Public Space, Democracy, and Colonialism:
British Columbia's Referendum on Treaty Principles

by

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B.Sc, University of Calgary, 1998

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

MASTER OF ARTS

in the Department of Sociology

We accept this thesis as conforming
to the required standard

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Abstract

Before its referendum in the spring of 2002, the British Columbian Liberal government held a series of hearings for the public to provide input on the principles that should guide provincial treaty negotiators. In this project, I analyze the ways numerous presenters and the government used liberal democratic principles – freedom, equality, minimal role of the state, individualism and reason – in the formal public spaces as justification for both the referendum and the colonial status quo. The disjuncture between liberal democracy as theory and as practice enabled its principles to be used to perpetuate injustice in realities marked by inequality. If those who work towards a more just society are to be successful, they must refuse value systems and processes that abstract individuals and communities from their lived locations and demand a state that engages with its citizens in meaningful dialogue.

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Acknowledgements

I would like to thank my Committee – Bill Carroll, Rennie Warburton, Cindy Holder, and John Borrows – for their insightful comments on drafts, as well as informal conversations that helped me to develop my ideas. Beyond my committee, I'd never have made it through the administrative aspects of producing and defending a thesis without support from Carole Rains and Zoe Chan that was certainly beyond the call of duty.

Further thanks go to those who found time in their very busy lives to proof-read my draft and discuss it with me: Jason Laurendeau, Maureen Kirkpatrick (x2) and Cynthia Mackenzie. More generally, I am grateful to Cynthia and Maureen for agreeing with me a considerable portion of the time and to my sister, Lisa, for disagreeing with me almost as often. Finally, I'm ever grateful to Tim for his patience (particularly formatting- and crashing-related) and for believing in me when I was too overwhelmed or frustrated to do so myself.

I want to repeat again in the strongest possible terms my view that this project is both ***morally and democratically legitimate****. Some will argue that the issues raised by these questions are too difficult for the average voter. This referendum is about lands, resources, governance, taxes - the very stuff of citizenship in a complex world. Democracy requires that we trust citizens with these questions, recognizing also that in our democracy the rights of minorities enjoy constitutional protections as strong as any found on the surface of the earth, vigorously guarded by an independent judiciary.*

This referendum is a conversation. It can be respectful. We can disagree and listen at the same time. We can even learn from our disagreements how to build common cause. Voting yes to these questions will establish essential parts of the vision, objectives and mandate that the province's negotiators will take to the treaty table to build lasting treaties and new relationships, so that all British Columbians, including First Nations, can work together to build hope and prosperity. (B.C. Attorney General Geoff Plant, 2002a, speaking about holding a province-wide referendum on principles of treaty negotiation; bold in original)

It would appear that B.C. has its own version of apartheid, and the government is prepared to use democracy as a tool to maintain it. We must bear in mind that democracy and freedom are not the same thing, and using a democratic referendum, the result of which is a foregone conclusion, to keep the Indians down on the res[ervation] is atrocious. It entrenches a form of democracy as a tool to oppress the minorities of this land. (T. Brumell, Oct. 25: 443)[1]

The referendum does play an important and legitimate role in a democracy, if it is a tool in the hands of citizens and not a toy controlled by a governing elite. ... When the referendum is under the control of government, and it is owned by government, it will be abused for the purposes of validating a position firmly held by the government. Such votes are not acts of democratic expression. They are acts of democratic prostitution. (Carrel, 2001: 120-1)

Chapter One: The B.C. Liberals and Liberal Democracy

On May 16, 2001 the Liberal Party of British Columbia was elected to the provincial legislature. Due in considerable part to British Columbians' discontent with the previously governing New Democratic Party (NDP), the Liberal party received 58% of the vote, but in British Columbia's "winner take all" system of riding-based representation, this proportion of the vote gave Liberals 77 of 79 seats in the legislature, leaving the province without the four opposition MLAs necessary for an official opposition. The Liberal government has wasted little time implementing a neo-liberal agenda, which employs strategies such as tax cuts, deregulation, and cuts to social programs to improve the economy and balance the budget. These strategies have served the interests of the upper echelon in society (those for whom a 25% tax cut is a significant return of income) while further marginalizing those already disempowered by the system, such as seniors and those on social assistance. Neo-liberal policies of the government include cutting funding for all ministries (with the exception of health and education for which it was frozen); reducing the public service by one-third over three years; unilaterally reopening contracts with hospital employees and social workers; redirecting taxes on lawyers' fees collected for legal aid; closing hospitals and courthouses; limiting access to social assistance (both explicitly and implicitly); and gutting the Labour Code. This list is incomplete and the Liberal actions are ongoing.[2]

One of the election promises of the Liberal party was to hold a referendum on the principles that should guide the Province of British Columbia in its tripartite treaty negotiations with Canada and individual First Nations. The stated purpose of this referendum was to 'revitalize' a stalled treaty process. Discussion of such a referendum

overlapped with a lawsuit filed by then-Opposition leader, now-premier Gordon Campbell and his colleagues Geoff Plant (current Attorney General) and Mike de Jong (current Minister of Forests), against the 1998 Nisga'a treaty signed by the NDP. The lawsuit was filed on the grounds that the Nisga'a treaty provided the Nisga'a with powers that created a third order of government and, as such, breached Canada's Constitution. The B.C. Supreme Court ruled against this constitutional challenge on July 24, 2000.[3] Because of the transition in office, the decision was not appealed as the lawsuit named the Attorney General of B.C. and as such, would have resulted in the Liberals litigating against themselves.

The idea of a referendum on treaty principles was controversial from its beginnings. Prior to the provincial election, the First Nations Summit (representing First Nations participating in negotiations through the B.C. Treaty Process) held a forum and invited the leaders of both the NDP and the Liberal Party to speak. From this forum, the First Nations Summit produced a video[4] for public dissemination arguing strongly against the referendum. The referendum process proceeded, in spite of this significant opposition from one of the three negotiating parties.[5]

In the summer of 2001, a Select Standing Committee on Aboriginal Affairs (hereafter "Committee") was struck as an all-party committee with ten MLAs (of which nine were men and all were White) and chaired by John Les, MLA from Chilliwack-Sumas. The NDP MLAs refused to sit on the Committee on the grounds that the process would be divisive and deaf to dissent,[6] thus the Committee was composed entirely of Liberal MLAs. From October 3 to November 2, 2001, the Committee traveled the province holding public hearings in 15 locations, receiving both oral and written

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submissions. Following these hearings the Committee met for deliberations and completed their mandate on November 30, 2001 when it produced a summary report including recommendations for sixteen ballot questions and a mail-in format. On March 13, 2002, the Attorney General's office announced the eight questions that would appear on the referendum ballots. The ballots were mailed out on April 2, 2002, to be returned by May 15, 2002.

The Liberal Government promoted this process as a "democratically legitimate process," creating space for "good public conversation" (Plant, 2002b), thereby providing "voters with an opportunity to learn more about the importance of treaty-making, debate the issues and express their views."[7] However, it is my contention that this ostensibly democratic process has been undertaken as a means to perpetuate the provincial government's authority over B.C. citizens *en masse* as well as state and Euro-Canadian[8] colonial authority over First Nations. This reproduction of authority is directly informed by the discourses of liberal democracy, which underlie both the Liberal platform and the politics of the global West. These historically contingent discourses refer to patterns of what it is possible to speak, think or act. By their virtual invisibility, they hinder truly meaningful dialogue between Aboriginal[9] and Euro-Canadian communities by blinding us, as a society, to other possibilities and thus these discourses perpetuate relations of inequality.

To read this case study as a direct critique of liberal democratic theory would be to misunderstand my purpose. That project has been undertaken by those better versed in the theoretical nuances of liberal democratic theory.[10] My purpose here is to move outside academic conceptions and debates about liberal democratic theory and illustrate

the ways in which the principles of liberal democracy are taken up in a formal political realm (i.e. that of the referendum process) by state and citizen. As does Freeman (2002), I distinguish between liberal democratic philosophy and liberal democratic institutions and focus on the latter – specifically, the referendum process as a manifestation of the philosophical principles. My presentation of the tenets of liberal democracy is likely to differ from the intentions of liberal democratic theorists. However, my project remains relevant insomuch as in developing communist theory, Marx did not intend Stalinism, nor did Darwin, in developing the theory of natural selection, intend eugenics.

These discourses are relevant in a context beyond the B.C. referendum on treaty principles: in B.C. , in Canada, and globally the discourses of liberal democracy have become hegemonic, though challenged. Gramsci believed that for the interests of a class to achieve and maintain hegemony, continual work was required to integrate the interests of other classes into its framework (Simon, 1991). He conceived of social relations as dynamic; thus, those in a position of hegemony must work continually to incorporate the interests of other classes and minimize contestation. Given these efforts, many who are not part of the dominant class draw on hegemonic principles to protect whatever privilege they do have. Thus privilege and oppression are not dichotomous: the boundaries between the two are blurred and fluid as the hegemonic social organization may be reproduced by those who are minimally privileged, or obversely, considerably marginalized, through this organization of power.

While the substantive issue under investigation in this project is that of the referendum on negotiation principles, which directly affects some First Nations, the discourses resonate beyond indigenous relations in Canada. Those justifying the status

quo use similar discourses informed by liberal democratic principles against challenges by other socially, politically and economically marginalized groups including women, racialized groups, immigrants, the working class, the poor, and the disabled. For instance, affirmative action is challenged on the grounds of equality (of opportunity); the transition from welfare to workfare is justified on the grounds that an individual cannot self-realize on welfare, but needs to develop skills and self-esteem through work. Within such institutionalized space, principles of liberal democracy are detached from their pure philosophical forms and are actively morphed into forms useful for the preservation of privilege. The cumulative effect of these hegemonic discourses is the maintenance of privilege for select sectors of society.

Although this analysis does not offer an explicit critique of liberal political philosophy, my critique of liberal democracy is implicit, resulting from a perspective rooted in people's everyday realities.[11] This critique points to the disconnect between the philosophical principles that are supposed to justify liberal democratic institutions – freedom, equality, state promotion of freedom and equality, individualism and reason – and the possibilities for a society that is just.[12] I am not interested in whether these values are necessary for or representative of a just society – that is a different project. I am suggesting that within the current structure of British Columbian and likely Canadian societies, conformity to these principles is not in itself sufficient for justice.

Anti-Apartheid Resistance

This project germinated in response to a selection of writings of the South African anti-apartheid activist Steve Biko (1996). Through a series of essays, Biko spoke to the

injustices of apartheid, including the means by which apartheid was perpetuated by seemingly helpful people and political structures.

Biko addressed a wide range of factors that served to entrench the subordinate status of Blacks relative to Whites under apartheid. Following the establishment of an apartheid regime, the powerful White minority[13] invoked a multitude of techniques to maintain their privilege, and by consequence, Black oppression. In schools, Black students were taught that their Black ancestors arrived in South Africa the same time as Whites and that their culture was barbaric. Christianity was also implicated in the perpetuation of subordination in as much as Christian doctrine directed blame towards the Blacks for their subordinate position.[14] In terms of everyday visceral oppression, Biko identified the dehumanization that resulted from the omnipresent fear of not knowing whether or not you were breaking the law and the continuous harassment by police.

As objections to apartheid grew globally, Blacks were increasingly admitted to sites of formal political participation with the apartheid government. Yet, Biko argued, these interactions were more insidious forms of oppression than their straightforward predecessors. These sites were tainted because they implicitly recognized White discourses (such as languages and styles of communication) while disregarding Black alternatives, thus forcing the co-optation of the participants and minimizing the possibility for large scale participation and change. By limiting the potential for change, these political fora were rooted in the assumption that "all [wa]s well with the system apart from some degree of mismanagement by irrational conservatives at the top" (1996: 91).

Bantustans are a specific example of the formal political spheres to which Biko was opposed. Bantustans were territories set aside for Blacks to pursue their "separate freedom", distinct from the freedom to be pursued by White South Africans. In spite of the poor quality of the lands and their small size, some traditional leaders opted to participate in the Bantustan project and claimed they would work to subvert the system from within. However, Biko felt that the creation of Bantustans was so politically derelict as to incapacitate any opportunities to challenge the system. Rather than provide possibilities to challenge the apartheid system, political participation on the issue of Bantustans, engagement with the state took place according to the rules devised by the state. While these rules gave the appearance of granting concessions to tribal leaders, such concessions were, according to Biko, premeditated. As a result, the state reproduced its power to rule Blacks, and, by consequence, disempowered the Black participants through their political participation.

Biko's analysis resonates (albeit cynically) with Nikolas Rose's (1999) analysis of advanced liberalism, enacted as governance during the 1980s under Margaret Thatcher and Ronald Reagan and continuing today. Under advanced liberalism, individuals are governed through their autonomy: to be free is to possess the capacity to act on your own personal interests. However, Rose argues that this seemingly obvious articulation of freedom masks the insidious elements of control in which it is entangled. Personal interests are not pure manifestations of inner essences, but are moulded directly and indirectly by a multitude of forms of governance including expert testimony, consumption of advertising (for both goods and lifestyles), as well as obligations to the nation. Although Rose argues that the state is only one of a multitude of threads in the

web of governance under advanced liberalism,[15] I will limit my focus to the state as it was the primary orchestrator of the referendum on treaty principles as well as the official colonial power in Aboriginal/non-Aboriginal relations.

Colonialism in your Backyard

Although apartheid is removed in time and space, the parallels between society under South African apartheid[16] and contemporary colonial British Columbia are clear. British Columbia, as a province, does not have the legal authority to impose its objectives on British Columbian citizens whereas the totalitarian regime in South Africa. However, the framework within which British Columbia operates is derived from federal principles and practices. Moreover, the federal government is complicit in practices like the referendum on treaty principles by its very silence. In this sense, the seeming inaction of the federal government supports and sanctions overtly colonial actions like the B.C. referendum. In both instances, a government representing the privileged members of society wields great authority over a marginalized segment of society, formally through legislation and official government departments, as well as informally through passivity and indifference.

While colonialism in South Africa and in British Columbia appear to be different in their goals – apartheid and assimilation, respectively – there is an overarching similarity in the desire for land and resources driving colonial powers in both societies. The details of the process, separation versus assimilation, may be different but the underlying premise of the process is much the same. Aboriginal peoples in British Columbia and Canada, were not subject to the violence as Blacks in South Africa. This is not to say, however, that there was not, and is not, violence committed against Aboriginal

peoples in the Canadian context: police brutality[17] and abuse in residential schools are evidence of violence. Finally, and as I will demonstrate in the next chapter, the possibility of challenging the colonialism in B.C. in formal political spaces echoes Biko's analysis of the potential to challenge apartheid in these sites.

Canada's colonial past provides significant context for the referendum on treaty principles. What follows is a sound-byte of the injustices encountered by Aboriginal peoples in Canada and, more specifically, British Columbia.

Both historically and currently, the *Indian Act* has been a manifestation of colonization in Canada, pervasive in the everyday lives of those it governs. Since its inception, the *Indian Act* has dictated who is and is not an "Indian." From 1927 to 1960, this Act prohibited First Nations from raising money or seeking counsel to pursue land claims. It was only in 1960 that Aboriginal men and women were granted the right to vote federally. The 1969 White Paper, introduced by Jean Chretien under Pierre Trudeau, proposed the elimination of the *Indian Act* and the Department of Indian Affairs and Northern Development (a proposition with considerable appeal to many Aboriginals). This disassembly was to be accomplished, the White Paper advocated, through the complete assimilation of Aboriginal peoples into Non-Aboriginal society (a far less appealing proposition). Beyond legislated government policy and in informal policy, there has been extensive coverage in the media of the physical, emotional and sexual abuses that took place in residential schools, the last of which closed in 1984 in Mission, B.C. [18]

In B.C. , the provincial government recognized Aboriginal rights and title to land only in 1990, following the decision of the Supreme Court of Canada that Aboriginal title

existed except where it had been explicitly extinguished (*R. v. Sparrow*, 1990). Prior to this, the British Columbian government had refused to negotiate treaties on the grounds that aboriginal rights and title did not exist and therefore did not need to be negotiated. Moreover, although most Aboriginal peoples in B.C. have not ceded their land through treaties (in contrast to most other provinces), in these negotiations the Crown is still assumed to hold title to the land (Alfred, 1999). Thus, the burden is on First Nations seeking land settlements to prove their title to the expropriated land, rather than on the Crown to prove its title is legitimate. First Nations must not only prove title to land, but they must do so through the B.C. Treaty Process, rooted in Eurocentric conceptions of ownership of land.[19] Taiaiake Alfred has argued that the current B.C. Treaty Process is "an advanced form of control, manipulation, and assimilation" (1999: 119). He criticizes this process because of its pre-eminent assumption of Canadian sovereignty. Such an assumption, he argues, seeks the extinguishment of Aboriginal nationhood as these nations are expected to fit into Canadian political and legal structures. If negotiations through the B.C. Treaty Process fail, the final avenue available to First Nations to pursue land claims (that is acceptable to the mainstream) is the Eurocentric judiciary.[20]

In parallel to South Africa, the referendum on treaty principles represents a specious structure of political empowerment. As with Bantustans, Aboriginal peoples have been encouraged to participate in a project that, from its inception, was contrived to reproduce power relations, both between the state and its citizenry (including indigenous peoples) as well as along colonial lines. The scope of this reproduction is vast. However, given that the treaty referendum both derived its legitimacy from and was

organized around the principles of liberal democracy, I shall focus on these tenets to frame my argument.

Tenets of Liberal Democracy

In the late 1980s, liberal democracy came to dominate nation-state forms of governance globally (Phillips, 1999: 4). At this time, liberal democracy was even hailed as "the end of history" (Fukuyama, 1989). Francis Fukuyama argued that with the fall of the Eastern socialist bloc, all alternatives to liberalism have been exhausted and, speaking in evolutionary terms,[21] there is no possibility but for the universalization of liberal democracy. Although Fukuyama's perspective is clearly contentious,[22] and although liberal democracy continues to be contested globally, this form of democracy has attained hegemony.

There are multiple liberal democratic perspectives, reflecting differing focuses and interpretations. However, Jean Hampton has identified five tenets that connect these multiple interpretations of liberal democracy into a cohesive theory: 1) freedom, 2) equality, 3) the role of the state to ensure freedom and equality, 4) individualism, and 5) reason as fundamental to communication (1997: 179-81). These principles are evident both in the design of the referendum process, and in the discourses used within this process[23] and as such, this process constituted an institution of liberal democracy (Freeman, 2002). I will now highlight the ways in which the referendum process conformed to the doctrines of liberal democracy, drawing connections, where possible, to the limitations of these doctrines addressed in Biko's (1996) critique of apartheid and Taiaiake Alfred's (1999) critique of colonial Canada.[24]

I. Freedom

Freedom has been and continues to be theorized in a myriad of ways[25]; thus, conceptions of freedom can take a wide variety of forms. Isaiah Berlin (1979) proposed two distinct freedoms necessary together to achieve freedom within democracy: negative freedom and positive freedom. Negative freedom, he argued, is a more obvious form of freedom – freedom from some extrinsic force. That is, negative freedom is the absence of external barriers or obstacles to fulfilling personal desires. This freedom, however, he argued, provides only a weak connection between liberty and democracy as an absence of control is not a sufficient condition for self-governance: autocracy is possible in the presence of negative freedom. The element necessary to strengthen the connection between freedom and democracy, Berlin argued, is the autonomy of the subject: positive freedom. This latter form of freedom makes it possible for a subject to govern herself and to participate in the formal political governance that rules her life and thus completes the union of freedom and democracy.

Hannah Arendt (1993) expanded on Berlin's call for autonomy and self-governance in democratic societies, emphasizing freedom as political activity. For Arendt, freedom is constituted through politics as a means (process) not an end. An essential requirement for the political spaces these theorists call for is neutrality for the purposes of the greater good. From an Arendtian perspective, this neutrality means that individuals' 'private' issues are inappropriate in the 'public' sphere (Villa, 1999). Thus, individuals are required to leave behind personal interests to deliberate towards a common good.

Given its participatory nature, the referendum clearly spoke to democratic participation. This participation (as freedom) was assumed by the Liberal government and privileged segments of the population to be adequate for legitimacy. By allowing citizens to participate in public hearings and subsequently granting citizens the right to vote on treaty principles, the Liberal government was able to emphasize the governing authority possessed by citizens of B.C. : ostensibly, the referendum embodied the democratic activity and deliberation characteristic of the participatory freedom called for by Berlin and Arendt.

Yet, there is a logical inconsistency in this assumption. Freedom is a necessary component of democracy as the citizens ultimately hold power in this system of governance. In the referendum on treaty principles overt democratic participation was taken as an indication of freedom. However, while freedom is a necessary condition for democracy, democracy is not a sufficient condition for freedom. T. Brumell makes this point in the introductory quotation in which he criticizes the referendum as a means to oppress Aboriginal peoples (Oct. 25: 442).

Even within democratic spaces, Biko's critique of participation with the state speaks to the possibility (or lack thereof) of deliberating in a space sanctioned by the state, including the referendum process, given the implicit bias in these spaces (1996). These spaces, Biko argued, are not neutral, but are unilaterally organized by the elite and thus reproduce the hegemonic codes. While these norms may be imperceptible to the elite, they actively disempower those who do not belong to the elite. For example, under apartheid the use of formal English in fora was problematic in several ways. Logistically, while Whites completed their education in English, Blacks were trained only in

vernacular English and only for six years. Moreover, the use of English, a White language, reproduced White authority by forcing Blacks who chose to participate to engage on the White terms.[26] In reality, then, the organization and processes of state-sanctioned public space (such as the referendum on treaty principles) may limit the possibility of participation. Though these sites may facilitate freedom for the privileged, the lack of freedom for the marginalized is perpetuated by the unwritten and unspoken hegemonic codes.

II. Equality

As with freedom, there are a multitude of conceptions about what equality means. Liberal democratic theory gives primacy to the political equality of individuals in society (Rawls, 1993: 6). While Rawls and other theorists of "High Liberalism"[27] may propose measures such as social welfare or income redistribution to address social and economic inequalities, the very legislation required to implement such measures has been argued by other theorists to be incompatible with pure political equality (Hampton, 1997). To introduce such legislation is argued to breach pure political equality: to implement legislation or policy with the intent of mitigating social and economic inequalities requires that the 'special needs' of certain individuals or communities take precedence over formalized political (legal) equality, the fundamental form of liberal equality (Rawls, 1993).

The great appeal of the referendum on treaty principles was its blindness to difference. By providing citizens across B.C. with the opportunity to speak before a Standing Committee,[28] and with the opportunity to cast an anonymous ballot – political equality epitomized in 'one person, one vote' – the Liberal government's referendum

design clearly met the liberal democratic dictates of political and legal equality. The referendum, as a technical democratic tool, assumed political equality to be a sufficient condition for justice.

Yet, the impact of more subtle forms of inequality on freedom, primarily social forms, has been subject to scrutiny. Nancy Fraser argues that social inequalities cannot be bracketed within a public sphere. Rather, "protocols of style and decorum that were themselves correlates and markers of status inequality" (1997: 78) prevented marginalized communities from participating equally within these political spaces. Iris Marion Young (2000) also highlights insidious forms of non-admission within political spaces. Even within these spaces, those who are less powerful may find that their ideas are not respected or taken seriously, or their participation may be discounted because their experience with the issue is completely disconnected from others in the public. This type of debarment she names "internal exclusion" (2000: 55). As noted by Biko (1996), adherence to alleged neutrality and temporary blindness to non-political inequalities in the interests of establishing an environment of 'equality,' actively disadvantages subordinated groups and benefits those with privilege as the implicit biases (e.g. the use of formal English) are assumed to be neutral.[29]

A further criterion has been identified as intrinsic to conceptions of equality. Ed Broadbent, former leader of the federal New Democratic Party, argues that "equality of substance" (2001: xvii), equality that accounts for the structural inequalities produced by capitalist markets, must replace the "weak liberal" maxim of "equality of opportunity" as these opportunities are necessarily informed by economic status. "Strong liberalism", while permitting intervention to provide a "fair start," remains rooted in the assumption

that individuals should compete in the market and that their ultimate outcome reflects their abilities and motivations. Broadbent challenges the conclusion of both strong and weak liberalism that inequalities resulting from marketplace competition are just. He argues that conceptions of equality must account for social realities with fundamental positions of advantage and disadvantage that directly impact an individual's or community's opportunity to succeed despite "equality of opportunity."

In realm of the law, Catharine MacKinnon (1989) argues that the notion of legally protected political equality actively disadvantages those without privilege. Legislated political equality, MacKinnon argues, cements social stratification as individuals with certain social freedoms (e.g. property and privacy) have those freedoms legally embedded while those without these social freedoms are prevented from accessing them by the same legislation. Consequently, the status quo is maintained. The equality assumed in Canadian society does not translate accurately from its juridical form in the Charter of Rights and Freedoms, to a social form in which individuals or communities are equal in everyday relations. While a single mother on social assistance and a partner in a prestigious law firm are "officially" equal, as per the Charter, it is highly unlikely that they will receive equal treatment at a bank or in a government office. Emphasis on political equality is flawed, then, as it presupposes social equality and then reifies this presupposition as law. The resulting legal equality obscures the social inequalities that exist in people's everyday lives, hampering challenges to these inequalities.

Apartheid made no claims to equality, but this claim was pervasive through the referendum process. In addition to the political equality claimed through the process of the referendum, issues relating to social and legal forms of equality constituted

significant themes in presentations at the hearings. I will address this theme in depth in Chapters Two and Three.

III. Role of the State

Within liberal democracy, state intervention is acceptable only to enhance the freedom and equality of its citizens (Hampton, 1997). While there is some debate among liberal democratic theorists as to whether this goal is best achieved by a minimalist or interventionist state, there is agreement that (1) the state can best meet these objectives when its form is democratic; (2) that tolerance and freedom of conscience for all citizens are essential; and (3) that the state must allow each individual to conceive of her 'good.'

