> Exxon Valdez Oil Spill Trustee Council, "Details about the Accident: Final Report, Alaska Oil Spill Commission, Published February 1990 by the State of Alaska," (Excerpt), n.d. *Exxon Valdez Oil Spill Trustee Council*. <<http://www.evostc.state.ak.us/index.cfm?FA=facts.details>> (Accessed 14 April 2013).

<sup>11</sup> T. Mason Hamilton, "Oil Tanker Sizes Range From General Purpose to Ultra-Large Crude Carriers on AFRA Scale," *The U.S. Energy Information Administration (EIA): Independent Statistics & Analysis*, 16 September 2014. <<http://www.eia.gov/todayinenergy/detail.php?id=17991>> (Accessed 8 November 2014).

<sup>12</sup> Council of the Haida Nation, "A Resounding Voice: Haida Gwaii Speaks to the Enbridge Joint Review Panel," *Haida Laas: Newsletter of the Council of the Haida Nation*, (December 2013), 3.

<sup>13</sup> Recent research on the effects of major tanker traffic on resident and migratory whale populations is alarming. Studies show that underwater noise pollution caused by normal shipping traffic interferes with whales' ability to communicate through sonar, causing groups of whales travelling together to become separated, as well as starvation, as sonar is used in hunting, especially among orcas. See: Frances M.D. Gulland and Ailsa J. Hall, "Is Marine Mammal Health Deteriorating? Trends in the Global Reporting of Marine Mammal Disease," *Ecohealth* 4 (2007): 135–50.; Living Oceans Society, *Shipping on the British Columbia Coast: Current Status, Projected Trends*,

Among residents of Haida Gwaii, the general view of Enbridge and the Northern Gateway project was one of deep mistrust. Throughout the period of study, Enbridge ran an expensive advertising campaign about the benefits and safety of the project. For several years leading up to the hearings, Enbridge and the ENGP seemed ever present to BC residents, with full-page ads appearing regularly in provincial and national newspapers and magazines, on Vancouver's public transit shelters, as banner advertising online, and in beautifully produced advertisements that ran regularly on television and prior to every film screened in Vancouver movie theaters. Some of this advertising was accused of visually falsifying the risks involved in the shipping route through the Douglas Channel.<sup>14</sup> On Haida Gwaii, an opposing visual campaign was carried out on a much smaller scale, with both handmade and mass-produced lawn signs appearing on virtually every residential and commercial property. Locals sported t-shirts sold in the tourist shops with the words "No Tankers, No Pipelines, No Problem" printed in bold on their fronts (see Figures 3-5).

In their testimony before the Panel, Haida people often framed the ENGP as yet another state intrusion into Haida territory. Raised on the success stories that came out of Lyell Island and the subsequent strength of the Haida tribal government, it was common to hear young people referring to the possibility that the ENGP would be their generation's Lyell Island. This confidence among Haida youth should not be surprising: by the time the ENGP was officially proposed in 2010, the Council of the Haida Nation (CHN) was an established tribal government

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*Potential Casualties, and Our Ability to Respond: A Briefing Report*, (Sointula, BC: Living Oceans Society, 2011), 28-9. <[https://www.ceaa-acee.gc.ca/050/documents\\_staticpost/cearef\\_21799/86129/Shipping\\_on\\_the\\_BC\\_Coast.pdf](https://www.ceaa-acee.gc.ca/050/documents_staticpost/cearef_21799/86129/Shipping_on_the_BC_Coast.pdf)> (Accessed 15 January 2014); Raincoast Conservation Foundation, "What's at Stake? The Cost of Oil on British Columbia's Priceless Coast," (Sidney, BC: 2010), 1-64. <[https://www.raincoast.org/wp-content/uploads/whatsatstake\\_vers.02.pdf](https://www.raincoast.org/wp-content/uploads/whatsatstake_vers.02.pdf)> (Accessed 18 January 2014).

<sup>14</sup> Daniel Tencer, "Northern Gateway: Enbridge Accused Of Misleading Public With Video That Shows Smooth Sailing In Douglas Channel," *The Huffington Post Canada (Online)*, (16 August 2012). [http://www.huffingtonpost.ca/2012/08/16/enbridge-douglas-channel-islands\\_n\\_1789223.html](http://www.huffingtonpost.ca/2012/08/16/enbridge-douglas-channel-islands_n_1789223.html) (Accessed 18 March 2013).



Figure 3. Placard in Queen Charlotte, BC. Photo taken by author in June 2014.

whose political presence and territorial claims had been greatly strengthened by several successful legal battles and over twenty years' experience of co-management with federal and provincial governments.<sup>15</sup> Further, the composition of the population on Haida Gwaii had changed over the years, and although divergent views continue to exist on any number of other island issues, there was a distinctly united front on the issue of oil tankers, which was understood as representing a common threat to all island residents.<sup>16</sup> Unlike the 1970s and 1980s, at the time

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<sup>15</sup> For a timeline of the Enbridge Northern Gateway Project, see the Canadian Press timeline online: <http://cponline.thecanadianpress.com/graphics/2013/northern-gateway-timeline/>. See the CHN website for a complete list of their legal cases (<http://www.haidanation.ca/Pages/legal/legal.html#haidacases>) and co-management agreements (<http://www.haidanation.ca/Pages/Agreements/agreements.html>). For an analysis of the landmark Supreme Court of Canada decision on the *Haida Nation v. British Columbia (Minister of Forests)* case, see: Tzimas, "Haida Nation," 2005.

<sup>16</sup> Although logging continues on Haida Gwaii, it has receded as the primary industry in the last thirty years (as it has elsewhere in BC). As a result, the resident population on the islands is less dependent on logging, and more attuned to incomes derived from the commercial and sport fishery as well as ecological and cultural tourism.

of the hearings there was no major conflict among residents of Haida Gwaii over the merits of oil tankers as there had been with logging, an on-island industry which economically supported a significant portion of the population. The general perspective of island residents on the ENGP, a project unlikely to offer any local based employment, was that it was all risk and no benefits. Further, the risks were potentially catastrophic to the existing economies and livelihoods of Haida Gwaii, which have become increasingly dependent upon cultural and marine-based tourism since the decline of logging (e.g., sport fishing, kayak and boat tours of Gwaii Haanas).

This unified opposition to the ENGP was expressed at multiple levels in the lead up to and during the hearings process. In 2006, neighbouring non-reserve communities on Haida Gwaii and on the mainland signed Protocol Agreements with the Council of the Haida Nation.<sup>17</sup> Several municipal leaders referred to these Agreements during the Review hearings, indicating their support of Haida leadership in opposing and managing the ENGP threat.<sup>18</sup> In the hearings, non-Haida Islanders' support for the CHN was expressed in people's personal statements, in their use of Haida place names, and in statements such as Duncan White's, who demonstrated an

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Importantly, there are exceptions to the united front on the ENGP. While Islander testimony to the Review Panel demonstrated overwhelming unity in opposition to the ENGP, in 2016 a letter to the NEB supporting the ENGP from four hereditary chiefs and four other community leaders became public. As a result, clan matriarchs have revoked the titles of at least three of the hereditary chiefs, two of which occurred through a potlatch in what has been declared a forceful expression of Haida law. The issue was that the chiefs acted without the awareness or support of their clans, and in this way violated Haida law and their responsibilities as named hereditary leaders acting on behalf of their clans. Prior to 2016, no hereditary chiefs within living memory have had their status revoked in this way. For more information, see: Andrew Hudson, "Matriarchs Revoke Chief's Status," Haida Gwaii Observer (30 September 2016). <<http://www.haidagwaiiobserver.com/news/396716571.html?mobile=true>> (Accessed 20 October 2016).; Eugene Kung, "Field Notes From the Haida Gwaii Potlatch: Why Government and Industry Should Take Heed of Indigenous Governance Decisions" *Environmental Law Alert Blog, West Coast Environmental Law* (14 September, 2016). <<http://wcel.org/resources/environmental-law-alert/field-notes-haida-gwaii-potlatch-why-government-and-industry-should>> (Accessed 20 October 2016).; Gene Law, "Enbridge Support Letter By Haida Hereditary Chiefs Raising Eyebrows," *Canada's First Nations Radio Network*, (30 June, 2016). <<http://cfnrfm.ca/enbridge-support-letter-haida-hereditary-chiefs-raising-eyebrows/>> (Accessed 30 June 2016).

<sup>17</sup> See the CHN website for a full list of agreements: <http://www.haidanation.ca/Pages/Agreements/agreements.html>.

<sup>18</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*, Hearing Order OH-4-2011, Volume 31, Skidegate, BC, 22 March 2012, Lines 21327-21344. <https://apps.neb-one.gc.ca/REGDOCS/File/Download/803958> (Accessed 12 September 2014).



Figure 4. Sign near Skidegate, BC. Photo taken by author in June 2014.

understanding of what was at stake for Haida people in their opposition to the ENGP:

For me, regardless of the outcome, regardless of what happens, I don't have any heirs. I have no children. My line stops dead, probably in less than 30 years if I do the math. So despite my serious concerns about the Enbridge proposal, my concerns are relatively short-term.

The Haida people, however, do have heirs and their lines will not be stopping. Given their past and future vision, how can any sane person even think of asking them to accept the risk proposed by the Enbridge project, which will devastate surely their culture.<sup>19</sup>

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<sup>19</sup> Ibid., 21827-21839.

This sense of being ‘all in it together’ is captured by Haida scholar Valine Crist’s collective term for Haida and non-Haida residents as ‘Islanders’, with which she consciously extends an identity of belonging to all the islands’ residents, whether they are of Haida descent or not.<sup>20</sup>



Figure 5. Sign in Skidegate, BC. Photo taken by author in June 2014.

### *The Joint Review Process*

Because the proposed ENGP would have traversed a provincial border, the project came under the jurisdiction of a federal rather than provincial environmental assessment.<sup>21</sup> This made

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<sup>20</sup> Crist, “A Peace of Mind,” 11.

<sup>21</sup> BC did have the option of requiring the ENGP to pass its own provincial processes for environmental assessment and Indigenous consultation, but agreed to accept the results of the federal process. After the NEB’s recommendation to approve the ENGP, the federal assessment process was successfully challenged in the provincial courts. In January of 2016, the BC Supreme Court overturned the NEB’s decision on the ENGP, determining that the process failed to meet provincial requirements for Indigenous consultation. See: *Coastal First Nations v. British Columbia (Environment)*, 2016 BCSC 34 <https://www.documentcloud.org/documents/2686393-Judge-Koenigsberg->

it necessary for the project to be reviewed by a three person quasi-judicial Joint Review Panel configured as an independent body under the mandate of the federal Ministry of the Environment and the National Energy Board. This Panel was authorized to “assess the environmental effects of the proposed project and review the application under both the *Canadian Environmental Assessment Act* and the *National Energy Board Act*.”<sup>22</sup> According to the JRP’s final report, “[a]s an expert tribunal, [its] responsibilities included:”

- Assessing what significant effects the project could have on people and the environment and how these effects might be mitigated (controlled, reduced, or eliminated) in accordance with the Canadian Environmental Assessment Act, 2012
- Considering whether the project is in the public interest and therefore should be recommended for approval under the National Energy Board Act
- Setting out conditions for safe and responsible construction and operation of the project<sup>23</sup>

While the JRP heard testimony from non-Indigenous communities, environmental organizations, and industry proponents, the process seemed heavily oriented towards hearing Indigenous testimony on the ENGP and its potential impacts on Indigenous communities. Consultation and, “where appropriate,” accommodation of Indigenous people is required in federal environmental assessment when “activities associated with a project could have a negative effect on potential or established Aboriginal or Treaty rights.”<sup>24</sup> The JRP’s definition of the environmental effects of a

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[Re-Coastal-First-Nations-v.html](#).; CBC News, “B.C. government failed to properly consult First Nations on Northern Gateway Pipeline, Court Rules: Gitga’at Celebrating 'Huge Victory' After Court Rules Province Failed in Duty to Consult,” CBC News: British Columbia (Online), (13 January, 2016). <http://www.cbc.ca/news/canada/british-columbia/bc-enbridge-ruling-coastal-first-nations-1.3402536> (Accessed 15 January 2016)

<sup>22</sup> Canada, National Energy Board, Canadian Environmental Assessment Agency, *Joint Review Panel for the Enbridge Northern Gateway Project*, “The Joint Review Panel,” (2 November 2012). <http://gatewaypanel.review-examen.gc.ca/clf-nsi/bts/jntrvwpnl-eng.html>. (Accessed 13 September 2014).

<sup>23</sup> Canada, *Connections*, 8.

<sup>24</sup> Canada, Canadian Environmental Assessment Agency, “Aboriginal Consultation in Federal Environmental Assessment,” (6 July 2016). < <https://www.canada.ca/en/environmental-assessment-agency/programs/aboriginal-consultation-federal-environmental-assessment.html>> (Accessed 22 April 2014).

project pertained to its potential impacts upon “the current use of lands and resources for traditional purposes by Aboriginal persons.”<sup>25</sup>

The National Energy Board was established in 1959 as independent federal regulator charged with promoting “safety and security, environmental protection and economic efficiency”, while acting in the “public interest”, and within a Parliamentary mandate with respect to “the regulation of pipelines, energy development and trade.”<sup>26</sup> National Energy Board hearings are customarily overseen by three Board members, which are in turn appointed by Canada’s governor general. The governor general acts “on advice from the Federal Cabinet”, which, at the time of the ENGP application, was composed of a Conservative majority led by then-Prime Minister Stephen Harper. Typically, Board members “are selected from the private and public sector and have knowledge or expertise in a variety of areas, such as economics, engineering, environment, finance, law, public participation, safety and science.”<sup>27</sup> The review Panel members are charged with receiving and reviewing all submissions (written or oral) for or against a proposed project, can ask questions of those making submissions, and finally, are responsible for making a “recommendation to [the Governor in Council] or a final decision on whether to approve or deny an application.”<sup>28</sup>

From its inception, the Joint Review of the ENGP was surrounded by political controversy and reputed shady dealings that cast doubt on how independent the process was from a Conservative federal government that seemed determined to expand Canada’s oil and gas-based energy sector. The impartiality of the Joint Review process was, however, deemed suspect

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<sup>25</sup> Canada, National Energy Board, Canadian Environmental Assessment Agency, *Joint Review Panel for the Enbridge Northern Gateway Project*, “The Joint Review Panel Agreement,” (7 October 2013). <http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/jntrvwpnlgrmnt-eng.html> (Accessed 15 October 2013).

<sup>26</sup> Canada, National Energy Board, “Who is the National Energy Board?” *National Energy Board Hearing Process Handbook*, (6 January, 2017). <[http://www.neb-one.gc.ca/prtceptn/hrng/hndbk/index-eng.html#s1\\_1](http://www.neb-one.gc.ca/prtceptn/hrng/hndbk/index-eng.html#s1_1)> (Accessed 15 October 2013).

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

by those on both ends of the political spectrum on pipelines. The review Panel was made up of three National Energy Board members: the Chair, Sheila Leggett, who at the time was the vice-chair of the Board, and two co-Panel members, Kenneth Bateman, and Hans Matthews.<sup>29</sup>

Individually and together, the professional biographies of the Panel members differently satisfied the range of expertise required by the National Energy Board and, presumably, were approved by both the Board and the federal Ministry of Environment. All had a professional background in the energy sector, which focused on oil and gas but, in the case of Bateman, also included work on a major wind energy project. Leggett was a founding member and on the board of Alberta Ecotrust, and had worked on environmental management and conservation of natural resources, while Matthews, who is Métis and a member of the Wahnapiatae First Nation in Ontario, had an extensive background in representing and negotiating Aboriginal mining interests. At various times, all three were perceived by some as too embedded in the energy sector to be impartial in hearing voices opposing the ENGP, and, by others, as pro-environment and biased against oil sector interests.<sup>30</sup> At the very beginning of the ENGP review process, the Conservative-led federal government made changes to the National Energy Board's decision-making authority in one of the omnibus bills that characterized Harper's time as Prime Minister. Bill C-38, which came into effect on June 18, 2012, reserved final approval or rejection of Board recommendations about energy project proposals for Parliament.<sup>31</sup> This move suggests Harper was unwilling to take the risk that the JRP might decide against recommending the Enbridge

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<sup>29</sup> See their biographies on the Joint Review Panel website: <http://gatewaypanel.review-examen.gc.ca/clf-nsi/bts/jntrvwpl-eng.html>

<sup>30</sup> An example of the latter can be found in Ezra Levant's 2012 opinion piece in Toronto Sun: Ezra Levant, "Big-time Bias: Pipeline Review Boss' Double Standard for Accepting Late Registrations Penalizes Patriots," *The Toronto Sun* (Online), (9 January, 2012). <http://www.torontosun.com/2012/01/09/big-time-bias> (Accessed 16 April 2013).

<sup>31</sup> Brenda Heelan Powell, The Environmental Law Center, "An Overview of Bill C-38: The Budget Bill that Transformed Canada's Federal Environmental Laws," (10 August 2012). [http://elc.ab.ca/Content\\_Files/Files/Bill38AnalysisArticlefinal.pdf](http://elc.ab.ca/Content_Files/Files/Bill38AnalysisArticlefinal.pdf) (Accessed 25 February 2013). To read the provisions of Bill C-38, see: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5697420>.

pipeline. However, it is difficult to know what the Panelists' views were then, or are now, on the project, the review process, or the politics of which that process was a part.