In the referendum on treaty principles, the state was acting consistently with these dictates of liberal democratic theory. The referendum as a province-wide exercise in political participation garnered great legitimacy from its democratic foundations. In addition, the public hearings and voting options[30] provided sites in which all citizens could speak freely and the rules of procedure required that this right be tolerated.[31] The referendum, as a democratic tool, married these tenets effectively and thus, the Liberals' primary objectives appeared to be consistent with the goal of maximization of freedom and equality for British Columbian citizens.[32]

However, Biko (1996) provided an alternative perspective on working through the system in a colonial context, which, although a response to apartheid, also applies in B.C. He suggested that in order to work through the system, goals and means must be compatible with the system. Those who opted for this means of resistance (i.e. one pursued within the existing system) underestimated the effect of the apartheid regime on

them. Moreover, to participate in these sites was to support the legitimacy and authority of the apartheid government.

Alfred echoes this perspective, arguing that the very existence of the state in Canada is a manifestation of the colonization and oppression of Aboriginal peoples.

> A critique of state power that sees oppression as an inevitable function of the state, even when it is constrained by a constitutionally defined social-political contract, should have special resonance for indigenous people, since their nations were never party to any contract and yet have been forced to operate within a framework that presupposed the legitimacy of state sovereignty over them. Arguing for rights within that framework only reinforces the state's anti-historic claims to sovereignty by contract. (1999: 48)

Thus, not only is working within state-sanctioned political spaces ineffective for those who do not share in the dominant norms and codes, but such participation validates a state that, from the perspective of colonized peoples, is illegitimate. As under apartheid, by accessing the political spaces provided by the state, participants implicitly recognize the state and accept its authority.

IV. Individualism

Under a liberal democratic framework, the only societies that are legitimate are those that can justify themselves to individuals, given that individuals constitute the fundamental unit of society (Hampton, 1997). Bert van den Brink (2000) argues that although attention to justice, reasonableness and tolerance, is necessary, liberal democratic theory must refocus its efforts on the individual, who constitutes the foundation of liberalism. From his perspective, liberal democratic theory is most appealing when its emphasis is on the individual:

> [...] respect for individuality is the first condition that has to be met before it becomes possible to address individuals as persons who are capable of autonomous action. I strongly believe that versions of liberalism that

> simply take individuality – and the vulnerable nature of individuality – seriously, stand the best chance of being accepted as benign, humane doctrines. (van den Brink, 2000: 222)

The referendum operated at the level of the individual, highlighting individual self-realization through political participation. Moreover, it highlighted individual choice and freedom of conscience. In the public hearing, presenters were individuals first, only secondarily associated with formal organizations. The actual referendum also emphasized the equal means for protecting the interests of individuals: one person, one vote. Through this structure of anonymous voting, individuals were lifted from their daily contexts – their multiple social identities and locations – and abstracted as individuals in the interests of political equality.

This basic form of equal protection of interests – one person, one vote with the majority decision ruling – characterizes adversary societies such as B.C. and Canada. Adversary societies, argues Jane Mansbridge (1980), begin from the assumption that individual or group interests are irreconcilable with one another and manage conflict by granting equal value to the interests of each individual

However, this emphasis on the individual is not compatible with all cultures and reflects a Eurocentric bias. The individualism under apartheid advocated by ruling Whites was argued by Biko to be fundamentally inconsistent with African culture (Biko, 1996). Prior to colonization, tribes in South Africa shared amongst themselves and across tribal boundaries. This collective arrangement ensured that all families and tribes had sufficient food and supplies. Those who required assistance were not shamed because of their need. However, with the imposition of individualism under colonial government, the sharing decreased thereby increasing poverty in families and in tribes. Moreover, Christian proselytization encouraged Blacks to hold each other personally

responsible for their circumstance, compounding poverty with shame (1996: 40-47). It is through this reorganization of relations and the introduction of shame that Biko implicates individualism in the post-colonization poverty experienced by Blacks.

Alfred (1999) argues that individualism is inconsistent with traditional forms of Indigenous governance. The tense dichotomy between "the individual" and "the collective" constructed in Western societies does not exist in Aboriginal societies, in which individual autonomy is respected and decision-making is consensual. This organization of social relations depends heavily upon respect, rather than rights. This emphasis on respect is echoed in Jane Mansbridge's (1980) model of unitary democracy. In this form of democracy, relationships are based on equality of respect and a foundation of common interests. These societies, organized around the principle that parties have shared interests (or at least are able to attain a level of sharing), are able to implement decisions made through communication and consensus, as advocated by Alfred (1999) and take collective responsibility for the community as advocated by Biko (1996). Emphasis on the individual dissolves as individuals drawn into webs through their relations with one another and this web significantly impacts deliberation and decision-making.

V. Reason

John Rawls (1995) argues that in order for a society to be fair and consequently just, political deliberations must be carried out by reasonable citizens. Rawls identifies two key elements of reasonability (1995: 54). The first is the willingness of citizens to participate fairly in cooperative efforts, assuming that others do also. The second element is the willingness to accept the "burdens of judgment" (1993: 49) – the possibility that in

a pluralist society, consensus will not be achieved and as a result, the decided outcome may not be an individual's preferred outcome, but the individual agrees to be bound to it. Thus, individuals are expected to engage fairly in political deliberations with one another to an end that can be accepted, if not agreed to, by all (Hampton, 1997).

In the referendum on treaty principles, the Liberal government hoped to engage the public of B.C. in political dialogue so that the province could "forge a new relationship with First Nations" (Plant, 2002a). Overall, the referendum met both of liberalism's criteria of reasonableness. The hearings held by the Committee created a place for willing citizens to participate equally in public dialogue, while the rules of procedure ensured fairness.[33] Following this input, the public was provided with an opportunity to collectively cast judgment in the form of the referendum and was subsequently bound to those "burdens of judgment."

However, Rawls' account of reasonability focuses only on the individual and the individual's willingness to (1) participate in a fair public sphere, and (2) accept the outcome of that participation, even if it is not the desired outcome. In focusing on the individual, Rawls does not account for the broader social and economic conditions in which deliberations necessarily take place and in which every individual is entangled. The conditions are marked by pervasive power inequalities and consequently public deliberations are not neutral, but are biased in favour of those with privilege. In addition to organizational biases, Rawls does not acknowledge that conceptions of 'reasonable' and 'unreasonable' exist relationally. This connection is critical because those people who have the power to define what is reasonable – privileged members of dominant society – necessarily define what is unreasonable.

Because of the absence of relations of power in Rawls' theory, his model of participation cannot account for conflicting perceptions of what is equal or fair and, consequently, reasonable. In reality, where there are considerable power differentials between groups, understandings of freedom and equality are unlikely to coincide because what is reasonable from the position of privilege is unlikely to be reasonable from the perspective of marginalization and vice versa. As a result, shared meanings of fundamental principles are unlikely to exist. Moreover, agreeing to disagree (Rawls' second principle) means that one interest will be chosen over others. In a real society marked by power inequalities, the choice is likely to reflect the interests of the dominant class and thus perpetuate the status quo. Given these 'real' conditions, liberal democratic principles do not to facilitate the transition to a more just society. Rather, they reproduce power inequalities and conditions of marginalization.

In spite of the power that marks both the terms of reference and ability to define what is 'reasonable', individuals who are unwilling to participate because of problematic conditions of participation are deemed to be unreasonable. Political deliberation is limited by the reasonable (read: dominant) terms[34] that promote the participation of reasonable (read: dominant) people. As a result, the marginalization of those who are unwilling to participate in deliberative processes, those for whom the processes are oppressive, is reproduced.

Ultimately, the call for reasonableness limits the possibilities for pluralist societies. If non-mainstream groups choose not to participate in deliberations because they see the process as biased against them, they will be cast out of broader society as

unreasonable elements. Rawls' pluralist liberal democratic society will be reduced to the dominant culture, which is relatively homogenous.

Biko addresses the problem of such inconsistency in the context of power relations. Under apartheid, Blacks were forced to be reasonable (i.e. willing to participate in deliberations biased against them) and engage in dialogue presumed to be neutral (in a power-laden environment) for their struggle if they did not want to be subjected to police force or legal action. In political spaces Blacks were forced to accept the presumed reasonable codes of the White regime such as the rules of debate and the use of formal English. Thus, Blacks could challenge the 'reasonableness' of apartheid by engaging with politicians through dialogue, but to do so implied that those Blacks had already accepted the reasonable codes that organized apartheid governance: to challenge apartheid government on the terms it set was already to accept its definition of reasonable, a definition that disqualified a considerable range of dissent. In response to this expectation for a particular type of dialogue, Biko suggested "[n]ot only have they kicked the Black, but they have also told him how to react to the kick" (66). The fact that powerful Whites unilaterally set the parameters of public space reproduced the power of the dominant group and further subjugated Blacks. Thus, the terms of deliberation themselves limited possibilities to challenge inequality.

A clear parallel exists between the use of reasonability to subjugate Blacks under apartheid and its use to subjugate dissenters in the B.C. referendum on treaty principles.[35] In the referendum on treaty principles, powerful Whites also organized the public space and thus the rules of the space mirrored their norms and values. Those who were unwilling to participate because of the context of inequality in which the referendum took

place were considered to be unreasonable and, given this unreasonability, no efforts had to be made to include them in the process.

The ultimate goal of liberal democratic theory is to create justice in a pluralistic society, justice ostensibly sought in the referendum on treaty principles. However, this goal has not been implemented in actual societies with real inequalities. The very tenets discussed above, the tenets that superficially legitimized the referendum on treaty principles, do not themselves ensure justice but, in practice, subvert actual efforts to challenge the power inequalities that perpetuate injustice.

(VI.) Economy

To this point, I have analyzed the tenets of liberal democracy and the consistency of the referendum on treaty principles with these tenets. However, there is another major discourse to which the referendum process spoke, or perhaps whispered – capitalism. Although liberal democracy and capitalism are theoretically separable as political and economic systems many liberal democratic theorists acknowledge a connection between this form of democracy and the market. Capitalist markets are necessary to facilitate the freedoms of association, occupation and opportunity previously emphasized by Rawls and Mill (Freeman, 2002). In addition, the basic tenets of liberal democracy discussed above – freedom, equality (especially of opportunity), the role of the state to maximize freedom and equality, individualism and reason – resonate strongly with the principles of capitalism. Milton Friedman drew explicitly on the first principles when he argued that capitalism was a necessary condition for political freedom (in MacPherson, 1975). In his argument, a capitalist economic system separates economic power from political power and thus, he argues, prevents the concentration of coercive power in a small elite.

Given the hard right-wing, pro-business values of the Liberal government, the referendum on treaty principles was located at the intersection of liberal democracy and capitalist economy. According to the B.C. Treaty Commission, the primary goal of the B.C. Treaty Process, the process to be revitalized through the referendum, is "certainty."[36] "Certainty" is a catchword that facilitates domestic and international investment (Ratner, Carroll and Woolford, 2002) as it establishes who has title to the land and replaces the inherent rights of Aboriginal peoples with treaty rights. This "certainty" as to exactly which rights and lands Aboriginals possess also provides the economic stability necessary for development and investment. Thus, the Liberal government chose an ostensibly democratic process to obtain public input on political negotiations,[37] negotiations whose impacts on the state and Non-Aboriginal citizens will be primarily economic.

The argument can be made, then, that the interests of corporate capitalists drove the referendum process. What was ultimately at stake in the treaty referendum was capital in the form of land and resources – the means of production. Treaties are favoured by those who seek to develop the land and resources, and those who glean dividends from such developers. From a Marxist perspective, the Liberals acted on behalf of a capitalist class dependent on ownership of these means of production. To facilitate capitalist exploitation of these resources, the government used a specious public space as a means to impede Aboriginal claims to these means, and thereby any challenge to the hegemonic control of means of production.

Such action is consistent with Marx's perspective on the modern state. In direct contradiction to Friedman, Marx challenged the possibility that the state is capable of

acting against the interests of capitalists. Rather, Marx saw the state as necessarily operating in the interests of the bourgeoisie:

> [...] the bourgeoisie has at last, since the establishment of Modern Industry and of the world-market, conquered for itself, in the modern representative State, exclusive political sway. The executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie (in McIntosh, 1997: 40).

In contrast to liberal democratic theorists, then, a Marxist analysis sees the liberal democratic state as necessarily implicated in reproducing the *in*equality and *un*freedom of those not in the capitalist class. C.B. MacPherson shares this perspective, arguing the antithesis to Friedman: a capitalist economy does not ensure the dispersion of power, but instead reinforces the political elite with the economic elite. As in B.C. , power becomes concentrated in the hands of a simultaneously political and economic elite.

Thus far, I have argued that although the referendum on treaty principles was consistent with the five major tenets of liberal democracy, the implementation of these tenets to the end of a just society can be criticized and I have identified such criticism raised by theorists and activists in different, but related, contexts. This critique foreshadows the discrepancy between liberal democratic principles and their actualization in the referendum on treaty principles.

Methodology

Biko was adamant that Blacks, not liberal Whites, lead the project of their emancipation.[38] Accepting that the role of white liberals is not to direct the efforts of Aboriginal peoples,[39] I take up this project instead as a means to educate other privileged Euro-Canadians about the way a seemingly neutral system of democracy and seemingly

universal principles of liberalism combine to create a space that simultaneously restricts the potential for meaningful dialogue and reproduces colonialism in British Columbia.

For the discourse analysis, which forms the bulk of my investigation, I have drawn heavily on the transcripts of the public hearings, the Committee's summary report and the Attorney General's speech to introduce the final referendum ballot as the primary state-organized texts for this 'public space'. My analysis does not include the numerous written submissions sent to the Committee for consideration in their summary report. I have chosen not to examine these texts for several reasons.

First, the transcripts indicate that the Committee members themselves did not read the written submissions. Rather, someone was hired to provide summaries to the Committee.[40] In addition, the main points of 132 of the 388 written submissions were presented at the public hearings, as presenters made both oral and written submissions to the Committee. Further, I anticipate that the extensive transcripts of the public hearings provided me with an adequate representation of the discourses used to promote varying perspectives. The most significant factor in this decision not to review the written submissions was the way in which the Liberal government framed the referendum. Throughout the public hearings and the referendum itself, the Liberal government justified the process as democratic debate or "good public conversation" (*The Afternoon Show*, 2002). I am interested in the ways this "public conversation" was enacted: the ways in which formal political 'space' was organized so as to encourage, dissuade, or dismiss particular forms of dialogue, as well as the ways in which this organization was challenged. Given this focus on the *process* of dialogue, the written submissions would not meet my purpose.

While the discourses around the treaty referendum operated in a variety of locations – newspapers, television and radio talk shows, public transit, coffee shops, and many others– the transcripts of the public hearings provided an important resource as the hearings constituted a concentrated site in which people spoke in their own words to an issue directly informed by Aboriginal/Non-Aboriginal relations in B.C. , with a preceding awareness that their words would contribute to the public record. Thus, the content of their presentations was deliberate and intentionally political. As such, I have limited my analysis to the individuals who presented at the public hearings, acknowledging that certain voices were silenced through,[41] or absent from, this process. While I have included challenges to the dominant discourses that arose through the hearings, my focus is on the use of liberal democratic discourse as a mechanism of marginalization by perpetuation of the status quo. This focus, I believe, inverts typical power relations in that those with power are the subjects of scrutiny, rather than those without.[42] In this way, my analysis is directed at efforts to maintain privilege, rather than efforts to rebuke this privilege, as I highlight the discourses through which participants at the public fora drew on liberal democratic discourses to actively perpetuate and challenge hegemonic power relations.

Conclusion

The referendum on treaty principles was founded upon principles of freedom, equality, individualism and reason. However, as I have shown throughout, each of these tenets has been implicated, in the perpetuation of power relations and colonialism in theory, as well as in South African and Canadian colonial experience. Thus, consistency with liberal democratic doctrine, aimed at creating a just society, is not sufficient for

justice. This is not to say that the above principles are to be abandoned, but rather to argue for a critical re-evaluation of the ways in which these principles are enacted in everyday realities, in contrast to their theoretical forms.

This coarse framework provides the background for my further analysis of the referendum on treaty principles. Although the institutions of liberal democracy in their ideal form can arguably constitute acceptable institutions of governance in a just society, in their practiced form these institutions themselves fall short of justice and can even subvert it. The referendum on treaty principles is a striking example of this failure.

In what follows, I will use the referendum on treaty principles as a case study to highlight in detail the ways in which discourses of liberal democracy, invoked both by state and citizen, serve the interests of the already-powerful. I will show that in the referendum process, liberal 'democracy' through its actual practices and languages became a mechanism with which to perpetuate relationships of inequality. To reiterate, this critique is rooted in the fact that in an unjust society, the principles of liberal democracy are not enacted to the desired end of a just society, but rather serve to reproduce the power relations that make the society unjust. Through this analysis, my intention is to point primarily to the disjuncture between the theory of liberal democracy and the possibility of its enactment. Secondarily, this project is an implicit critique of liberal democratic theory itself as this theory remains disconnected from the reality in which it is to be implemented.

In the subsequent chapters, I will analyze the discourses that organized the referendum on treaty principles. My analysis is informed by Foucault's conception of power as omnipresent (Foucault, 1990: 93) and as such, I have highlighted the ways in

which those subjects who are disempowered by the referendum process resist their disempowerment and challenge the state. Drawing further upon Foucault, I subscribe to institutionalized power wielded by the state through strategies and technologies to organize the "conduct of conduct" (Rose, 1999: 3). In addition, I recognize the systemic racism and neo-colonialism practiced against Aboriginal peoples globally. However, this analysis is located at a particular time (2001-2002), in a particular place (British Columbia) and is organized around a single event: the referendum on principles of treaty negotiation.

To facilitate analysis, I have drawn out two major relationships around which liberal democratic discourses coalesced. In Chapter Two, I address the discourses that organized and challenged the referendum as a politically-sanctioned procedure. Thus, I consider state-citizen relations to highlight the ways in which Liberal government organized and managed the public hearings, as well as the ways in which citizens participated in these hearings. In Chapter Three, I highlight liberal democratic discourses invoked by speakers at the public hearings, Committee members, and government officials to justify and challenge particular principles of treaty negotiations and, in so doing, point to the ways in which these discourses reflect colonial Aboriginal/Non-Aboriginal relations.

In making the division between state-citizen and Aboriginal/Non-Aboriginal relations, I recognize that the formal political procedural aspects of the referendum are informed by public discourses and, reciprocally, the attitudes of the public are informed by formal politics. Moreover, I recognize and emphasize that these two relationships are fundamentally bound through the discourses of liberal democracy that pervade both the

formal and political realm and society more generally. However, as the Liberal government unilaterally developed and officially controlled the rules of the referendum process, I believe that an analysis of this formal political framework is both relevant and necessary to identify the immediate relationship between the state and its citizens. In addition, the substantive societal discourses used within the formal political proceedings were (and are) not limited to the referendum process itself, but also provide insight into much broader Aboriginal/Non-Aboriginal social relations within British Columbia.

Chapter Two: State and Citizen

The analysis in this chapter will focus on the ways in which the Liberal government as state actively reproduced its authority. Following from the principles of liberal democracy, the state was ostensibly acting to maximize equality and freedom for its citizens. However, analysis of the overall process, as well as specific discourses invoked by the state during the process, indicates that rather than producing a strong public, one whose deliberations impacted state decision-making (Fraser, 1997: 90), the referendum process acted to buttress the control of the Liberal government. Through the process, at a multitude of levels ranging from encounters between individuals to the actual legislated referendum, the referendum served to cement the authority of the Liberals over British Columbians. This authority was contested throughout but, as I will argue in this chapter, the Liberal government dominated the process and ultimately used the referendum to reinforce its agenda. While this goal is clearly inconsistent with the tenets of liberal democracy, these tenets legitimized the process and thus are themselves implicitly critiqued.

Chapter Three: Colonial Citizens

This chapter moves beyond the state and focuses on the discourse of participants in the public hearings. Again, the focus is on liberal democracy in as much as citizens rooted their justifications of the current colonial order in B.C. in tenets of liberal democracy. Throughout the hearings, presenters drew on themes such as equality, the freedom to engage in political activity, the freedom for individual self-realization and the dictates of the economy to justify both the referendum itself and the colonial context in which it occurred. However, these discourses were not passively accepted, but were actively, and often explicitly, challenged through counterhegemonic discourses by those opposed to the referendum process and Canadian colonial society. This analysis reflects the extent to which liberal democratic ways of thinking are hegemonic to, but contested in, British Columbian society.

Chapter Four: Towards a Just Society?

The ostensible (and only legitimate) purpose of the referendum was to give citizens of B.C. the opportunity to engage in meaningful dialogue on the issue of treaty settlements. This project is not in and of itself a perpetuation of questionable authority. However, as argued in Chapters Two and Three, the organization of the process, as well as the testimony within the process served to reproduce relationships of authority both over citizens and Aboriginal peoples. This perpetuation is a result of the disjuncture between liberal democratic theory and practice. The major contributor to this gap, I believe, is the abstraction beyond lived realities that is implicit in liberal democracy, both in theory and in practice.

In British Columbia, the project of meaningful dialogue requires a reflexive analysis of Canadian colonial history, and the filiation of privilege in the Euro-Canadian population with this past. It further requires that individuals locate themselves and their daily realities within the current colonial structure. Moreover, such dialogue requires a strong public whose deliberations actually guide the government (Fraser, 1997), as opposed to processes that incorporate the public into a set government agenda. With some equality of respect demonstrated by the state towards its citizens (Carrel, 2001) and a consequent decrease in the hierarchical locations of 'state' and 'citizen,' meaningful dialogue, dialogue that will guide British Columbia towards a more just society, is possible.

Chapter Two: State and Citizen

The primary interventionist role of the state under liberal democracy is to enhance the freedom and equality of its citizens. It was ostensibly to this end that the Liberal government held a referendum on treaty principles. This referendum process, as orchestrated by the state, was clearly oppressive for Aboriginal peoples. However, B.C. citizens *en masse* were also subject to oppression: through the referendum process, the very freedom and equality that the government was to enhance was, instead, compromised. While engaging in practices that appeared to empower the public, the state, in fact, reproduced its authority over the public. The multitude of ways in which the state subverted the possibility for a "strong public" to influence state decision-making (Fraser, 1997: 90) forms the basis of this chapter.

My goals in this analysis are twofold and equally important. I wish to demonstrate the ways in which a democratic process, conducted in public space, can be co-opted to disempower those who participate in the process and serve the interests of those with privilege.[43] I also wish to document and record the resistance brought against the process to recognize those who had the courage to speak, in a multitude of ways, against a process orchestrated to silence them.

Public Hearings

To come up with recommendations for the referendum on treaty principles, the Liberal Cabinet established the all-party Select Standing Committee on Aboriginal Affairs (Committee) to seek input from British Columbians on the principles that should guide the province in its treaty negotiations. As noted in the previous chapter, this all-party committee consisted only of Liberal MLAs. The Committee, as an all-party

committee, was theoretically distinguishable from the Liberal government as a whole. However, in practice, the Committee drew heavily on the mandate of the Liberal party. Thus, the Committee was distinct from, but bound to, the Liberal government. In turn, the Liberal government, distinct from the long-term political institution of the state, embodied (and continues to embody) certain qualities of the state such as bureaucracy and formality. Thus, the Committee was bound both by the procedures and inaccessibility of the political elite and Liberal party politics. Although I recognize the obligation of the Committee to undertake particular procedures and discourses because of the inevitable influences of the state and the Liberal party, the Committee was ultimately composed of individuals who actively steered the process and made decisions that reinforced it. These individuals are thus accountable as are members of the Liberal government and the state. Consequently, my analysis implicates the state, the Liberal party, the Committee and its members individually, in the perpetuation of relations of inequality through the public hearings on treaty principles.

Terms of Reference

The terms of reference of the public hearings established by the Committee afforded it explicit control over the process. The Committee was clear as to what was and was not up for public deliberation, highlighting two specific issues not relevant to the hearings – whether or not the Liberal government should proceed with a referendum and whether or not treaties should be pursued:

> The Committee's Terms of Reference do not include considering whether to hold a referendum, or the question of whether to continue negotiating treaties. The Committee will be considering only those matters concerning questions for a referendum on principles to guide the provincial approach to treaty negotiations.[44]

The first restriction on the terms of reference anticipated discussion of whether or not there should be a referendum. On this issue, the Liberal government was able to effectively eliminate such discussion by highlighting their election promises and drawing on discourses of responsibility and obligation to the public that elected them:

> You touched very eloquently on the mandate of this committee and the tough job we have facing us and the fact that it was an election promise. You're suggesting for a moment that we should perhaps forget that promise. I personally have a problem with that. It was a commitment we made to the people during the election, and we were elected with a very resounding majority to represent the people of British Columbia. So it's a commitment I think we do owe to the people – to follow up with the commitment we made during the election. (**D. MacKay**, Nov. 1: 505)

> This government sought election on a commitment to negotiate workable, affordable treaty settlements that will provide certainty, finality and equality. ... So we made two commitments to bring the people of B.C. into the treaty process. We promised to give all British Columbians a say on the principles that should guide BC's approach to treaty negotiations, through a one-time, province-wide referendum, within our first year. We also promised to ask an all-party committee of the Legislature to consult with British Columbians, including First Nations, to draft the referendum questions. We've kept the second promise. The all-party committee has consulted and reported to the legislature. Today we are putting in motion the steps to keep the first promise. (G. Plant,[45] 2002b)

These justifications to continue with the referendum process despite repeated objections are perverse, given that the purpose of the referendum was to get input from the public. It follows from this logic that even if the oral and written submissions received by the government unanimously rejected the referendum, the government would still be obligated to go through with it, on the grounds that it was an election promise. This claim appears particularly disingenous in light of the willingness of the Liberals to break other election promises (British Columbia New Democrats, 2002). By this precedent, the promise of a referendum minimizes the promise of meaningful consultation with citizens.

Much of the criticism of the referendum itself was dismissed on the grounds that concerned citizens did not understand the purpose of the referendum. A letter from my MLA, Sheila Orr states, "Let's be clear about one thing the referendum does not undermine constitutionally protected rights of the Aboriginal people [sic]." On multiple occasions in the hearings, John Les, Committee Chair, engaged speakers concerned with issues of Aboriginal rights on the grounds that they had missed the purpose of the hearings and the referendum:[46]

> We have said consistently from the very beginning that we absolutely recognize what the constitution has to say about aboriginal [sic] rights. It perplexes me sometimes when we keep hearing from that side of the table that this is about aboriginal [sic] rights. It clearly is not. We recognize what those rights are. It is how we set about the process of incorporating those rights into the mosaic of British Columbia. (Oct. 18: 394)

Ironically, the citizens who were dismissed as misunderstanding the purpose of the referendum constitute part of the same citizenry addressed by Plant (2002b), a citizenry to be trusted with the difficult task of engaging in the referendum. The Committee created a further dichotomy in which citizens who challenged the referendum in the context of colonial relations were not to be trusted on the grounds that they misunderstood, while citizens who participated obediently were trusted in the name of direct democracy.

In the case of the second restriction on the terms of reference, the Liberal government omitted discussion of whether or not treaties should be pursued. Given this construction, the Liberal government could work from a platform that officially recognized Aboriginal rights in accordance with landmark judicial rulings such as *Calder v. AG B.C.* (1973), *R. v. Sparrow* (1990), and *Delgamuukw v. B.C.* (1997), while simultaneously pursuing an agenda that would ultimately limit these rights. Although the

referendum process did not directly challenge Aboriginal rights, the overall goal to provide provincial representatives with negotiation principles will limit the interpretation of rights at treaty tables in future negotiations. In spite of this connection between treaty principles and Aboriginal rights, the Liberal government upheld this dichotomy of principles and rights. Those presenters who made their argument in terms of 'principles' legitimized the referendum in its legal and ethical context, while those who argued in terms of 'rights' were dismissed as misconstruing the purpose of the referendum process.

While the Committee worked to buttress the dichotomy of rights and principles, speakers at the public hearings challenged this binary:

> When people have brought up the idea that this is morally wrong because of infringement on native rights, you've responded by saying this is not a question of native rights. To the extent that you're not going to directly ask the question, "Should natives have these rights or not?" I suppose that's true. You can infringe on those rights, even if you don't directly ask that. I guess we'll have to agree to disagree on this one. I still think that by asking to predetermine conditions of how treaty negotiations will go, you are infringing on those rights. (S. Paone, Nov. 1: 534)

In such instances, where presenters challenged the dichotomy implicit in the terms of reference, and where presenters simply rebuked the referendum, it was common for Committee members to attempt to realign the presenter with the official terms of reference, generally with success:

> You have stated in your submission that you, the Okanagan Nation and presumably Westbank, are opposed to the referendum and opposed to what we are doing with respect to that referendum. My question to you is: what is there that we could ask? How can we formulate a referendum question that would affirm property rights or interest in property from your perspective? (**P. Nettleton**, Oct. 11: 240)[47]

This action was possible because of the Committee's unilateral authority to question the presenter and its authority to set the framework of the hearings. Within the hearings, presenters were subject to the control of the Committee chair. Thus, speakers

presented their submissions when called upon to do so, and answered questions by the Committee members. Speakers did not have the same authority to ask questions of the Committee.[48] These controls enabled the Committee to direct many resistant participants into 'appropriate' discourse through its line of questioning and thus reinforced the state's control over its citizens.

Purpose of Public Fora

The public fora served multiple purposes. At its most conspicuous level, the purpose of the hearings was to get the public's input on principles to guide the Province in its treaty negotiations. The Liberal government, having judged the B.C. treaty process to be stalled, vowed to revitalize the process. The referendum process was the tool chosen by the government for the purposes of revitalization. According to the Liberal government, a stronger mandate for provincial negotiators will result in more effective negotiations at the treaty table.

> Given that the concern in having this referendum, as I understand it, is to strengthen the position of the negotiators for the province so that they may have a clear mandate for the negotiations and hopefully speed up the process [...] (**B. Belsey**, Oct. 24: 400)

However, speakers challenged this rationale on the grounds that stronger mandates at the treaty table were inconsistent with the facilitation of treaties. Treaty negotiations, it was argued, required flexibility and compromise from all parties and a provincial mandate limiting such possibility would necessarily stifle the process.

> [...] a referendum is not going to advance the treaty process. The primary barrier to concluding treaties is narrow provincial mandates. A referendum that results in even narrower provincial mandates is really more likely to collapse the process than it is to advance it. (M. Browne, Nov. 2: 598)

> It's fine to come up with this mandate to negotiate, but the negotiations have to mean something to both parties. If you have a strong mandate for

> equality for all British Columbians – for not giving away fish, for not giving away forestry, for not giving away land, for just simply handing over some cash – I suspect you'll find that you're not negotiating with anybody on the other side of the table, because your mandate is simply too strong for somebody to come to the table and negotiate with. (B. Gochauer, Oct. 3: 107)

From this perspective, the Liberals' stated intention to revitalize treaty talks through the referendum was fundamentally flawed. A further argument against strengthening mandates pointed beyond the effects of the referendum on the logistics of negotiations to the broader context in which these negotiations transpire. Treaty negotiations, such individuals argued, do not depend only the mandate of negotiating parties, but also on the relationship of trust that exists between these parties:

> Any negotiation has to be based on a certain degree of faith – faith that the other party will treat you fairly. The referendum process will destroy any faith the Aboriginal people have in the process, and you will be doomed to failure. (C. Hooper, Oct. 24:421)

Given the government's desire to settle Aboriginal claims through treaty negotiations, action that jeopardized the relationships necessary for negotiations was challenged the very rationale for the referendum.

In addition to the obvious purpose of receiving public input, the Committee clearly identified secondary goals to be met through the public hearings– education and public debate. However, it is not clear that the Committee managed to execute these goals.

1. Goal: Education

> That's the purpose of the committee: to educate the people so they have an understanding of what's going on at the table. I think this committee, as we draw to a conclusion on Vancouver Island in the first part of November, is going to have educated the people a little bit more on the principles. (**D. MacKay**, Oct. 17: 302)

You comment with respect to the educational component associated with what we're doing. It is our position that we are here to engage people at the community level as well as to inform them as much as possible. It's all part of what we're doing. (**P. Nettleton**, Oct. 17: 330)

Execution

You asked the question: what do they want? That question was asked of a native presenter at our previous location, and I asked him if he felt the same as Joe Gosnell when Joe Gosnell said that the air, the land, the bugs, the water and the forest all belong to them. Everything – it is all theirs. This young native chap said: "Yes, that's the same stance we take." What do they want? You're right. I think they're looking for the province. (**D. MacKay**, Oct. 18: 377)

(Clearly educationally useful...)

D. Youlden: I don't really have much to present. I've actually got to do a paper on the referendum for my first year political science class and whether I believe in it or not. I booked a time to come down and ask questions, if that's all right. I know it's not the protocol of the committee. If it's a waste of time, then I can leave. There's no problem if that's an issue.

J. Les (Chair): We're all ears.

D. Youlden: I was at a meeting last night at the university, and they were saying about how the referendum... If it's a one-day election or whatever, it costs them $16.5 million for it. I don't know if that's a lot of money to the government or not. Those issues are just things I'm wondering about personally. As I went over your thing, you say that the referendum will go back to the public if there's ratification and stuff. How would it work – a one-day ballot box? Or do they have a plan on how to have the referendum?

J. Les (Chair): How do you think it should work?

[...]

D. Youlden: I don't know. That's why you guys are up there. That's sort of a question to you guys. I realize I'm supposed to be coming up with what you guys are saying. I realize that. I was just sort of hoping to get an idea on any of these things. My paper is due next week, you know. [...]

J. Les (Chair): I was going to say: "Nice try, Darryl." But our primary objective is to hear from you, what your views are on the proposed referendum. If it helps you get your political science paper done, that's an added bonus. But that's not going to be our primary focus. (Nov. 2: 612)

While it was admittedly not the Committee's job to write the student's paper, the deflection of questions back to the speaker clashes with the Committee's self-described mandate to educate the public. The Committee had created for itself a difficult position: although education of the public was an important component of the hearings, the Committee was concerned that any substantive statements would serve as evidence that its findings were prejudiced, and so avoided any engagement with the public.[49] Moreover, the formal rules of procedure that permitted only one individual or organization to act in the public space at a given time eliminated the possibility of engaged learning between citizens as a result of public debate.

The second goal of the public hearings identified by the Committee was public debate.

> 2. Goal: Public debate
>
> While a process might be controversial, does that mean necessarily that we should hush it up and not expose a significant issue like this to public discussion and debate? (**J. Les**, Oct. 12: 293)
>
> ... many things should be vigorously debated and perhaps voted upon in the most open and democratic way possible, and yet when it comes to something that is admittedly difficult, sensitive, and complex, we should step back from that vigorous public debate. On a subject like this, people are more prone than ever to say: "You're the government. You do it." Is that appropriate? (**J. Les**, Oct. 18: 394)
>
> You wondered earlier whether there would be any point in you having anything to say and whether it would make a difference. Let me assure you that although sometimes we find it difficult to listen to one another, as you have this evening, it is still very, very valuable for us all to listen to one another. I think that is one constant that we've experienced throughout the province. Not often enough do people get together in forums like these and discuss honestly and openly and with candour the issues that are before us. (**J. Les**, Nov.1: 559)
>
> I want to express the government's appreciation to the legislative committee chaired by the member for Chilliwack-Sumas and to all those who made submissions to it. The work of the committee has begun a conversation

> with the people of BC. That conversation is essential if we are to reinvigorate the treaty process. (Plant, 2002)

Execution:

> I don't think we have time this afternoon to get into a lengthy discussion on that topic, but could you put your mind to it [...] and perhaps over the next several days develop a separate paper on that issue? (**J. Les**, Oct. 24: 400)

> Thanks [...] for your eloquent, thoughtful presentation. I'll reserve the right to have a coffee with you to debate the issue of the extent and scope of Aboriginal rights, but I won't do that this morning because that's not what we're here for. (**M. Hunter**, Oct. 17: 299)

At several hearings, debate was logistically hampered by time constraints. Although dialogue at the hearings was already greatly restricted by the rules of procedure that governed the process (see below), by encouraging interested parties to submit written reports, the Committee eliminated potential dialogue between presenter and Committee, let alone amongst members of the public. Further, Committee member Hunter actively disengaged from debate, unquestionably removing himself from the "vigorous debate" advocated by the chair as the underlying the process. Throughout the hearings,[50] this Committee member explicitly refused to engage with presenters to discuss views that did not coincide with his. While he was explicit about his refusal to engage, more often there were simply no questions after presentations that strongly challenged the Liberal agenda.[51]

Rules of Procedure

Those who have the capacity to organize public spaces, such as the Committee, are those who have economic, political or social power. As a result, the very organization of proceedings places limits on the potential for challenge by those who are not endowed with these forms of power. Richardson, Sherman and Gismondi speak to

the impact of discourses more subtle than the terms of reference and official purposes of consultation in their analysis of a pulp mill environmental public hearing in Alberta:

> There are [...] subtle ways that government and project proponents can limit debate and legitimate the desired outcome of the hearing, including dress, demeanour, and a choice of words intended to indicate expertise, trustworthiness, objectivity, and concern for the well-being of society. These techniques are simultaneously used to marginalize and dismiss concerns raised by anyone who questions or objects to the proposal. (1993:11)

Young identifies this type of subjugation as "internal exclusion" (2000:55). This form of exclusion occurs after subjects have been admitted to a public space for debate or discussion. Ideally, once in the space, they are part of the political process. However, Young argues that internal exclusion is typified when participants are not heard or respected or have their perspectives discounted because they do not align with dominant perceptions, in this instance, a conservative agenda vis-à-vis colonial relations. Young suggests that this form of exclusion is insidious as those who hold power within the space often perpetuate it unconsciously, thereby reproducing their power.[52]

Once within the public hearings, presenters were bound by procedural rules that promoted particular forms of language and behaviour, while subjugating other forms. The element of procedure over which the public (as both presenters and audience) had the least control was the physical structure of the hearings. The rooms were organized with the Committee seated at one end of the room and the presenter, in front of the audience, at the other end. All speakers had to use a microphone and Hansard recorded their presentations for the public record. While members of the Committee had access to the draft copies of Hansard to ensure 'accuracy' (Hansard, n.d.), members of the public who presented were not afforded this same opportunity. In addition, the rules of procedure that organized the hearings were highly formalized, with the Chair controlling all

engagement. The audience was not permitted to engage with the speaker or the Committee, leaving only the presenter and the Committee as discussion participants. When this framework was breached, the audience was actively denied a role in the proceedings:

> A Voice: Excuse me. I'd like to say something about the acoustics. I get about one out of every four words back here. It may be better to let the speaker go to where you are and speak. If he has a good speaking voice, everyone will hear clearly.
>
> **J. Les (Chair)**: I take your point. We're not going to be able to change the way the room is laid out.
>
> A Voice: But you hear my point – if the speaker doesn't use the mike and goes to where you are.
>
> **J. Les (Chair)**: Right. Carry on [...] (Nov. 1: 494)

The ability of the audience to hear the proceedings was of little concern to the Committee, at least in the instance that the remedy would have lessened the physical representation of the Committee's authority. The audience was also prevented from speaking out of turn through direct appeals to the need to maintain the formal structure of the proceedings or through ignoring interventions:

> **J. Les (Chair)**: All right. Any further questions?
>
> E. Boyanowsky [previous speaker]: Excuse me, Mr. Chair, but I didn't get a chance to respond to something that puzzled me.
>
> **J. Les (Chair)**: Okay, hang on. I'm not sure if it's appropriate. First of all, if you're not at a microphone, Hansard can't pick up you, in any event. I want to maintain some order, if you don't mind. So let's just leave it at that.
>
> Our next speaker is Gordon Gibson, and I propose that we now turn to him – not that I don't want to hear from you, Ehor.
>
> E. Boyanowsky: I just had a clarification question. That's fine. I can ask Paul [Tennant].
>
> P. Tennant: I'll still speak to him.
>
> **J. Les (Chair)**: There's a hallway out there, and I'd suggest you duke it out if you like. (Sept. 26: 72)

J. Les (Chair): [to presenter] Thank you very much, Stuart.

C. Dennis: Can we have time to ask him a question about...

J. Les (Chair): No, sir. No.

C. Dennis: ...the racist remarks this gentleman is making?

J. Les (Chair): The next presenter is Anne Spilker. Is Anne Spilker here? (Nov.1: 495)

It is not surprising that for several presenters, the structural confrontation with up to ten members of the Committee and subsequent engagement in formal political practices led to frustration and anxiety. Although the Committee reflected the broader patriarchal tendencies of the state through the use of rational, neutral and objective discourses (MacKinnon, 1989: 162), some presenters spoke from outside the location that these discourses created:

> Actually, this entire process is another strategy of intimidation, as I sit here and shake to give this presentation. When you consider that only those who would feel somewhat articulate, confident, educated or brave and bold would step forward anyway to give their opinions and suggestions, it's not the common people that would really come out. Therefore, you've left out a large proportion of people who might feel less literate, unconfident, suppressed, threatened or even victimized. In essence, you've already omitted the opinions and suggestions of a countless number of people, including some who may be affected most by this referendum. (D. Henderson, Oct. 25: 450)

This presenter's challenge regarding the accessibility of the proceedings was entirely unacknowledged in the comments that followed her presentation. Instead, the Committee member who responded to Ms. Henderson emphasized the purpose of the hearings as gathering direction on principles of negotiation, not questioning negotiation itself. In contrast to the dominant discourse of the hearings in which presenters were abstracted as subjects, locating themselves only in dimensions directly relevant to the substantive nature of the hearings, Ms. Henderson sketched the experience of a speaker from a location marked by, rather than objectively detached from, subjective reality. In

addition, she transcended the physical boundaries of the hearings and reconstituted as subjects those individuals who did not enter the physical public space because of the anticipation of their experience in the hearings. Given that this alternative discourse was outside of the model subscribed to by the state (MacKinnon, 1989), and the Committee, the use of a discourse rooted in immediate subjective experience was dismissed either because the Committee did not register the comment, or because it did not comply with the parameters of 'appropriate dialogue.'

This challenge touches upon the unscrutinized procedural requirement of the hearings that limited participants to those who were confident and articulate in formal settings. Given the settings of the fora, participants were not representative of the greater public, but were self-selected in their decision to participate as speakers. However, even within the hearings, different speakers were not accorded the same level of respect. Rather, those presenters who were not so confident or articulate faced another form of internal exclusion:[53] their arguments were diluted by the paternalistic role of the Committee:

> C. Gonzales: I wasn't going to come here because I was scared. I'm not an academic, but I think it's important to say something. I want something better for my children than I have grown up with. I really don't think this is the answer.
>
> [...]
>
> **J. Les (Chair)**: Thank you very much, Candy. I want to say, on behalf of the committee, that we very much appreciate you coming this afternoon and making a presentation. We know, and several other people before you this afternoon have said, that it's a somewhat intimidating process to make a presentation to a committee like this. We don't intend it to be that way, but having been on the other side of the table myself years ago, I know that it inevitably is that way. Thank you for you courage in coming forward. (Oct. 24: 405-6)

In his response, the Committee chair did not address the last comment by the presenter, but instead took a paternalistic approach. He focused on the affective portion of the presenter's submission, to the exclusion of the substantive content.

An explicit form of resistance employed at the hearings was to revise the terms of participation within the public hearings:

> Good afternoon. I'm Chief Dorothy Phillips from the Soda Creek band. I just wanted to state that my presence here should not be misconstrued as being a consultation process. I speak against the referendum, so I won't be taking any questions after I'm finished. You can send them to me. (D. Phillips, Oct. 10: 217)

In this quotation, the speaker temporarily inverted the power relationship organizing the hearing. Most conspicuously, she revoked the Chair's authority to mediate discussion and the Committee members' authority to ask questions. In addition, she redefined her role as a presenter: she was not a participant in a consultation or dialogue. Instead, she used the opportunity to criticize the referendum, for the public record, from a position she designated as outside the role assigned by the Committee. Finally, she required the Committee, as opposed to the presenters, to be proactive through her indication that if the Committee wished to initiate dialogue, they were required to invest additional effort to do so, and do so on the terms she set out.

Following Chief Phillips's presentation, the Chair allowed a comment and a set of questions. The Committee member alleged that the speaker has conflated Aboriginal rights with principles of treaty negotiation, insinuating that the substantive content of the speaker's presentation was misguided. In addition, the Committee member re-established power as Chief Phillips could not respond without breaking her initial stance. The questioner also sought to bring the speaker within the official terms of reference. Her initial questions were factually-based, seeking input about the Band's involvement in

treaty negotiations. Though not directly confrontational like the unrequited comment, this question was still an effort to break the speaker's determination not to participate on the Committee's terms, and to coax her into the procedure of the hearings. Chief Phillips provided yes and no answers to the first two questions. However, when asked to further comment on the treaty process, she indicated that she was not prepared to speak to the issue at that time.

While Chief Phillips's strategy may be considered moderately successful in that she did not cede power back to the Committee, her success was confined to the moment in which she spoke. Ultimately, her resistance did not impact the Committee's recommendations, nor did it fundamentally challenge the power organization of the public hearings. Rather, this power was limited to a narrow spatial and temporal location – her presentation – though perhaps appearing otherwise.[54]

The above examples of governed resistance highlight the ways in which the elite Committee wielded power to organize the structure of 'public' spaces. This elite not only controlled the process and behaviour of participants, but also determined which modes of resistance were appropriate; those deemed inappropriate were disregarded or neutralized and thus became impotent.

Citizenship

Several theorists of deliberative democracy including Jürgen Habermas (in Nancy Fraser, 1997: 69-98), Joshua Cohen (1997), and Wendy Brown (1995) have advocated the need for individuals to enter political spaces as community members, rather than as interested individuals. More directly related to the substantive issues of the referendum process, Cairns (2001) casts common citizenship as central to future Aboriginal/Euro-

Canadian relations in Canada. While Aboriginal peoples, he argues, are entitled to special status that recognizes their inherent rights, Canada requires citizenship as a commonality to bind relationships between Aboriginal and Euro-Canadian communities. This citizenship is founded upon a willingness of each individual to see beyond her immediate needs and desires and act in the spirit of the common good. Fraser (1997) is critical of this perspective, arguing that it is not possible to distinguish between public and private interests. Rather, she argues, such distinctions are techniques used to promote particular interests, values, and perspectives and discredit others as inappropriate or self-interested.

Canadian/British Columbian citizenship was an important construction in the public hearings preceding the referendum. The emergence of the 'common B.C. citizen' was due in great part to the highly regulated sites of political participation that homogenized behaviour and discourse, as well operating as an entity of, and for the benefit of, the Province. This model served to obfuscate the role of the state in driving the referendum on treaty principles: the state argued it was providing an opportunity for the 'common B.C. citizen' to participate politically rather than pursuing its own agenda. This common citizen had to see beyond his immediate needs to work towards shared goods that would serve the community – the province – as a whole.[55] Yet, the symbolism of the 'common B.C. citizen' was particularly ironic in the context of Liberal governance. Given that the government deemed "special interest groups" to be responsible for most of the challenges, the 'common citizen' was not embodied in teachers, doctors, nurses, health employees, lawyers, social workers, unionists, social assistance recipients, the

Anglican and United churches and their supporters against the referendum. Given these restrictions, the 'common citizen' turned out to be not entirely common.

Although members of the Committee welcomed personal stories, the implicit dichotomy between public and private privileged the former, and the public good that organized the hearings was that of economic growth.[56] However, contrary to its superficially public nature, this good could itself be identified as a private interest. Clearly, members of the Liberal party, along with their supporters in B.C. 's capitalist class, have personal interests in increased investment and greater corporate profits.

Not only did the rhetoric of citizenship have a controlling effect on the substantive topics considered to be eligible, but it further controlled citizens of B.C. The 'common citizen of B.C. ' is not merely a member of the public, but is a highly disciplined and obedient citizen. This citizen participates when called upon in the manner dictated and, otherwise, accepts the paternalistic benevolence and wisdom of the government. In terms of the referendum process, this citizen accepted and worked within limited terms of reference and complied with legislated rules of participation in completing and appropriately forwarding his ballot to Elections BC.[57]

Citizenship was also non-racialized.[58] The Committee recognized its mandate to " 'give *all* British Columbians a say on the principles that should guide... treaty negotiations...' " (British Columbia, 2001: 2) and explicitly noted that this population included Aboriginal peoples (D. MacKay, Aug. 29:4). Several committee members spoke to the need to provide access to Aboriginal people, especially women and those not involved in formal political bodies of their communities:

> It has certainly always been my objective to make the opportunity for native women, the average native person, the average non-native person to be

> heard in this process. That can best be done by going to as many areas and as many towns as possible. (**D. Chutter**, Sept.17:27)

> There are groups among the aboriginal [sic]community who just don't come out publicly with a view opposite to the elected council, partly due to the hierarchy system that they have. [...] There is a large segment of the aboriginal [sic] community who have concerns, and that's the women in many cases – not all cases, but in many cases – of the aboriginal [sic] community. (**G. Trumper**, Aug. 29:5)

In spite of aspiring to inclusivity, one Committee member explicitly recommended not to hold hearings in Aboriginal communities[59] and the final travel plan included no Aboriginal communities as sites for fora. In the end, the Committee used appeals to equal citizenship to deny the proactive inclusion of Aboriginal communities and mask the tacit racialization of the referendum process.

> The other [issue] that we've been discussing is meeting in native communities or non-native communities. I have a grave concern already with the tone of our discussion. This is really about British Columbians regardless of what you are. ... We can't get everywhere, and the reality is that this is for everybody, regardless of your race (**B. Lekstrom**, Sept. 5:18).

It was only within this narrow conception of citizenship defined and invigilated by the state that B.C. residents were able to engage with the government. The referendum process identified the citizen as obedient, reasonable, and non-racialized. In effect, this process selected homogenized participants who would not challenge the government's agenda.

Transcription

These formal political rules of procedure were not limited to the hearings, but extended beyond them as the hearings were transcribed. In the translation of oral proceedings to written text, individuals were subjected to further rules of procedure. The process of transcription carries elements of the broader power relations within which it

operates. For instance, unless bound to a specific nation, "First Nation" is not capitalized, nor is "Aboriginal."[60] Also, native languages that could be identified were noted in the text as "other than English," [61] as opposed to "in their native language," a distinction that reproduces English, and the dominant culture, as the referent by which Aboriginals, together with other minority groups, are to be judged.