What is clear is that the Conservative Party supported the project's approval from the outset of the review process. At the very beginning of the hearings, first Prime Minister Stephen Harper and then Environment Minister Joe Oliver, publicly came out in favour of the ENGP, while labeling major environmental organizations and anti-pipeline activists as "radicals" and a threat to Canadian security, suggesting that foreign, US-based interests were funding prominent Canadian environmental organizations and First Nations in an effort to stall the growth of the Canadian economy.<sup>32</sup> This was quickly followed by supposedly unrelated but widespread Canadian Revenue Agency audits of major (and many very minor) Canadian environmental organizations.<sup>33</sup> Although not openly linked, on March 27, 2013, federal legislation passed forcing band governments to publically disclose their budget spending and the salaries of band employees.<sup>34</sup> While this was supported by many Indigenous people in Canada, the legislation seemed well timed to cast Indigenous governments – many of which in BC and Alberta were vocal opponents of the ENGP – as corrupt and unable to manage themselves. Such moves to discredit Indigenous governments suggest that the Conservative government perceived that First Nations opposing the ENGP were gaining a narrative credibility among broader Canadian publics that the government sorely lacked. Owing to the perception that the government had

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<sup>32</sup> Canada, Natural Resources Canada, "An Open Letter from the Honourable Joe Oliver, Minister of Natural Resources, on Canada's Commitment to Diversify Our Energy Markets and the Need to Further Streamline the Regulatory Process in Order to Advance Canada's National Economic Interest," *The Media Room, Natural Resources Canada*, (9 January 2012). <<http://www.nrcan.gc.ca/media-room/news-release/2012/1/1909>>; Laura Payton, "Radicals Working Against Oilsands, Ottawa Says: Environment Groups 'Threaten to Hijack' System, Natural Resources Minister Says," *CBC News: Politics*, (9 January, 2012) <<http://www.cbc.ca/news/politics/radicals-working-against-oilsands-ottawa-says-1.1148310>> (Accessed 23 February 2012).

<sup>33</sup> Gerald Caplan, "As CRA Audits Charities, There's a Scandal Within a Scandal," *The Globe and Mail* (Online), 14 November, 2014. <<http://www.theglobeandmail.com/news/politics/as-cra-audits-charities-theres-a-scandal-within-a-scandal/article21599291/>> (Accessed 17 November 2014).

<sup>34</sup> Canada, Indigenous and Northern Affairs, *First Nations Financial Transparency Act*, 27 March, 2013. <<https://www.aadnc-aandc.gc.ca/eng/1322056355024/1322060287419>>

already decided to approve the project, communities participating in the review process questioned whether it was a venue in which their voices would be heard, a concern often repeated by those testifying in the Haida Gwaii hearings.

In order to fulfill its mandate, the JRP received volumes of expert reports arguing for and against the Northern Gateway Project, and held three phases of public consultation hearings in 2012. Further, the Panel received over nine thousand letters, most of which, the JRP acknowledges, argued against the project.<sup>35</sup> In 2012, the Panel visited approximately eighteen communities across BC and Alberta twice – once for oral evidence hearings for registered intervenors, and again for oral statement hearings, which were open to anyone who applied in advance to give testimony about their “knowledge, views or concerns on the proposed Enbridge Northern Gateway Project.”<sup>36</sup> These hearings were followed by a smaller series of final hearings in which registered intervenors could question a team representing the Project. On Haida Gwaii, the Panel held hearings in both of the largest reserve communities – Skidegate and Old Masset – which were webcast live at the time and later transcribed and made available online. In total, the Haida Gwaii hearings alone produced over 950 pages of transcribed testimony, which does not include Haida participation in the final hearings. In December of 2014, the JRP released its Final Report in two volumes, and the federal government granted its conditional approval of the project in June of 2014.

### *State Commissions as Technologies of Rule*

My analysis of the Joint Review process is informed by current controversies over the limited nature of Indigenous consultation processes in Canada, as well as a growing body of

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<sup>35</sup> Canada, *Connections*, 14.

<sup>36</sup> Canada, National Energy Board, Canadian Environmental Assessment Agency, “Oral Statement,” and “Intervenor,” *Joint Review Panel for the Enbridge Northern Gateway Project*, (7 January, 2014). <http://gatewaypanel.review-examen.gc.ca/clf-nsi/fq/hrngrdrq-eng.html> (Accessed 23 February 2014).

literature on colonial-era commissions as technologies of colonial rule. Particularly influential was anthropologist and historian Ann Laura Stoler's call for the vast textual records produced by commissions to "be read for their extraordinary ethnographic content, but also for the content evident in their form."<sup>37</sup> The publicly accessible textual archive produced by the JRP leaves us with thousands of pages of Indigenous testimony from across British Columbia and Alberta. My analysis of the Haida engagement of the Joint Review process considers how the structure and process of the JRP demarcates desirable and undesirable forms of Indigenous knowledge and stories, and manages what role Indigenous Peoples can have in the state's decision-making processes, thereby defining what constitutes adequate state consultation and accommodation of Indigenous Peoples. But I am just as, or more, interested in how Haida people operated within and against the limited spaces made available to them in the Joint Review process; how they asserted their own narratives of Haida sovereignty and the proper relationship to territory as sacred; and how their participation reveals a narrative of Indigenous expendability that lies at the center of the Joint Review process as an elaborate (and expensive) performance of state listening.

Stoler and others have noted the ways that colonial commissions worked to legitimize the colonial or imperial right to rule through their performance of accountability, as commissions often involved tremendous investments of time and funding. Such large-scale enactments of the colonial state's "will to truth" served, she argues, to authorize the state's capacity to make (now supposedly well-informed) "judgments about what was in society's collective and moral good."<sup>38</sup> Religious Studies scholar Pamela Klassen argues that commissions on Indigenous land use, such as the Royal Commission on Indian Affairs for the Province of British Columbia (1912-16)

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<sup>37</sup> Ann Laura Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2, no. 1-2 (March 1, 2002): 105. See also Pamela E. Klassen, "God Keep Our Land: The Legal Ritual of the McKenna-McBride Royal Commission, 1913-16," in *Religion and the Exercise of Public Authority*, Benjamin L. Berger & Richard Moon (Eds.), (Oxford: Hart Publishing., 2016): 79-94.

<sup>38</sup> Stoler, "Colonial Archives," 106.

(more commonly known as the McKenna-McBride commission) can be seen as “civic ‘theatres of power’ in which the ‘Crown’ exercises its public authority through listening to its people in ritually and legally circumscribed settings and then recording these conversations in lengthy documents.”<sup>39</sup> Klassen argues that close readings of these documents reveal different “cosmologies of land” which “undergird the very norms, laws, and practices that turn land into ‘territory.’”<sup>40</sup> In this sense, public commissions can be read as unique expressions of state power, as well as for the culturally rooted narratives that frame land (and people) as rightfully falling under state jurisdiction. In my view, these observations of nineteenth and early twentieth century state commissions apply as readily to the twenty-first century Joint Review hearings.

As I will discuss in the next section, the review of the ENGP was a process that simultaneously solicited Indigenous participation while silencing Indigenous narratives by carefully managing the content, tone, and form of Indigenous testimony. That liberal settler states offer circumscribed forms of socio-political and economic inclusion to Indigenous Peoples in exchange for limited benefits is the central critique of most of the recent literature on state recognition practices of Indigenous subjects. However, and as I have suggested in earlier chapters, what is less often observed is how Indigenous Peoples engage these limited spaces, and to what effect. Insofar as the Joint Review process provided a script for Indigenous participation, Haida people’s strategic involvement both performed to, and exceeded the roles assigned to them.<sup>41</sup> How they occupied the limited spaces made available for them reveals how insufficient existing consultation, accommodation, and recognition practices are as a means to enable Indigenous cultural and spiritual survival, let alone to thrive. As I will demonstrate in the final section of this chapter, Haida engagement in the JRP, along with other Indigenous and non-

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<sup>39</sup> Klassen, “God Keep Our Land,” 79.

<sup>40</sup> Ibid. 80

<sup>41</sup> For a related argument, see McCreary and Milligan, “Pipelines, Permits, and Protests,” 2014.

Indigenous dissenting voices, changed the story the state could tell about its own legitimacy in ways that resonated broadly.

### **Storytelling in the Structure of the Enbridge Northern Gateway Joint Review Process**

The structure of the Joint Review process, particularly the spaces it made available for Indigenous participation, told its own stories about both Indigenous people as knowledge contributors and the assumed authority of the state as the sole decision-maker about people and places. The JRP constrained and subordinated Indigenous narratives in the very ways it solicited and opened up spaces for Indigenous voices in the state's decision-making process, managing the content, tone, and form of Haida and non-Haida Islanders' participation. Through the Panel's demonstrated allegiance to the procedural guidelines of the process, its narrow definitions of what constitutes Aboriginal Traditional Knowledge, and its performance of listening that was also a refusal to hear certain kinds of testimony, the JRP enacted a story of state sovereignty upon Haida participants.

#### *Regulating Indigenous Storytelling Through Definitions of Acceptable/Desirable Indigenous Knowledge*

The hearing process was structured by a series of procedural directives that outlined the behavioural guidelines for both the Panel and participants in the hearings. Procedural Directive Number Four restricted participants testifying in the Oral Evidence and Oral Statement parts of the hearings to sharing “oral traditional knowledge, such as that given by Aboriginal peoples; and personal knowledge and experiences about the potential effects of the Project” on individuals and their communities.<sup>42</sup> Not permitted was any form of speech that could be construed as argumentative, rhetorical questions, third party information, or scientific or

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<sup>42</sup> Canada, National Energy Board, Canadian Environmental Assessment Agency, “A093 – Oral Evidence for Intervenor - Procedural Direction 4 (A38675),” *Enbridge Northern Gateway Joint Review Panel*, (23 January, 2012). <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A38675> (Accessed 24 September 2013). For a complete list of Procedural Directives, see: <http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/procdrlrctn-eng.html>.

technical information.<sup>43</sup> In practice, Procedural Directive Number Four was routinely invoked as a way of identifying desirable and undesirable testimony, managing the content, tone, and form of people's participation in the hearings, and maintaining the Panel's authority over the process.

Throughout the hearings, speakers were interrupted and cut short on the basis of their failure to adhere to Procedural Directive Number Four – from fourteen-year-old Masset resident Jesse Condrotte, to Ricky Ott, an Alaska-based marine biologist, activist, and witness to the effects of the Exxon Valdez spill on her community, who was invited by the CHN to speak to the Panel and the community. Although elders were interrupted less often, many participants appeared to find it difficult to anticipate when customary ways of speaking would be construed as inappropriate. What characterized the bulk of the exchanges between the Panel members and speakers were significant gaps between what people wanted to say and how they wanted to say it, on the one hand, and on the other, what the Panel wanted to hear.

Such apparent interpretive gaps also appeared in relation to the category of Aboriginal Traditional Knowledge (ATK). For its cues on how ATK should operate within the review process, the JRP looked to the Canadian Environmental Assessment's Agency's reference guide on "Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act."<sup>44</sup> In this guide, Aboriginal Traditional Knowledge is presented as a means to acknowledge that Indigenous Peoples often possess "unique" forms of knowledge, especially about the environment, which can help Environmental Assessments to:

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<sup>43</sup> Examples of third party information include that which is gleaned from a source other than one's own personal experience or from one's 'Aboriginal traditional knowledge.' Such information could be from something one has read, reports or studies authored by someone other than the speaker, or things other people have said or said to the person testifying. For examples of testimony deemed 'scientific or technical information,' see Malcolm Dunderale's testimony: Canada, *Joint Review Panel Vol 31*, 21513-21521, 21602-21621.; Canada, "A093 – Oral Evidence," 1.

<sup>44</sup> Canada, Canadian Environmental Assessment Agency, "Considering Aboriginal Traditional Knowledge in Environmental Assessments Conducted Under the Canadian Environmental Assessment Act -- Interim Principles," (6 July, 2016). <https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=4A795E76-1> (Accessed 24 September, 2013).

- provide relevant biophysical information, including historical information, that may otherwise have been unavailable;
- help identify potential environmental effects;
- lead to improved project design;
- strengthen mitigation measures;
- contribute to the building of enhanced long-term relationships between proponents, Aboriginal groups, and/or the responsible authority;
- lead to better decisions; and
- contribute to the building of EA and ATK capacity within Aboriginal communities and build an awareness of, and appreciation for, ATK in non-Aboriginal communities.<sup>45</sup>

In many ways, the inclusion of Aboriginal Traditional Knowledge in federal environmental assessment processes represents a tremendous achievement for those who have pushed for state acknowledgment of the value of Indigenous knowledge systems and the need to consider the impacts of economic development upon Indigenous Peoples and territories. However, in the Joint Review Process, Aboriginal Traditional Knowledge became a mechanism of containing the dimensions of Indigenous knowledge that challenged Canadian sovereignty and opposed the type of economic development proposed through the ENGP.

*Managing Content – The Incompatibility of Aboriginal Traditional Knowledge and Scientific or Technical Knowledge*

Aboriginal Traditional Knowledge in environmental assessment processes has been critiqued for the ways it configures ‘Aboriginal Knowledge’ as a discrete category of information that can be extracted from its cultural, political, and historical contexts and incorporated into the state’s decision-making practices without threatening the state’s authority as sole decision-maker. Social geographers Tyler A. McCreary and Richard A. Milligan have made a similar point in their critical consideration of Aboriginal Traditional Knowledge in the Joint Review Process, noting how “[r]ecognition of traditional knowledge only as evidence

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<sup>45</sup> Ibid.

dismisses the relevance of Indigenous jurisdictions and traditions as frameworks for decision.”<sup>46</sup> In this way, Indigenous people are cast as benign knowledge-sharers rather than co-sovereign decision makers, as many perceive themselves to be, and must perform to this expectation in order for their testimony to be heard. While the Panel members at times noted positive examples of the testimony they were charged to receive – that which fell within their definitions of traditional and/or personal knowledge – Haida participants in the process routinely failed to perform appropriately, often seemingly without intending to.

A good example is seen in the testimony of *Nang Jingwas*, Hereditary Chief Russ Jones’ testimony, during which he drew upon many different dimensions of his knowledge about Haida culture, Haida Gwaii, its marine environment, and the potential impacts an oil spill would have upon the region’s environment and people. Like many other Haida participants, Jones introduced himself first with his hereditary name, *Nang Jingwas*, followed by his family lineage.<sup>47</sup> He then described what parts of the coastline he had travelled and knew well as a fisherman, his education (Master’s degree in fisheries), and profession (engineer), as well as the nature of his work for the Council of the Haida Nation as Technical Director and Manager of Marine Planning for the Nation’s Haida Fisheries Program. After clearly stating his opposition to the ENGP, the remainder of Jones’ testimony was spent explaining how Haida traditional knowledge and cultural principles have shaped and been incorporated into the Nation’s marine use plan, using as reference the Haida *Oceans and Way of Life Map* the CHN produced in 2011.<sup>48</sup> Jones pointed to the places he had fished and the places that have been identified as protected marine environments, and talked about their vulnerability to an oil spill. He then went through and described each of the six cultural principles that the CHN’s Haida Marine Workgroup configured

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<sup>46</sup> McCreary and Milligan, “Pipelines, Permits, and Protests,” 120.

<sup>47</sup> As he did in his testimony to Justice McKay at the 1985 injunction hearings. See Chapter 4, 19-20.

<sup>48</sup> See: <http://moa.ubc.ca/voicesofthecanoe/history/haida-map-ocean-and-way-of-life/>

as a *Haida Ethics and Values* document, which the group developed as their first step in marine planning. The second of these, *Yahguudang*, he translated as ‘respect’: “respect for other people, but it's also respect for all beings and all living things and it basically teaches us how we should treat each other.”<sup>49</sup> Finally, Jones described the impact an oil spill would have on him, personally, and on the marine environment through the example of the herring population:

An oil spill would affect the food that I gather and eat. It would affect the amount of fish that would be here on Haida Gwaii. I work with the Council of Haida Nation in the management of fisheries so it would affect the work I do. It would certainly change our community.<sup>50</sup>

Throughout what amounts to seventeen pages of his transcribed testimony, Jones expertly interwove into his testimony knowledge from his personal experiences as a fisherman and long-term resident of Haida Gwaii, a culturally knowledgeable Haida citizen, and a fisheries and marine planning director. He spoke with affection about the “particular smell in the air” when herring spawn, the way to catch herring, the importance of the herring fishery to Haida Gwaii, and the effects of a relatively small oil spill on his and his Uncle’s herring catch in the mid 1970s.<sup>51</sup> He discussed fishermen he knew in Alaska, who shared information about the long-term effects of the Exxon Valdez spill on their fisheries, and described each of the fisheries-based economies active on Haida Gwaii, explaining how an oil spill would affect each of them in specific ways, noting their combined estimated annual economic value over a ten year period from 1985 to 1995 to be \$83 million dollars. He described collecting the eggs of nesting sea bird populations, and how these too would be contaminated by a spill, along with damaging a marine environment critical to migratory seabirds. He discussed his concerns about the impacts of an oil

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<sup>49</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*, Hearing Order OH-4-2011, Volume 22, Old Masset, BC, 28 February 2012, Lines 13138-9. <https://apps.neb-one.gc.ca/REGDOCS/File/Download/793623> (Accessed 28 September, 2012).

<sup>50</sup> *Ibid.*, 13149.

<sup>51</sup> Jones’ Uncle was the late Chief Dempsey Collinson.

spill on the highly prized black seaweed, which grows high in the inter-tidal zone, and upon the local tourism industry, which is also dependent upon a clean marine environment in the marine protected zones that draw visitors from around the world. He used past examples to talk about the devastating impact of introduced species to marine ecologies, and the increased risk of this from the unloading of supertanker ballast water at Kitimat. Jones closed by urging the Panel to consider not just the potential economic benefits of the project but also the nature and extent of the localized impacts of an oil spill. He emphasized the importance that the Panel seek consent from the Haida people for the proposed project because it would negatively impact their title and rights, and because it would be left to the Haida people to carry the greatest burden of risk in such a project:

We've been quite clear about the position of the Haida, that we don't support the pipeline and oil traffic through Hecate Strait or Dixon Entrance.

It's important that the Panel seeks consent from the Haida for any recommendation they make about what happens with this project because decisions will have the most profound effect on us.

The Enbridge proposal will have a huge impact and a spill is a virtual uncertainty [sic]. I agree with what other people have said; it's not a question of "if a spill will occur" but "when".