Moreover, the transcription is not verbatim, but is modified according to an editorial style guide approved by the Legislature.[62] Thus, even spoken English was translated into formal written English with modifications to grammar and the insertion of appropriate punctuation. The result is a significant difference between a given spoken passage transcribed verbatim and its official representation:[63]

> Um, my mother, um, well, my, both my parents are the product of Indian residential schools. ... My mother wanted to be a nurse and she got up to grade 8 and they told her that "now, you have to quit being Indian, um, if you wanna become a nurse." Um ... my father, he was told, he was forced to quit talking our language. Um, and while he was at school had, had one of his cousins wash his mouth out with soap because he was talking our language.
>
> Um... so our kids, my kids, my, my daughter, my nieces and nephews, and the generation, the next generation, they're growing up knowing that that, that, that dark history that happened. And those kids are going to be angry about that. ... They're going to be very pissed off at the racism. Um, whether it's blatant or subtle. They're not going to like it.[64]
>
> Both of my parents are the products of the Indian residential school. My mother wanted to be a nurse. She got up to grade 8, and they told her: "You have to quit being an Indian if you want to become a nurse." My father was forced to quit speaking our language. The school had one of his cousins wash his mouth out with soap because he was speaking our language.
>
> Our kids – my daughter, my nieces and nephews and the next generations – are growing up knowing that stuff, the dark history that we have in this province. Those kids are going to be angry about that. They're going to be very pissed off at the racism, whether it's blatant or subtle. They're not going to like it. (R. Martin, Nov. 2: 593)

Even if the substantive meaning of the presentation was not changed in its official form, the authority to correct obvious mistakes in a presenter's speech (Hansard, 2002), in essence to make the presenter's words appropriate to the official public record, reproduces the authority of the state and demeans the speakers. In this capacity, expands its role as sentry to the official public domain not just in terms of organizing physical access (i.e. the fora), but by further regulating this access through the imposition of a standard of speech. Consequently, presenters at the fora were individually subjected to state controls even beyond their presence at these hearings.

Summary Report

For the remainder of the chapter, I will develop a critique of the state and will be emphasizing the language of the Liberal party as, once the public hearing were finished, this political elite had a monopoly on the official political discourse regarding the referendum process. The report of the Committee, "Revitalizing the Provincial Approach to Treaty Negotiations: Recommendations for a Referendum on Negotiating Principles" (British Columbia, 2001), was developed between November 2 and November 30, 2001. The strategically narrow terms of reference of the public hearings were reflected in the Explanatory Note of the Committee's report.

> This report limits its review to the matter at hand, the referendum questions, rather than undertaking a broader analysis of the treaty process and specific elements within it. For a variety of reasons witnesses provided advice on topics much broader than the focus of this Committee. We heard from a variety of people and organizations, all of whom provided insight and heartfelt advice on issues relating to the treaty process, Aboriginal history and culture as well as the referendum and its questions.
>
> However, because of its limited mandate the Committee has not summarized this material in its report. (British Columbia, 2001: 5)

Thus, material that highlighted the broader circumstances within which the referendum took place was written out of the official record. In addition, in spite of the fact that fully one-third of those who presented at the public hearings spoke explicitly against the referendum process, these dissenters were silenced by the enforcement of the very limited terms of reference. Meaningful involvement in public debate was ultimately limited to highly disciplined interlocutors who accepted the terms of reference, and by default the state's authority to limit debate to particular parameters of the substantive issue, and did not challenge the Committee beyond these terms. Having had the opportunity to challenge the Liberal agenda in a public space, dissenters had no tangible impact on the outcome of the Committee's report.

Recommended Principles

Neither did those who presented within the set parameters significantly influence the outcome of the hearings. While the principles recommended by the Committee were raised at the public hearings, several other contested themes also emerged. The fact that there was not consensus on these themes indicates that broader public debate, through the referendum,[65] would be important for such issues. These themes included the use of interim measures;[66] consideration of incremental settlements;[67] whether settlements should be to collectives or individuals,[68] settlement of lands in fee simple;[69] and setting a timeline to complete negotiations.[70] [71]

Ignoring several principles raised in the course of the hearings, the Committee based its recommendations on the principles *already framing the B.C. Treaty Process*:

> We did not hear any substantial opposition to the current principles and therefore recommend that they form the core of the referendum questions to be considered by the public. They have undergone much consideration by

> the Provincial Government and have served as a basis for negotiations thus far. (British Columbia, 2001: 7)

The Committee used these principles in a "negative-billing" sense: if participants did not reject the principles, they were assumed to endorse them. Yet, these principles were not presented for the public to consider; the advertisement for the hearings stated:

> This fall, the Select Standing committee on Aboriginal Affairs is accepting written submissions and conducting regional public hearings to hear what all British Columbians have to say about the principles that should guide the B.C. provincial approach to treaty negotiations.[72]

Instead of seeking input from British Columbians about principles that should guide the treaty process, in its summary report the Committee claims to have sought input from British Columbians about the principles that were *already* guiding the process (British Columbia, 2002). This failure of the Committee to communicate exactly what aspects of negotiations principles it was seeking input on provides evidence of the lack of consultation that the government actually intended.

Paradoxically, some Committee members rejected these principles:

> C. Gillis: The existing principles are perfectly functional [...]
>
> [...]
>
> **M. Hunter**: You said, I think, in respect to that, that you felt that those existing principles were functional. I guess the difficulty I had, as someone who's been fairly close to this through my previous life before I got into politics.... I'm a little confused about the principles myself. There is that set of principles announced in 1991. There is a set of principles – I think there are 18 or 19 of them – that the last government was operating under. If I'm confused, I'm sure lots of other people are. (Oct. 25: 458-9)
>
> The basic principles, I'll say, that the government has been taking and working under are flawed. (**B. Lekstrom**, Nov. 1: 532)

Although these Committee members explicitly rejected the current Treaty Process principles, these principles still formed the foundation of the Committee's recommendations. These principles had already been endorsed explicitly by the premier

prior to the hearings[73] and were backed by at least one member of the Committee during the fora:

> [...] we have 19 principles here that we've been following for the last eight years and that are, by and large, very good [...] (**R. Visser**, Oct. 3: 104)

Thus, public consultation on these principles was little more than an afterthought to get a public mandate to a commitment already made by the government, a commitment of which some Committee members evidently were not aware.

From the Liberal perspective, these principles ought to be problematic. By the Liberals' own account, the B.C. Treaty Process has not been successful. How, then, could reinstating the pre-existing principles for negotiation reinvigorate and revitalize the treaty process? The Liberal government's support for the current treaty principles was (and continues to be) inconsistent, at best, with its stated goal of revitalization.

A further failing in use of the principles to frame public input at the hearings was methodological in nature. On October 17th, a Committee member suggested:

> We presently have 19 principles that were agreed upon some time ago, but I don't think the people.... I would question if anybody in this room knows what those 19 principles are, which the treaty negotiators are presently negotiating under. (**D. MacKay**, Oct. 17: 302)

It is possible that the member was incorrect in making this assumption, and perhaps that would be best for the legitimacy of the fora. If he was not, however, the validity of the Committee's statement that no one significantly disagreed with the principles is compromised, unless the Committee members read the Hansard transcripts, an unlikely workload given their four-week timeline to produce a report. How could the Committee know whether they heard resistance to the principle if they did not know what the principles were? To acknowledge halfway through the hearings that no one on the Committee knew the 19 principles, and then have the Committee indicate that they heard

no resistance to these principles fundamentally challenges the validity and legitimacy of both the Committee's findings and recommendations.

Ballot

The referendum ballot was introduced to the Legislature on March 13, 2002, with a speech by the Attorney General, Geoff Plant. In this speech, Mr. Plant traced the recommendations of the Committee through to the ballot proposed to (and ultimately accepted by) the Legislature.

Reconciliation

The first recommendation of the Committee was that the government of B.C. undertakes a process of reconciliation, including an expression of regret. The Liberal government accepted this recommendation, stating that this process was important for a new relationship between First Nations and British Columbia and needed to be undertaken in consultation with First Nations. However, Plant opted to undertake this process at the treaty tables, instead of within broader public discourse, as was undertaken in the Truth and Reconciliation Commission in South Africa (South Africa, 1999).

The movement of this issue to the treaty tables has important implications for broader Aboriginal/ Euro-Canadian relations in B.C. Clearly, the tone of the ballot[74] would have been different if it began with a statement identifying the commitment of the Liberal government not only to revitalizing the treaty process but also to taking part in a reconciliation process. Such a statement would have recognized the individualized and institutionalized injustices committed against Aboriginal peoples in B.C. in the past and continuing today. By reserving statements of regret and processes of reconciliation for the treaty table, the broader public in B.C. is, as with all hegemonic colonial discourse,

screened from any official recognition of (historic) injustice. Instead, such recognition continues to be suppressed and Euro-Canadian citizens of B.C. are shielded from their complicity in this colonial regime.

Necessary Negotiations

Plant was unwavering in his position that the referendum was a legitimate democratic process, in spite of the strong protest against the referendum. Legitimacy, in this context, was highly contingent on the 1991 report of the B.C. Claims Task Force which recommended that "*political* negotiations"[75] should be the mechanism through which "First Nations, Canada and British Columbia establish a new relationship based on mutual trust, respect and understanding."[76] Emphasizing the "political" aspect of this recommendation, Plant drew unequivocally (note the word 'surely' in both excerpts) on common sense and then, for reinforcement, logically deduced the legitimacy of the referendum process.

> It must surely be the case that each party to the treaty process can bring to the table its own vision, its own objectives and its own mandate for what it seeks to achieve through these political negotiations. [...]
>
> And if these are, as the Task Force said, political negotiations, then it is surely right for the government to decide how to obtain a mandate supported by those to whom it is politically accountable: namely the electorate of British Columbia. We choose to do so by asking the people directly. (Plant, 2002a)

Having justified the actions of the provincial government, Plant moved to a thinly veiled warning for First Nations:

> Treaty making is a political negotiation to find common ground that will form the basis of an agreement. But no one is bound to agree to that which they cannot accept. If a First Nations finds that it cannot achieve agreement with the province and Canada on a mutually acceptable land claims settlement, then it will be free to determine its rights by litigation. First

> Nations who choose to litigate will find nothing in this referendum has in any way compromised their constitutional rights.
>
> But litigation is not the pathway to certainty or reconciliation. Litigation is expensive, adversarial and time-consuming. And in this area of the law it seldom produces certainty. (Plant, 2002a)

In this excerpt, Plant acknowledged the power of First Nations to refuse to be bound to agreements they found unreasonable, and their subsequent authority to litigate. However, he immediately made this legal avenue appear less appealing, alleging litigation's limited ability to resolve settlement issues. Clearly, if negotiation and litigation are the two options for settlements available to Aboriginal peoples, and if litigation is an ineffective option, then First Nations actually have one option: negotiation. Thus, Plant warned First Nations to remain in the treaty process if they seek certainty.[77] The implication of this warning is that First Nations seeking certainty may, in fact, be bound to negotiation tables whose fundamental principles they reject.

Plant's threat assumed that, for a variety of reasons, the process of litigation would be more problematic for First Nations than negotiation. However, all of the criticisms of litigation identified by Plant – that it is "expensive, adversarial and time-consuming" – apply equally to negotiated settlements. Currently, First Nations in B.C. hold $149 million in loans repayable to Canada and B.C. , loans received for the purposes of negotiating treaties (Kane, 2002). The current treaty process has done little to ameliorate the relationship between First Nations and Canada and B.C. And if, as Plant repeatedly claimed, the referendum was a legitimate part of that process, the B.C. Treaty Process may be more a source of irritation, than a means to ameliorate this relationship between First Nations and the state. Finally, it was the cornerstone position of the Liberal government throughout the referendum that the treaty process needed to be

reinvigorated because it had not yielded a single treaty in ten years. It appears that in terms of time, cost, and rapport the treaty process is comparable to litigation.

Ballot Text

While the Committee's report recommended sixteen questions, the ballot contained only eight. Numerous astute analyses have been done of the eight questions put forth in the referendum. I refer readers to such analyses by John Borrows and Louise Mandell in Appendix VII for an analysis of the substantive content of the questions. Recommended principles referring to process (recommendations 1-3), as opposed to guiding principles, were eliminated as outside the mandate of the referendum on the grounds that:

> Government does not need to seek a mandate from the voters on these three points. They represent the clear and unequivocal policy of the government. (Plant, 2002a)

Other principles for which the government determined it did not require a mandate from the public were affordability, finality, and equality.

> In thinking about treaty principles, it soon became clear that some principles are simply so fundamental to the entire process that they are not open to question. These fundamental principles include the following: treaty settlements should be workable and affordable; and they should provide certainty, finality and equality. To put the point another way, no one could seriously contend that treaties should be unaffordable or unworkable, or that they should create uncertainty, endless disputes, or inequality. (Plant, 2002a)

However, contrary to this logic, which Plant believed no one could seriously challenge, several of these principles have been, and continue to be, contested. In terms of affordability, Plant spoke clearly from the neo-liberal ideological platform of the Liberal government. Given the Liberals' hard-right mandate to balance the budget in four years in the face of tax cuts, Liberal definitions of affordability are fantastically

biased. Indubitably, First Nations' expectation of some form of compensation as well as the land mass required to establish economically viable reserves will be incommensurable with the current government's conception of affordable.

Also, speakers at the hearings challenged the 'obvious' notion that treaties should not lead to endless dispute:

> Rights evolve as Canada's understanding of the culture and people evolves. What is this ridiculous notion of achieving finality through treaties? The one great truth common to all systems of belief is that all things change. Impermanence is a given. Aboriginal rights must therefore also be allowed to change. When it comes to rights, there is no such thing as finality. (T. Jones, Nov. 1: 517)

> I'm not one of those who think that deadlines of short-term agreements are worth very much. Treaty-making is not about the final piece of paper. That's merely a final stage which will not be a final stage. The treaty process is a process. (P. Tennant, Sept. 26: 65)

These comments suggest that the basic approach of governments to 'complete' treaties may be askew. Contrary to the alleged common sense of this approach, many presenters felt it unreasonable to expect that problems arising between Euro-Canadian and Aboriginal communities over hundreds of years can, within a decade, be resolved in their entirety and in a way that will not be contested in the future.[78]

Finally, though Plant assumed that no one could dispute the entrenchment of equality in treaties, this principle was highly contested and is further analyzed in the next chapter. Thus, the Liberal government prevented its citizens from participating in dialogue on issues that are deeply controversial and worthy of such discussion. To permit discussion on these issues would allow British Columbian society to fundamentally re-evaluate the treaty process as it organizes relations between First Nations and the state.

Grammar

Further revisions to the questions found in the summary report were grammatical. With the exception of the final question on tax exemptions for Aboriginal people, all of the questions on the referendum ballot were abstracted beyond the people who will live the outcomes of treaty negotiations, as has been criticized by MacKinnon (1989). In the questions, there were no subjects; rather, principles appeared to be without connection to the parties involved. Speaking in the passive voice, the questions hid the power of those with the authority to write the questions. The mystification of power through this use of grammar is clear. For instance, the sixth principle on the ballot:

> Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.

would read quite differently if written as:

> Do you agree the government of British Columbia should have a mandate to create a third order of government? (D. Silversides, Oct. 3: 124)

While in both cases, the proposed question reinforces colonial sovereignty over First Nations, through the use of the active voice, the second question marks the voter as an actor. Thus, the possibility of the vote to choose, as well as the influence of their voting choice on the outcome of the referendum, and colonialism, are clear. In addition, the use of the active voice provides structural context of British Columbia as one party in the negotiations seeking a mandate from the public, as opposed to the ballot question in which no parties are seen to act, and federal and provincial interests are bound and wielded over the third party. When the active voice is used, the actions of both the voters and the Province are evident, rather than obscured, as in the ballot question. Thus, the referendum ballots, as text, served to reinscribe "ruling relations" – socially organized activities that ensure the maintenance of societal inequalities (Smith 1987: 75) – and

thereby maintain an institutionally inscribed colonizer-colonized hierarchy, in which Euro-Canadian citizens are exempted from recognizing their involvement in this hierarchy.

Moreover, the referendum principles were all speciously innocent and common-sensical (especially in the absence of a statement of regret). This discourse directed voters towards affirmative responses[79] and puppeteered the outcome of the referendum. More insidiously, this organization of the referendum greatly compromised the opportunity for participation in a truly democratic process. On the ballot, individuals were not provided with meaningful options. The questions simplified complex issues to seeming common sense, and gave participants the impression that they had had the opportunity to provide meaningful feedback to the government. In fact, participants were manipulated into agreement with the government, in an exercise that provided no possibilities to reject the Liberal government's agenda. Democracy, in this context, was the freedom to carry out the government's mandate.

Although the referendum was ostensibly a free vote, the rhetoric of the Liberal government (including the ballot) minimized the potential to vote against the proposed principles, both on logistical and moral grounds. From a logistical perspective, it was argued that the rejection of principles would further hamper negotiations, thereby delaying treaties necessary for economic development in the province. From a moral perspective, clear principles and all that would follow from them were cast as fulfilling an ethical obligation of society – the strengthening of institutionalized Aboriginal/Euro-Canadian relations in British Columbia. Thus the Liberal government manipulated

citizens without a critical perspective of provincial Aboriginal affairs into endorsing seemingly simple and obvious negotiation principles.

Leading up to the actual vote, citizens were directed to vote 'yes':

> The government takes a position on these questions. We would answer yes to each of them. Answering yes to these questions will provide the Province's negotiators with a clear mandate on issues that have arisen and will arise in the course of negotiations. With a renewed and clearer sense of purpose, better progress will be made at the tables, leading to agreements that will enjoy public support and build a strong foundations for enduring relationships built upon mutual recognition, reconciliation and respect. (Plant, 2002a)

The Attorney General went on in his speech to explain that a 'no' vote on a given principle would mean that the government "need not be constrained" by this principle in its negotiations. However, the message in the above quotation is clear. Answering 'yes' would lead to a clearer mandate, which in turn would lead to better progress in negotiations, which in turn would lead to agreements implicitly endorsed by the public, agreements that would provide the foundation for better relationships with First Nations in British Columbia. A 'no' vote would not, Plant implied, yield similarly useful results.

In sum, the ballot represented a physical manifestation of the colonial relations operating in B.C. Not only was reconciliation, in which injustice is acknowledged, removed from the public sphere, but the formal and informal power relations underlying such injustices were obscured through this decision and the grammar of the ballot. Moreover, the conduct of citizens, including First Nations, was controlled as the Liberal government strongly discouraged non-participation in negotiations and the rejection of principles. Located as part of a larger referendum process, these outcomes are consistent with the control exerted by the state through meretricious democracy.

Overall Significance of the Referendum Process

Democracy or Manipulation?

The format of the public hearings and the language of the official ballot reflected the current relationship between the state and First Nations, as well as the state and its citizens, and thus organized the referendum process to reproduce these social structures. Through the fora and the ballot, the state sought public endorsement of negotiation principles. Such endorsement tacitly included endorsement of the state's authority to rule First Nations. Thus both the hearings and the ballot were physical manifestations, albeit of different sorts, of a colonial state.

While First Nations were clearly subject to the political power of the Liberal government through these actions, British Columbian citizens, *en masse*, were also subject to the authority of the state. The public was moulded into disciplined citizens throughout the process, culminating in the ballot, in which they were pressed to agree to the Liberals' proposed principles. Even early in the process, however, the manipulation underlying the democracy was exposed:

> Are we as a province, perhaps, playing the television game of *Jeopardy*, where the government provides the answer, a preset policy, and we are to come up with the referendum questions? (J. Newall, Nov. 1: 498)

> In the end this referendum is not really about policy. That has already been set. Instead, this is about winning a debate that the Liberals are setting up. This is a debate about how to achieve the colonial objectives of purging both the moral claims of native peoples as well as the settler guilt that flows from indefensible policies of unilateral dispossession. (G. Haythornthwaite, Nov. 2: 601)

In spite of these allegations, the Liberal government pursued its agenda to an end that absolved it of the referendum outcomes.

Responsibility

Through the referendum, the Liberal government drew on norms of public responsibility by both appealing to and transferring such responsibility to the public. The logic for the appeal to public responsibility is as follows: the reinvigoration of the treaty process was an election platform of the Liberal party; the public demonstrated its approval of this platform by voting in a majority government; the Liberals provided a mechanism to carry out their election promise to reinvigorate treaties through the referendum process; finally, given this democratic tool, the responsibility fell to the public to fulfill their obligation not only to participate, but also to enable the Liberals to govern. This responsibility was informed not only by democratic obligations, but also by the social, political and economic obligations of both Aboriginals and Euro-Canadians in B.C. : the threat of continuing ineffective treaty talks loomed over the referendum vote, should citizens fail to exercise their franchise in support of the appropriate principles.

Ironically (which is not to say unintentionally), though the Liberal government as state acted unilaterally in developing and administering the referendum on treaty principles, its use of 'democracy' obscured its power. By staging an ostensibly democratic event that virtually guaranteed public endorsement of its preset principles, the Liberal government effectively repositioned itself as merely acting on behalf of its citizens – true 'government by the people.' Thus, responsibility for the principles was effectively transferred to B.C. voters.[80] These citizens may now be held responsible for further failures to negotiate treaties as the Liberal government has used the referendum as a means to exempt itself ideologically from the "political negotiations." Instead, it recast

itself as a pawn of the public will; this while simultaneously preserving its power over both Aboriginal and Euro-Canadian citizens.

Of participating in dialogue with government, which transpires in spaces arranged by government, Steve Biko wrote "if you want to fight your enemy you do not accept from him the unloaded of his two guns and then challenge him to a duel" (1996: 85). Throughout his work, Biko argued the impotence of formal political engagement with the government as a means to end apartheid. This system, he argued, was designed not only to control what could be sought after and achieved by those who participated, but also provided sites of 'free speech.' This alleged 'free speech' was dangerous in that it served to exonerate the state from international criticism of intolerance. Thus, within state-sanctioned political spaces, Biko saw participants as pawns, because the government ultimately had unilateral control over these sites.

Such perceptions of state-sanctioned sites of contestation have been made in less extreme political climates than that of apartheid. In his analysis of environmental public hearings in Britain, Ray Kemp (1985) argued that public hearings were, in actuality, empty democratic processes, staged by the state to justify the ideologies of state and capital. A similar analysis of environmental public hearings arose from participation in an Environmental Impact Assessment of a pulp mill in northern Alberta. Richardson, Sherman and Gismondi argued after local residents convinced the Review Board to reject the proposed pulp mill, the Alberta government pursued its agenda through a further review process. This inquiry was far more restrictive in scope, both in terms of content and public access. According to the authors, it constituted "kangaroo court" (1993: 176) to ensure the mill would be built.[81]

Conclusion

Pursuant to liberal democratic theory, the primary function of a liberal democratic state is to enhance the freedom and equality of its citizens. Superficially, the Liberal government's referendum on treaty principles, through its call for direct political participation and its embodiment of political equality, was evidence of its commitment to the freedom and equality of its citizens. However, upon closer examination, it becomes evident that through the referendum process, the Liberals did not act in the interests of their citizens in the democratic (as opposed to substantive) aspect of the referendum, but rather employed the referendum to pursue the preservation of state authority at a multitude of levels varying from contact with individuals, to official policy and legislation.

Thus, the fora served two functions less conspicuous than the official position of the Liberal government. First of all, the hearings ostensibly provided all citizens with an opportunity to be heard, an opportunity that essentially served as a safety valve for those fundamentally opposed to the process. Secondly, the hearings allowed the Committee, and ultimately the Liberal government, to gather input from the public, input from which the Committee would extract commentary appropriate to its cause, and provide this commentary as evidence of public backing. In sum, the Liberal government created the appearance of a strong public, whose deliberations actually influence state decision-making (Fraser, 1997: 90), in a political sphere that in fact debilitated such a possibility.

In this context, it was safe for the Liberal government to address a potentially explosive issue in which it was embroiled: the rights and title of Aboriginal peoples. The referendum process allowed the Liberal government to designate itself as the pawn of the

public, while actively seeking to reproduce its colonial authority over Aboriginal peoples in two ways. First, by holding the referendum, the Liberal government, as a provincial government, presented itself as holding an indisputable position at treaty negotiation tables. Secondly, by limiting the mandates of its provincial negotiators, the Liberal government effectively limited the breadth Aboriginal rights and title it was willing to recognize, while officially working within the parameters of legal decisions.

However, in the treaty referendum, it was not only the state that acted to reproduce its colonial privilege. Rather, many Euro-Canadians who participated in the hearings invoked discourses of liberal democracy to justify their privilege in a colonial regime. Through appeals to liberal democratic principles, many citizens, like the state, argued for the continuation of Western principles of justice in a society dominated by injustice. These calls to the status quo, however, were not without opposition. I shall now turn to the ways in which citizens at the public hearings drew on liberal democratic discourses to preserve their colonial privilege, and the counterhegemonic challenges they encountered.

Chapter Three: Colonial Citizens

In the previous chapter, I argued that the formal political structures and procedures governing an ostensibly democratic process, held under the pretense of enhancing the freedom and equality of its citizens, served to marginalize those who did not belong to the political elite, thereby silencing dissent. Moreover, citizens were manipulated through rhetoric and practices of democracy, while the procedure of this democracy was meretricious at best. Ultimately, through the referendum process, the Liberal government drew on hegemonic tenets of liberal democracy to legitimate the government's actions and reproduce its authority in the state-citizen relationship. However, it is important to locate this process within a broader societal context given the substantive issue of the referendum on treaty principles, and that is the purpose of this chapter.

In this chapter, I shift my focus from the procedures of the state specifically, to the discourses of liberal democracy raised in the public hearings by presenters and Committee members as either justifications for or rejections of the referendum and of principles. I find this project particularly interesting in that although these discourses arose in response to the terms of reference of the hearings (i.e. to define principles for negotiation), the principles of liberal democracy invoked are the very ones that made the referendum possible. Moreover, discourses informed by liberal democracy perpetuate a colonial regime over Aboriginal peoples in B.C. and Canada. Operating within the parameters of the hearings as commentary on appropriate or inappropriate principles, they were fundamental in legitimizing the hearings and the referendum process on this issue, as well as past and future democratic practices under a colonial regime.