Local impacts are often overlooked by for the so-called national good. It may be of benefit for some people in Canada, but I think we must look at it from a Haida perspective, in our view of our title and rights. When we do that, this proposal should not be approved.

Thank you.

--- (Applause)<sup>52</sup>

Chair Leggett did not interrupt his testimony, but responded with the following:

Mr. Jones, I didn't want to interrupt you as you were speaking. You obviously have a wealth of both technical and Aboriginal knowledge and personal knowledge.

We are here to collect the oral evidence piece and not the argument piece. That piece will come at a later time, as we've mentioned. And so I just wanted to mention it at this point that it's very helpful to the Panel if everybody can contain their information that they're providing us -- providing to us at this point on the oral evidence and *stay away from the scientific and technical pieces* that have already been filed as written evidence.

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<sup>52</sup> Canada, *Joint Review Panel Volume 22*, Lines 13237-13241.

There'll be an opportunity at the final hearings for the cross-examination or the final questioning portion, as well as at the end there'll be the opportunity for everybody to present their arguments.

This allows everybody to be presenting their arguments based on all the information that's come in. So we're not trying to cut anybody off; we're just trying to follow the sequence that has been established to make sure that everybody has the opportunity to understand all the information and then finally we'll wrap up at the very end of the process with argument.

I just wanted to mention that.

Thank you.<sup>53</sup>

Admittedly, within the logics of the Joint Review process as they were, it was necessary to have some parameters around people's speech. Types of testimony were pre-categorized and ordered presumably to make it easier for the Panel members and their team to manage the vast extent of information being gathered, and to synthesize and digest it during the evaluation and decision-making stages. Defining appropriate time limits for different types of testimony, as well as when and where such types of testimony should be given and received, were part of the rules and guidelines devised to organize and carry out such large-scale public hearings – to make such an undertaking manageable. However, the Joint Review process' prescriptive orderliness did other kinds of work as well. In Jones' case, as in many other people's testimony, it required that he internalize the processes' knowledge categories, separate out precisely the kinds of knowledges that he had spent a lifetime working to integrate into a functional whole, and re-present to the Panel a thin, de-contextualized version of what he knew and how he had come to know it in order to meet the requirements necessary for being heard. His clearly organized testimony, with an introduction, supporting points (some of which were numbered for clarity), and conclusion was politely acknowledged, framed as 'argument' and containing scientific and technical information, and thus construed as speech out of place, all for the stated purpose of ensuring the process continue in accordance with the rules of the process.

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<sup>53</sup> Ibid. 13242-13247. Emphasis mine.

As Stoler notes, colonial commissions often signaled sources of state anxiety, and were concentrated on collecting information as a way of managing a population considered threatening to the prevailing social (colonial) order, such as the poor, or mixed-race people.<sup>54</sup> While the category of Aboriginal Traditional Knowledge is purported to be a means of including of Indigenous Peoples and cultures into the body politic, in the JRP, it was also a means of containing the threat of a distinctly problematic difference through a strictly limited form of consultation and incorporation. In other words: ‘we are here to listen, but on these terms, and we will only listen to a narrowly conceived version of you.’ In order to be heard, Indigenous participants could not speak as themselves, they had to speak in ways that the state imagined them.

### *Managing Tone*

At times, it seems as though testimony was identified as objectionable based less on its lack of adherence to procedural directive number four, than because of the speaker’s tone or the way her speech affected the tone of the room. Indeed, throughout the hearings, there appeared a reoccurring struggle over what constituted the appropriate tone of the hearings. The National Energy Board handbook advises that although members of the public might find hearings “formal and even intimidating”, this is part of how the organization ensures that such processes be “thorough and orderly” and “meet the needs of those participating.”<sup>55</sup> In return, the Board “expects all people attending the hearing to behave in a courteous manner toward the Board members, Board staff, and all attendees.”<sup>56</sup> As Jerome Bruner notes for the context of the

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<sup>54</sup> Stoler, “Colonial Archives,” 103–7.

<sup>55</sup> Canada, National Energy Board, “In the Hearing Room,” *The National Energy Board Hearing Process Handbook*, 6 January 2016. <<http://www.neb-one.gc.ca/prcptn/hrng/hndbk/index-eng.html>> (Accessed 10 February 2016).

<sup>56</sup> Ibid.

courtroom, maintaining a particular tone is an integral part of the performative ceremony of law in any cultural setting, and moreover, is integral to how law is legitimized as a ‘true story’:

Legal proceedings are, for one, ritually solemn. Laughter is regarded as inappropriate unless it is intentionally initiated from the bench, which is rare. Respect for the presiding officer of the court is expressed through such ritual commands as “Order in the court!” when an inadvertent disturbance occurs and by the enforced rule that the audience rise when the judge enters or leaves the courtroom.<sup>57</sup>

While the Joint Review process was only quasi-judicial, and the Panel members never quite called for ‘Order in the court!’, they used parallel expressions and means of making participants and witnesses alike conform to what they considered the proper tone for the hearings. As Bruner notes, in doing so the Panel members were also enforcing the notion that participants act in accordance with a story in which the hearings exercise is presumed legitimate, and that the stories it tells, and those that are built into its proceedings as assumptions, be taken as true stories. For the most part, those testifying treated the Panelists and the process with a great deal of respect; but they also acted from and in accordance to an altogether different script.

Along with procedural directive four and the accusation of ‘argumentative speech’, the Panel appeared to manage testimony and audience response by attempting to disallow or limit applause during and at the end of people’s testimony, citing the need to adhere to time limits in order to ensure everyone’s participation. The Panel reacted quickly to language they interpreted as ‘threatening’, construing participants’ commitments to acts of civil disobedience as direct threats to the Panel.<sup>58</sup> As can be seen in the excerpts below, two such statements elicited very

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<sup>57</sup> Bruner, *Making Stories*, 44.

<sup>58</sup> Islanders of any duration of residency are experienced with non-violent protest as a means to exert control over land use decisions made off-island. This began with the Lyell Island blockades in the 1980s, but has also been used in relation to Haida protests over the sport fishing industry, and more recently in the Islands’ Spirit Rising blockade of logging roads in TFL 39. In 2012, the Joint Review Panel went so far as to temporarily cancel the review hearings in Bella Bella, BC. The Panel claimed concerns for their safety after interpreting a peaceful protest along the road into town from the airport as threatening to the extent that they turned around and took the first boat out of the community. CBC News, “Gateway Hearing Cancelled After Protesters Greet Panel: Bella Bella Resident Says Protest was Peaceful,” *CBC News: British Columbia (Online)*, (2 April, 2012).

supportive responses from audience members but censure from the Panel. We see this first with Dale Lore's testimony:

Consequently, we won't let [the ENGP] go ahead. It just will not go ahead. But how far do we have to go? We're lawful people; we will do everything in our power lawfully to keep this from happening, and then we'll get into civil disobedience, and if that doesn't work, it'll keep going until somebody gets killed. So we don't want it to happen.

MEMBER BATEMAN: Mr. Lore, I'm just going to interject here. I know you feel energetic in your views and we are here to hear that.

There is a discomfort though when you or anyone begins to proceed down a path of civil disobedience and injury and that type of thing. So you must refrain from that so that we can have a proper opportunity to hear views but not ones that encourage, or perhaps make people feel uncomfortable about things such as civil disobedience.

So with that, please continue.

MR. DALE LORE: No problem, I didn't want to make your Panel feel uncomfortable. Everybody else here has had to experience that here over the last 30 years on several occasions. So it's our reality, but I apologize.

--- (Applause)

THE CHAIRPERSON: Could we have order in the room, please.

Everybody who has come here has spent a great deal of time, it has been our experience, in preparing their statements and they do only have 10 minutes to deliver them. So I would ask the audience to refrain from any kind of applause or anything like that while the oral statements are proceeding.

Thank you.<sup>59</sup>

And again with Alexander McDonald's testimony:

So I want to commit to non-violent protest of this as it continues. I also wish to commit to being civilly disobedient, to stop the tankers from flowing, and whatever else I can conceive of doing. And in those commitments I do also commit to put myself in harm's way, and I guess I'll call that good.

Thank you.

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THE CHAIRPERSON: I just wanted to let people know that we're here to hear your personal views and knowledge about the project but not to receive threats.

And so I would ask everybody as they prepare their oral statements to keep in mind the fact that we're looking for the relevant information of your knowledge and views about the project in these oral statements, and that it's an inappropriate time and use of this Panel's time to start talking about things like civil disobedience and threats.

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<http://www.cbc.ca/news/canada/british-columbia/gateway-hearing-cancelled-after-protesters-greet-panel-1.1289416> (Accessed 15 January 2016). For an excellent account of Islands' Spirit Rising and its historical context, see: Louise Takeda, *Islands' Spirit Rising: Reclaiming the Forests of Haida Gwaii*, (Vancouver, BC: UBC Press, 2014).

<sup>59</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*. Hearing Order OH-4-2011, Volume 56, (13 June, 2012), Lines 6466-6473. <<https://apps.nneb-one.gc.ca/REGDOCS/File/Download/824245>> (Accessed 27 February 2013).

So I would ask everybody to bear that in mind as they prepare and present their oral statements. Thank you.<sup>60</sup>

Time limits were frequently cited as a reason to censure the tone of people's testimony and audience responses to it. On at least two occasions, Chair Leggett objected to audience applause after people's testimony because it seemed to violate the desired tone of the hearings. In the first example, she asked people to hold their applause for the reason that it may take up too much time. She further suggested that applause was too celebratory, reminding participants that the hearings were "a very solemn occasion."<sup>61</sup> In disallowing applause on behalf of the speakers, Leggett positioned the Panel as the proper authority over the process. She presented herself as a decision-maker who assumed the authority to act in the best interests of the speakers, notwithstanding the fact that the Panel was the only party objecting to the use and prevalence of audience applause. This contest over the appropriate tone of the proceedings arose again after former CHN President Miles Richardson's testimony, wherein Chair Leggett offered a threat of her own with respect to the ambiguously worded 'additional measures', lest inappropriate conduct impinged on the Panel's ability to fulfill their listening work:

Again I would remind you *this is not a rally, this is a serious hearing* and we need to be able to listen to the people who are here to speak with us. And we are here to listen to them and I would ask everyone please to refrain from the comments from the audience as far as clapping and -- if this continues on we will have to take additional measures and we would then be in a position of maybe not having enough time to hear everyone who's come here to speak with us.  
And we are here to listen and we want to be -- to have that opportunity to fully listen to everyone. So I appreciate everyone's full cooperation in this matter.<sup>62</sup>

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<sup>60</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*, Hearing Order OH-4-2011, Volume 57, (14 June, 2012), Lines 6704-6708. <<https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A42181>> (Accessed 27 February 2013).

<sup>61</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*, Hearing Order OH-4-2011, Volume 30, Skidegate, BC. 21 March 2012, Line 20236. <<https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A40267>> Emphasis mine. Audience applause is a rich and untranslatable dimension of the hearings. Each speaker is applauded at the end of their testimony, but also at times amidst someone's testimony, as an expression of support or approval for a specific statement.

<sup>62</sup> *Ibid.*, Line 20305. Emphasis mine.

Interestingly, Haida leadership challenged this censure during a break in the proceedings, at which point they claimed that applause for a speaker is part of Haida tradition. The idea of Indigenous tradition, it would seem, had some standing in the process. As Chair Legett stated upon returning from the break:

I'm continuing to learn as I go that it's a privilege to be involved in a process like this. And I was further educated during the break that the clapping at the end of when a speaker has spoken is actually part of the tradition of the Haida Nation, and so for that I apologize, I was not aware of that. And I'm grateful that everybody lets the speakers speak before any clapping goes on so that we can hear the thread of what each speaker is trying to say to us and then we'll allow the tradition to continue. I'm certainly not here to change any Haida traditions by any stretch. So I appreciate the education that I've received on it and also your cooperation in ensuring that the expressions of gratitude don't extend in a way that it prevents the next speaker from moving on.<sup>63</sup>

Here we find a compromise, wherein the Panel 'allowed' the practice of a Haida tradition within a formal quasi-judicial process, thereby limiting any perception that Leggett or the Panel relinquished any control over the proceedings. It was partly through this deliberately courteous, non-confrontational, but firm positioning that the Panel asserted its authority, and through it, that of the state. However, as anthropologist David Kertzer observes, "successful ritual...creates an emotional state that makes the message incontestable because it is framed in such a way as to be seen as inherent in the way things are...beyond debate."<sup>64</sup> That the Panel members felt compelled to repeatedly police the proceedings in order to maintain the proper tone for the hearings suggests that the process lacked credibility even at this early stage.

### *Managing the Form of People's Testimony*

Scholars critiquing the way Indigenous testimony is evaluated in the court system or in co-management negotiation processes have long argued for Indigenous ecological knowledge to

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<sup>63</sup> Ibid., Line 20315.

<sup>64</sup> David I. Kertzer, *Ritual, Politics, and Power*, (Yale University Press, 1988): 9.

be understood as a practice, not simply as information that can be divorced from its cultural contexts.<sup>65</sup> These authors draw our attention to knowledge as it appears in and is transmitted through social practices such as hunting, fishing, the preparation of animal hides, the distribution of food, carving, beading, etc. Similarly, Haida testimony in the Joint Review process described in tremendous detail how integral ocean resource harvesting is to Haida economies and nutritional needs, but more fundamentally, to their relationships with one another, and with their territory. Haida people filled the space made available for them through the Joint Review process' solicitation of Aboriginal Traditional Knowledge with expressions of what they knew about their marine environment and their dependence upon it. In general, they communicated this orally, but they also attempted to express this knowledge in a uniquely Haida idiom. In traditional systems of Indigenous law and governance on the north west coast, dance, ceremony, and song are part of a cultural complex in which people's knowledge is publicly legitimized and authorized by the community, however broadly defined. As with many Indigenous cultures in the region, in Haida practices the right to carry certain names and perform certain songs and dances is tied to rights of access and use of specific territories.

On June 13, 2012, the first day of the Skidegate oral statement hearings, the Skidegate *hlgaaGilda* Youth Haida Dance Group was scheduled to perform a dance for the JRP Panel, accompanied by a song performed by their teacher, Jenny Cross. The hearings opened with the Chair's review of the day's schedule, during which she cancelled the youth dance as it failed to meet the definition of what constituted an 'oral statement':

I understand that there was a potential planned cultural presentation that was to be a dance, and we have said that this is not the time and place for that. We're here to hear these oral statements, as I've mentioned, that are 10 minutes in length and are individuals

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<sup>65</sup> Alternate phrasing for Indigenous ecological knowledge includes Aboriginal Traditional Knowledge (ATK) or Traditional Ecological Knowledge (TEK). See: Cruikshank, *Social Life of Stories*, 1998.; Irlbacher-Fox, *Finding Dahshaa*, 2009.; McCreary and Milligan, "Pipelines, Permits, and Protests," 2014.

who have signed up to present their oral statements which is their personal views and knowledge about the Project.

So for you who -- for the party or the group who was planning to give this presentation, I understand that there's been some work that's gone into it, I would encourage you to speak with one of our process advisors to determine what your other potential options are. As I said, tonight, we're here exclusively for the oral statements.<sup>66</sup>

Later in the day, the leader of the youth group, Jenny Cross, opened her oral statement with the following remarks on the impact of the Panel's refusal to allow the youth performance:

Chiefs, Ladies Held in High Esteem, good people, thank you all for being here.

My name is Jenny Cross and I am the lay teacher for the Skidegate HlgaaGilda Youth Haida Dance Group that you see in the front here.

(Speaking in native language). Today is a sad day. (Speaking in native language). Our children are sad because we're not going to dance for you.

Since February, the children worked very hard on their ocean storyline performance for today. Their power of statement is in their Haida dancing and they just want to ensure that our precious culture and the many sea creatures, birds and animals of which we hold in very high regard had a voice too through traditional Haida dance.

Our drums are silenced. We are heartbroken and very disappointed that we have been deterred to present our strong opposition to the proposed pipeline by the JRP strict rules and guidelines.<sup>67</sup>

Ms. Cross went on to offer a brief explanation of what the dance was intended to communicate, which was the interconnections between Haida people and Haida Gwaii, and their commitment to protect it. As she made explicit later in her testimony, the children's performance was intended to recount this narrative through dance as an expression of communication traditional among Haida people, but also to offer the children an opportunity to demonstrate their pride in their culture and the place they are from:

It was not my vision to speak this evening but rather to have the children speak through our oral and traditional history of our Haida people for thousands upon thousands of years that has been passed on. It was my wish to have them show you the pride in who

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<sup>66</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*. Hearing Order OH-4-2011, Volume 56, (13 June, 2012), Lines 6348-50. <<https://apps.neb-one.gc.ca/REGDOCS/File/Download/824245>> (Accessed 27 February 2013).

<sup>67</sup> *Ibid.*, 6506-10.

they are. They are proud to be Haida children. They are proud to be living in this beautiful majestic islands that we call home.<sup>68</sup>

Then vice-president of the CHN, April Churchill, filed a written motion the same day asking the Panel to reconsider their decision, but it was denied on the basis that the oral hearings were not the appropriate place in the hearings process for this type of presentation:

Prior to the oral statement portion of the community hearings the Panel heard extensive oral evidence, including from this community which included Aboriginal traditional knowledge. This portion of the community hearing is to collect oral statements. It is not the appropriate stage in the proceedings for this type of presentation. The opportunity remains for Ms. Churchill, on behalf of the Haida Nation, to request by Notice of Motion, that a video recording of the dance be submitted for consideration as late oral evidence.<sup>69</sup>

Later that same day, one of the members of the youth group explained what it meant to be refused permission to perform the dance:

Hello. My name is Jessica Fairweather, my friends call me Jess. I was born here and I have lived here for my entire life. I'm the age of 14. I am Haida, and my Haida name is Jaask'wan. My great-grandfather, my chinaay, was a Haida Chief of Tanu. A few high school students have volunteered to speak in front of you today, including myself. One of the first things that have bothered me is the fact that my traditional Haida dance group was not allowed to perform in front of you yesterday. I would like to quote a part my -- of the speech of my dance teacher, Jenny Cross, made yesterday: "We are descendants of the ocean and are interconnected to all living sea life, birds, and animals. All living creatures entering our lives has a purpose and sustain our people. The legacy of who we are come from our ancestors. We will do everything in our power to protect our ecosystem." (As read)  
Unquote.  
The Haida language is growing more and more faint. It is the sad truth. Us, as the Haida children, have been chosen to carry out the culture of our ancestors and our Elders. Many of us, as the youth, do not get the opportunity to learn to speak our own native language so many children have volunteered to show what we would like to say, but in dance. The Panel would not allow this.  
They say due to the fact that it was in Haida and not understandable we were not allowed to represent ourselves in this way. I understand that it is against the rules, but they could have at least allowed us to show them it.<sup>70</sup>

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<sup>68</sup> Ibid., 6510.