Liberal Democratic Hegemony

As introduced in the first chapter, Hampton (1997) has identified five tenets of liberal democratic theory: freedom, equality, and the state's role to enhance the former two principles, as well as individualism and reason. In the previous chapter, I highlighted the disconnect between the philosophy of the state enhancing freedom and equality and the reality of the state buttressing its authority over its citizens. In this chapter, I will look at the ways in which citizens, participating in the public hearings, took up discourses of freedom, reason, equality and individualism to justify and perpetuate status quo colonialism, as well as the ways in which these discourses were challenged, both from within the same framework, and through the use of alternative discourses.

Freedom: Political Participation

The most obvious discourse throughout this process was that of direct democracy, given the pretext of democracy underlying the referendum. In this context, consistent with the conception of freedom described in the introduction, political participation in and of itself was constituted as a public good. More specifically, the significance of participation of individuals who perceived themselves to be shut out of the negotiations to this point was emphasized.

> I don't like the racial comments and the anger that I'm hearing from people. I think this referendum process is a very good process because it's allowing the common person to feel, for the first time, like they are part of the process and that their opinions are being asked for. That's a very important step in perhaps lessening some of the tension that we hear building. (S. Viens, Oct. 5: 188)

Not only did 'average' non-Aboriginals themselves justify their participation in the referendum process, but the Committee actively justified this participation as well. The incorporation of previously uninvolved non-Aboriginals was argued to be legitimate

on the grounds that, until this point, their interests had not been adequately considered and such exclusion was inappropriate:

> You've expressed your concerns about the referendum. Nevertheless, you have expressed some thoughts and some concepts – recognition, respect, reconciliation – that are consistent themes I've heard from aboriginal [sic] leaders before [...] in my community of Nanaimo, where negotiations are allegedly at a fairly advanced state, the problem is that people on the non-aboriginal [sic] side feel that recognition and respect have not been afforded to them. (**M. Hunter**, Oct. 4: 166)

As seen in this quotation, equality was tightly bound to the liberal democratic principles of freedom. If an Aboriginal leader argued that her people should have recognition, respect and reconciliation, it was only reasonable, given the principle of equality, that non-Aboriginals should be afforded the same in the context of political participation. Thus, the referendum process, as well as offering further participation of non-Aboriginal citizens in treaty negotiations, was justified on the grounds that non-Aboriginal citizens had been wronged through lack of consultation. The moral arguments launched by Aboriginal groups and their sympathizers against the referendum[82] were mitigated by the moral wrongs committed against the common B.C. citizen, who had not previously been able to participate in the process.

However, the contention that common citizens of B.C. have not had opportunities to participate in the current treaty process has been previously challenged. Alfred, contrary to those cited above, argues that non-indigenous interests are already comprehensively incorporated into the B.C. Treaty Process by way of Regional Advisory Committees, Treaty Advisory Committees, Provincial Regional Caucuses, the Treaty Negotiations Advisory Committee, and a toll-free number for the public to give input on related issues to the provincial government (1999:127), not to mention the representation inherent in the federal and provincial negotiating teams. The referendum and its public

hearings ostensibly provided a further mechanism of participation in the treaty process, allowing non-Aboriginals not affiliated with the above groups the opportunity to speak directly to the state, in addition to offering each member of the electorate the opportunity to cast a ballot.

However, following from Alfred, this participation was at best redundant given the multitude of ways in which non-Aboriginals can have input into the B.C. Treaty Process. At worst, this further means of inclusion in the treaty process for non-Aboriginals exacerbated overrepresentation of Euro-Canadian interests. Given that non-Aboriginal interests are already given considerable representation, the referendum can be seen as an effort to buttress the reproduction of Euro-Canadian colonial privilege.

Reason

In liberal democratic theory, individual citizens are expected to hold reasonable attitudes when engaging with one another (Hampton, 1997). The individuals who participated in the referendum process were reasonable as they agreed to participate fairly in cooperative deliberations and were committed to the burden of judgement. Not only were these citizens judged to be fair, but also benevolent:

> Back in 1917 the men of British Columbia voted to allow women to vote. Perhaps, although you seem rather pessimistic, the people of British Columbia in a referendum will decide to do the right thing. I tend to be somewhat more optimistic. I count often on the generosity of people and on their willingness to make an appropriate and correct and generous decision. (**J. Les**, Oct. 5: 197)

In this excerpt, the Chair did not problematize, or even recognize, the tyranny (or lack or benevolence) that existed in order for men to vote on women's rights of franchise. Rather, he tied their benevolence, as a form of reasonableness, to the exercise of freedom in a democratic setting. Arguments against the referendum that spoke to this process as

an exercise in "majority tyranny" or questioned the ethics involved in a majority voting on an issue directly affecting a minority[83] were dismissed on the grounds that in democracy, as a political system, possible infringements on minorities are mediated by the compassionate behaviour of the majority citizens:

> I just can't let this go. Your feelings were that it was unethical for the majority to make decisions for the minority. It begs the statement from me that the type of government we have in this country is called democracy. Democracy is defined in the dictionary as government ruled by a majority, with compassion and understanding for minority rights. Unless we involve the majority of the people of British Columbia in the principles that guide the treaty process, I don't think we have a democracy. (**D. MacKay**, Oct. 10: 225)

By this logic, the government in B.C. was obligated by the democratic principles to involve the majority, non-Aboriginal population directly in the treaty negotiation process. Again, underlying this logic was the principle of blind equality, extending beyond democratic processes. Throughout the hearings, individuals spoke to equality as an essential element of British Columbian, and Canadian, society. I will now turn to the principle of equality as it was manifested in the public fora.

Equality

There is tension in the multiple meanings of "equality," another tenet of liberal democracy, in Canada's colonial context. As Furniss (1999) points out, this denial of Aboriginal/non-Aboriginal difference is woven through alternative colonial discourses that neutralize the significance of difference, envision Aboriginal peoples as environmentally/culturally/morally superior, and establish Aboriginal peoples as the 'other'. While several authors have pointed to the significance of the 'other' in relationships of subjugation – for instance Hill Collins (2000), Memmi (2000), Loomba

(1998), and Said (1979) – appeals to equality mask this 'otherness' and with it, claims for protection due to marginalized status.

Equality is a crucial element in the referendum given the backdrop of Canada's (and Canadians') self-sanctifying obsession with equality, as well as the types of equality necessary to make the treaty referendum legitimate. The democratic process of the referendum required political equality in the form of 'one person, one vote.'[84] Thus, in order to legitimize the forum in which they were heard, speakers were obliged to reinforce political, and other forms of, equality. Any recognitions of difference that did take place transpired at a superficial level (for instance, artistic style – see below) that did not impede 'true' equality. At the hearings, equality was defined and argued experientially, constitutionally, (non-)racially,[85] morally and patriotically.

Equality of experience

In a briefing that took place prior to the public hearings, a Committee member imposed the first dimension of equality. An Aboriginal presenter spoke to the difficulties of living on a reserve. Following his presentation, the notion that Aboriginals in general, or the speaker himself, were experientially not equal to Euro-Canadian British Columbians was challenged by a Committee member:

> You spoke about some of the things that you saw were missing from your life. One of them was the B.C. Hydro that ran by your place, and you could hit it with a rock. They wouldn't serve you. That's not unique to yourself [...]. There was a small community up in my riding called the Meziain Junction with the same thing. The hydro line went right by the whole community and they couldn't access the hydro line. They had to run off diesel power. [...]
>
> You spoke about road condition, the gravel roads. Once again, I represent the largest geographic riding in British Columbia, and most of the access to my communities is on gravel roads. So I know from where you speak when you speak about gravel roads and how nice it would be to have paved road. I accept that, and I also wish we had it as well.

> You talked about the fact that a large number of your community members have migrated away from the village because of economic conditions, and that made me think back to my own childhood. My father was a coalminer. In 1957 the coalmines closed down, and 100 percent of the people in that small coalmining town were unemployed.
>
> Today, when I go back to where my home used to be, there's nothing there except trees, because the town was knocked down and reclaimed by Mother Nature. (**D. MacKay**, Sept 19: 47)

In his reply, the Committee member pointed to an equality of geographical and economic realities between Aboriginal peoples and rural non-Aboriginal peoples. All of the challenges raised by the presenter associated with living on a reserve dissolved as these experiences were argued to also exist off reserves. However, the necessary context of reserves as physical manifestations of colonial legislation – the primary differentiation between reserves and rural experiences – was completely ignored.

The equalization of Aboriginal and non-Aboriginal experience was not limited to physical obstacles but alleged in the mental realm as well. A psychological example of equalizing realities turned on the notion of fear:

> R. Hamilton: I grew up at a time when not just children but everybody in my community was afraid of the RCMP. One of my brothers, in my eyesight.... This is not hearsay; it's not a story handed down to me. I saw RCMP officers kicking my late brother's face around in my mother's kitchen. I saw blood spattered on the white walls, the white floor and the white ceiling of my mother's home because my brother was a drunken Indian asleep in bed. The RCMP came on the rumour that there was a drunken Indian in our house, and at that time we weren't allowed to consume alcohol. My mother said: "My son's asleep in bed. He's not bothering anyone." Well, they broke a bunch of bones, and after a year and a half of legal process, my mother had no sense of justice. That goes on today. We continue to be afraid, many people in our community, of the RCMP.
>
> [...]
>
> **B. Lekstrom**: More of a statement, then I'll get to the question. We talk about fear, and you related that from the youth. I think there's fear amongst everybody that we've got to get on with this [i.e. negotiating treaties]. (Nov. 1: 530-532)

Clearly, the fear of not completing treaty negotiations, which has minimal impact on the day-to-day lives of the majority of British Columbians, cannot be equated to a daily fear of uninitiated physical brutality. In his campaign against apartheid, Biko (1996) argued that white liberals who supported the anti-apartheid movement could not entirely be counted upon as their experience was comfortable. While anti-apartheid activism was a project for them, they did not live apartheid in the same way as blacks and clearly had less of a vested interest in overthrowing it. Yet, in the above quotation, the Committee member equated the lived experiences of Aboriginals and non-Aboriginals with respect to permeating fear. The parallel he drew ultimately belittled the experiences of the Aboriginal presenter through a specious comparison: the Committee member reduced fear surrounding physical assault to fear surrounding further possibilities for investment. In spite of the influence of the *Indian Act* and less formalized elements of colonialism, blind faith in liberal democratic principles led many non-Aboriginals to assume that the ways in which Aboriginals laid claim to inequality was directly paralleled in their own lives. They concluded that the formal equality of Aboriginals and non-Aboriginals translated accurately into equality of reality.

Equality = Sameness

Once equality had been established, both in the unconscious depths of the societal psyche and in overt discussion, a conflation occurred: equality became interchangeable with sameness, primarily in a legal sense. This sameness was perceived to be compromised by the special rights and privileges, mostly commonly tax exemptions and state-sponsored benefits, held by Aboriginals:

> The natives of British Columbia must decide to answer the question that our MP, Betty Hinton, asked at an all-candidates forum during this last election:

> do you want equal rights or special rights? I stand for the abolishment of the Department of Indian Affairs. Quite frankly, I am tired of the granting of special rights. Either you are a Canadian or you are not. If you decide not to be, you cease to receive the benefits of citizenship of this country—no more status cards, no more cheap gas and no more financial handouts. (M. Terlesky, Oct. 25: 440)

> The NDP, the native leadership and others have successfully manipulated, in my opinion, a significant portion of the public to think that the Crown should eternally make lottery winners and land barons out of aboriginals [sic] and their offspring because of some of the past injustices their forebearers have endured.[86] (B. Lloyd, Village of Port Alice Councillor: Nov. 1: 549)

These excerpts highlight the ways in which some participants understood 'equal' only in the context of sameness to mainstream Canadian culture. Yet, it is improbable that these participants, as located in their everyday realities, would want to be held to this interpretation of equality. The MP that the first speaker references is a member of the Canadian Alliance, a party predicated on the difference of western Canada from its central counterparts. The second speaker is a municipal representative of a village, the needs of which are different from those sought by more powerful urban centres. Although these presenters argue for sameness, the implementation of such a definition would be deleterious to them. Ultimately, sameness favours those who are already part of the elite, whose hegemonic privilege may be challenged by difference as by its very existence, difference problematizes the elite's ostensibly universal values and systems of relations.

As Furniss (1999) observed in her analysis of a public hearing relating to land claims in Williams Lake, non-Aboriginals' appeal to equality with Aboriginals was cast not only in legal and economic terms, but also through a framework of morality. According to this morality, and given that equality is equal to sameness, any recognition and analysis of difference is perceived to constitute racism. This racism is morally

reprehensible to the multicultural sensibilities of Canadians, and thus difference is prohibited in the name of equality.

> Nothing in a final treaty should continue to provide different rights and tax provisions even a century from now. This kind of racism must end. That's racism. (C. Johnson, Oct. 25: 444)

> This criticism is not just that this largesse is extended only to a segment of Canada's population – which, generally calculated, is about 3 percent – but the fact that these policies are based on race. Canadians rightfully abhor racism and are always in the forefront of efforts to stamp it out at home and abroad. Yet these policies and programs are based entirely on race and ethnic origin. (S. Wright, Nov. 1: 495)

The logical consequence of these arguments is that Canadians, as members of a multicultural, non-discriminatory society, should not recognize race at all. Multiculturalism, then, as a pillar of Canadian culture, is actually a policy of non-difference. By this logic, and given that difference is relative to a standard, non-racial, ethnic, national or cultural group should be recognized as different from the dominant Euro-Canadian culture – an insidious form of cultural colonialism. Politically, this conflation of equality with sameness has critical implications for the potential of Aboriginal self-governance. Several presenters opposed "race-based" governance and, through comparison to apartheid in South Africa, one presenter argued that such a system was not only inappropriate from a local perspective, but also from the perspective of the global community. In this context, not only would politics be racialized, but the speaker also predicted that a similar power imbalance and subsequent infringements on rights, as experienced by Blacks under South African apartheid, would transpire in B.C. :

> [...] I don't think the native self-government thing is the way to go either. All through my life we grew up hearing about the apartheid systems that there were in various parts of the world and that we still see today. I don't think having a race-based government is the way to bring people closer. I don't know how things are going to pan out as far as the treaties go from now on, but if you're a person living within these areas, I'm just concerned,

> if you don't fall into that racial background, what your rights will be. I'm very concerned about that. (R. Fuerst, Oct. 4: 163)

The irony of opposition to anything that was in any way racialized was that the entire referendum process was itself predicated upon racialized or ethnic difference. The very process of treaty negotiations recognizes some form of difference (and corresponding rights and title) for Aboriginal peoples in B.C. To negate this difference was to fundamentally challenge Aboriginal rights to treaties at all, a challenge from which the Committee strove to distance itself.[87] However, while the Committee actively challenged opponents of the referendum who argued it was ultimately a referendum on Aboriginal rights, in none of the above five instances in which speakers clearly challenged Aboriginal rights did any member of the Committee refer to the terms of reference for the hearings, nor did they "educate" these individuals as to the ways in which the proposed principles violated constitutionally recognized Aboriginal rights, in keeping with the formal control over the terms of references, as well as the educational purpose of the process.[88]

Who is Racist?

An implication of this 'equality = non-racialization' interpretation was that it stifled accusations of racism on the part of those opposed to the process. Given that in liberal democratic societies, all persons are technically equal, regardless of racial or ethnic background, charges of racism against a democratic process rooted in equality (one person, one vote) were argued not only to be unfounded, but maliciously strategic:

> Those who throw the charge of racism easily around and raise the spectre of denied rights do so to carve out bargaining room at the negotiating table. It is a strategy of sorts, but one that is reckless. [...] When well-known native leaders throw the racism charge around or falsely claim that a referendum would take away rights, such leaders are employing that rhetoric precisely

> because they know that most British Columbians are not racists. Such proponents attempt to intimidate the average British Columbian into never questioning what some native leaders propose. The strong rhetoric thus helps accomplish that. That is not helpful. (M. Milke, Canadian Taxpayers' Federation, Nov. 2: 564)

However, this perspective of equality – rooted in technical, juridical equality – was myopic. Catharine MacKinnon (1989) argues that socioeconomic stratification is not ameliorated by legally embedded conceptions of equality. Rather, the social freedoms or opportunities already held by some become entrenched at the time of legislation, while those without these social freedoms or opportunities are not only not granted these privileges through legal means, but are subsequently prevented from achieving these privileges because the law becomes an obstacle. As a consequence, status quo stratification is reinforced by legal conceptions of equality. The liberal democratic perspective that currently dominates Western politics is predicated on an assumption of equality that fails to translate from its juridical form in the Charter of Rights and Freedoms, to the everyday social relations of individuals and communities. Thus, propositions of legal (or technical) equality obfuscate social inequalities that exist and are reproduced over time. Consistent with the assumption that, to this point, non-Aboriginal citizens had been unfairly excluded from the treaty negotiation process, the legal/political conception of equality provided an important framework for the referendum process:

> C. Stephens (Nisga'a Heritage Chief; City of Prince Rupert Councillor): In short, what do you call equality? Starting from that side, sir.
>
> **D. Mackay**: Equality?
>
> C. Stephens: Yes.
>
> **D. MacKay**: You and I have the same equal rights under the constitution, before the criminal courts.
>
> **J. Les (Chair)**: Just so I understand this clearly, Cyril. We are here to hear from you.[89]

> [...]
>
> **B. Belsey**: I believe allowing everybody an opportunity to vote on a referendum is equality, yes.
>
> C. Stephens: For who? You? Not for the first nations [sic], no.
>
> **B. Belsey**: For all those that have the opportunity to vote. I think that's equality. If we said that only a certain group of people could or couldn't vote, I would think that's inequality. (Oct. 3: 120-3)

Providing Aboriginal peoples the right to vote, denied until 1960, accorded little means to challenge and overcome the structural inequalities organizing Canadian society. Even if enfranchisement[90] did put Aboriginal peoples on par *politically*[91] with non-Aboriginals, a logical stretch is necessary to equate formal electoral equality with social equality, as was pointed out in the public hearings.

> Some may say: "Well, isn't that what the treaty process is supposed to do: provide equal opportunities to first nations [sic] so that they can work towards an equal socioeconomic experience?" Perhaps that would work if we didn't have 150 years of inequality as the foundation for the present situation. It's like you and I running a 200-metre race. I start 100 metres ahead of you, but we both must run at the same pace. Your chance of catching up is pretty remote. (C. Knight, Nov. 2:571-2)

A less confrontational, but perhaps more insidious, promotion of equality arose from a paternalistic perspective vis-à-vis Aboriginal peoples. In these instances, the majority drew on concern for the minority:

> [...] in the Criminal Code under the Firearms Act, a 12-year-old child living on a reserve who is Aboriginal does not need to have a licence, does not need to have training. All he needs is a letter from the Chief or an elder to state that he needs the rifle for sustenance. As we all know, a lot of the reserves – not all of them but a lot of them – have drug problems, abuse problems, all kinds of problems, and it's a fact that the highest suicide rate is on the reserves. It doesn't make sense to me to give a 12-year-old child a rifle to go out there and hunt – by himself as well. (D. Nickason, Oct. 18: 375)
>
> We believe that the Indian Act is an archaic piece of legislation, as it essentially places every native as a ward of the state. This approach effectively strips natives of their self-worth and self-determination. The Indian Act must be dissolved and every native recognized as a Canadian

> citizen with equal rights and privileges. (S. Hartwell, Village of Telkwa, Mayor, Oct. 4: 134)

This approach to equality carries an inherent argument that Aboriginal peoples in Canadian society would be best served if governed in the same way as non-Aboriginal citizens, an argument consistent with the primary assertion of the 1969 White Paper. It also suggests that Aboriginal peoples are best governed by non-Aboriginals and non-Aboriginal institutions. The first speaker suggests that the social problems on reserves are exacerbated by exemption from the *Firearms Act*. The second speaker points to the psychological well being that will come to fully integrated Aboriginal citizens. It seems, however, that their primary assertions do not differ significantly from the more obvious motivations of the first speaker:

> I'm really pleased to see the Indian art throughout our province. I think it's fantastic, and I think that their culture and customs should be encouraged and enhanced. That doesn't mean that it has to take over everything. It doesn't mean that they can't be assimilated, if we want to use that word, into the rest of the province. (D. Nickason, Oct. 18: 376)

Although the paternalistic intentions of the speaker may be generously interpreted as a desire to 'do good, ' such 'good' is only understood by the speaker as participation in and acquiescence to the rules of the dominant Euro-Canadian culture. Again, though in a less obvious way, equality is conflated with sameness.

A further perspective on equality was that of patriotism – a plea for the common citizen to act for the betterment of the nation, without selfish motivations. In this sense, the well-being and greatness of Canada as a nation was invoked as a symbol around which individuals and groups of differing or conflicting interests were galvanized:

> Growing up as a young white person in Canada, I've always had a problem with that connotation, as far as people foisting blame on white people. I don't know what a white person is. I look around this room and I see Canadians. I see my neighbours. (R. Fuerst, Oct. 4: 162)

> Whether we are first nations, whether we are fourth-generation or fifth-generation Canadian, or whether we have chosen to come and live here, I think the magic word is that we are all Canadian. (M. Shepherd, Oct. 24: 414-5)

The perversity of this symbolism, however, is that Canada, as a nation, is emblematic of colonialism for many Aboriginal peoples, in contrast to its former existence as part of Turtle Island.[92] The norms, laws and moral values we use to define Canada originated from a small elite of White, European men, and persist in the favour of individuals of similar background. Exacerbating this favouritism is the fact that Canada, as a nation, exists at the expense of individuals of Aboriginal background whose Nations formerly held the land. Thus, it is patently unreasonable to expect support for Canada (or B.C. , in the case of the referendum process) above one's own interest from a group disenfranchised by its very existence.

Relationships to Canada served as an important touchstone for those affirming equality for all Canadians. From this location, those who challenged Aboriginal rights and title either rejected or co-opted terms defining special relationships to the land and the state. Specifically, presenters resisted any challenge to Canada's nationhood posed by Aboriginals as well as special designations for Aboriginals themselves.

In the first instance, speakers resisted the potential for Canada to be broken into smaller nation states, a possibility if First Nations are to be recognized as, in fact, nations:

> [...] our third concern is the threat the treaty process poses to Canada's sovereignty. We're asking the government to be sensitive and to consider seriously the terminology used in the treaty process, even the term "treaty" itself. We draw to your attention the UN International Covenant on the Rights of Indigenous Nations, part VIII, paragraph 34. In that document you will learn that a treaty signed between a state and its indigenous nation is subject to international bodies for dispute resolution. The inference here is that Canada's sovereignty is subject to challenge in an international court as a result of signing a treaty with our first nations [sic]. (B. Newton, Pinantan Pemberton Livestock Association, Oct. 25: 435)

While this speaker recognized Aboriginal peoples as peoples and sought to protect the Canadian nation from implications resulting from recognizing these peoples in a formalized way, many other speakers rejected the distinct status of Aboriginal peoples, thereby acting to further establish their own claim to the land:[93]

> Over the last 20,000 to 30,000 years there have been at least three and possibly four distinct waves of migration to North America. The term "since time immemorial" is therefore meaningless to me. Each migration affected, altered and modified the physical characteristics and, presumably, the cultures that predominated within each previous migration. In the end, we are all one. (D. Berkshire, Nov. 1: 556)

> I'd respectfully suggest that anyone who entered Canada before 1876 is therefore an aboriginal [sic] and should be given a reserve. (A. Knight, Oct. 25: 455)

> I think we are casting in aspic a group of individuals because they claim, and I believe it is heartfelt, that they have this special relationship with the land. My forefathers were Ukrainian. They had a special relationship with the land. People everywhere have a special relationship with the land. (E. Boyanowsky, CANFREE, Sept. 26: 56)

By drawing on Canadian patriotism, speakers invoked both the cohesive equality of common citizenship, as well as the technical equality provided for in the Charter of Rights and Freedoms, both of which served to reproduce Canadian sovereignty. This sovereignty was protected through the formal appeals to sovereign status, as well as the subversion of categories that challenge this sovereignty as seen above. Thus, even outside of formal political rhetoric, Canadian sovereignty was of primary importance.

Individualism

Another major tenet of liberal democratic discourse that served to justify not only the referendum, but a colonial relationship over Aboriginal peoples was that of individualism: the individual as primary to British Columbian society. Furniss locates this ideology of the "self-made man"[94] in a capitalist economy, in which advancement is

justified on the basis of equality of opportunity. The government's role, as in liberal democracy, is to intervene in the economy only to enforce fairness and equality. This ideal of society turns on the values of liberal democracy already mentioned, as well as the assumption that "material progress and prosperity can be achieved through an individual's determination, hard work, and self-sacrifice" (1999: 83-4).