<sup>69</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*. Hearing Order OH-4-2011, Volume 57, (14 June, 2012), Lines 6677-8. <<https://apps.nel-one.gc.ca/REGDOCS/Item/Filing/A42181>> (Accessed 27 February 2013).

<sup>70</sup> Ibid., 7009-13.

The CHN later filed a motion to the NEB to have a DVD recording of the dance accepted as late oral evidence. The introductory statement of the law firm submitting the motion asserts:

This evidence is an oral expression of Haida laws, traditions and culture and its admission as evidence is important for recognizing and respecting that song and dance are part of Haida legal tradition.<sup>71</sup>

In addition to its importance as a symbol of Haida legal tradition, the dance was meaningful for the ways it demonstrated young people's commitment to Haida cultural practices. For a community still living with the ongoing intergenerational impacts of residential schools and the state's assimilation policies, the pride of young Haida people in learning and publicly practicing their culture is not something to be taken for granted. Such pride is part of the history of Haida-state relations, the story of Haida survival, and, in important ways, a remarkable achievement. It is in instances such as this one, where the Panel failed to recognize and be flexible enough to accommodate the symbolic needs of the Haida community – with respect to the stories that are important to them – that the legitimacy of the Panel's claims to authority are undermined.

The JRP's rules of process and the Panel members' deployment of these rules during the hearings worked to constrain and subordinate Haida and non-Haida testimony, in the very act of soliciting Indigenous and local narrative knowledge. The Panel's refrain of 'We are here to listen' was repeated throughout the oral statement and oral evidence hearings, but in practice, it appears that the Panel was only prepared to listen to a very specific version of Indigenous and local subjects. Testimony that was construed by the Panel as outside the defined parameters of 'Aboriginal Traditional Knowledge' or 'Personal Knowledge', as well as argumentative or

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<sup>71</sup> Council of the Haida Nation, White Raven Law Corporation, "Motion to File Late Oral Evidence," (10 August 2012). <[https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/384192/620327/624910/702795/841413/D42-30-1\\_-\\_Council\\_of\\_the\\_Haida\\_Nation\\_-\\_2012\\_08\\_10\\_CHN\\_Notice\\_of\\_Motion\\_to\\_JRP\\_-\\_Late\\_Oral\\_Evidence\\_DVD\\_-\\_A2W6J8.pdf?nodeid=841234&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/384192/620327/624910/702795/841413/D42-30-1_-_Council_of_the_Haida_Nation_-_2012_08_10_CHN_Notice_of_Motion_to_JRP_-_Late_Oral_Evidence_DVD_-_A2W6J8.pdf?nodeid=841234&vernum=-2)> (Accessed 28 February 2013).

overly confrontational speech was met with a calm, firm insistence upon the importance of the Joint Review process' procedural guidelines. As is evident from people's responses to the Panel's interjections in their testimony, it was not always clear to them when they had misstepped, or, in other moments, failed to adequately shield the Panel from the emotional and psychological effects of considering the ENGP's potential impacts upon how and where they live, and who they are. As Guujaaw stated at the conclusion of one hearing session:

We've presented evidence, basically, as you asked us, personal experience from our people, from our families, from our households in a way that -- you know, we try to do it as -- you know, in an organized way that you -- that you've set forth and it's very hard for us to do it in this way, you know, because there is so much at stake. You know, what really is at stake is a people and a culture and an environment that certainly has provided for us but provided for people all over the world in the resources that have left here, the seafood, the beautiful things that people have enjoyed from this land, and continue to enjoy.<sup>72</sup>

Whether or not it was as explicitly articulated as in the statement above, people's sense of dislocation at the Panel's heavy-handed management of the content, tone, and form of their testimony is palpable in the hearing transcripts. Throughout, there is an unmistakable feeling that the Panel members kept missing the point of what the participants were trying to convey, due to some combination of their inability or refusal to hear people's resounding opposition to the ENGP.

Moreover, the hearings took place in spaces that were familiar to Haida and Islanders, commonly used for public community occasions such as memorials, potlatches, celebrations, school graduations, and basketball tournaments. Despite the presence of the Panel and the cumbersome nature of the hearings process, participants were at home in the physical space of these buildings, were all more or less accustomed to how public gatherings usually operate in

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<sup>72</sup> Canada, National Energy Board, Ministry of Environment, *Joint Review Panel for the Enbridge Northern Gateway Project*, Hearing Order OH-4-2011, Volume 23, Old Masset, BC, 29 February 2012, Line 13472. <<https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A39646>> (Accessed 28 February 2013).

them – even confrontational ones about difficult community issues. They appeared affronted at the Panel’s interjections and attempts to manage their speech and their responses to a very personal issue in what was very much home ground.<sup>73</sup> The JRP may have been able to shorten and in some cases prevent some forms of testimony, but was not, in the end, successful in fully subordinating Islander (Haida and otherwise) testimony. In their engagement with the JRP, Haida demonstrated an acute awareness of the ways in which the process demoted them from decision-makers to contributors of a highly circumscribed type of knowledge, assumed the state’s sovereignty and jurisdiction over territory the Haida considered their own, and was built to receive only some of the stories they had to tell.

### **Haida Engagement of the JRP**

#### *Participation and Problems of Access*

Islander engagement of the JRP process was tremendous, with well over 400 people attending each day of the hearings.<sup>74</sup> In all, 201 people testified at the oral statements and oral evidence hearings. Of these, 198 expressed their rejection of the ENGP, with only 3 in support. While in many ways Haida participants acted *within* the parameters of review process, it is impossible to see their testimony as successfully contained by the procedural guidelines and the JRP’s definitions of Aboriginal Traditional and Personal Knowledge. Haida participants repeatedly challenged the constraints of the process upon their speech, fully occupying and exceeding the space made available for them through ATK. In doing so, they and their neighbours filled the official record with their voices, the cumulative effect of which challenged

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<sup>73</sup> For example, on the first day of the Skidegate Oral Evidence hearings Miles Richardson stated: “Our people will share. Our people are the most generous people on this earth. They’ll share; they’ll get along. They’ll find a way through difficult situations. But don’t come here and to our home, don’t come to our home and just say it’s this way or the highway. We won’t put up with it and to the very -- with every fiber of our being.” Canada, *Joint Review Panel Volume 30*, 20295.

<sup>74</sup> Communities Against Supertankers: Haida Gwaii CoAst, “Reports Back From the Old Masset Joint Review Panel Hearings,” (blog), 14 March, 2012. <<http://haidagwaiicoast.ca/2012/03/14/reports-back-from-the-old-masset-joint-review-panel-hearings/>>

the state's assumed sovereignty over their territory, and presented an alternative to the narrative implied by the presence of the Joint Review process: that of a fair and accountable state acting in the best interests of its citizenry. Instead, Haida testimony revealed an older narrative operating at the heart of the state's decision-making processes with respect to Indigenous Peoples and territories: that Indigenous existence is expendable in the face of the expansion of resource extractive industries in Canada. Haida (and Islander) testimony reframed the state's assumed jurisdiction over Haida Gwaii as illegitimate, in large part because of the state's lack of dependence upon, knowledge of, and intimate connection to the territory. Instead, Haida people presented a story about how their rootedness to their local environment legitimized them as the best placed to make critical decisions about the future of Haida Gwaii.

Getting their voices onto the official record was by no means a straightforward process. Before participants could deal with the problem of fitting their speech into the framework defined by the JRP's procedural guidelines, they first had to successfully register as approved participants in the process. This proved to be so difficult that the CHN hired Valine Crist to facilitate the participation of all island residents in the process. Crist, a young Haida woman who co-founded the Haida Gwaii-based community activist group CoASt (Communities Against Super Tankers), was working on a Master's degree in anthropology at the University of Victoria, the focus of which became the Joint Review hearings on Haida Gwaii.<sup>75</sup> In my conversation with her, Crist acknowledged and welcomed the opportunities made available in the process for people to participate, but she noted that there were many barriers facing such participation.<sup>76</sup> Crist observed that many people, especially in the older generation, felt that the process would not recognize their knowledge because they were not 'experts.' Based on how the process was

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<sup>75</sup> See: Valine Crist, "Protecting Place Through Community Alliances: Haida Gwaii Responds to the Proposed Enbridge Northern Gateway Project," (M.A. thesis, University of Victoria, 2008).

<sup>76</sup> Valine Crist, Personal Interview by Author, 1 July, 2014.

presented to them, they believed this was a requirement to testify.<sup>77</sup> Crist observed that the procedural rules were the first indication of how confining the process would be. As time went by, people's perception of the inaccessibility of the process deterred community participation. Many did not want to participate but ultimately decided to because they felt it was their only opportunity to be heard. People's initial wariness of the JRP was validated after the Prime Minister and Minister of Environment came out publicly in support of the ENGP, and reserved final approval for Parliament.<sup>78</sup> For many, this proved that the JRP's outcome was decided from the outset, yet people still turned up in large numbers to voice their opposition to the project. As Haida Gwaii resident, environmentalist, and Haida language scholar Severn Cullis-Suzuki noted, the attitude among those who testified was that they were treating the process as legitimate in terms of the emotion, energy, and time investments they needed to take it seriously despite feeling otherwise.<sup>79</sup>

Those who wished to participate encountered several significant obstacles early on in the process. Community members were required to register for one or both of the Oral Statements and Oral Evidence hearings. Oral statements allowed individuals ten-minute time slots to express their perspectives on the proposed project. For the Oral Evidence hearings, would-be participants had to apply to be registered as intervenors. If successful, participants were made "official Parties in the process [which] allow[ed] them full access to submit information requests, call witnesses to provide evidence, and cross-examine evidence throughout the review."<sup>80</sup> However, applying for this status was by no means easy, and applications were frequently rejected. Crist makes the crucial observation that tribal governments such as the CHN were not permitted to

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<sup>77</sup> Ibid.

<sup>78</sup> Ibid. See also, Council of the Haida Nation, "A Resounding Voice: Haida Gwaii Speaks to the Enbridge Joint Review Panel," *Journal of the Council of the Haida Nation*, December 2013, 4.

<sup>79</sup> Severn Cullis-Suzuki, Personal Conversation, July 2014. See also Crist, "Protecting Place," 45.

<sup>80</sup> Crist, "Protecting Place," 17.

register as intervenors, although other organizational collectives such as CoASt were.<sup>81</sup> A third level of participation was reserved for representatives of all levels of Canadian governments (federal, provincial, territorial, and municipal), but not band or tribal governments.<sup>82</sup> Crist interprets the lack of recognition given to Indigenous governments or political authorities as colonialist on several levels, particularly because it forced “*individuals* to voice opposition rather than the collective, which...segments shared values and Indigenous ontologies.”<sup>83</sup>

Crist further notes that community members were given short notice of registration deadlines for which they had to choose specific date and time slots in hearings sessions that were months or even a year away, long before they really understood what the Joint Review process was.<sup>84</sup> Those who successfully registered as intervenors found their email inboxes flooded with communications keeping recipients abreast of the Joint Review process.<sup>85</sup> On the one hand, such communiqués met all the requirements for keeping participants informed about the process, but they also amounted to a barrage of documents written in a bureaucratic register that many found impossible to decipher or keep up with. As Crist observed, the effect on many community members was that the process often made community members feel overwhelmed or intimidated before they had even given their testimony.<sup>86</sup> Those testifying at the hearings, especially when participants’ testimony was curtailed due to their failure to speak within the JRP’s procedural guidelines frequently referred to the impenetrability of the participation process. For example:

You know, we’ve changed our logging practices here over the years. We’ve, you know, lobbied with Guujaaw – was there – and to stop logging on Lyell Island, and that was a success, made a world-renowned, you know, national park. Why would we endanger that trucking, like, 300 tankers proposed like starting out per year return trip?

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<sup>81</sup> Ibid., 17-8.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid. Emphasis mine.

<sup>84</sup> Valine Crist, Personal Interview by Author, 1 July, 2014.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

THE CHAIRPERSON: Mr. Pineault, again, we're here to hear about your personal knowledge and experiences about the potential effects of the project on you or your community.

MR. PINEAULT: Yes.

THE CHAIRPERSON: You'll have an opportunity for argument at a later point in the process as we've discussed.

MR. PINEAULT: I'm not arguing anything.

THE CHAIRPERSON: So if you could ---

MR. PINEAULT: I'm just talking about my personal experience.

THE CHAIRPERSON: That's what we're here to hear about today.

MR. PINEAULT: And I have personally read – Enbridge has sent me all of their information because I'm an intervenor, and I have stacks of books like this high. And even if I quit my full-time job I would never be able to read that much information. They've probably spent more money on this project than our entire gross economic value is on the island.

THE CHAIRPERSON: Mr. Pineault, we need to hear from you about your personal knowledge and experiences about the potential effects of the project on you or your community. So if you could focus your remarks on that.<sup>87</sup>

CoAst's mandate was to help Haida and non-Haida residents of Haida Gwaii navigate this complex process, and offered several participants a means to participate under its organizational umbrella by applying as a group intervenor on their behalf.

The CHN worked hard to ensure that Haida and non-Haida Islanders alike made their voices heard in the JRP process, and those testifying often noted the CHN's supportive role in facilitating community participation. In one such case, the speaker closed his testimony with thanks:

Also I'd like to thank the staff of the Joint Review Panel, and the Village of Queen Charlotte, and the Haida Nation without whose assistance in navigating the complex bureaucracy of rules, forms, and timelines, I'm certain we would not be sitting in front of the Panel today.<sup>88</sup>

Despite various barriers, Islanders rose to the opportunity to participate in force, contributing what amounts to just under a thousand pages of transcribed testimony, and showing unprecedented unity in opposing the Enbridge Northern Gateway pipeline project. In the

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<sup>87</sup> Canada, *Joint Review Panel Volume 23*, 14308-317. According to procedural directive number four, rhetorical questions not permitted. See: Canada, "A093 – Oral Evidence," 2012.

<sup>88</sup> Canada, *Joint Review Panel Volume 31*, 21565.

following, I will explore in more detail the content of people’s testimony, and in particular, how the Haida articulated their opposition through an engagement with the knowledge category of Aboriginal Traditional Knowledge. In doing so, they challenged the JRP’s definitional authority over their testimony, and asserted their own narrative vision of what was being put at risk by both the ENGP and the JRP as a representation of the Crown’s unwillingness to meaningfully share decision-making authority over lands, resources, and people.

#### *Aboriginal Traditional Knowledge in a Haida Register*

Haida participants in the process clearly had their own understandings of what constituted ‘traditional knowledge’, and how it could – and should – inform the state’s decision-making process. *Gina* ‘*waadluwxan gud aa kwagiida*, which *Nang jingwas*, Russ Jones, translated as “everything depends on everything else,” is first among the six principles that form the basis of Haida ethics and values, as described above.<sup>89</sup> I have tried to draw from the transcripts the main ingredients of what Haida participants meant by interconnectedness when they used it to describe what was at stake in the Panel’s decision to approve or reject the Northern Gateway Project. As with the logging blockades of the 1980s, a threat to the ecological integrity of the territory (marine and terrestrial) was seen as a threat to Haida cultural survival. An oft-repeated assertion in people’s testimony was that an oil spill would mean the end of the Haida. Indeed, along with protecting large parts of Haida Gwaii from logging, Haida land-use and environmental planning has focused on designating most of the shorelines of the archipelago with protected status.<sup>90</sup> Where the JRP transcripts offer a much more extensive written record of the inextricability of cultural and ecological health on Haida Gwaii than could have been communicated in the 1985

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<sup>89</sup> Canada, *Joint Review Panel Volume 22*, 13137-146. The term ‘interdependence’ is also used in relation to this principle.

<sup>90</sup> Lynn Lee, “People, Land, and Sea: Environmental Governance on Haida Gwaii,” paper prepared for the *Action Canada Northern Conference*, Haida Gwaii, September 2012. <<http://www.actioncanada.ca/wp-content/uploads/2014/04/Haida-Gwaii-Environmental-EN-Oct-2012.pdf>> (Accessed 15 September 2015).

injunction, the message remains the same. In this case, the main concern was an oil spill and its effects upon the marine environment of Haida Gwaii, which would first and foremost impact Haida people's ability to harvest foods from the region's waters and shoreline. In their testimony, Haida people talked about food harvesting as a source of cultural identity, an important economic and nutritional resource, a means of transmitting cultural knowledge from one generation to the next, a means of recovering from past state policies aimed specifically at disrupting intergenerational knowledge transmission, and as a threat to the models of sustainability and co-existence the Haida and their neighbours have worked so hard to create since the 1970s.

#### *Nutritional and Economic Importance*

A common expression in the transcripts is “when the tide goes out, the table is set.” Indeed, when reading the JRP transcripts it often seems that the bulk of Haida stories describe what seafoods people eat and where they harvested them. Conscious of this, prominent Haida leader Guujaaw at one point joked that the Panel probably thought that “all we do is sit around and eat.”<sup>91</sup> In page after page of the transcripts, people described in loving and often emotional detail how dependent they are upon a healthy ocean, some citing recent nutritional and economic studies that offer hard numbers to support what is common knowledge on Haida Gwaii: that a diet based on traditional foods is nutritionally healthy and has the capacity to reverse the diet-related health problems plaguing many Indigenous communities.<sup>92</sup>

In communities where seasonal unemployment rates can reach up to 70-80%, harvesting seafood offers paid work, and a food source for when paid work is scarce, as is noted in Chief Robert Mills' testimony:

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<sup>91</sup> Canada, *Joint Review Panel Volume 23*, 21086.