British Columbia having been established as a free and equal society, thereby legitimizing the referendum process, it follows that the economic benefits accrued by British Columbians are directly proportional to their individual efforts and motivations. Thus, to deny individuals access to their own resources would be to impose limits upon them and thus to act inappropriately as suggested by the speakers who promoted a paternalistic form of equality. Less conspicuous in the public hearings was the obverse blame directed at those whose economic benefits are minimal. In this context, some presenters argued that allowing Aboriginals the opportunity to realize their individual potentials involved terminating their ties to the state, as well as relieving their burdens of collectivity, both in terms of band assets and band politics. Not only would breaking these ties allow the individual to prosper economically, but also psychologically:

> A formula of transition from blatant tribalism towards pluralism seems the only reasonable path for citizens of British Columbia. This transition must be focused upon the individual, not upon a tribal council. The ideal formulation would be that each native receive a personal parcel or parcels of title land with covenants attached allowing, over time, total release from the personal trust. (E. Andersen, Nov. 1:500)

> It is elitist not to respect the individual native and his right to manage his own life. Not to do so is a sign of disrespect. The same could be said in the parental context of respecting one's children's rights and ability to become independent citizens. It is our responsibility to cut the apron string. We do it gently, with love and attention coupled with training, to achieve this as best as possible. (C. Timmermans, Nov. 1: 492-3)

> It is a sad and sorry situation that we cannot seem to get beyond. No amount of money will gain the respect that the aboriginal [sic] people seem to want. By keeping the land in the control of the band, there is no way that the individual person can make decisions on what most of us do every day of our lives. Sometimes the decisions we make are wrong, but we must be responsible for those decisions ourselves. (K. Goodings, Peace River Regional District, Oct. 5: 180)

However, as with the paternalistic calls for equality noted above, these paternalistic arguments for increased individualism amongst Aboriginals resonate with colonial directives:

> I believe the question on the referendum should be: who do we deal with? I believe we should deal only with the individuals. [...] It also gives them self-respect. Maybe they want to be doctors or lawyers. Maybe they want to live in Prince George and have a house and raise their family like everybody else. It'll give them the head start they need. It'll help them assimilate, if you want to put it that way, to our society. They have to if they're going to survive. Let's give them the opportunity, as individuals, to do this. (R. Berry, Oct. 24: 415)

Perhaps this is the reason the CBC radio spoof "Dead Dog Café" hosts " 'Indians Anonymous,' the Indian self-help program that helps keep Indians who have become white from reverting back to being Indians again." This fictitious self-help program is ongoing given its success at maintaining assimilated Indians in the capitalist economy: "Think of the Indians who have been able to leave their past behind, the Indians who have been able to embrace capitalist and market economics with a glad heart [...]" (2001). The individualist values promoted by some speakers were directly tied to a market economy, highlighting the connection between liberal democratic values and capitalism.

Economic Hegemony

As argued in the introduction, although capitalism and liberal democracy are theoretically separable, in practice this distinction breaks down. Presenters to the

Committee complemented arguments rooted in liberal democratic discourses with those rooted in the market. Drawing on individualism, the speakers above emphasized the importance of economic opportunities for individuals available through the elimination of collectivism. Others, in contrast, pointed to broader economic considerations that related directly to the referendum, and to broader Aboriginal/non-Aboriginal relations in B.C. Providing access to capital for business was a primary motivation of the referendum and this connection between the Liberals' push to revitalize treaty negotiations; the Deputy Minister responsible for treaty negotiations articulated their neo-liberal economic agenda:

> The important implication of this [i.e. undefined Aboriginal rights and title] for the provincial government is that the provincial government's ability to authorize use and disposition of lands and resources is subsequently constrained, and that uncertainty discourages investment. [...]
>
> Turning to BC's objective, our objectives in negotiation are to clarify aboriginal [sic] rights and title in order to establish greater legal certainty around land and the resource base in this province. It's to create a climate for greater economic opportunity for all British Columbians including first nations [sic] and, importantly, to address and move forward on improving the quality of life for aboriginal [sic] people. Many of the government's new-era commitments speak to these objectives. (P. Steenkamp, Sept. 19: 32)

Supporters of the referendum, who, based on their presentations, likely supported a hard-line approach to negotiations, mentioned the economy only in passing. Not more than a sentence or so was required to indicate a need to access resources,[95] or the need to obtain certainty to increase investment in British Columbia.[96] This minimal argumentation reflects the hegemony of economics. Economics, specifically the capitalist economics tied to liberal democracy, have come to dominate social discourses. In the Gramscian sense, the capitalist class has effectively aligned the interests of other classes with its own and, in so doing, has garnered support for its agenda from those who are not advantaged and possibly disadvantaged, by this agenda. Throughout the

referendum process, the arguments used to promote capitalism were dominant and thus familiar so that minimal effort was required to communicate arguments such as the importance of economic development.

Arguments against the current treaty process, but with clear implications for land claims, were also couched in the trendy rhetoric of taxpayer rights. Through this discourse presenters called for the government to partake in negotiations so as not to indebt taxpayers:

> A much-desired end with certainty will give a reasonable amount of potential for wealth creation to aboriginals [sic], but at the same time not leave the rank-and-file non-aboriginals [sic] of this province paying in perpetuity towards the ongoing maintenance of a constitutionally entrenched hodgepodge of enclaves. These would leave the taxpayer perpetually paying for special benefits to a rapidly growing minority who deem such their right for an eternity. In other words, we British Columbians want to provide a reasonable potential for our aboriginal [sic] peoples to make livings, but many of us do not wish to burden our own progeny forever with the outworking of such things.
>
> I speak to avoid such fiscal disasters as Nunavut, the Yukon treaties and most recently, I believe, the Nisga'a treaty, which promised the world, so to speak, and yet only seemed to create massive and expensive out-of-scale bureaucracies that draw more and more from the dwindling funds provided by the taxpayer. (B. Lloyd, Village of Port Alice, Councillor, Nov. 1:549)

However, this alleged cost of treaty settlements was challenged:

> It's common knowledge that the cash component of the Nisga'a treaty is $190 million, and it's also common knowledge that if you factor in the land and the resources, it's approximately $500 million. Those two numbers sound like an extremely expensive treaty. I beg to differ. [...] Let's break down those two amounts. The $190 million divided by the total population of Canada, some 30 million-plus – that's not very much. I believe it's $6 and change per capita. The $500 million divided by the 30 million-plus total population of Canada is $16.50. I want to draw everyone's attention that [sic] the cash component of the Nisga'a treaty is paid, I believe, over 15 years. The $16.50 per capita is a little over a dollar a year. The $190 million by 15 years – remember it's $6 and change – is some 42 cents. If someone wants to talk about the affordability, it's beads and trinkets. (B. Assu, Nov. 1: 557)

From this quotation, it is evident that some presenters were able to find space to challenge the dominant capitalist discourse from within.

Indian Industry

Within the discourse of taxpayers' rights more specific attacks on the "Indian Industry" were launched: a group of lawyers, bureaucrats, academics and elite Aboriginal leaders involved in settlement negotiations, were claimed to be making a small fortune at the expense of Canadian taxpayers.[97] Individuals involved in this "industry" were accused of failing to actually finalize treaties as to do so would be to work themselves out of lucrative careers. In the context of individualistic scripture, individuals who participate in the "Indian Industry" were further stigmatized through their relationship to Aboriginals. The Indian Industry was guilty of helping Aboriginals, rather than letting Aboriginal peoples help themselves. Having their actions denounced as self-interested employment, implicitly detrimental to Aboriginals, the relationship of the "Indian Industry" to the Aboriginal communities connoted parasitism.

However, if any party is justified in complaints against the "Indian Industry", it is First Nations in B.C. who are collectively indebted $149 million in loans used to pursue treaty settlements (Kane, 2002). Moreover, such criticism does not recognize that the Indian Industry is a direct result of the imposition of processes of settlement framed by colonial legislation and practices. In this sense, many non-Aboriginal critics of the process of treaty settlement are themselves implicated in the Indian Industry, as the system reflects their colonial privilege. Therefore it is the system that facilitated the creation of the Indian Industry that is to be faulted, rather than the participants who operate within the system.

Referendum ≠ Capital

Economic discourses were employed not just by supporters of the referendum, but also by those who resisted it. These resisters introduced arguments against the referendum based on the potential implications of the referendum for capital. While seeking protection of their access to capital, these parties (including the business-oriented B.C. Chamber of Commerce) were concerned with the negative impacts on relations with Aboriginal communities resulting from the referendum process:

> ... there are some serious challenges facing this process. The first one, in our view, is the fear factor. Treaty negotiations and aboriginal [sic] rights are extremely sensitive issues. A referendum that relates to such issues is fraught with the danger that it could act as a lightning rod for unjustified animosity and negativity toward aboriginal [sic] people who are trying to resolve the issue surrounding their status as Canadians. (J. Winter, British Columbia Chamber of Commerce, Oct. 24: 398)
>
> I have to ask myself why a business-friendly government would want to inflame a potentially volatile situation.
>
> [...]
>
> Why bring about an atmosphere that is going to be inflamed, that is certainly not a business-friendly atmosphere, as far as businesses coming in. They don't want to come into a province that has these issues being fought on the streets and on the roads. (L. Johnson, Oct. 11: 261-2)

While sharing business-centred motivations with Mr. Johnson, the B.C. Chamber of Commerce couched its in the politically correct language of good faith relationships with Aboriginal peoples.

The assumption that the Crown owns land and business is entitled to access this land for resource extraction is central to the fear of negative relations with Aboriginal peoples. Assuming that the state and industry are entitled to such resources, any barrier to access these resources represents a loss of capital, economically speaking, but also a loss of status in the sense that previously marginalized indigenous groups suddenly

control what previously dominant parties believed to be theirs. Capitalists and those who actively support a capitalist regime have not only their power, but also the very source from which they derived and continue to derive power, challenged through Aboriginal land claims. Confronted with opposition to the current organization of power, those benefiting from the system perceived themselves to be victimized, regardless of the ways in which the system continues to be biased in their favour. Beginning from an assumption of Crown title to the land, these individuals identified the economic risks to local industries resulting from Aboriginal activism:

> For one thing, when aboriginal [sic] people are looking for attention from the media or from government or the public, it's very convenient for them to hold forest industry operations as hostage. They find it handy, so if they want attention for some of the issues they are pursuing, they will often resort to blockades that disrupt our operations. (M. Beets, Council of Forest Industries, Oct. 18: 384)

> I believe the native youth movement is waging economic and political terrorism on the residents of Sun Peaks and its owners at Sun Peaks Corp. I speak not only from what I have seen reported but from my own personal experience at Sun Peaks and watching the native youth movement in action. (M. Terlesky, Oct. 25: 440)

The choice of words in these presentations is interesting, especially given a post-September 11th context.[98] In a time when 'terrorism' is just cause for powerful nations to militarily invade and politically conquer other nations, and if you are not with the United States and its anti-terrorist campaign, you are against them (in the words of George W. Bush), using this term against Aboriginal groups suggests violence, otherness and the need for control. However, the "terrorism" to which the second presenter speaks (as he goes on to describe it) is the harassment of walkers and rude treatment – hardly terrorist activities.

Moreover, in these quoted statements, the actions against which Aboriginals are protesting are obscured. In the first instance, logging, itself a violent and controversial activity, is sanitized into "forest industry operations." In the second, the speaker does not identify the action Sun Peaks is undertaking that has spurred an active challenge by the Native Youth Movement: the proposed development of lands claimed by indigenous groups in the area.

In contrast, some presenters recognized that this mentality of victimization was inappropriate:

> I have to say that it's a strange world we live in, where healthy and prosperous citizens can somehow transform themselves into victims groups. We have people running around claiming that they're being victimized by first nations [sic] and that first nations [sic] are getting a free ride, and completely ignoring the fact that... I know that members of this committee have spent time on reserves. There's not a free ride there. Those people are suffering. We have to admit the fact that we're not victims and that first nations [sic] have much lower standards of living on average than we do. (M. Browne, Nov. 2: 598)

In spite of these challenges based on the economic and social statuses of Aboriginal peoples, the notions that the Province was the legitimate title-holder of unceded land and that this land was to be developed for the betterment of the provincial economy were so dominant as to be unspoken in the public hearings. The risks to a capitalist system, without revitalization of the treaty process, were couched in economic discourses such as prosperity and stability. This is not to say, however, that arguments rooted in the same economic framework were not used to subvert this hegemony.

Resistance and Economy

In her analysis of a public hearing on land claims in Williams Lake (1999: 138-163), Furniss highlights the use of dominant discourses (including the Constitution,

family, and work ethic) by audience members responding to right-wing presentations by a panel of Reform MPs and Melvin Smith, a former deputy minister in B.C. and proponent of the 1969 White Paper. In response to the critique of land claims put forth by the panel, Aboriginals and sympathetic non-Aboriginals presented arguments in widely understood conceptual economic frameworks such as labour-management relations, the significance of resource industries, and the importance of a capitalist work ethic. These discourses affirmed the values of the non-Aboriginal population, but also provided a space within which Aboriginal presenters could establish a point of reference for the dominant culture from which to draw attention to cultural difference and suggest alternate application of the values. Economy, as a hegemonic discourse, provided a site for potential subversion of dominant values. In the public hearings, those who resisted the referendum process also drew on discourses involving the need to protect and 'grow' the economy:

> British Columbia is going to be judged by the rest of Canada and the international community and, most importantly, in the market by how it is dealing with aboriginal [sic] property rights. The business of British Columbia is dependent on the reconciliation of these property rights, our aboriginal [sic] title and other interest in the land, the Crown title. How much economic activity takes place in B.C. will depend on whether there is a fair and equitable settlement with first nations. This is a blunt legal and economic reality of the situation we are facing because of the whole question.
>
> In this environment British Columbia cannot afford to have a majority population vote no on a social and legal justice [sic] in a referendum that would tell the rest of the world that non-natives in B.C. are going to try to finish the job their forefathers unconsciously tried to do. This is denying Indians our property rights. This is politically and morally unacceptable and therefore economically unwise, as most British Columbians participate as workers in the economy and are not leaders. (M. Werstuik, Westbank First Nation, Oct. 11: 238)

This approach was also evident at the public hearings on negotiation principles: anti-referendum, pro-land claims arguments were cast in the rhetoric of capitalist economy:

> I have to try to make it very clear that we're in total opposition to the referendum. I want to maybe caution you on the work that's before you. I'm afraid that it might create some civil disobedience. [...]
>
> Marshall, which came out last year on fishing in New Brunswick, actually created more conflict. There's a risk we run. The court there made a ruling in our favour and then, for whatever political or legal reasons, went back and did another ruling. The ruling that came out really encouraged the conflict that took place in Burnt Church last year, so we both run the risk of running into that same problem in the future. That, coupled with the uncertainty and conflict created by these fundamental property rights issues, has cost British Columbia billions of dollars in economic growth and investment opportunities over the past few years. (B. Hall, Sto:lo Nation, Oct. 17: 295-6)

However, many have been leery of participation in the dominant discourse of capitalist economy. While some argue that the expansion of capitalism is a necessary means to empowerment (Flanagan, 2000: 114, en 7), Alfred (1999) counters that models of governance based on perpetual growth and accumulation (those proposed by Western governments) are fundamentally incompatible with effective forms of indigenous self-governance because they emphasize profitability over community well-being, and compromise traditional values including stewardship of the land. In addition, he argues that while valuable development may exist, unless carefully and critically undertaken, partnerships with the state and industry may simply move Aboriginal communities into further relationships of dependency (1999: 116). Ratner, Woolford and Carroll (2002) also argue that First Nations now face "new colonization" pressures in the form of market liberalization, which have replaced legal and physical coercion. While presenters were able to engage the hegemonic ideal of capitalist economics to facilitate their participation,

the use of capitalist arguments to challenge the referendum process carries consequences. To take up this discourse as a means to refute the referendum is first to recognize and accept its dominance, dominance that currently poses particular problems for colonized communities.

Referendum Proce$$

A more specific target of anti-referendum presenters was the cost associated with the referendum process. While the Liberal government was in the process of cutting all ministerial budgets (except health and education, whose budgets were frozen), they spent just over $3 million on the mail-in referendum (Elections BC, 2002)[99] in addition to $474,000 for the public fora.[100] Thus, in the context of the simultaneous actions of Liberal government, the money spent on a controversial referendum was argued to be inappropriate:

> You're [i.e. the Select Standing Committee on Aboriginal Affairs] a remarkable luxury for a government that is intent on reducing costs and making redundant as many people as possible. (R. Nursall, Nov. 1: 544)

However, some presenters saw beyond the fiscal costs of the referendum:

> My final point is that referendums are expensive. Your cost-conscious government should drop the idea on that basis alone. I believe, however, that the costs if you proceed will be far more than monetary. A referendum will cost the goodwill of first nations [sic] people, our global reputation on an issue of profound and fundamental human rights and social harmony. I reiterate: please do not proceed with the referendum. (A. Carr, Leader of B.C. Green Party, Nov. 2: 607)

In this presentation, cost as a concept from economic discourse was subverted as its meaning was expanded beyond hegemonic economic goods to include social and political factors.

I have identified the ways in which the hegemonic discourses of liberal democracy and economy were used both to justify the referendum and the backdrop colonial regime, as well as the ways in which these discourses were subverted to challenge the hegemony. However, both of these discourses work from within dominant discourses to challenge those very discourses. Adrianne Carr, in the quote above, meshed the hegemony of economy with a counterhegemonic discourse of social justice. It is to these counterhegemonic discourses, located outside of liberal democratic and economic discourses, that I now turn.

Beyond Hegemony

Even after a social or economic class has integrated the interests of other classes into its system of values, thereby attaining hegemony, this class must maintain the consent of the other classes (Simon, 1991). In B.C. , the process of the referendum on treaty negotiations brought into focus the hegemony of liberal democratic and capitalist discourses. While the state and many participants subscribed to these discourses to justify both the referendum process and the colonial regime, these arguments were continually destabilizing by counterdiscourses within the public hearings. Some of these resisters used dominant discourses, but shaped them to subvert colonial agendas. Other resisters paralleled the refusal of Ratner, Woolford, and Carroll (2002) and Alfred (1999) to engage in the dominant discourses. Many presenters who were resistant to either the referendum process because of its substantive issue, the current state of Aboriginal/non-Aboriginal relations in British Columbia or Canada, or both, spoke through alternative discourses, the first of which was social justice, a discourse introduced by Adrianne Carr in the previous quotation.

Social Justice

Social justice was the primary discourse used to argue against current power structures, and the referendum as a manifestation of these structures. This discourse involved drawing on broad contextual backgrounds, challenging notions of participatory democracy and economy with ethical obligations resulting from historical and contemporary injustices against Aboriginal peoples. However, this social justice perspective was strongly contested by those subscribing to colonial hegemony.

Both Aboriginal and non-Aboriginal presenters addressed the issue of social justice and located the referendum within a larger realm of injustice that began with the colonization of Canada and B.C. These presentations involved a variety of subdiscourses such as legal, anti-colonial and emotive discourses:

> As any historian will tell you, the Okanagan nation has never ceded, surrendered or sold our rights to the land. We've never signed any treaties with the British Crown or with British Columbia or any other government body. To date, there is no legal interest in conveying our ownership to the land. That ownership is not recognized by British Columbia, by Canada or by basically anybody. We have never been compensated in any way, shape or form for the loss of our lands or resources, and there has been no reconciliation.
>
> The history of our people is well-known. Just as any native in North America – in B.C., anyway, in particular – we have never been conquered [by war]. We have been conquered by disease, by an industrial society coming in and taking over and by government policies of trying of assimilate us into the general populace of Canada. It's still ongoing today. There has been statutory discrimination, and racism has deeply affected us for generation and continues to affect us.
>
> Despite all of this strife, we've continued. Our people have always been here, and we will always be here. The people today still fight for the same rights that our people have for over a hundred years since colonization. There will be future generations, because we pass these strengths on to our next generations for them to continue to struggle and fight. This is going to be ongoing forever. (M. Werstuik, Westbank First Nation, Oct. 11: 237)

This speaker highlighted the obligations of a colonial society to its own foundational institution of law, while drawing simultaneously on an unquestioned principle of Western societies – that of property. The tension in this presentation was strong: having located the similarity between Aboriginal and non-Aboriginal communities in terms of legally recognized property rights, the speaker differentiated Aboriginal peoples from the "general populace" who, along with their government, are responsible for the current social and economic location of Aboriginal peoples in B.C. In the final paragraph, the speaker turned again to the similarity between Aboriginal and non-Aboriginal communities by highlighting the strength of Aboriginal peoples.

The recognition of strength is significant as it provides contrast to shallow representations of Aboriginal peoples assumed by some citizens of B.C. , including one Committee member:

> I worked in a number of native communities, and I saw the poverty and the alcoholism that were so prevalent in homes. I have to ask you, because you mentioned that you've seen it from a different perspective. You've seen it from both sides. What was the driving force that got you into education and got you to where you are today? What did you see that made you want to get out of that cycle that I've seen so much of and I'm sure you have? (**D. MacKay**, Nov. 2: 596)

Here, the Committee member implicitly suggested that the presenter, having grown up on a reserve, was pre-destined for the cycle of poverty and alcoholism until he (as an individual) managed to get himself through high school and into university. While poverty and alcoholism are admittedly problems confronting persons in Aboriginal communities, the Committee member's comments suggest that there was no hope for this youth and his escape from the dregs of the reserve was nothing short of fantastic. This comment demonstrates a disturbing lack of respect for Aboriginal persons who are not

poverty-stricken or alcoholics, as well as a refusal to recognize the colonial circumstances that are necessarily implicated in the situations of those who are.

Another alternative discourse through which presenters challenged previous colonial acts drew on emotive personal or familial experience:

> We had the Indian Act imposed on us. We had residential schools imposed on us. We were denied the vote in this country until 1960. The debate before that vote was granted to us was about whether or not we were human. My grandfather was in his seventies at that time, and my father was 39 or 40 years old. This country had a debate about him, about my grandparents, as to whether or not they were real human beings. (R. Martin, Nov. 2: 593)

For this particular presenter, the Committee had no questions or comments. However, for other individuals who presented the lived side of colonial history, the Committee acknowledged the presentation and went on to draw the speakers into the terms of reference of the hearings.[101] The significance of these efforts was that principles for treaty negotiation were emphasized at the expense of lived experiences of colonialism. As in Chapter Two, the Committee acted to reproduce its control over the content of the hearings. Moreover, appeals to social justice were mitigated as negotiation principles took primacy over these experiences.

However, some presenters avoided efforts at co-optation by directly connecting the referendum with injustices of the past.

> As I did my historical research over the years, a very disturbing pattern started to emerge. It was sort of a constant collusion between the federal government, their Indian agents, the provincial government of B.C., the church and even corporations to coerce, deceive and cheat the aboriginal [sic] people. [...] Why do I bring up these injustices of the past? Because in this referendum I see a return to that darkness. (C. Hooper, Oct. 24: 420)

By highlighting his distaste with colonial history and directly implicating the referendum in that history, this speaker placed himself outside of the scope of the

Committee and its hearings. This location is ironic, however, given that it still exists within the physical and political space of the hearings and the Committee.

A more specific theme that directly implicated the referendum as a contemporary act of injustice was the use of a democratic (read: majority rule) mechanism when there was clearly a politically disempowered minority:

> The Sierra Club really believes in a fair and just society. We believe it is about respect. We know that the first nations [sic] have taken offence at the proposal for a referendum and that they have opposed it. We also oppose it. A referendum has the potential to increase divisiveness in our province and has the potential for increased racism and increased uncertainty. I do believe it is not the way we'd move forward in a just society. A referendum is not in the public interest, and it is not respectful. In a just society the majority does not vote on minority rights. (V. Husband, Sierra Club of British Columbia, Nov.2: 607)

The broader context of Aboriginal/non-Aboriginal relations (or lack of such relations) also provided a platform from which speakers could address the injustice that tainted the referendum. These speakers undermined the logic of participatory democracy through referendum, while highlighting ignorance about and discrimination against Aboriginal peoples.

> Referenda based on minority issues are inherently problematic, since the protection of minority rights and interests cannot simply be subject to the will of the majority. [...] The knowledge exhibited by British Columbians about the history of aboriginal [sic] and non-aboriginal [sic] relations and about the current situation of aboriginal [sic] peoples, including their rights and responsibilities within the province, is at best extremely mixed. Although we have no doubt that when informed, individuals in this province may be capable of engaging in constructive debate on this or any other subject, they are not at present adequately informed. (A. Eisenberg, British Columbia Civil Liberties Association, Nov. 2: 603)

> Just two years ago in the Vanderhoof shopping mall, this same woman – who was the recipient of the Order of Canada, an honorary degree from UNBC [University of Northern British Columbia], and was Vanderhoof woman of the year – was having a conversation in a Carrier language with her lady friend who's also in her eighties. They were ejected from the mall by the security guard who, when later asked why he did it, replied that he

> couldn't understand what they were saying, so he assumed they were drunk. This intellectual giant, with his deep understanding of aboriginal [sic] issues, will be voting in your referendum along with thousands of others who know nothing of aboriginal [sic] history or treaty issues and couldn't care less – people whose negative stereotypes of an entire race are formed by their observations of a few street drunks and whose closest contact with natives or native issues is driving through a reserve with their windows rolled up and their doors locked. (C. Hooper, Oct. 24: 420)

> There's a clear history of systemic and social prejudice in Canada and B.C., from the earliest days of exploration and colonization to the contempt of the native culture shown by Chief Justice Allan McEachern in the more recent Gitxsan-Wet'suwet'en case in 1991. There's been a striking lack of tolerance, not to say acceptance, of beliefs, values and attitudes which run counter to the majority social view. I don't believe that the general non-aboriginal [sic] population is free of such prejudice, and the outcome of a referendum is almost certainly preordained. (O. Mott, Oct. 5: 196)

From the perspectives of these presenters, the referendum was fatally flawed given the general nescience of prejudice and colonialism, both historical and ongoing, in British Columbia.

In a more global setting, the following speaker drew on the fear of bioterrorism resulting from the terrorist attacks on the United States to achieve psychological empathy and moral accord with the experiences of Aboriginal peoples. However, this argument proved too fundamental a challenge in its alignment of re-settlers with terrorists.

> D. MacKenzie (Indigenous Business Magazine): ... For aboriginal [sic] persons and communities in British Columbia to be treated with consistent fairness could constitute a dramatic paradigm shift. Smallpox has been recently identified as likely the most potentially damaging weapon usable by bioterrorists. That weapon was deliberately used against aboriginal [sic] populations in this province in the late nineteenth century. It is a deplorable and unconscionable political and historical legacy that is quite incontrovertible and redounds redolently to our ongoing shame.
>
> ...
>
> **D. MacKay**: Donald, I can't let this go. We've heard presentations from all over the province. We've heard from a number of people about some of the bad things that happened since the colonization of Canada by the European settlers and some of the pitfalls and terrible things that have happened to our native population. I'm really having trouble accepting your

> comment in the paper here where you said that smallpox was deliberately used against aboriginals [sic]. I'm just amazed that you would say that. I can't say any more.
>
> ...
>
> I find it personally offensive to think that my grandfathers and my great-grandfathers would have done something as deliberate as what you're suggesting in your paper. I just find it offensive. I just want to leave it at that. (Oct. 18: 388-390)

While the Committee member was personally offended at this historical perspective, the recommendation by General Amherst to give gifts of smallpox-infected blankets to natives during an uprising in 1763 has been documented (e.g., Dickason, 1992: 183). This historical event points to some Whites as actively evil-minded colonialists. In response, the Committee member challenged the historicity of the event on the grounds that morally it was not possible, thereby challenging the factuality of this incident itself.

In other instances, the injustices of a given event committed against Aboriginal peoples were denied, even if the event was accepted factually. Supplemental to obvious contestation of historical occurrences, conservative discourses that advocated moving beyond the past existed in strong tension with discourses of historic injustice.

> We cannot revise history to eliminate the last 150 years of frustration. For this process to reach a successful resolution, we must focus on understanding what is fair and affordable today and in the future. (J. Spencer, Canada West Ski Areas Association, Oct. 25: 437)
>
> We must also accept that we can never achieve ideal solutions here, nor can we fully compensate for wrongs of the past. We must find solutions that give fairness now and in the future. (C. Timmermans, Nov. 1: 493)

This perspective has been critiqued in post-colonial writing in different contexts. Mohanty suggests that those who assume that society can collectively put the past behind them and move forward without looking back at injustices such as slavery and

colonialism overestimate the generosity of those who have been previously marginalized. Such a position, she argues "seems predicated on the erasure of the history and effect of contemporary imperialism" (1992: 78), an erasure that is in the better interests of those who are implicated as exploiters, than those who have been and continue to be exploited.

Even when confronted with contemporary examples of injustice, ultra-conservatives dismissed the substantive content of these allegations, arguing that the majority of society was being manipulated through guilt:[102]

> A corrosiveness has grown up around these issues that has its genesis in the notion of reparations. This type of thinking is the driving energy for almost every social conflict on this planet today. It is nearly impossible not to recognize how entrenched Canadians are in the notion that somehow the general population has a debt to pay to Canadian natives. The skilful exploitation of the idea of a collective guilt has elevated fewer than one million people, out of 30 million, to a special status. (E. Andersen, Nov. 1: 500)

This speaker reframed the roots of social justice discourse. He argued that it was evidence of strategic manipulation, rather a moral awareness of fundamental inequality and unfairness.

Within the public spaces of the hearings, the counterhegemonic discourse of social justice was dominated and deflected by appeals to liberal democratic principles and sometimes explicitly subject to censure. Anticipating such impediments to the possibility of meaningful deliberation, a more radical strategy of resistance was devised by those who opposed the referendum process

Disengagement

The second strategic discourse used to challenge the referendum and Aboriginal/non-Aboriginal relations in B.C. was disengagement. The strongest action taken against the referendum was a boycott on the part of First Nations. While some

Aboriginal peoples and some representatives of First Nations did present at the public hearings, the First Nations Summit[103] had passed a resolution to boycott the referendum and associated process prior to its inception. This boycott was explicitly taken up by the more radical Union of B.C. Indian Chiefs (UBCIC) during the mail-out referendum. Throughout the referendum process, Chief Judith Sayers of the Hupacasath band was a key opponent, denouncing the referendum and calling for citizens to boycott it. In addition to these Aboriginal activists, active boycotts of the referendum were called for by a multitude of non-Aboriginal groups. Groups that publicly condemned the referendum, calling for their members and supporters to boycott the referendum included the David Suzuki Foundation;[104] Vancouver Association of Chinese Canadians;[105] British Columbia New Democratic Party;[106] Canadian Union of Public Employees;[107] British Columbia Teachers' Federation;[108] and the British Columbia Nurses Union.[109] These, and many other, organizations collected protest ballots that were forwarded to an independent auditor to be counted,[110] while other opportunities for disengagement ranged from not voting in any capacity[111] to a contest for best ballot hat, origami, bonfire, limerick or art installation.[112] Thus, not only was there disengagement at the public hearings, marked by the official absence of First Nations representatives, but also in the voting process where space was created for active non-participatory alternatives to the narrow option provided by the government.

Though far-removed from the experience of apartheid South Africa by time and space, the insights of colonized Blacks remain relevant to this situation. Biko (1996) argued that leaders who participated with the apartheid government to establish Bantustans[113] seriously underestimated the power of the system over them. While these

leaders maintained that they were working at change within the system, Biko believed that the creation of Bantustans was so politically derelict as to disable all efforts by Blacks living there to initiate any sort of change. Rather, Biko argued, such participation sanctioned the apartheid government by recognizing it and accepting its assistance. He summarized his contempt for the use of the negotiation and creation of Bantustans to challenge the apartheid government as follows:

> The argument runs that all other forms of protest, disagreement and opposition are closed to black people and that we can call the bluff of the government by accepting what they give and using it to get what we want. What most people miss is the fact that what we want is well known to the enemy and that the Bantustan theory was designed precisely to prevent us from getting what we want. The authors of the system know it best and they give us any concessions we may demand according to a plan prearranged by them. When they created these dummy platforms, these phoney telephones, they knew that some opportunists might want to use them to advance the black cause and hence they made all the arrangements to be able to control such "ambitious natives." (1996: 84)

While Bantustans mirror reserves in Canada, the more salient argument put forth by Biko is the impotence of seeking change from within structures of oppression. Given the recommendations of the Committee and the questions on the official ballot, it is clear that little was actually up for deliberation in the public hearings, and equally so in the actual referendum. Biko articulated a model of state control that transcends the specific context in which it was born: by providing a site in which the public, including disenfranchised communities, may directly access the state under the guise of influencing policy, the state reins in potential dissidents, forcing them to conform to a colonial system. Formal political sites of deliberation are defined and regulated by the state. Thus, participation in this regime implicitly recognizes and admits the authority of the state over marginalized communities.[114] This authority is maintained even in the context of the state's responsibility to enhance the freedom and equality of its citizens.

Engagement with the state is thus highly problematic for indigenous peoples in Canada, whose very existence as 'Indians' is dependent upon the state. Taiaiake Alfred argues that:

> ... oppression [operates] as an inevitable function of the state [...] since [Aboriginal] nations were never party to any contract and yet have been forced to operate within a framework that presupposed the legitimacy of state sovereignty over them.... Arguing for rights within that framework only reinforces the state's anti-historic claims to sovereignty by contract. (1999:48)

This rejection of a colonial relationship by refusing to engage with the state exists in British Columbia beyond the referendum process. First Nations who have, as of yet, refused to participate in the B.C. Treaty Process have rejected it primarily on the grounds that this process reproduces the colonial relationship between the state and First Nations. The treaty process, it is argued, is fundamentally flawed in that it seeks extinguishment of rights that preceded the current colonial governments[115] and begins from the erroneous assumption that the Crown holds title to the land, and that it is against this title that First Nations must prove their traditional title (Alfred, 1999: 120). Thus, the referendum on treaty principles itself represents only a small stone in the pervasive fortification that organizes and perpetuates the colonial relationships between Aboriginal peoples and Euro-Canadian peoples, concentrated in the state.

Conclusion

While principles of liberal democracy served to legitimate the referendum on treaty principles, these principles were also used within the hearings to justify institutionalized colonialism in British Columbia. Even those unfamiliar with the formal ideal of liberal democracy drew heavily upon these principles – evidence that these

principles constitute a hegemonic societal discourse. In this way, the referendum process gave evidence of the pervasiveness of these principles as organizers of our society.

The referendum process, as political activity, followed from liberal democratic perspectives of freedom as political action and self-realization. Although the referendum was controversial from its earliest beginnings, it was justified on the grounds that participating citizens were reasonable. Allegations of 'tyranny of the majority' were argued to ignore the benevolence and compassion of the majority and counter to political equality. This assumption of political equality was buttressed by further claims that social and economic equality exists in British Columbian and Canadian society, a tacit refusal to recognize the colonial regime in Canada as such. These assumptions of equality took the form of calls for sameness, a position that necessarily invoked the individual in order to avoid discussing the institutions of society that create structural inequality in particular communities (for instance, the *Indian Act*). Where these institutions were discussed, it was as an impediment to individuals' capacity for self-realization.

Those who challenged both the referendum process and British Columbian and Canadian colonization, however, also used the tenets of liberal democracy. Assumptions of equality and the significance of political participation were contested, as was the 'reasonableness' of the non-Aboriginal electorate. In addition, non-Aboriginals challenged the referendum process on the grounds that it created unfavourable economic conditions because of the tension it created. Contestation of state and colonial authority also took place outside of the dominant discourse of liberal democracy, through appeals to the ways in which liberal democracy failed to achieve social justice in the context of

the referendum. Further resistance to the process, with its ties to colonialism, took place through disengagement: all Nations represented in treaty negotiations, as well as those that had rejected the negotiation process, formally boycotted the process. However, given the Liberal government's unilateral control of the proceedings, these efforts at resistance were ultimately suffocated within the formal realm of politics.

The Liberal government's declared agenda in the referendum on treaty principles was to establish meaningful dialogue on the principles that should guide provincial negotiators. However, the narrow parameters within which meaningful dialogue was to take place, the rules of procedure organizing the hearings and the Liberal government's final and unilateral authority over the process (in all phases from determining the structure of the hearings to establishing the wording and process for the final ballot) limited any such dialogue. In terms of dialogue itself, it could hardly be argued that a process that came to endorse already existing principles – without identifying them as framing the process – could be the outcome of meaningful public dialogue. Instead, the overall structure created a public political space in which many participants drew on the same tenets of liberal democracy that legitimated the referendum to legitimate the colonial relationship that exists in Canada, and consequently to legitimate their privilege in a colonial society.

That the tenets of liberal democratic theory, a theory whose goal is the establishment of a just society, were used on the part of the state and non-Aboriginals to perpetuate their privilege speaks to the disconnect between liberal democracy as a theory and as a practice. It is to the source of this disconnect that I will now turn.

Chapter Four: Towards a Just Society?

Reflections on Justice

Over the last three chapters, I have argued that the five tenets of liberal democracy – freedom, equality, the role of the state to promote these amongst its citizens, individualism, and reason enacted as reasonableness – do not translate successfully from theory to practice, especially in the context of considerable power inequality. In the treaty referendum process the state and many presenters drew on the discourses of liberal democracy. These discourses gave the referendum legitimacy and served to reproduce (both intentionally and unconsciously) the structural power relations of colonial privilege. My purpose has been to analyze liberal democracy as it can be enacted in a formal political sphere and as it informs everyday discourses in societies with unjust power relations. I have used this case study to show that intellectual adherence to these principles, even collectively, is not a sufficient condition for justice in an unjust society.

While my analysis of the referendum process represents the enacted principles of liberal democracy in only one historically-contingent setting, the parallels drawn with South African apartheid politics, as well as the theoretical critique of these principles, provide the basis for a strong critique of liberal democratic theory. This theory is itself historically contingent, rooted as it is in Western, upper-class masculinity. During the 1960s and 1970s, the civil rights movement, the feminist movement, and the gay and lesbian movement challenged this hegemonic bias of Western societies.[116] The emergence of postmodernism shortly thereafter has furthered this challenge. These activist and academic agendas have questioned assumptions of objectivity and neutrality, challenged superficial definitions of equality and problematized the focus on individuals.

This resistance has revealed the ways in which these hegemonic principles and frameworks perpetuate the general privilege of White, heterosexual men. Although such men are privileged generally, the typically White, heterosexual, male political and economic elite who wield considerable power in society stand to benefit the most from maintaining the status quo.

Liberal democratic theory, while advocating justice in a pluralist society, seeks this justice within the societal norms that favour those who are already privileged. By advocating liberty first and foremost, liberal democracy assumes that all people either have, or have access to, freedom (including, say, single mothers on welfare). By assuming equality, the lens of liberal democracy blurs social patterns, focusing instead on individuals. By privileging the individual, liberal democracy abstracts people from their communities, thereby masking and denying societal patterns of injustice. By privileging reasonableness, liberal democracy discounts the context and broader content of deliberation, emphasizing instead individuals' (lack of) participation.

Liberal democratic theory abstracts the practice of democracy from a real society of inequality and struggle to a mythic society of equality and neutrality. When this abstraction is practiced, it benefits those who are privileged and disadvantages those who are marginalized. Plurality is possible only to the extent that it accepts and supports a liberal democratic framework. Perhaps liberal democratic theory would be practically adequate within a society that is already just. In the meantime, however, it will not be able to facilitate the transformation of the unjust societies that comprise most (if not all) of the world.

Colonial Relations in British Columbia

If there is to be justice in the British Columbian (and Canadian) context, parties need to have an understanding of each others' perspectives and an alternative framework of principles in which to enact this understanding. A new discourse is necessary for both of these projects. This discourse must be developed and extended in tandem with social, political and economic restructuring. A substantive democracy would embrace principles like "mutual respect" and "meaningful dialogue" in place of empty euphemisms mandating "tolerance." These principles would be taken up as vocabulary and enacted in both formal political spheres and everyday situations, in much the same way as "freedom" and "equality" currently pervade these sites of engagement.[117] These principles directly challenge liberal democratic principles, rather than working in parallel or as weak criticism.

Mutual respect, including a respect for difference, and understanding build off of one another. A relationship of respect and understanding is necessary both between the state and its citizens, as well as between Aboriginals and non-Aboriginals. Currently, both of these relationships are one-sided as the state dominates its citizens and non-Aboriginals dominate Aboriginals. As a result, one party is systematically disempowered;[118] the dominant parties' understanding of the marginalized 'other' is typically superficial; and respect for difference is often only formal. Given the stifling of plurality that is implicit in liberal democracy in unequal societies, understanding and respect will not develop out of the current hegemonic framework within which Canadian society operates.

If the corruption of social justice that the referendum process represented is to be eliminated, two bastions of inequality in British Columbian, and Canadian, society must be overturned. First, the relationship between state and citizen must be fundamentally reorganized. Secondly, the ignorance of Canada's colonial history and present must be expunged.

Meaningful Democracy in British Columbia

Currently, although the state ostensibly serves its citizens, citizens are disempowered except at the time of elections. While citizens endow the state through the election of representatives to act on their behalf, the state does not reciprocate this relationship through its term, as evidenced in the transition from the public hearings to the summary report.[119] During elections, citizens and state are abstracted from the reality of institutionalized authority as contending parties tout policies of responsibility and accountability. However, once these citizen-oriented moments are over, the reigning government assumes almost unilateral state authority. Citizens require meaningful representation in government, with the opportunity to have their voices heard and influence decision-making.

I do see democracy as the means to 'forging new relationships,' a means to a just society. It is democracy, however, that must move beyond the state to continue in the liberal tradition. The transition from our current society to a just society requires participation that is empowering, not marginalizing. While freedom and equality have a significant role in democratic proceedings, they are not a sufficient condition for truly democratic practices and should not take such a prevalent position as to obscure the everyday realities of participants or their participation in public spaces. Just democracy

requires that the public is able to participate in meaningful dialogue with the state, not on terms that the state or other elite deem reasonable, but on terms that participants assess to be reasonable. Dialogue must also occur in sites outside of the state and this dialogue must carry weight outside of its immediate context. A dialogical relationship between the state and the public would be a sharp contrast to the public hearings of the referendum in which the Committee gave explicit worth to the contributions of the presenters, and then, in an about face, proceeded with an entirely different agenda.[120]

I believe that we must renovate the current state in order to move towards justice. One radical reorientation of state practice is the first renovation: citizen-state relations will become more meaningful if the state truly honours its call for public participation. This renovation means that the state does not set narrow parameters that make participation insignificant. It does not stage events intended (or likely) to intimidate people out of participation. It does not set timelines so tightly as to virtually guarantee the gatherer of information will not be able to review it and will have to draw from some unknown (or some previously undisclosed) source to develop coherent recommendations. It does not put out for discussion issues and policies that are not, in fact, up for discussion. Moreover, a state committed to public participation does not ignore the input it does receive from the public. As André Carrel has argued, if the state is to be truly trusting and respectful of its citizens, it must not simply accept input, but must use this input as impetus for action (Carrel, 2001: 104). In short, public participation is not merely a smoke screen. Such honesty and respect for citizens would mark a major transition in citizen-state relations.

Working through colonialism

If social justice is to be achieved in British Columbia, the second bastion of injustice that must be expunged is colonial ignorance. It may seem ironic to speak of expunging ignorance if it is conceived of as "a lack of knowledge" (Barber, 1998). While there are instances in which individuals or groups may truly be ignorant through a lack of knowledge, I do not accept that British Columbian (or Canadian) colonialism can be excused on this account. In fact, I believe that the perpetuation of colonialism in B.C. and Canada is only possible through citizens' continuing consent to colonize. This consent does not always take an explicit form, nor is not always active. Rather, it is the response (denial, justification, or apathy) of an individual or group to the reinforcement of colonialism encountered daily at institutional and individual levels. For the privileged citizenry, such 'ignorance' promotes the inaction that maintains colonial privilege.

Privilege is a concept that is critical to anti-colonial projects and citizen self-consciousness. Privilege includes being oblivious to 'Aboriginal problems,' but it also includes working on such problems by day, and leaving them at the office in the evening. It is not having to consider the issues of indigenous peoples, or being personally involved with them. It is the luxury of being ignorant of the past, which undoubtedly defines the present, by passively accepting the dominant history, the history of 'winners.'[121] Finally, it is the ability to either justify personal racism or be blind to systems of discrimination because they have no immediate bearing on everyday living.

If colonial relations in B.C. and Canada are to be overcome, the problem of privilege is at least as important as, if not more important than, the problem of marginalization. While information on Aboriginal issues is readily avilable through

government policy offices and the media, the public must be exposed to meaningful and contradictory analyses of past and current colonialism, penned by individuals and groups speaking from a variety of locations. With exposure to such information, privileged citizens can no longer exempt themselves from responsibility through ignorance. Meaningul analyses of privilege, both externally-driven and introspective, locate individuals as part of larger social patterns in historically rooted contexts, while also identifying the privilege that exists in contemporary contexts as a result of that history. Moreover, meaningful analyses locate privilege in everyday lives, rather than addressing it at a level of abstraction that allows those who are privileged to escape from its implications in *their* personal lives.

The referendum was problematic not only because it facilitated the perpetuation of colonialism by abstracting citizens within the hearings and as votes. A more insidious form of abstraction permeated the process. Through its unilateral organization of the process, the state became the primary target for those who challenged the project and colonialism in B.C. The referendum was picked up by the provincial media and came to represent the primary issue facing Aboriginal peoples in B.C.

What the media did not pick up were the myriad elements of colonialism that persist in British Columbian society, and the ongoing complicity of most non-Aboriginal citizens in this regime. Thus, the referendum – an obvious exercise in injustice – displaced the more deep-rooted and less visible contributors to colonialism in B.C. and in Canada. While the referendum rallied superficial support for Aboriginal peoples in B.C. , it is not clear, nor likely, that the referendum served as a conduit for self-conscious reflection on colonialism or on privilege amongst non-Aboriginals.

More harmful than the substantive content of the referendum was the way in which the process directed discussion towards the referendum as the sole element of colonialism in British Columbia. Individuals and groups focused their anti-referendum sentiments on the Liberal government without drawing connections to the colonial regime that enabled the referendum. The significance of the referendum as a clear effort in state control and the reproduction of colonialism was lost as it was engulfed in a broader wave of anti-Liberal sentiment. The referendum itself provided a clear target for resistance; the Liberal government provided a clear target for blame. This direction overpowered opportunities for increased awareness of and dialogue about the everyday colonialism that pervades British Columbian society. It reduced Aboriginal/non-Aboriginal relations to a formal political process, orchestrated by a controversial party. The relations that exist beyond those organized by the Liberal government in formal political spaces must be recovered if colonialism in B.C. is to be transcended. If the state and citizens of British Columbia are actually committed to the project of improving Aboriginal/non-Aboriginal relations, we must actively recognize the colonial past and present and actively locate ourselves in this context.

Déjà Vu

In response to Aboriginal peoples' demands to dismantle the colonial regime in Canada and to provide practical solutions to social and economic inequalities they faced, the Royal Commission on Aboriginal Peoples (Commission) was established (Tully, 1998). Over a period of five years, the Commission conducted public hearings, commissioned studies and visited Aboriginal communities. The Commission released its multi-volume report in 1996.

The resonance between the requirements of de-colonization I've outlined above and those proposed by the Commission cannot be overlooked. In the interpretation of its mandate, the Commission sketched its approach with a parallel framework:

> The analysis we present and the avenues of reconciliation we propose in this and the other four volumes of our report do not attempt to resolve the so-called 'Aboriginal' problem. Identifying it as an Aboriginal problem inevitably places the onus on Aboriginal people to desist from 'troublesome behaviour'. It is an assimilationist approach, the kind that has been attempted repeatedly in the past, seeking to eradicate Aboriginal language, culture and political institutions from the face of Canada and to absorb Aboriginal people into the body politic – so that there are no discernible Aboriginal people and thus, no Aboriginal problem.
>
> Our report proposes instead that the relationship between Aboriginal and non-Aboriginal people in Canada be restructured fundamentally and grounded in ethical principles to which all participants subscribe freely.
>
> The necessity of restructuring is made evident by a frank assessment of past relations. We urge Canadians to consider anew the character of the Aboriginal nations that have inhabited these lands from time immemorial; to reflect on the way the Aboriginal nations in most circumstances welcomed the first newcomers in friendship; to ask themselves how the newcomers responded to that generous gesture by gaining control of their lands and resources and treating them as inferior and uncivilized; and how they were designated as wards of the federal government like children incapable of looking after themselves. Canadians should reflect too on how we moved them from place to place to make way for 'progress', 'development' and 'settlement', and how we took their children from them and tried to make them over in our image.
>
> This is not an attractive picture, and we do not wish to dwell on it. But it is sometimes necessary to look back in order to move forward. The co-operative relationships that generally characterized the first contact between Aboriginal and non-Aboriginal people must be restored, and we believe that understanding just how, when and why things started to go wrong will help achieve this goal. (1996, Vol.1, pp.2-3)

The Report of the Commission has been criticized for not providing adequate attention to the broader Canadian context because it does not fully analyze non-Aboriginals and non-Aboriginal institutions (Cairns, 2001). However, the introduction sets out the Commission's mandate within this broader context and calls specifically for reflection on the colonial past and present by non-Aboriginals.

Although the Commission produced over 100 pages of recommendations resulting from its consultations, the federal government's response to these conclusions has been abysmal (Cairns, 2001). Perhaps the reason these ideas have not yet been implemented is that they challenge the power of the state and official politicians by rejecting the colonial foundations of this power, especially through recommendations for a nation-to-nation approach to treaties (Cairns, 2001). In contrast to the public hearings of the B.C. treaty referendum, the Commission's recommendations were autonomous from the government's current mandate. However, in like measure, these consultations had little impact as the federal government has thus far refused to implement them. In both instances, the net result is a travest of "public participation."

The significance of the Report of the Commission in the context of the treaty referendum is that it provides a further example that meaningful efforts to de-colonize British Columbia and Canada must take place at both *individual* and *institutional* levels. Although the substantive framework of the Commission's mandate points to the need for citizen reflection, the lack of government support for this project has stifled the possibility of meaningful implementation, specifically of colonial introspection. However, if this introspection is to take place only at the level of the state (as with Geoff Plant's proposal that statements of reconciliation be undertaken at the treaty tables) and only at a superficial level (as highlighted by the Province's bad-faith decision to stage the referendum) it will have minimal impact on the daily lives of those who are both privileged and marginalized by colonialism.

Both state and privileged citizen must play an important role in dismantling the injustices of a colonial society. The state must be involved in this project to the extent

that it is complicit in active and passive perpetuation of colonialism (Gordon, 2001). Moreover, although it was not the case in the referendum on treaty principles or the Royal Commission on Aboriginal Peoples, the state does have the capacity to provide sites of meaningful dialogue towards social change (Young, 2000). Privileged citizens must be involved as colonial attitudes are manifested at the level of the individual, in the myriad of everyday activities that contribute overwhelmingly to the colonial regime in British Columbia and Canada. Without efforts at both of these levels, the hegemonic discourses of liberal democracy, invoked to preserve the status quo, will continue to dominate. British Columbians (and Canadians), both privileged and marginalized, will continue to live colonialism.

AfterWords

In the actual referendum, approximately one-third of the 2.2 million ballots that were mailed out were returned. These ballots endorsed all eight principles overwhelmingly, with "yes" votes for each principle ranging from approximately 85% to 94% (Elections BC, 2002). While there was considerable activity by referendum supporters and opponents prior to the date ballots were due, the response to the results was half-hearted and brief. Since the results were announced, the referendum has fallen off the media radar. It seems neither the Liberal government nor Aboriginal peoples have much to say while they wait to see the effects of these newly-endorsed principles at negotiation tables.

In the bigger picture, not much has changed. The Liberal government continues to implement its neo-liberal agenda; the non-Aboriginal citizens of B.C. continue to enjoy a state of indifference vis-à-vis the colonialism that pervades B.C. At a meeting with the

First Nations Summit on September 16, 2002, Geoff Plant suggested to First Nations representatives that he had heard their history before, was sure to hear about it again, and would prefer to proceed with the substantive component of their meeting (Afternoon Show, 2002).