<sup>92</sup> For example, see: Canada, *Joint Review Panel Volume 30*, 20734-20736.

Our community has an extremely high unemployment rate of approximately 80 percent. Big industries such as logging and fishing have come and gone, and we're left trying to make a living.

You've heard some of the ways the two Band Councils, Skidegate Band Council and Old Massett Village Council, as well as the Council of Haida Nation, have been trying to build sustainable economies on Haida Gwaii.

Because there aren't any jobs, we, of course, then have a large number of people on social assistance. Unfortunately, with social assistance comes a limited quality of life.

Sometimes people who are on social assistance don't even have enough money to buy their kids Christmas presents. To offset that, they try to supplement with traditional foods from the local waters.

They stock up as much as possible to try and free up some extra cash to enjoy quality of life activities. An oil spill would definitely affect their ability to eat, but it would also affect their ability to make their social assistance go a little further.<sup>93</sup>

Like many northern communities with short growing seasons and minimal agricultural land, the cost of imported store-bought foods are far greater than in southern communities. Randy Tennent explained this to the Panel members:

I'm not a rich man. I don't know if you have ever bought a banana here in town but it's expensive.

--- (Laughter/Rires)

You know, it is. Everything's brought in by the ferry or barges, milk -- milk, you know, just a basic necessity: six bucks for a jug; right. It's very expensive and when you're on a limited budget, I just can't see doing it without seafood. That's how important it is to me.<sup>94</sup>

However, several people commented on how rich they felt, because they were able to readily consume high quality seafood sold at a premium in urban centers in the south. One participant reflected on a visit to Vancouver, and seeing there the high cost of seafood that is readily available on Haida Gwaii. He noted that this made him feel wealthy, and lucky to live on Haida Gwaii. The importance of this sense of pride in place and one's quality of life in rural settings in comparison to urban settings should not be overlooked, especially among youth.

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<sup>93</sup> Ibid., 20751.

<sup>94</sup> Ibid., 20845.

## *Cultural Importance*

Over and over in the hearings, Haida participants related the ways in which their identity as Haida people is inextricably bound up in the territory, in their family crests and the connection between these and ancient village sites, through their art which tells stories rooted in the landscape and their historical connections to it, in the supernatural beings they have seen or heard about, and in the way their lives (and bodies) are synchronized to the rhythms of seasonal harvests. As Nika Collinson explained,

For us, the oceans and waters mean everything. Fish and seafood are so important. It is just one of those things when you grow up with it, it becomes a part of you, a part of your being, your body knows how to react to it, and it tastes better than anything else in the world because you grew up getting it and processing it and so it's really more than just food, it's a way of life, it's our identity.<sup>95</sup>

This cognizance of Haida people's reliance upon their environment was perhaps most directly expressed in Chief Ronald Wilson's closing comments to the Panel rejecting the ENGP:

You people scare the hell out of me. You have a power to say a word that could destroy an entire lifestyle; I hope you understand that. I hope you understand that I cannot allow that. *The foods that we are, again, bid me to stop you.*<sup>96</sup>

In recounting all the bays they had fished and stretches of coastline where they had harvested a tremendous array of seafoods, Haida participants articulated a concept of culture as a set of practices and experiences. In a 2014 lecture at the University of Victoria, Columbia University anthropologist Elizabeth Povinelli spoke about how, for the members of the Indigenous Australian Karrabing Film Collective she works with, being out on the land is pedagogical; it “builds people into place and place into people.”<sup>97</sup> She described how “being there” and interacting with the land is *the* site wherein people and place come into being

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<sup>95</sup> Canada, *Joint Review Panel Volume 30*, 21069. This statement echoes Dianne Brown's 1985 testimony in Justice McKay's courtroom. See Chapter three.

<sup>96</sup> Canada, *Joint Review Panel Volume 57*, 7507. Emphasis mine.

<sup>97</sup> Elizabeth Povinelli, “Life and Death in Geontology,” (presentation, *Learning How to Inherit Colonized and Ecologically Challenged Lifeworlds*, September Symposium, University of Victoria, Victoria, BC, September 26-28, 2014).

together, in a relational process of co-becoming. Culture as a set of practices is created and sustained through activities between people and place – activities that build relationship, that draw the bonds between people and place tighter and tighter with each successive act. In their testimony to the JRP, Haida people said again and again to the Panel: ‘these places to you are just places on a map. Now that you’ve been here, they will be more than dots on a map.’ Haida participants in the JRP described their intimate knowledge of their territory, and how, for them, the places they knew were saturated with personal and collective memories, knowledges, and stories. They worried about the impacts of an oil spill upon the intergenerational transmission of meaning, culture, and values. Their expressed concern was that if an oil spill occurred they would be prevented from harvesting food in the waters and on the foreshores around Haida Gwaii, and because of this their descendants would lose this intimate connection to the territory, and come to relate to these loved places as meaninglessness or anonymous ‘points of a map.’

In their testimony, Haida people effectively demonstrated their understanding that the continuity of this kind of cultural relationship could not be ensured through its preservation on paper or simply in the telling of it, but that it is a way of being reliant upon doing. Haida elder Barney Edgars forcibly described the threat the ENGP and the JRP represented to food harvesting and to the pedagogical opportunities harvesting activities offer: “you’re not only taking away our classroom but you’re also taking away our way of teaching all of our people.”<sup>98</sup> In short, the loss of the marine habitat of Haida Gwaii due to an oil spill would mean a loss of stories about harvesting, the interconnectedness of the land, sea, and the creatures that live there, and about being Haida. Edgars and others compared this potential loss of cultural knowledge to the effects of residential schools upon the Haida. Judson Brown, *Gudtaawt’is*, and Jaalen Edenshaw made similar points from their perspective as parents of young children:

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<sup>98</sup> Canada, *Joint Review Panel Volume 23*, 14003-14009.

[Brown]

This connection we have with Haida Gwaii is truly relying on intergenerational food gathering where our young learn from our Elders.

If a spill were to occur, how many generations of our own people would have to wait until they can safely gather their own seafood?

I believe if two or three generations of our people were not able to harvest seafood with their Elders the transfer of this knowledge and wisdom would cease; not unlike the effects of residential school on our language. This could result in a loss of the spiritual connection we have with Haida Gwaii.

There's talk about mitigative measures. I believe there are no mitigative measures available to rectify this loss. The spiritual connection relies on continuity. It is passed on from generation to generation. It is the collection of thousands of generations of Haidas living off of this land.<sup>99</sup>

[Edenshaw]

If I cannot eat from the sea it would be a huge economic blow to my family. More than that, it would sever a connection that we've had, that goes back to the first Haidas. Our culture is passed on from generation to generation. *If my kids don't get out there to learn how to do it they won't be able to teach it to their kids.*

*Even if-- even if one of those spots, you know, is ruined and then, you know, however many years, 100 years or whatever if it came back people would forget how to fish that area, you know, things would be different. We'd have to relearn that.*

We have survived through smallpox, which has killed over 95 percent of our people. Generations of kids have been taken to residential school and told not to be Haida anymore. Our language is hanging on by a thread but we are still here.

Our culture comes from our land and our sea. If this project happened we would lose that connection of food gathering in our oceans. The threat to our culture and the threat to all cultures is too great. The loss of our culture is not an acceptable risk.

Haaw'a.

--- (Applause)<sup>100</sup>

In Edenshaw's testimony, protecting food gathering as a site of intergenerational transmission of knowledge is meaningful today because it is connected to how people are recovering from past state policies that were *intended* to effect cultural loss.

Residential schools are now well known for the damage they have done to Indigenous people's connections to family, culture, and place. Indian status and the lack thereof, regulated through the various iterations of the Indian Act, has created similar kinds of ruptures. Elected CHN representative Jason Alsop talked about how his nanaay (his grandmother) lost status when

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<sup>99</sup> Canada, *Joint Review Panel Volume 30*, 22297-22300.

<sup>100</sup> Canada, *Joint Review Panel Volume 30*, 13905-13911. Emphasis mine.

she married his chinaay (his grandfather), who did not have status even though he was of Haida descent. That the couple could not legally live on the reserve or harvest fish to feed their family through the 'Indian' food fishery became especially important when his grandmother was widowed at nineteen with three young children.<sup>101</sup> Alsop spoke about how many of the things his nanaay was taught by her mother's generation were not passed down to his mother's generation because of this. After Bill C-31 was passed and Alsop's mother got her status back in the 1980s, his family was legally permitted to move back to Skidegate and begin re-integrating themselves into the community. But such re-integrations can be fraught. As Alsop put it, "you have to learn how to re-exercise your traditional rights after that exclusion and gain confidence and feel acceptance back into the community after some of the tension that results from that."<sup>102</sup> For Alsop, food harvesting is not just about sustenance, it is "about family and coming together and providing and working for [his] clan and -- so [they] could host potlatches."<sup>103</sup> The importance of food harvesting here is historical. It is a means of rebuilding connections that were so badly frayed or severed as a result of past state policies.<sup>104</sup>

Ruth Gladstone-Davies made a similar point, framing the potential loss of her ability to pass along her knowledge to her grandchildren as discrimination against her as a Haida woman, and a violation of her traditional right to teach her descendants in a Haida fashion about food harvesting and the cultural knowledges associated with harvesting activities. She connected the risks posed by the ENGP to earlier losses in status for women in her family due to the Indian Act policy of women losing status if they married non-status men. With Bill C-31, she stated,

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<sup>101</sup> For insightful analyses of the Indian food fishery, see: Harris, *Fish, Law, and Colonialism*, 2001.; Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries*, (Toronto: University of Toronto Press, 1993).

<sup>102</sup> Canada, *Joint Review Panel Volume 30*, 20338.

<sup>103</sup> *Ibid.*, 20325-20342.

<sup>104</sup> Jason ends his testimony by repeating the principle that "everything depends on everything else": "So I want to remind you that we're all in this together and everything depends on everything else. Gina waadluxan gud ad kwaagid. Haawa." *Ibid.*, 20399.

Indigenous women “were allowed once again to return home, gather, process, prepare and consume our traditional foods.”<sup>105</sup> Gladstone explained to listeners how subsequent amendments meant to address continued gender discrimination in the provisions of Bill C-31 have since enabled a broader group of people to apply for status, two of which are her grandchildren. She further observed:

Clearly, the traditional right to teach is still very new to those of us impacted by both these bills. We are still new to bringing these basic rights to our children and grandchildren. I cannot afford to have this right to teach my traditional values taken away again so soon.

The inevitable oil spill will do this, whether it be the pipeline or the supertanker. Once again, as a Haida woman, I feel I will be discriminated against.<sup>106</sup>

While the ENGP was characterized as just the latest state-sanctioned threat to Haida and Haida culture in people’s testimony, it was also located within what Haida perceive as a history of state mismanagement of their territory’s natural resources.

#### *Haida Gwaii and the Past and Future of Haida-State Relations*

Haida testimony to the JRP demonstrates that as permanent residents and local resource users, Haida people have long memories when it comes to state mismanagement. People routinely framed the ENGP (and the state’s consideration of it) as just another instance of external mismanagement of local resources, citing not only the most prominent examples, such as the logging conflicts of the 1980s, but also the lack of adequate regulation of the sport fishery and fishing lodges, abalone harvests, and the recent controversies over the federal Department of Fisheries and Ocean’s management of the herring fishery.<sup>107</sup> Others worried that an oil spill would threaten the positive and cooperative relationships that have been built with federal and provincial agencies since the 1980s. Most notably, the Gwaii Haanas co-management agreement

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<sup>105</sup> Canada, *Joint Review Panel Volume 31*, 21662-21670.

<sup>106</sup> Ibid.

<sup>107</sup> For example, see: Canada, *Joint Review Panel Volume 23*, 14004.

between the CHN and Parks Canada, the *Kunst'aa Guu–Kunst'aayah Reconciliation Protocol* with British Columbia, as well as memorandums of understanding between the CHN and the local municipalities of Queen Charlotte, Port Clements, and Masset. All are widely recognized as groundbreaking, particularly the *Kunst'aa Guu–Kunst'aayah Reconciliation Protocol*, which lays out a framework for government-to-government relations while acknowledging a fundamental disagreement about Haida and Crown sovereignties.<sup>108</sup>

While the Haida have been at the forefront of co-management in Canada, those who testified about these accomplishments in the JRP hearings also pointed to their fragility. As Guujaaw stated on the last day of the Old Masset oral evidence hearings:

You've heard of us, you know, finally coming from that place of colonialism where we've seen our lands been impoverished and the people left with no authority to do anything and basically in a quite a weakened state from successive diseases and getting back to a position where perhaps we can become self-sustaining. There's hope in our community that we could build an economy that -- it's a fledgling thing. Basically a few years ago we had nothing and now we have some things to work with and we're trying to organize that. We do have a good blueprint for it. And all of it is threatened by the proposal that's in front of us right now.<sup>109</sup>

Other people's testimony on the same issue shows a cognizance of how hard it has been – on all sides – to build and maintain cooperative working relationships through which representatives from the CHN and ministries in the federal and provincial governments can work to define and implement long-term visions of sustainable land-use and environmental stewardship. They perceived these relationships as models that could be reproduced elsewhere. Jason Alsop, elected representative to the Gwaii Haanas Archipelago Management Board, and then-assistant director of the Kay LnGaay Heritage Center and Museum, spoke to the value of Gwaii Haanas in this respect:

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<sup>108</sup> For a full list, see: <http://www.haidanation.ca/Pages/Agreements/agreements.html#>

<sup>109</sup> Canada, *Joint Review Panel Volume 23*, 13469.

There's so many educational, cultural, spiritual and economic values and interests within that place [Gwaii Haanas], and together we've agreed to look after it. And in this very hall, they had the celebration to sign that agreement to move forward, and it's fitting that we're here today again looking to ensure that that continues for the betterment of future generations of Haida and Canadians. And that's very important to us, to keep moving forward with Canada in a respectful and positive way. And a big part of what people are coming here to learn now is our co-management, is how we're working together as communities as moving forward to create sustainable industries and an economy that will sustain this island for many years to come.

And the [Kay LnGaay] centre in many ways is a training ground for new stewards, for managers, for guardians of our sacred places and to get trained in the western and Haida ways so we understand both sides and move forward together. And we tell our stories there, old stories, new stories. And everything that happens is a part of our history. [...] And an oil spill, tanker traffic, introduced species, all these things put all this in jeopardy. Sustainability of our jobs, educational opportunities and, essentially, could be the end of our living culture as we know it and as a museum, we become like many other museums.

So with all these interests of conservation, tourism, fishing, education, small business, there's all these things and all these people who depend on intact oceans and ecosystems.<sup>110</sup>

In her testimony, Cullis-Suzuki reflected on her extensive experience with ecological protection movements across the world, finding what has been accomplished on Haida Gwaii to be unique, and highlighted the importance of trust in the relationships that have been built between Haida and the settler state. She closed by noting that all this was threatened by oil tanker traffic in coastal waters:

[H]ere in B.C. on Haida Gwaii the Canadian and B.C. government has committed to keeping this natural support system alive and intact. They've agreed to that. If we allow high-risk oil spills to our coast we will have to then question what this protection means.

The risks this project presents contradicts decades of negotiation and building a vision together and the good faith between peoples who have agreed to disagree and yet continued to work together.

This project risks more than our land and waters, it would threaten to negate the environmental leadership that our country has taken in the past and it would threaten the trust built between peoples over 25 years since the protest on Lyell Island.<sup>111</sup>

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<sup>110</sup> Canada, *Joint Review Panel Volume 30*, 20379-20383.

<sup>111</sup> Canada, *Joint Review Panel Volume 31*, 22351-22353.

Insofar as all the above captures *what* people say is at stake in the decision to approve or reject the ENGP, the remaining discussion of Haida engagements of the Joint Review process will explore *how* they express what is at stake for them.

### *Affect and Haida Management of Emotional Tone in the Hearings*

The contrast in the affective tone of the Panel members and those testifying is noticeable, and is an important dimension of the stories the two sides were telling. While the Panel members performed a polite but firm, impersonal and authoritative bureaucratic rationality, those testifying expressed the full range of human emotion in their oral submissions to the process: anger, frustration, sadness, fear, joy, pleasure, humour, resignation, determination, skepticism, weariness, affection, and love. Haida participants especially referenced the importance of ‘speaking from the heart’ in a way perhaps meant to authorize theirs as true or honest speech. However, explicitly acknowledging the emotional costs of considering a project like Northern Gateway was also how Islanders expressed what was at stake in the approval or rejection of the project. Affective expressions were also attempts to impress upon the Panel the emotional and psychological impacts of such a decision-making process from the perspective of those who would have been most directly affected but had no official decision-making authority. In this way, people’s testimony highlighted what they were most afraid of – the extinguishment of their culture and way of life. Some pointed out how the emotional and psychological impacts of projects such as Northern Gateway were felt long before they were officially approved or began construction. As Gladstone-Davies explained to the Panel:

My experiences in income assistance or welfare worker gives me both personal and experienced knowledge about the potential effects of the project on my community. *We are already dealing with the impacts of this proposed project.* Individuals, families and clans are reacting to the rumblings of a pre-determined outcome and what it will mean to them.<sup>112</sup>

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<sup>112</sup> Ibid., 21653.

It was quite common for participants to become overcome with emotion during their testimony, often when describing their connection to the lands and waters of Haida Gwaii:

If you're on the outside looking in, you'd see the Haida people rely on the shoreline and the waters of Haida Gwaii. It is a part of our nourishment and also a part of a way we make a living, where we make a living to provide for our families. We have razor clams, k'aaw, seaweed, Sockeye, spring salmon, halibut; the list continues.

I thought I practiced this enough to not cry.

These are our traditional foods. It's what makes us Haida. Without our Gwaay, we are nothing.<sup>113</sup>

The emotional tenor of the process was explicitly acknowledged and attended to by community leaders, as seen in Guujaaw's opening of the first day of the proceedings in Old Masset:

XaaydaGa 'Laasis, our Chiefs, matriarchs, I just wanted to say a few words before we turn this over to the Panel, and mainly to dispel some of the misgivings and mistrust that we feel in coming into this, just to say it so that the Panel understands our feelings but also so that we don't have to bear it throughout the whole process.<sup>114</sup>

Guujaaw also expressed this acknowledgement and caretaking at the close of the Skidegate hearings. In the following, the Panel's ability to feel was interpreted as an indication of their capacity for shared understanding: "So just thank you and everybody who stayed, you know, some -- if you feel as emotionally washed as us, we appreciate that."<sup>115</sup> Indeed, people's references to the heart suggest that it is the organ that listens best, as seen in Guujaaw's opening speech to the Panel on the first day of the oral evidence hearings in Old Masset:

Just before we proceed, our singers have one more song they want to put into the record here, and it's a song composed about Haida Gwaii. It means a lot to this village and to the Haida Nation and we want to put this into your hearts. (Haida Gwaii song)<sup>116</sup>

Similar sentiments were expressed in Ron Brown Jr.'s closing statements later that same day:

So I hope that this National Energy Board, that all and everything that I said to you here in these days and the ones you've already attended *goes from your ears to your heart*, that

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<sup>113</sup> Canada, *Joint Review Panel Volume 22*, 12795.

<sup>114</sup> *Ibid.*, 12301.

<sup>115</sup> Canada, *Joint Review Panel Volume 31*, 22376.

<sup>116</sup> Canada, *Joint Review Panel Volume 22*, 12335.

all the people that have spoken to you and the children *will bring what we feel and what we need* to protect for our future generations, will be all considered when you make these decisions, for coming to hear our people and our concerns for our waters and our foods. Haaw'a.<sup>117</sup>

When the Panel appears to have failed to grasp and respect the emotional dimensions of people's statements, the latter's frustration was evident, as seen in Donnie and Jaalen Edenshaw's reactions to the Panel's interruptions of people's testimony:

[Donnie Edenshaw]

There's -- it's hard to think of what will happen if it [Haida Gwaii] was gone, you know? We plan on teaching our kids how to do this forever. We don't want to have to teach them how to survive without it. We don't want to learn how to clean up oil, how to clean up a mess.

You know, it's -- it's pretty frustrating to sit here and see people cut off what they're saying, what they have in their hearts, what they know for someone else to believe that what they have to say is more important. The bottom line is we need this place and unless you lived here I don't think you'll ever have any idea of what it's like.<sup>118</sup>

[Jaalen Edenshaw]

Just before getting started, it really feels like our way of life is on trial here. You know, it's a pretty strange feeling to have to defend how we live here and the consequences if we don't say the right things and convince you is all that can be gone, so if you just think about how that feels as you're making your decision in a year's time or so.<sup>119</sup>

James Cowpar's response to the Panel's interpretation of people's commitment to civil disobedience as 'threatening language' has a similar tone:

[James Cowpar]

And in serving as a councillor for the Skidegate Band Council it makes me proud to -- in the decisions we make and the battles we fight with respect to negotiations, whether it be through government to government, whether it be private corporations, our intent is the benefit of this island and the protection of all its valuable resources so that exploitation and the practices of the past will not happen again.

And as my daughter sits here, she will realize the importance of this and in speaking to our values, our culture, and in her experiencing this, she'll understand why, in the event our passion is deemed civil disobedience.<sup>120</sup>

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<sup>117</sup> Ibid., 12965.

<sup>118</sup> Canada, *Joint Review Panel Volume 22*, 13969-13970. Emphasis mine.

<sup>119</sup> Ibid., 13876. Emphasis mine.

<sup>120</sup> Canada, *Joint Review Panel Volume 30*, 20714.

Others powerfully pointed to the emotional and psychological cost of engaging in the Joint Review process and those like it, as well as the general demands of expending so much of their energy and resources protecting their territory. Frank Collison asserted:

So we are not about to just walk away and go and find somewhere else because we have nowhere else to go. All we have are these islands that we live on. So the passion that has been expressed over these years has been done in a very difficult and, I would think, an emotionally...draining way; that most of us have thought long and hard about what we should say. We have now been in this position before where we've had to think so hard about what we have to say about our position on this particular project and it certainly has been emotionally draining for myself, even if -- when I do speak several times in public. So those people that have come forward and said what they have to say has been the right things to say. They've said it from their hearts and because of their attachment to these islands and their desire to keep it as it is.<sup>121</sup>

Dianne Brown, who spoke so powerfully at the injunction hearings in 1985, made a similar point:

But -- so we have succeeded in protecting Gwaii Haanas and the waters that surround it, and I think on why I went on the line that time is the same reason I'm sitting here today. We all have grandchildren and -- coming now. We want them to live how we lived. We want them to eat the food that we ate. We want them to access the medicines that are available to us. That is why we come here to speak to yet another panel. It's not an easy process to be constantly having to worry about protecting your homelands. I see the strain it takes on our leadership of constantly fighting for our rights and fighting mainly to protect. But I suppose, you know, if you're going to live on Haida Gwaii, you're going to have to step up and protect her. So we, as a nation, strongly -- as a grandmother, I strongly oppose any kind of pipeline or boats that carry the oil. One spill would devastate all of us.<sup>122</sup>

According to Haida testimony, unwanted resource projects awaken and maintain in people a fear of their own extinction. It is Haida people's passionate rejection of this possible narrative that fills the thousands of pages of transcribed testimony from the JRP hearings on Haida Gwaii.

*Gina 'waadluwxan gud aa kwagiida*, 'everything depends on everything else', was at the center of how Haida and non-Haida Islanders articulated their relationship to Haida Gwaii and

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<sup>121</sup> Canada, *Joint Review Panel Volume 57*, 7485-7488.

<sup>122</sup> Canada, *Joint Review Panel Volume 30*, 20507.

their opposition to the Northern Gateway Pipeline project and tanker traffic in their territory. Their cognizance of their multi-faceted connections to their territory was also the source of their asserted authority as the best decision-makers for the lands and waters that constitute Haida Gwaii. Individually and taken as a whole, Haida testimony tells a story of Haida strength, resilience, and determination, but also of their vulnerability and the fragility of what they have managed to hold onto, recover, and build over the last century. They described the risks of tanker traffic and an oil spill as far too costly, since the damage to the local ecology would result in a cultural loss – an irreparable harm – that the Haida would not recover from. Renowned Haida artist Robert Davidson expressed the interconnectedness between Haida cultural health and the health of Haida territory in his testimony to the JRP:

I want to talk about the path forward. I want to share a story about getting argillite -- the slate from which Haida art is made -- with my dad Claude Davidson from Slatechuck Mountain. Along the trail my dad said “You always have to look back to where you came from so you can always find your way back.”

I want to expand on this teaching and use it to look back at our history post-contact. There are many indignities that have been forced upon us through Canada’s history and Canada’s laws. Without dwelling on these indignities, I want to name a few, such as reducing our land base to reserves, outline [sic. ‘outlawing’] our connection to our spirituality through our potlatches and therefore our connection to song and dance. Taking our children into residential schools, into foreign lands also had a great impact on our culture. It would be like having Canadian children taken away to Russia and not having contact with their families for years.

People like my parents came home like strangers, not knowing their families, not knowing their roles in society, like how to be parents, aunties, uncles, mothers, fathers and not knowing our history. They believed it was a shameful thing to speak Haida. It took many years before my dad was able to speak Haida confidently again. But through all these indignities we’ve always had food on the table. It was the food from the land and oceans that helped us survive the many onslaughts on our way of life. We’ve always maintained our connection to the land, waters and oceans, and the land, waters and oceans has helped us and nurtured our bodies and spirituality in our art. But our culture cannot sustain another blow to the oceans and the food that has nourished us for millennia.<sup>123</sup>

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<sup>123</sup> Canada, *Joint Review Panel Volume 22*, 13308-13312.

As I will demonstrate in the next section, the JRP appropriated this language of interconnectedness in its Final Report in a way that legitimized its decision to approve the ENGP, while simultaneously authorizing state decision-making authority.

### **The Joint Review Panel's Final Report**

On December 19, 2013, the Joint Review Panel recommended approval of the Enbridge Northern Gateway Project, with an attached 209 conditions listed, along with explanations of the JRP's decision, in a two volume Final Report which was made publically available online.<sup>124</sup> On June 17, 2014, the ENGP was granted federal approval, subject to these same conditions. In its Final Report, the JRP accepts Enbridge's science on the "unlikeliness" of a major oil spill, which allowed the authors to disregard the bulk of Haida and other coastal First Nations' testimony, most of which centered on the potential impacts of a major oil spill. The report found Enbridge's mitigation and response measures to be sufficient in the "unlikely" case of an oil spill, and with respect to other potential effects of the project upon local ecologies. While the report does acknowledge that the project carries the potential for "significant" risks to marine ecologies and the Indigenous Peoples dependent upon them, the authors find that such risks are acceptable given the project's potential social and economic benefits to the broader Canadian public interest. Where the Haida employed a narrative of interconnectedness as the basis of their opposition to the ENGP and the source of their jurisdictional authority over their territory, the JRP employed a language of interconnectedness to claim a broader and less subjective vantage point from which to legitimize their decision, and their decision-making authority.

### *Evidence and Effects of an Appropriated Vocabulary of Interconnectedness*

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<sup>124</sup> The two volumes of the JRP's final report can be accessed online at: <<http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/rcmndtnsrprt/rcmndtnsrprt-eng.html>>

The JRP's mobilization of the language of interconnectedness to promote its objective authority can be seen in specific parts of the Final Report. The first volume, entitled "Connections" begins with a brief introduction ("Recognizing Connections"), in which the authors position themselves as disinterested, impartial arbiters of multiple subjective, conflicting perspectives, charged with making decisions in the best interests of the Canadian nation as a whole, rather than the interests of any one particular interest group or region.<sup>125</sup> For example:

Some people said economic development like the Enbridge Northern Gateway Project could harm society and the environment, while others told us a strong economy was necessary to sustain and enhance environmental social values. They all recognized the linkages among people, economy, and environment, and that these are all aspects of a shared ecosystem.

Our task was to recognize these connections. We weighed and balanced them to answer the fundamental question: Would Canada and Canadians be better or worse off if the project goes ahead?<sup>126</sup>

Elsewhere, interconnection is used to subtly suggest a false opposition between conservation and industrial development, although the authors appear careful to avoid implying that the concept of interconnectedness is the sole intellectual domain of Indigenous Peoples or environmentalist groups: "Recognizing the interconnectedness that many parties pointed out, including Northern Gateway, we note that any development cannot occur without impacts."<sup>127</sup>

Throughout the report, the JRP assumes the jurisdiction to make decisions for territories that other people recognize as their own. This assumption is not questioned in the report, and as the JRP is authorized by the state, the state's decision-making authority also remains an unchallenged operating principle. The challenges to state sovereignty made in peoples' testimony are denied in the report through the simple fact of their omission. Apart from a single reference

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<sup>125</sup> Canada, National Energy Board, Canadian Environmental Assessment Agency, *Connections: Report of the Joint Review Panel for the Enbridge Northern Gateway Project Volume 1*, (19 December, 2013), 1-2. <<http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/rcmndtnsrprt/rcmndtnsrprtvlm1-eng.pdf>> (Accessed 22 December 2013).

<sup>126</sup> Ibid., 1, 74.

<sup>127</sup> Ibid., 74.

to a legal decision won by the Heiltsuk with respect to fisheries, assertions of Indigenous sovereignty are also absent from the Final Report, perhaps because they lay beyond what the JRP was mandated to consider, within the narrow confines of Procedural Directive Four.<sup>128</sup> The JRP's decision-making authority is also implied through the report's acknowledgment of the uneven distribution of the project's risks and benefits. With respect to a large oil spill, the authors concede that the impacts upon "lands, waters, or resources used by residents, communities, and Aboriginal groups" would be "significant." In some cases, such admissions are immediately qualified by the report's finding that "the adverse effects would not be permanent and widespread."<sup>129</sup> In others cases, the Panel appears to admit that the impacts upon specific species or populations would be permanent, but that the larger ecosystem would eventually recover: "We found that, in rare circumstances, a localized population or species could potentially be permanently affected by an oil spill. Scientific research from a past spill event indicates that this will not impact the recovery of functioning ecosystems."<sup>130</sup> There are no estimated time scales given for such recoveries, suggesting that the socio-cultural and economic impacts of a spill would be unavoidable for some.

Where the report acknowledges that the "potential opportunities and benefits would not be distributed evenly" (with some carrying most of the risk and seeing little benefit), elsewhere the authors concede that "some social benefits will only be realized to the extent that Aboriginal groups and other affected parties choose to accept and implement these opportunities and benefits."<sup>131</sup> The latter may include "training and education opportunities, participation in ongoing scientific research, Community Advisory Boards, and the Fisheries Liaison

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<sup>128</sup> The decision was *R vs. Gladstone*. See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1409/index.do>

<sup>129</sup> Canada, *Connections*, 21.

<sup>130</sup> *Ibid.*, 69.

<sup>131</sup> *Ibid.*, 33, 74.

Committee.”<sup>132</sup> I would suggest that offering such ‘benefits’ in exchange for assuming the burden of risk of a project such as the Enbridge pipeline is a bald-faced expression of state power, in that it makes no mention of whether Indigenous people consider such opportunities as equal in value to the existing advantages reaped from their tanker and oil-free territories. The report further acknowledges the nature of the risks for Indigenous communities in particular:

We recognize that reduced or interrupted access to lands, waters, or resources used by Aboriginal groups, including for country foods, may result in disruptions in the ability of Aboriginal groups to practise their traditional activities. We recognize that such an event would place burdens and challenges on affected Aboriginal groups. We find that such interruptions would be temporary. We also recognize that, during recovery from a spill, users of lands, waters, or resources may experience disruptions and possible changes in access or use.<sup>133</sup>

Nonetheless, as is repeated throughout the Final Report, the authors find that “the project’s potential benefits for Canada and Canadians outweigh the potential burdens and risks.”<sup>134</sup>

The extensive resources in terms of both time and funding required by the JRP to conduct its review support the JRP’s self-description as a neutral, rational decision-making agency, authorized by and acting on behalf of the state, seeking out a diversity of perspectives in order to make an objective, disinterested recommendation to the federal government. However informed, the JRP’s extensive exercise in public listening does not prevent its members from, in James Scott’s terminology, “seeing like a state.”<sup>135</sup> As Scott notes, the state’s supposedly disinterested view from above is more often than not a view from a narrowly defined set of interests, fraught with complex and context-specific power relations, like any other subjective vantage point. The JRP maintains this supposedly objective viewpoint despite direct appeals by the Haida that the Panel members perceive them and their homeland as more than just places on a map. This is the

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<sup>132</sup> Ibid., 74.

<sup>133</sup> Ibid., 25.

<sup>134</sup> Ibid. 71.

<sup>135</sup> James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*, (Yale Agrarian Studies. New Haven: Yale University Press, 1998).

basis of Chief Robert Mills' appeal to the Panel in his testimony on the first day of the Skidegate oral evidence hearings:

Everybody who comes to Haida Gwaii has a memory of it. These places that, you know, we've been showing you here on the map, if you haven't been to them they're just a place on a map, they're just a spot.

The places I've pointed out to I've been to. I've stepped foot on there. I've looked out over the water, over the horizon, over the landscape and just filled my lungs with clean fresh salt air and was just amazed at the splendour and the beauty of Haida Gwaii on the west coast, the east coast. And I haven't been to all of it yet but in being to these places there's an emotional attachment to it. There's that experience of it.

So to me, and others and hopefully you, now that you've been here to Skidegate, for example, the next time you see a little dot on the map saying Skidegate you'll remember it because you were here, you got to see who we are as a people, you got to hear some of what we are, what we're about, what we're trying to do, our way of being in this world. And I know I'm over my time but I just wanted to share that.<sup>136</sup>

The Haida know (from past experience) that the absence of an experience-based relationship to place can produce an abstracted view of place which makes it that much easier for industry, state authorities, and broader publics to 'see like a state' (detached, disinterested observers), rather than like a local (deeply interested in, attached and subject to the land). To this end, like many other First Nations, the Haida have produced their own maps, which assert and prioritize their multidimensional understandings of place. One example of this is the *Haida Oceans and Way of Life* map, which was used by several Islanders to support their testimony at the JRP hearings.<sup>137</sup> The map documents Haida place names, former and current village sites, Supernatural Beings, what ocean creatures are harvested for food and where, as well as their names in English and Skidegate and Masset Haida dialects. While in some ways representing a view from above, what is mapped also reflects a view from below, as the map marks out the socio-spiritual points of importance from a Haida cultural perspective.

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<sup>136</sup> Canada, *Joint Review Panel Volume 30*, 20777.

<sup>137</sup> The map's companion brochure offers concise documentation of Haida knowledge oceans and rivers in the territory. For links to both, see: <http://www.haidanation.ca/Pages/documents/documents.html>.

Similarly, since at least the 1970s, the Haida have been very supportive of the development and expansion of the eco-tourism industry, through which people from all over the world are drawn to experience first-hand and form personal connections to Haida Gwaii's marine and terrestrial ecologies. Since the 1970s, the Haida have supported programs for island youth, such as the Rediscovery Program and its offshoots, through which Haida and non-Haida youth are brought to Gwaii Haanas to learn about Haida traditions, local ecologies, and survival skills. There is also the Haida Gwaii Semester, run by the Haida Gwaii Higher Education Society in partnership with BC universities. In this program, undergraduate students interested in natural resource management get course credits for spending one immersion semester on Haida Gwaii, learning about "a resource-dependent community facing economic transition, population decline, increasing local control of natural resources, and new decision-making frameworks."<sup>138</sup> The Higher Education Society has recently expanded its offerings to include courses on reconciliation studies, marine planning, and natural resources studies, as well as a series of short professional development workshops on innovative leadership. All courses are co-taught by university faculty in partnership with island residents.<sup>139</sup> All of these initiatives are based on the understanding that in order for Haida visions for Haida Gwaii to succeed, they need a broad support base on and off-island, and that this can be achieved by offering people an experience-based connection to and appreciation for the place, its people, and their objectives.

While the Panel's report acknowledges that Indigenous people described a deep attachment to place, this acknowledgment appears to have little impact on their decision to put such attachments at risk by approving the ENGP. According to the CEAA's guidelines on

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<sup>138</sup> Haida Gwaii Higher Education Society, "Haida Gwaii Semester," <http://www.haidagwaiisemester.com/haida-gwaii-semester/program-overview> (Accessed 13 January 2016).

<sup>139</sup> Local resident teachers include Chief Satsan Herb George, Senior Associate of the Centre for First Nation Governance. See: <http://hghes.ca/>

integrating Aboriginal Traditional Knowledge into environmental assessments, acknowledging Indigenous concerns is as much as the JRP is required to do in its Final Report. The guidelines note that some forms of ATK are more easily integrated into existing environmental knowledge than others. Specifically, “[k]nowledge about, or based on, values and norms, is not as readily integrated with scientific data sets.”<sup>140</sup> In instances where “western and traditional knowledge systems” are irreconcilable, environmental assessment practitioners “should juxtapose what is suggested by each knowledge system in their EA report, demonstrate how they have considered each in their EA, and how each type of knowledge has been considered in the EA.”<sup>141</sup> Thus, the competing priorities and values of Enbridge as the proponent and the concerns of many Indigenous and non-Indigenous communities along the pipeline route and coastal British Columbia need not be fully reconciled in the JRP’s report, but simply ‘juxtaposed.’ By doing this, explaining its decision-making process, and providing its reasoning for its recommendation, the JRP fulfills its mandate.

Ann Laura Stoler observes, “commissions are stories that states tell themselves”; stories of good governance built on informed, responsible, and rational decision-making.<sup>142</sup> She notes that insofar as commissions offer evidence of the state’s commitment to fairness, they are, at the same time, expressions of “the state’s right to power through its will to truth.”<sup>143</sup> As such, commissions and public review processes such as the JRP are performances that legitimize state authority. Of course, commissions are also stories told to the governed, and it matters whether or not such stories are found credible in the public sphere, perhaps especially in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries, a period that most liberal citizens perceive as dramatically more enlightened

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<sup>140</sup> Canada, Canadian Environmental Assessment Agency, “Considering Aboriginal traditional knowledge in environmental assessments conducted under the *Canadian Environmental Assessment Act* -- Interim Principles,” 6 July, 2016. <<https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=4A795E76-1>> (Accessed 5 March 2015).

<sup>141</sup> Ibid.

<sup>142</sup> Stoler, “Colonial Archives,” 103.

<sup>143</sup> Ibid., 106.

and informed than earlier periods in Indigenous-settler relations. The JRP's Final Report could be read for the ways it successfully contains Indigenous opposition. However, I suggest that the extent to which it acknowledges the uneven distribution of the ENGP's benefits and burdens of risk fundamentally disrupts the JRP's ability to tell a convincing story of the state's trustworthiness. On the one hand, the entire exercise of the Joint Review process was meant to publically enact a story of the state's good governance. On the other, the report must acknowledge that it assumes the authority to decide what forms of life will be supported, and which will be *made* vulnerable by being assigned the greater burden of risk in resource development projects, willingly or unwillingly. While the Haida understand their need for a broad base of public support, so too does the state, which also remains in existence thanks to public support. In many ways, the entire performance of the Joint Review process is oriented to the public, hence the production quality of the Final Report, with its glossy images of pristine west coast scenes and packed hearing rooms, its carefully considered accessible language, and the fact that it is available to anyone with an internet connection. While the JRP failed to completely contain the unsettling and challenging voices of Indigenous and non-Indigenous opposition within the hearings process and even to some degree in its Final Report, the Haida were also unable to bring the JRP around to their 'from the ground up' view of their territory. Within and outside of the Joint Review process, both put their story to the public in competing bids for narrative legitimacy.

### **Conclusion: Stories, Listening, and Belief**

In a thoughtful essay on the early years of settlement in British Columbia, historian Paige Raibmon examines what she terms the "microtechniques of dispossession."<sup>144</sup> She offers readers numerous examples of "colonial law bent and broken", documenting where settler practices of

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<sup>144</sup> Raibmon, "Unmaking Native Space", 56.

land dispossession violated existing colonial laws in ways that were either tolerated or overlooked, and sometimes facilitated by those charged with enforcing laws protecting Indigenous lands.<sup>145</sup> Such examples, she notes, remind us that:

[T]he powerful stories about the rational, coherent, and just nature of British law were riddled with contradictions at the time of their telling. In and of itself this is no indictment. The stories we live by are inevitably marbled with contradictions. But we might begin to think more deeply about the consequences of particular contradictions at particular places and times. Which contradictions have been tolerated to the point of invisibility, while others have been called up as evidence of an impoverished or inaccurate story?<sup>146</sup>

There is something in this statement about the power of belief in the face of contradiction that returns us to Chamberlin's discussion of the credibility of a story. Like currencies, democratic social orders are sustained on the basis of the majority's belief in their overall value. However, this belief can waver or fail, and citizens have various ways of withdrawing their sanction if they feel unrepresented. Opportunities for social change are created when a sufficiently large or sufficiently powerful group of citizens lose their faith in the democratic process.<sup>147</sup> The structure of the Joint Review Process, the hearings, and the JRP's Final Report were all powerful venues for telling stories: Haida stories, state stories, and corporate stories. So which proved more convincing?

The story told throughout the Joint Review Process was that the state remains the best decision-maker for the broader national interest because it maintains an objective point of view, and is not subject to the fortunes or failures (socio-political, cultural, ecological, or economic) of any one part of its territory. In this respect, the JRP's Final Report effectively put Haida and other Indigenous voices back in the roles they were intended to play in the review process: knowledge contributors representing local environments and local concerns, whose contributions

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<sup>145</sup> Ibid., 66.

<sup>146</sup> Ibid.

<sup>147</sup> Although it does not follow that this change will make for a more democratic society, as the recent election of Donald J. Trump in the United States demonstrates.

were contained from the outset through categories such as ‘traditional’ or ‘personal’ knowledge. By authorizing a somewhat independent agency (the JRP) to conduct its information-gathering exercise at great expense, the state performed itself as committed to fair, impartial decision-making in the interests of the broader Canadian public. Through the Joint Review process, the state performed a story of responsible government, committed to gathering information from a broad base of its citizenry by means of a tremendous act of public listening.

Raibmon recently observed how, “[i]n recent decades, settler states have institutionalized and thus sanctioned the important practice of listening to ‘other’ voices in a number of contexts.”<sup>148</sup> Closely linked to the phenomenon of state apologies for past atrocities and reconciliation projects, such practices of state and public listening represent to many people progressive steps towards achieving a more humanitarian, just society. However, critics have noted that such practices of recognition serve to create a distance between an imagined humanitarian present and the ‘unfortunate’ or ‘regrettable’ actions of national pasts.<sup>149</sup> As Raibmon and others have noted, while the desire for a humanitarian present is commendable, there are significant risks attending state and public processes of witnessing testimony:

Settler society’s sympathetic listening is laden with unjustified certainty: certainty that it is listening for the right reason, at the right time; that it is on the right side; that listening *is* reconciliation. Such certainty precludes facing up to the need to transform not only attitudes but also relations of power. It precludes addressing the material, as opposed to merely the rhetorical, changes that must be a part of any meaningful process of reconciliation or decolonization. Such certainty fosters listening that reinforces rather than challenges the status quo of settler colonialism.<sup>150</sup>

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<sup>148</sup> Paige Raibmon, “Introduction: Listening to ʔəms taʔaw,” in *Written as I Remember It: Teachings (ʔəms taʔaw) from the Life of a Sliammon Elder*, by Elsie Paul ʔəms taʔaw, (UBC Press, 2014): 6.

<sup>149</sup> Bain Attwood, “In the Age of Testimony: The Stolen Generations Narrative, ‘Distance,’ and Public History,” *Public Culture* 20, no. 1 (December 21, 2008): 75–95.

<sup>150</sup> Raibmon, “Introduction,” 7. Chamberlin similarly cautions against the perceived abilities of the sympathetic ear to understand what it is hearing. Chamberlin, “Close Encounters,” 24-5.; Chamberlin, *If This is Your Land*, 8-25.. For more on the limits of listening in reconciliation processes, see: Miranda Johnson, “Reconciliation, Indigeneity, and Postcolonial Nationhood in Settler States,” *Postcolonial Studies Vol 14*, No 2. (2011): 187-201.; Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*, (Crown/Archetype Press, 2007).; Antjie Krog, Nosisi Lynette Mpolweni-Zantsi, and Kopano Ratele, *There Was This Goat*:

Haida testimony to the JRP, however, refuses any easy breaks between past instances of corporate mismanagement and state abuses and the risks they were being asked to assume through the Northern Gateway Project. Instead, and notwithstanding the extensive exercise of consultation performed through the JRP, Haida testimony connected the state's consideration of the ENGP to past practices of environmental racism.<sup>151</sup>

For the Haida, the ENGP threatened the entirety of their territory and thus put a whole way of life at risk, making it a completely unworkable proposal. The JRP looked at the risks and benefits from the perspective of the Canadian nation, with its eye to Canada's standing in the global economy. At such a scale, the increased vulnerability of one ecological region, its peoples, cultures, and economies was an acceptable risk. The problem, from a Haida perspective, is that this logic is consistent with the decisions that have been made about their territory from Victoria, Ottawa, and London since the early colonial period.<sup>152</sup> Such decisions, and the thinking that supports them, discounts not only what place is to Haida people, but what Haida people are to place: that is, a people who have rights and obligations to the territory that sustains them. For the Haida, who articulate at such length and in so many registers the interdependence of people and place, decisions like the JRP's do not make for a convincing story of the Canadian state's fairness and impartiality, and certainly fail to inspire the Haida's trust in the state. Rather, the JRP's approval of the ENGP represents just the latest iteration of a deeply historical narrative: that Indigenous Peoples are expendable when it comes to the expansion of the Canadian

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*Investigating the Truth Commission Testimony of Notrose Nobomvu Konile*, (University of KwaZulu-Natal Press, 2009).; Regan, *Unsettling the Settler*, 2010.

<sup>151</sup> Isabel Altamirano-Jiménez, *Indigenous Encounters with Neoliberalism: Place, Women, and the Environment in Canada and Mexico*, (Women and Indigenous Studies Series, Vancouver: UBC Press, 2013), 115-8. See also: Christina Dhillon and Michael G. Young, "Environmental Racism and First Nations: A Call for Socially Just Public Policy Development," *Canadian Journal of Humanities and Social Sciences Vol. 1*, No. 1 (2010): 25-39.

<sup>152</sup> With the notable exception of the protection of Gwaii Haanas, which the state agreed to under enormous public pressure instigated by Haida activism.

resource-based economy. The approval of the ENGP affirms yet again for the Haida that Canadian governments cannot be trusted to navigate the opportunities and demands of the global economy on their behalf.

Ultimately, it is impossible to account for all the narratives operating in and through the JRP or the work that they have done (and continue to do) for the different peoples, places, politics, and organizations involved. However, I would suggest that the Haida narrative – and those like it coming from other First Nations – gained enough currency among a broad cross-section of Canadian society to prove a significant obstacle to the realization of the ENGP. Furthermore, there is good evidence that the state’s narrative legitimacy has been found lacking in the public eye with respect to the Enbridge Northern Gateway Project, as well as other oil and gas development projects regulated and approved through the National Energy Board.

As mentioned at the beginning of this chapter, opposition to the Northern Gateway Project in British Columbia was (and remains) widespread. In many ways, the JRP inadvertently facilitated the strength of opposition against the ENGP, as it gave those attending the hearings a forum in which to voice their disapproval of the project and witness countless others doing the same, thereby building a sense of unity – and community – from a public recognition of shared values.<sup>153</sup> That Chair Legett felt compelled to insist to those attending the JRP hearings on Haida Gwaii that the hearings were “not a rally” is an indication of the strength of common feeling on Haida Gwaii.<sup>154</sup> Awareness of a common cause among diverse groups extended across BC and beyond, through initiatives such as the Pull Together Campaign. This campaign began in the northern BC communities of Smithers and Terrace as small-scale fundraisers to support the legal cases against Enbridge by several First Nations whose territories would be traversed by the

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<sup>153</sup> Valine Crist, Personal Interview by Author, 1 July, 2014.

<sup>154</sup> See fn68, this chapter.

pipeline and shipping tankers. An expanded version of the campaign with a visually dynamic and accessible website, co-supported by the Sierra Club of BC and the Victoria, B.C.-based Raven Legal Defense Fund, offered a central place where people across the province and beyond could fundraise for and donate money to support the legal costs of seven First Nations challenging the JRP and federal approval of the ENGP. Individuals, local municipalities, small businesses, or groups of friends who opposed the ENGP raised funds in sometimes minor but creative ways. One couple asked for donations to the campaign in lieu of wedding gifts, yoga studios advertised classes in support of the campaign, with further proceeds donated from yard sales, potluck dinners, concerts, farmer's markets, film screenings, art auctions, and so on. At the time of writing, the campaign had raised over \$600,000.<sup>155</sup>

What is compelling about the Pull Together Campaign with respect to story and belief? The icon of the campaign is a stylized west coast Indigenous dugout canoe, with four figures wearing cedar hats, their arms raised, holding paddles, poised to make a forceful united downward stroke, which would surely propel the canoe forward. The campaign website offers the following explanation: "First Nations have a saying: many paddles, one canoe. Let's unleash the power of the vast majority of BC who don't want this pipeline and tanker project, and build a hopeful future for generations to come."<sup>156</sup> No doubt, those who supported Indigenous legal defense funds through the Pull Together Campaign did so out of a variety of attachments to BC and a lack of identification with the state's approval of the ENGP and its decision-making process. That support could represent a convergence of distinct narratives opposing the ENGP and the Conservative government, or an expression of faith in the stories First Nations such as the Haida told about their relationship to place, but more likely it represents some combination of

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<sup>155</sup> See: <http://pull-together.ca/>. The Haida were one of the communities involved in the legal case against Enbridge.  
See: <http://pull-together.ca/background/>

<sup>156</sup> See: <http://pull-together.ca/home/>

both. Regardless, it remains significant that non-Indigenous residents of BC and Canada came to believe that their best chance of opposing unwanted state approval of oil and gas development lay with the constitutionally-enshrined strength of Indigenous Nations.

At the time of writing in 2016, these efforts seemed on the verge of success. Prior to the 2015 federal election, then Liberal leader Justin Trudeau stated his support for an oil tanker ban for the northwest coast, which was quickly interpreted as the death knell for the ENGP should he be elected. Just a few days after the election of a Liberal majority on October 19, 2015, which marked the end of over ten years of Conservative government under Stephen Harper, I attended a workshop on Aboriginal Law hosted by the BC Legal Education Society. The lunchtime speaker was former BC attorney general Geoff Plant, who focused his lecture on the weakened credibility of regulatory institutions such as the National Energy Board. Plant observed the public's increasing crisis of faith in the state's regulatory bodies, noting, and I paraphrase, that the system is failing when people are out protesting the day after the Board makes a recommendation.<sup>157</sup> This 'crisis of faith' is fundamentally about a loss of public confidence or trust in governing institutions. At the same time, the idea of public sanction became a hot topic in media and business circles – what it is, how to get it, and how to hold onto it. Indeed, former president of the Council of the Haida Nation Miles Richardson was recently asked to speak to a meeting of business leaders in Victoria, B.C. on exactly this topic.<sup>158</sup>

All of this returns us to Tully's discussion of the reliance of viable democracies upon

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<sup>157</sup> Here, Plant was referring not just to the ENGP but also to the Kinder Morgan pipeline proposal and the protests opposing it at Burnaby Mountain. Geoffrey Plant, "Lunchtime Keynote," Presentation to the *Continuing Legal Education Society of BC's 2015 Aboriginal Law Conference*, Vancouver, BC, 6 November, 2015. See also: Jessa Sinclair, "Kinder Morgan Protests Take Over Burnaby Mountain, B.C.: Opponents of the Proposed Trans Mountain Pipeline Expansion Defied a Court Injunction and Risked Arrest," *CBC News: British Columbia*, 1 December, 2014. <<http://www.cbc.ca/news/canada/british-columbia/kinder-morgan-protests-take-over-burnaby-mountain-b-c-1.2852860>> (Accessed 4 January 2015).

<sup>158</sup> Miles Richardson, Personal conversation, April 10<sup>th</sup>, 2015.

public trust. What happens when a large enough portion of the citizenry no longer believes that the government is adequately representing their interests and desires? As Bruner notes,

The law has evolved over the centuries not only to render just and legitimate verdicts between two opposing narratives but to do so in a way that removes the risk of precipitating a cycle of revenge after the verdict has been pronounced. To achieve this dual objective, the courts must be accepted as authoritative and legitimate, and they must also be seen as fair and disinterested, capable of rising above the self-serving and adversarial narratives by which cases are presented.<sup>159</sup>

In the case of the ENGP, some of the state's highest courts are beginning to find that the Joint Review process lacked legitimacy, as seen in the BC Supreme Court's recent decision that the JRP failed to fulfill the provincial requirements for consultation of Indigenous Peoples, a decision that was echoed in relation to federal duties to consult the Federal Court of Canada in June of 2016.<sup>160</sup> These belated, but valuable, affirmations of Haida and Islander stories will not ring true for everyone. However, it seems plausible that the growing public discourse on the risks of climate change and the historical and ongoing marginalization of Indigenous Peoples might mean that a greater share of the Canadian population will prove more receptive to Indigenous storytelling.

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<sup>159</sup> Bruner, *Making Stories*, 37.

<sup>160</sup> CBC, "B.C. Government Failed," 2016. See the reasons for judgement here: <http://wcel.org/sites/default/files/file-downloads/A-437-14%20English%20Reasons%20for%20Judgment%2020160623.pdf>. See also: *Coastal First Nations v. British Columbia (Environment)*, BCSC 34.

## Conclusion

### Stories For ‘A World In Which To Live’

*“From the perspective of Indigenous people, original violence might best be understood as the disruption – and far too often, outright destruction – of a people's story. These patterns are found on every continent and with every aboriginal group's story...One cannot go back and remake the history. But that does not mean history is static and dead. History is alive. It needs recognition and attention...The challenge...lies in how, in the present, interdependent peoples ‘restory,’ ...that is...begin the process of providing space for the story to take its place.”<sup>1</sup>*

Colonialism was a narrative process in the sense that it hinged on writing a new set of relationships onto the land, and onto the bodies and minds of all those pulled into its orbit. Indigenous Peoples’ negotiations and refusals of this process have been similarly narrative in experience and expression. The preceding chapters have attempted to witness, up close in specific encounters, localized processes of decolonization as repossessions of stories and lands, Indigenous people’s increasingly public confidence in their own narrative groundings since the middle of the twentieth century, and their ongoing frustrations with the state. This dissertation has explored how stories operate *in* Indigenous-state relations, while also keeping an eye turned towards stories told *about* Indigenous-state relations in British Columbia, all the while asking: what does it mean to live well together in story?

This question connects us to stories of sovereignty, law, and citizenship. Historically in Canada, Indigenous Peoples have been offered impoverished forms of belonging to the colonial and Canadian nation-state. Through policies of assimilation and the Indian Act, they have been configured as wards of the state, incompetents that require managing rather than sovereigns to be engaged as authorities in their own territories. In direct and indirect ways, the state has attempted

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<sup>1</sup> John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace*, (New York: Oxford University Press, 2005), 140.

to prevent Indigenous Peoples from being themselves, while at the same time systematically preventing them from obtaining or maintaining positions of power within the existing Canadian economic and socio-political framework, or from defining the terms of their own participation in the Canadian project.

However, such attempts have not managed to permanently suppress Indigenous Peoples' more expansive articulations of self and belonging in relation to the state, and in relation to their territories and stories. Bruner notes that

[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each Decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which to live.<sup>2</sup>

As I have tried to show in this work, through their engagements with the state, Indigenous Peoples have attempted to create the conditions of possibility for other forms of belonging and being within and outside of the narrative possibilities defined through the Canadian state's laws, policies, and practices. Tully's distinction between what he terms diverse citizenship and modern citizenship is one way of thinking about how Indigenous Peoples have been attempting to create sustainable ways of being in relationship with Canada and their own territories and cultural priorities. Whereas modern citizenship, as generally conceived, is granted by the state from above, diverse citizenship is defined by the negotiations from below of what citizenship-as-belonging-in-the-democratic-collective means. He observes that diverse citizenship "is not a status given by the institutions of the modern constitutional state and international law, but negotiated practices in which one becomes a citizen through participation";<sup>3</sup> diverse citizenship comes into being "in terms of grass-roots democratic or civic activities of the 'governed' (the

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<sup>2</sup> Bruner, *Making Stories*, 12.

<sup>3</sup> Tully, *Public Philosophy Vol. 2*, 248.

people) in the specific relationships of governance in specific locales.’<sup>4</sup> While some versions of Indigenous nationhood movements have promoted rejections of Canadian citizenship, or the pursuit of a ‘citizens plus’ status, I believe Tully’s description of diverse citizenship in many ways captures the narrative labours at the heart of Stó:lō and Haida engagements of the state that I have studied here. At every official point of contact with the state – in petitions, at a blockade, in the courts or review hearings, and in treaty negotiations – Stó:lō and Haida people have attempted to shift the narrative conditions that have acted to limit the ways in which their status of belonging can be imagined – with respect to the state and to their own territories. Put differently, they have been attempting to create a more expansive, generous, and self-directed narrative world ‘in which to live.’

Inevitably, this dissertation has also been attuned to the stories told *about* Indigenous-state relations; how those who have written about these relationships – myself included – understand the nature of power possessed and wielded by the parties involved, and what its effects have been. In looking to the past and the present, I have tried to offer readers an opportunity to trace both the continuities and changes in the stories told over the course of the last century and a half, as well as how they are told. Studying the work of story in such detail has left me with a sense that it is important that none of us allow our stories about who we are and where we are going to become too closed or rigid. If the triumph of Indigenous Peoples in these ongoing political and cultural struggles is, as yet, not guaranteed, then neither is the state’s. As Julie Cruikshank observed in relation to storytelling and agency in land claims processes in the Yukon, “we cannot know the outcomes of such transactions, nor can we expect them to be tidy, but we can learn a great deal if we take seriously the social agency of the participants.”<sup>5</sup>

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<sup>4</sup> Ibid., 247.

<sup>5</sup> Cruikshank, *The Social Life*, 159.

In *Returns*, James Clifford notes that “[c]ultural endurance is a process of becoming”, but reminds us that no people become who they are in relation to a single powerful force.<sup>6</sup> Rather, in considering cultural change in contexts of domination and subjugation, he reminds us that there are any number of powerful agents that hail us, and to which we respond. Clifford, like Cruikshank, remains wary of the gravitational pull of narratives of social change that are overly teleological and pessimistic; narratives in which “[e]verywhere the future is convergence, undifferentiated homogeneity. Whether told as a lament for vanishing cultures or as a celebration of progress, the story is familiar. The new inexorably replaces the old. But does it? What else is going on?”<sup>7</sup> I am not sure if I have been able to provide definitive answers to this last question, but it has motivated me in this research to try – not always successfully – to stand at somewhat of a distance from stories that are overly familiar or easy.

Only recently has it occurred to me that what I have been tracking, in part, is a history of Indigenous tactics in pursuit of the larger, as yet not wholly realized objective of decolonization, especially since the 1960s.<sup>8</sup> Tully concludes that only a “historical and contextual approach, related to the actual practices of freedom on the ground, can illuminate the unequal global relationships and the possibilities for their transformation.”<sup>9</sup> By challenging the existing narratives of Indigenous-state relations, and by asserting alternative narratives, all four chapters evidence the story-foundations of Indigenous Peoples’ “practices of civic freedom” in relation to the colonial/Canadian nation-state.<sup>10</sup> While it is critical to understand the nature of state power and how colonial relations are produced and maintained – directly and indirectly, consciously

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<sup>6</sup> Clifford, *Returns*, 7.

<sup>7</sup> *Ibid.*, 35.

<sup>8</sup> I thank Elizabeth Vibert for bringing this, and Foucault’s work on tactics to my attention. See: Michel Foucault, *Discipline and Punish: The Birth of the Prison (Second Vintage Books edition)*, (New York: Vintage Books, 1995, c1977).

<sup>9</sup> Tully, *Public Philosophy Vol. 2*, 6.

<sup>10</sup> Tully, *Public Philosophy Vol. 2*, 4.

and unconsciously – the other, equally critical phenomenon to understand is how Indigenous Peoples have managed to create and even expand the spaces that exist in their relationships with the state, however constrained. For Tully, the project is not to expend our energies working towards a utopian future in which practices of civic freedom will be allowed to exist, but to acknowledge where and how such practices are already operative in the world as it is now. This re-orientation encourages us to recognize that models for civic freedom are all around us, and that they operate within and alongside the practices of imperial relations. Storytelling – whether by a fireside, on television, in ceremonies, or in the courtroom – is a *social* practice. Stories and the ways we tell them contain models for how to live together, and how not to. Developing critical literacies around stories does not just mean learning to question the stories we are told and are telling, but understanding the many and complex ways that stories function in our lives as individuals and as collectives.

Researching power relations and the work of story in the context of colonial and postcolonial studies has highlighted for me how we are shaped as much by the stories we do not know as those we do, and how we live in ignorance of their impact until someone or something reveals formerly unknown stories to us. However, as Thomas King reminds us in *The Truth About Stories*, once we have been told a story, we are in many ways responsible for it. King ends every chapter with a version of the same few sentences. Of the story he has told, he states: “It’s yours. Do with it what you will. Tell it to friends. Turn it into a television movie. Forget it. But don’t say in the years to come that you would have lived your life differently if only you had heard this story. You’ve heard it now.”<sup>11</sup> In this way, he makes the reader a participant in the storytelling exercise, rather than a passive consumer of narrative, reminding us that it is what we do (or fail to do) with the stories we are told that matters most. However, King questions whether

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<sup>11</sup> See, for example: King, *The Truth About Stories*, 29.

any of us can be relied upon to believe the stories we tell and then to actually live by them. In his 'Afterwords', King offers us a story that casts doubt on his ability to live up to his sense of himself as an ethical person and a good friend. He tells a story about how he allowed a friendship that was once close but then became difficult to slip away, in large part because his friends were struggling with a problem that seemed to have no easy solution. When he is eventually confronted with the gap between his story about himself as a good friend and his actions, King finds cause to despair over humanity's fate, over humanity's ability to not just "tell a different story" but to live a different story. At the same time though, the exercise of revealing this personal story tells yet another story: something to do with the need for honesty with ourselves and those we are in relationship with, and being unflinching in examining our own and each other's stories.

Working on this dissertation has helped me to understand part of what is at stake in Indigenous struggles to repossess their lands and stories. People need all kinds of stories in their lives: honest stories, stories that confront, comfort, stories that teach, inspire, and sometimes reveal hard truths. Stories of loss and struggle, of oppression and abuse cannot and should not be silenced. But people also need humorous and hopeful stories, positive stories they can see shaping and reflected in the world around them, stories that connect them with a meaningful past and create, rather than foreclose, a sense of possibility in the future. Refusing to acknowledge this shared human need is part of what sustains social inequality, and preventing this need from being met has real impacts on people's lives.<sup>12</sup> In many ways, the point of this dissertation is to

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<sup>12</sup> See: Michael J. Chandler and Christopher Lalonde, "Cultural Continuity as a Hedge against Suicide in Canada's First Nations," *Transcultural Psychiatry*, 35, no. 2, (1 June 1998): 191-219.; Kiera L. Ladner, "Understanding the Impact of Self-Determination on Communities in Crisis," *Journal of Aboriginal Health*, 5, no. 9, (6 November 2009): 88-101.

encourage people to dig deeply into the stories we tell about ourselves and each other, and to ask:

Who am I in your story? Who are you in mine?

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## Appendix to Chapter 2

The Speech  
The 1864 Petition  
24 May 1864, New Westminster

*The assembled Indian chiefs of the Districts of New Westminster, Fort Yale, Fort Douglas and Lillooet have resolved to address the Governor, the Representative of Queen Victoria, through their Representative as follows:*

*Great English Chief*

*We beg to speak to you.*

*We, the native Indians, are gathered to welcome you, and to show you our good dispositions.*

*We know the good heart of the Queen for the Indians. You bring that good heart with you, so we are happy to welcome you.*

*We wish to become good Indians, and to be friends with the white people.*

*Please to protect us against any bad Indians or bad white men.*

*Please to protect our land, that it will not be small for us: many are well pleased with their reservations, and many wish that their reservations be marked out for them.*

*Please to give us good things to make us become as the good white men, as an exchange for our land occupied by white men. Our hearts will always be good and thankful to the Indian and to you Great Chief.*

*We finish to speak to you.*

[Lists 23 written names, “And 32 Chiefs from other tribes”]

The 1866 Petition (English only):  
Forwarded to the Earl of Carnarvon in February 1867

*To the Colonial Secretary for Governor Seymour*

*We Indian Chiefs thank Governor Seymour for not allowing the white man to sell liquor to the Indian There are no policemen, nor gaols in our villages as there are amongst the white men we know that the liquor destroy the Indians every where, they drink liquor*

*The white men tell many things about taking our landsour hearts become very sick We wish to say to Governor Seymour: please protect our lands : many are our children and some go to school one of them as written this.*

*We do not like to pay money to carry lumber and other things in our canoes on the river of our ancestors*

*We like to fish where our fathers fished*

2 pages of names and marks. At end of list:

*Marked in presence of me L. Fouquet.*

1873 Petition to I.W. Powell

*I.W. Powell Esq.  
Superintendent of Indian Affairs*

*Sir,*

*We the Chiefs of various Villages situated on the Douglas Lillouet road and along the Fraser River and also along the Coast to Bute Inlet are truly happy to welcome you our new Chief sent by Canada to take in hand the interests of the poor Indians.*

*We cam here to celebrate as we have done these many years past, the day of our great Chief the Queen, and also expecting the pleasure of meeting you.*

*We have been anxiously wishing to see you as we have been longing for a Chief, who will truly have at heart our Interests so long neglected for the past.*

*The white men have taken our land and no compensation has been given us, though we have been told many times that the great Queen was so good she would help her distant children the Indians.*

*White men have surrounded our Villages so much as in many instances especially on Fraser River but few acres of Land have been left us.*

*We hope that you will see yourself our wants and our desires, and you will remove that veil of sorrow which is spreading over our hearts.*

*We once more greet your coming amongst us as our Chief, and the representative of the Canada Government; Through you we send our best thanks to the Chief of Canada for the generous donation he sent to us to celebrate more solemnly the feast of our Great Chief the Queen.*

*Peter Ayessik            Chief of Hope  
William                Bute Inlet  
[Etc...]*

1874 Petition

New Westminster,  
July 14<sup>th</sup>, 1874.

Sir,

*Having been, along with some other, commissioned by the Chiefs to present our common petition to you, we have come down to New Westminster yesterday, and after consultation, we came to the conclusion to send the petition by mail.*

*You have told Alexis and myself not to go down till you send notice.*

*We expect to hear from you through Rev. Father Durieu, at New Westminster.*

*I have, &c.,*

*(Signed)*

*Peter Ayessik,*

*Chief of Hope.*

...

*To the Indian Commissioner for the Province of British Columbia: -*

*The Petition of the undersigned, Chiefs of Douglas Portage, of Lower Fraser, and of the other tribes on the seashore of the mainland to Bute Inlet, humbly sheweth: -*

*1. That your petitioners view with a great anxiety the standing question of the quantity of land to be reserved for the use of each Indian family.*

*2. That we are fully aware that the Government of Canada has always taken good care of Indians, and treated them liberally, allowing more than one hundred acres per family; and we have been at a loss to understand the views of the Local Government of British Columbia, in curtailing our land so much as to leave in many instances but a few acres of land per family.*

*3. Our hearts have been wounded by the arbitrary way the Local Government of British Columbia have dealt with us in locating and dividing our Reserves. Chamuel, ten miles below Hope, is allowed 488 acres of good land for the use of twenty families: at the rate of 24 acres per family; Popkum, eighteen miles below Hope, is allowed 375 acres of bad, dry, and mountainous land for the use of twenty-seven families: at the rate of 13 acres per family; Yuk-yuk-y-yoose, on Chilliwhack River, with a population of seven families, is allowed 42 acres: 5 acres per family; Sumass, (at the junction of Sumass River and Fraser) with a population of seventeen families, is allowed 43 acres of meadow for their hay, and 32 acres of dry land; Keatsy, numbering more than one hundred inhabitants, is allowed 108 acres of land. Langley and Hope have not yet got land secured to them, and white men are encroaching on them on all sides.*

*4. For many years we have been complaining of the land left us being too small. We have laid our complaints before Government officials nearest to us: they sent us to some others; so we had no redress up to the present; and we have felt like men trampled on, and are commencing to*

*believe that the aim of the white men is to exterminate us as soon as they can, although we have always been quiet, obedient, kind, and friendly to the whites.*

*5. Discouragement and depression have come upon our people. Many of them have given up the cultivation of land, because our gardens have not been protected against the encroachments of the whites. Some of our best men have been deprived of the land they had broken and cultivated with long and hard labor, a white man enclosing it in his claim, and no compensation given. Some of our most enterprising men have lost a part of their cattle, because the white men had taken the place where those cattle were grazing, and no other place left but the thickly timbered land, where they die fast. Some of our people now are obliged to cut rushes along the bank of the river with their knives during Winter, to feed their cattle.*

*6. We are now obliged to clear heavy timbered land, all prairies having been taken from us by white men. We see our white neighbors cultivate wheat, peas, &c., and raise large stocks of cattle on our pasture lands, and we are giving them our money to buy the flour manufactured from the wheat they have grown on same prairies.*

*7. We are not lazy and roaming-about people, as we used to be. We have worked hard and a long time to spare money to buy agricultural implements, cattle, horses, &c., as nobody has given us assistance. We could point out many of our people who have those past years bought with their own money ploughs, harrows, yokes of oxen, and horses; and now, with your kind assistance, we have a bright hope to enter into the path of civilization.*

*8. We consider that 80 acres per family is absolutely necessary for our support, and for the future welfare of our children. We declare that 20 or 30 acres of land per family will not give satisfaction, but will create ill feelings, irritation amongst our people, and we cannot say what will be the consequence.*

*9. That, in case you cannot obtain from the Local Government the object of our petition, we humbly pray that this our petition be forwarded to the Secretary of State for the Provinces, Ottawa.*

*Therefore you petitioners humbly pray that you may may [sic] take this our petition into consideration, and see that justice be done us, and allow each family the quantity of land we ask for.*

*And your petitioners, as in duty bound, will ever pray.*

*(Signed) Peter Ayessik, Chief of Hope  
Alexis, “ Cheam.*

[Lists names of many Chiefs according to area, and Village]

*I hereby testify that the above mentioned Chiefs met together in my presence, and the above petition is the true expression of their feeling and of their wishes.*

*(Signed) Peter Ayessik,  
Chief of Hope.*

*New Westminster, July 14<sup>th</sup>, 1874*