An anonymous speaker at a public lecture stated that more interesting than the referendum itself was the response of Whites who were protesting the referendum. The referendum (and Gordon Campbell), he commented, would be no more than a footnote in British Columbia's colonial history. It is an important footnote, however, because it marks a clear moment in which those with power actively protected the institutionalized relations that accorded them such power. Given this clarity, it is also a teachable moment, an instant in which those who value justice can identify the injustices perpetuated by the discourses of liberal democracy, and the need to move beyond these hegemonic discourses if we, as British Columbians, as Canadians, are to move beyond colonialism and work towards a just society.

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Appendix I: Biographies[122]

Attorney General and Minister Responsible for Treaty Negotiations

Geoff Plant (Richmond-Steveson) - Attorney General and Minister Responsible for Treaty Negotiations.

Previous Provincial Political Experience: Critic for the Attorney General Ministry; Critic for intergovernmental relations; Caucus Whip.

Previous Occupations: Lawyer; Lecturer and Writer on issues related to aboriginal and educational law.

Community Involvement: Director & President of the Richmond Community Music School; Council chair of Gilmore Park United Church.

Select Standing Committee on Aboriginal Affairs

Chair

John Les (Chilliwack-Sumas)

Previous Occupations: Mayor of Chilliwack; Councillor of Chilliwack; Business and property development.

Community Involvement: Community Police Access Centre non-profit society, Chair and board member of the Fraser Valley Regional Library; Rotary Club of Chilliwack.

Deputy Chair

Paul Nettleton (Prince George-Omineca)

Previous Provincial Political Experience: MLA, Prince George-Omineca, 1996

Previous Occupations: Logger; Millworker; Lawyer, including work with a Native community law office.

Community Involvement: Chair of Fort Outreach; community programs for youth.

Committee Members

Val Anderson (Vancouver-Langara)

Previous Provincial Political Experience: MLA, Vancouver-Langara, 1991, 1996

Previous Occupations: United Church minister; professor at Vancouver School of Theology; Coordinator/editor of Canadian Multi Faith Action.

Community Involvement: Founding chair of the Vancouver Food Bank and the Pacific Youth and Family Addiction Service Society; Good Neighbour Award 1990; Honours from the Social Justice Foundation of B.C.

Bill Belsey (North Coast)

Previous Occupations: Manager of maintenance and engineering at a pulp mill; businessman; Member of the Forest Industries Trade Committee, Rupert Port Authority Nominating Committee, and North Coast Oil and Gas Task Force.

Community Involvement: Rotary International; Skeena Clown Unit; Active member of Gizeh Temple; referee, coach, vice-president and president of Prince Rupert Minor Hockey as a referee, coach, vice-president and president; Skeena Valley Amateur Hockey Association president.

David Chutter (Yale-Lillooet)

Previous Occupations: Cattle rancher; alfalfa and ginseng farmer.

Community Involvement: Member of B.C. Cattlemen's Association; Director and past-president of Nicola Stock Breeders Association; City of Merritt and Region Pool Committee member; founding member of Nicola Watershed Community Roundtable; participant in Fraser River Green Plan Nicola Corridor Project.

Mike Hunter (Nanaimo)

Previous Occupations: Consultant in partnered company; Department of Fisheries and Oceans specialist in international affairs; past president of Fisheries Council of B.C.

Blair Lekstrom (Peace River South)

Previous Occupations: Mayor of Dawson Creek; councillor of Dawson Creek; installer-repairman with B.C. Tel.

Community Involvement: Peace River Regional District member; North Central Municipal Association executive; North Central Municipal Association president; member of Municipal Finance Authority, B.C. Task Force on Bank Mergers, B.C. Agri-Food Policy Working Group; Union of B.C. Municipalities executive member; board member of Dawson Creek & District Hospital Foundation.

Dennis MacKay (Bulkley Valley-Stikine)

Previous Occupations: Private investigator; provincial coroner; security patrol agent; RCMP.

Community Involvements: Executive director of the Smithers Community Services executive director; Northwest Community College board member; Timber Harvesting

Contract Mediators and Arbitrators; International Ski Federation (FIS) technical delegate; Lions Club International secretary; and coach for minor league baseball and hockey.

Gillian Trumper (Alberni-Qualicum).

Previous Occupations: Mayor of Port Alberni; President and Fisheries Committee chair of the Union of B.C. Municipalities; Chair of West Coast Treaty Advisory Committee and Alberni-Clayoquot Regional District Board; co-chair of Community Economic Adjustment Initiative Committee; member of the Advisory Council to the Law Commission of Canada; and nurse.

Community Involvements: member of Western Vancouver Island Heritage Society, Port Alberni Friendship Centre; honorary membership in the Port Alberni Kiwanis and Rotary Clubs; Port Alberni Citizen of the Year (1993).

Rod Visser (North Island)

Previous Occupations: Business manager; logger; waste management.

Community Involvements: Chair of Pacific Resource Education Society.

Appendix II: Recommended Referendum Ballot

VISION

The Province of British Columbia is engaged in treaty negotiations with the Federal Government and Aboriginal Governments to reconcile Crown title and claims of Aboriginal title. It is hoped that treaties will serve as a basis for a new relationship that will lead to a prosperous future for all British Columbians

WHEREAS:

The Government of British Columbia has committed to providing the public with a one-time, province-wide referendum vote on the provincial principles guiding treaty negotiations; and

The objective of this referendum is to receive public endorsement of the principles to revitalize the process of negotiating treaties; and

A clear definition of Aboriginal rights and title and new relationships with Aboriginal people are best established in treaties; and

The Canadian Constitution and the Charter of Rights and Freedoms will continue to apply equally to all British Columbians and

The Federal Government's primary constitutional and financial responsibility for treaties must be maintained;

Therefore, do you support the following provincial principles for negotiation:

<u>Openness</u>

Treaties should be negotiated in as transparent a manner as possible. **Yes or No**

Treaty negotiation should be responsive to the input of local community and economic interests. **Yes or No**

Local Government participation in the treaty process is guaranteed. **Yes or No**

<u>Property and Interest Issues</u>

Private property is not negotiable, unless there is a willing seller and a willing buyer. **Yes or No**

Continued access to hunting, fishing, and recreational opportunities will be guaranteed for all British Columbians. **Yes or No**

The Province will maintain parks and protected areas for the use and benefit of all British Columbians. **Yes or No**

All terms and conditions of provincial leases and licences will be honoured. **Yes or No**

Fair compensation for unavoidable disruption of commercial interests will be assured. **Yes or No**

Aboriginal Governance

The Province will negotiate Aboriginal Government with the characteristics and legal status of Local Government. **Yes or No**

Treaties must strive to achieve administrative simplicity and jurisdictional clarity amongst various levels of government. **Yes or No**

Province-wide standards of resource management and environmental protection will continue to apply. **Yes or No**

Treaties should provide mechanisms for harmonization of land-use planning between Aboriginal Governments and Local Governments. **Yes or No**

Settlement

Affordability should be a key factor in determining the amount of land provided in treaty settlements. **Yes or No**

Treaties must ensure social and economic viability for all British Columbians. **Yes or No**

The existing tax exemptions for Aboriginal people will be phased out. **Yes or No**

Treaty benefits, including cash and land, should be distributed and structured to create economic opportunities for all, including those living on and off reserve. **Yes or No**

Appendix III: Alternative questions

Okay. I'm going to make a recommendation for a question. My question, then, would be: do you have confidence in the current provincial government to negotiate on your behalf? (E. Moody, Oct. 3: 112)

I have a few question here. The first one would be: do you believe that you harbour any prejudice in favour of or against the first nations people of B.C.? – and explain what you mean. The second question would be: how long have your own family or your own ancestors lived in your area of B.C.? Third: how long have the ancestors of the local native bands lived in your areas of B.C.? When were the native peoples granted the right to vote generally, and when were they granted the right to vote provincially? How many native bands or reserves are there in B.C.? Name the native bands in your local area.

You see, these questions are all aimed to see what people know about the local people who are living around them. I feel that if they don't know anything about them, then they really don't have the right to decide for those people.

Name the native bands in your local area. Are the traditional languages still spoken at all? What are, or were, those languages? What qualifies a certain community of people for nationhood? Do you believe that any local native community constitutes a nation? Did any native group ever have the rights of sovereignty and self-determination? Do they have those rights to sovereignty and self-determination now? If not, by what historical events or mechanisms have they come to lose them? (O. Mott, Oct. 5: 196)

B. Hall: Well, I understand that you control 93 percent of the resources and land in British Columbia. I think you should ask your people if they want to share that with us. ...

B. Belsey: Do you feel that an appropriate question would be: are you willing to share 93 percent of the land and the resources? Is that where we're going with this – something like that?

B. Hall: Well, that would be nice. We'll take 93 percent back. [Laughter] (Oct. 17: 298-9)

Consequently, we recommend the following wording for a referendum question. Under the heading entitled "Referendum Question," we suggest that you leave the space blank. That way, if the government of B.C. feels it must live up to its foolish promise of holding a referendum, it can do so without miring the whole treaty process in a more costly and divisive delay. (J. Foy, Oct. 17: 320)

Appendix IV: Ballot text

Whereas the Government of British Columbia is committed to negotiating workable, affordable treaty settlements that will provide certainty, finality and equality;

Do you agree that the provincial government should adopt the following principles to guide its participation in treaty negotiations?

1. Private property should not be expropriated for treaty settlements.

2. The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.

3. Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.

4. Parks and protected areas should be maintained for the use and benefit of all British Columbians.

5. Province-wide standards of resource management and environmental protection should continue to apply.

6. Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.

7. Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments.

8. The existing tax exemptions for Aboriginal people should be phased out.

Appendix V: Question Construction

The referendum principles that were ultimately recommended by the Committee disregarded yet another issue presented at the fora. Many presenters, including those aligned with Liberal ideology towards Aboriginal peoples, called for neutral, objective questions:

> Referendum questions need to be neutral, clear, concise and capable of being answered definitively by the answers posed. A question that is inherently biased or attempts to collapse too many issues into one question could be misleading. Such a question might not only produce ambiguous results that may be hard, if not impossible, to implement but could also undermine the credibility of the referendum process. (K. Linegar, Nov. 2: 584)

> I am against, as you might have gathered, a third order of government. It seems to me that it is fraught with danger. It places Aboriginals further away from the mainstream of Canadian public. I think that is a negative way to go.
>
> ...when the questions are presented to the public, they should be broadly based. They should not all be in favour of one side of an argument. (T. Joslin, Oct. 25: 452)

> The B.C. Chamber [of Commerce] proposes this question ["is the process working"] for four reasons.... it is a neutral question. It's objective about the process. ... (J. Winter, Oct. 24: 398)

> You have the good fortune to have the opportunity to avoid the pitfalls of the fellow referendums in Quebec, where successive separatist governments sought to write vague questions that attempted to hide their real intentions... (J. Cummins, Oct. 18: 353)

> P. Lester: ... I'd stay away from a referendum. That's my opinion.
>
> **J. Les (Chair)**: Is that the only observation you would have?
>
> P. Lester: No. Simply, the government is going to do what they want to do. This could easily – I won't say it will – create more disruption than before. You know it's going to agree with whatever has been said, but a referendum can be adjusted in such way that there's only one possible answer. That's my opinion. (Oct. 3: 106)

> I'm confident that any questions that will appear on the referendum ballot will be either so overtly racist as to be untenable; so devoid of substance as to be motherhood questions that would garner a large, meaningless yes response, which could them be twisted into a perceived mandate for the Liberal government to have carte blanche to stymie the treaty process; or so contrived as to be of the, "Have you stopped beating your wife?" variety, where neither a yes or a no answer is reasonable or appropriate. (R. Slave, Oct. 24: 422)

However, the potential for bias addressed implied in these suggestions was denied by the Committee in the public hearings:

> We all know you can write a question to get the answer you want. That's certainly not the job of our committee. Being up front, we want to bring a resolve to this and get back so that we can be effective as a province again as a whole. (**B. Lekstrom**, Nov. 1: 532)

One presenter recommended that the Committee get help with the questions from those with expertise:

> I believe you need to engage a professional opinion-polling company toward (sic) these statements in such a way that there is no unintended bias. People tend to like to agree to positions. (H. Silver, Nov. 1: 555)

This advice was salient foreshadowing of the response of pollster Angus Reid to the final ballot questions:

> ...the British Columbia Aboriginal referendum is one of the most amateurish, one-sided attempts to gauge the public will that I have seen in my professional career. Though we can be justifiably concerned about the cost of this initiative, its deeper harm comes in the false picture it will give of the true state of attitudes on this complex question and, even worse, its pretense that this kind of flimsy exercise is a legitimate way to divine the public will. (Vancouver Sun Op-Ed, April 5, 2002)

Appendix VI: Alternative Analyses of the Referendum Ballot

TREATY REFERENDUM QUESTIONS, AND QUESTIONS?

Retrieved May 1, 2002 from http://www/treatyinjustice.org
John Borrows, Professor and Chair in Aboriginal Justice, University of Victoria, Faculty of Law

The questions the government proposes to ask regarding treaty negotiations are:
Do you agree that the Provincial Government should adopt the following principles to guide its participation in treaty negotiations?
[*Are these clear questions that will lead to clear answers? How should these principles be interpreted after the vote?*]

1. Private property should not be expropriated for treaty settlements.
[*Since aboriginal title is a private property interest (Delgamuukw), does this mean that under a yes answer the Crown will not attempt to secure surrenders of aboriginal title where there is less than 100% aboriginal consent? If there were less than full Aboriginal consent to a surrender, this would mean that an Aboriginal Nation would have to expropriate a property interest held by a member of its group, and this would be inconsistent with a yes answer.*]

2. The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.
[*Does this mean that, as title is an underlying burden on a lease or license, a yes answer would commit this government to compensating aboriginal peoples for the issuance of leases or licenses, where this action has disrupted historic and contemporary Aboriginal commercial use of the land?]*

3. Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.
[*Does this mean that the Crown will commit itself to ensuring that Aboriginal peoples, as peoples, can hunt, fish and use Crown land for recreational purposes throughout the province as a result of treaties?*]

4. Parks and protected areas should be maintained for the use and benefit of all British Columbians.
[*Does this mean that Aboriginal peoples, as peoples, can use and benefit from all the parks in the province under a yes answer?*]

5. Province-wide standards of resource management and environmental protection should continue to apply.
[*Does this mean that Aboriginal peoples, as peoples, will be able to secure enforcement of province-wide standards through treaties and manage resources and protect environments in the province if a person votes yes?*]

6. Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.
[*Does this mean that under a yes vote the government will interfere with and not follow the Canadian constitution, where the inherent right of Aboriginal self-government was held to be a constitutionally protected right in the Courts of this province, in Campbell vs. AGBC?*]

7. Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments.
[*Does this mean the province will commit itself to creating effective consultation and communication strategies for land use decisions that affect First Nations in the province, if one votes yes?*]

8. The existing tax exemptions for Aboriginal people should be phased out.
[*Does this mean that the current government recognizes and affirms that Aboriginal peoples have current tax exemptions in the province, until it is negotiated away?*]

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Recommended Referendum Ballot:
A Legal Analysis

prepared by
Louise Mandell, Q.C., of Mandell Pinder
February 25, 2002

1. Introduction

The B.C. Liberals made an election promise to "give all British Columbians a say on the principles that should guide B.C.'s approach to treaty negotiations, through a one-time, Province-wide referendum. The Select Standing Committee on Aboriginal Affairs recommended 16 principles of treaty negotiations to be framed as questions to be put before the people of British Columbia. The Government has not committed itself to whether the referendum would be conducted under the *B.C. Referendum Act* (hence, whether it would be legally binding or not); however, Premier Campbell has publicly stated that the Government will be bound by the results, which will become the Province's mandate in treaty negotiations.

This opinion addresses one aspect of the debate on this referendum, which is the legality of the questions posed. In our opinion, many of the questions are unconstitutional, in the sense that the area and scope of the questions falls outside the jurisdictional powers of the Province. Should the Province accept a mandate to implement principles based on answers to the questions it has no jurisdiction to determine, the positions which will be taken by the Province at the Treaty table may very well embroil the Government in Court challenges which would open the Province up to litigation for years to come.

The Courts have said that the Governments have a duty to negotiate Treaties in good faith.[1]This is what the Chief Justice said at the conclusion of the *Delgamuukw* case:

> ...Moreover, the Crown is under a moral, if not a legal, duty to enter into and conduct those negotiations in good faith. Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve ... "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown". Let us face it, we are all here to stay. [2](emphasis added)

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[1] *Gitanyow First Nation v. Canada* [1999] 3 C.N.L.R. 89
[2] *Delgamuukw v. The Queen* [1997] 3 S.C.R. 1010, para 86

Yet, how can the B.C. Government conduct good-faith negotiations with a mandate to take contentious positions on questions which are constitutionally beyond its power?

In this analysis, we first set out the unique constitutional position of the Aboriginal Peoples, which establishes clear limitations on Provincial Crown title, and the Province's jurisdiction to determine the issues addressed by certain questions. We next address the problematic questions.

2. The Unique Constitutional Position of the Aboriginal Peoples

Under the constitutional arrangement, the Province's power as it affects Aboriginal Peoples and the right to land is limited in four ways. First, the Province's power is limited by unextinguished Aboriginal title, which burdens the title of the Crown. Second, Provincial legislative power is limited by the Federal Government's exclusive jurisdiction over Indians and lands reserved for Indians. Third, the Provincial legislative power is limited or controlled by the fiduciary relationship between the Crown and Aboriginal Peoples. Fourth, the provincial power is limited by Section 35 of the *Constitution Act, 1982*. We deal with each of these limitations in turn.

The Province's power is limited by unextinguished Aboriginal title, which burdens the title of the Crown.

The constitutional position of Aboriginal Peoples begins with the simple fact that Aboriginal Peoples were here first. The Supreme Court of Canada described Aboriginal (or Indian) title as follows:

> ...the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means...[3]

When Britain settled Canada, the law governing acquisition of new territories required that the Crown respect, as legal rights, the pre-existing rights of the Aboriginal Peoples to occupy and possess their land. These legal rights continue upon the assertion of Crown sovereignty and constitute a burden on Crown title, removable through a process of treaty making. These principles – the continuation of pre-existing legal rights of Aboriginal occupation, and treatymaking to acquire these rights by the Crown – were embodied in the *Royal Proclamation of 1763* and applied throughout Canada. B.C. refused to give effect to these principles.

The Royal Proclamation of 1763 states:

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[3] *Calder v. A.G.B.C.* [1973] S.C.R. 313 at p 228

> And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories **as, not having been ceded to or purchased by Us, are reserved to them**, or any of them, as their Hunting Grounds. (emphasis added)

In other words, Aboriginal Peoples are to be respected in the possession of their land until the Crown concludes treaty with them.

The Supreme Court of Canada has affirmed the pre-existing and continued right of possession which Aboriginal Peoples enjoy to their territories on many occasions:

> ...They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion...[4]

> ...when the Nishga people came under British sovereignty...they were entitled to assert, as a legal right, their Indian title. It being a legal right, it could not thereafter be extinguished except by surrender to the Crown or by competent legislative authority, and then only by specific legislation.[5]

> ...Their interest in their lands is a pre-existing legal right not created by Royal Proclamation, by s.18(1) of the *Indian Act*, or by any other executive order or legislative provision.[6]

The Supreme Court has also rejected arguments made by the Governments that these preexisting rights are traditional practices, such as to pick berries or to hunt; or that these rights to land are site-specific relating only to areas of existing Indian reserves. The Court has concluded that these pre-existing legal rights are very broad rights in land.

> First, Aboriginal title encompasses the right to *exclusive* use and occupation of land; second, Aboriginal title encompasses *the right to choose* to what uses land can be put, subject to the ultimate limit that those uses cannot destroy the ability of the land to sustain future generations of Aboriginal peoples; and third, that lands held pursuant to Aboriginal title have an inescapable economic component.[7]

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[4] *Guerin v. The Queen*, [1984] 2 S.C.R. 378, citing with approval *Johnson v. McIntosh & Wheaton* 543 (1832).
[5] *Calder v. A.G.B.C.*, supra p 402
[6] *Guerin, supra*, p 379
[7] *Delgamuukw v. The Queen*, supra, para 166

Until extinguished, Aboriginal title is a legal burden on Crown title. This has been clearly stated in law since the *St. Catherine's Milling* case in 1888, where the Privy Council described the legal burden on Crown title in this way:

> ...there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a *plenum dominium* whenever that title was surrendered or otherwise extinguished.[8]

The constitutional burden on Crown title by unextinguished Aboriginal title was continued at Confederation by the division of powers between Canada and the Province.

Canada acquired:

> **Section 91**...the exclusive Legislative Authority ... to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say...
>
> 24. Indians, and Lands reserved for the Indians.

The Province acquired ownership of Crown lands. Section 109, provided:

> **109**. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces...shall belong to the several Provinces...subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

In the *St. Catherine's Milling* case, the Privy Council determined that unextinguished Aboriginal title was "an interest other than that of the Province". The Court also interpreted how Section 91(24) and Section 109 interact to give effect to the burden of Aboriginal title on the title of the Crown:

> ...the fact that the power for legislating for Indians, and for lands which are reserved to their use, has been entrusted to the Parliament of the Dominion is not in the least degree inconsistent with the right of the Province to a beneficial interest in these lands, available to them as a source of revenue whenever the estate of the Crown is disencumbered of the Indian title.[9] (emphasis added)

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[8] *St. Catherine's Milling and Lumber Co. v. The Queen* [1889], 14 P.C. 46, p. 55

[9] *St. Catherine's Milling & Lumber Co. v. The Queen*, supra, p. 59

Said in another way, it is only when the Crown has rid itself of the burden of the Aboriginal title, through Treaty concluded by Canada, that the lands become open for disposition by the Province. The converse of this proposition is that if the estate of the Crown has not been disencumbered – that is – if the Aboriginal title to it has not been extinguished – such lands are **not** available to the Province as a source of revenue.

The constitutional burden of Aboriginal title on Crown title has been repeatedly upheld by the Supreme Court of Canada, as recently as 1997 in the *Delgamuukw* decision.[10]

The Province's power is limited by Canada's exclusive legislative authority for Indians and lands reserved for Indians.

Not only is Provincial Crown title burdened by Aboriginal title, the Province has no power to legislate in relation to Indians and lands reserved for Indians, because this power is assigned exclusively to Canada.

In the *St. Catherine's Milling* case, the Privy Council held that the Federal Government (and not the Province) had the power to accept a surrender because Canada had exclusive legislative power over Indians and lands reserved for Indians. In the language of constitutional law, accepting a surrender is at the core of Section 91(24) and the Province has no power under the constitutional arrangement to affect this core. Only Canada may do so. The Courts have concluded that the core of Section 91(24) includes Aboriginal rights in relation to land, including hunting and fishing rights and Aboriginal title. The Province has no power to define or to extinguish that core[11], and its power to affect the core is limited.

The Province's power is limited by the fiduciary relationship between the Crown and Aboriginal Peoples.

The *Royal Proclamation of 1763* reflected principles of British justice, which became rooted in the common law of Aboriginal title. As the Supreme Court of Canada noted:

> In respect of this Proclamation, it can be said that when other exploring nations were showing a ruthless disregard of native rights England adopted a remarkably enlightened attitude towards the Indians of North America.[12]

This relationship between the Crown and Aboriginal Peoples has been described by the Courts as a fiduciary relationship. This means that Governments are bound to treat Aboriginal Peoples and their land, different from other Canadians. The Crown must

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[10] See, for example, *Delgamuukw v. The Queen*, supra, paras 172 to 176

[11] *Delgamuukw v. The Queen*, supra, at para 177; *Paul v. Forest Appeals Commission*, 2001, B.C.C.A. 411

[12] *Calder v. A.G.B.C.*, supra, p. 395

safeguard and protect the Aboriginal right of occupation, and ensure a fair process if and when Aboriginal Peoples choose to give up land rights to the Crown. This is because of the legal nature of the Indian interest in land which, unlike other tenures, is inalienable, except upon surrender to the Crown. The Crown's original purpose in declaring the Indian interest to be inalienable was to facilitate the Crown's ability to represent the Indians in dealing with third parties and to prevent the Indians from being exploited.[13]

The Supreme Court has described this fiduciary relationship as non-adversarial, and always involving the honour of the Crown:

> ...the Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship.[14]
>
> ...The Crown has a fiduciary obligation to aboriginal peoples with the result that in dealings between the government and aboriginals the honour of the Crown is at stake.[15]

And so, the Province's power is limited in the sense that the Province may not act contrary to this fiduciary relationship.

> iv) The Province's power is limited by Section 35 of the *Constitution Act, 1982*

Aboriginal rights are entrenched in the *Constitution*. Section 35(1) provides:

> Part II
> Rights of the Aboriginal Peoples of Canada
> 35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

As the Supreme Court has pointed out, the entrenchment of Aboriginal rights was remedial, designed to bring a measure of justice to the history of the Government's disregard of the legal rights of Aboriginal Peoples.

> For many years, the rights of the Indians to their aboriginal lands – certainly as legal rights – were virtually ignored...

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[13] *Guerin v. The Queen, supra,* at page 376
[14] *R. v. Sparrow* [1990], S.C.R. 1075 at 1108
[15] *R. v. Vanderpeet* [1996] 2 S.C.R. 507 at 536-537

> ...It is clear, then, that s.35(1) of the *Constitution Act, 1982,* represents the culmination of a long and difficult struggle in both the political forum and the courts for the constitutional recognition of aboriginal rights...Section 35(1), at the least, provides a solid constitutional base upon which subsequent negotiations can take place. It also affords aboriginal peoples constitutional protection against provincial legislative power...[16]

The Supreme Court has concluded that Aboriginal title is incorporated in Section 35(1) and enjoys constitutional status and protection:

> ...Aboriginal title at common law is protected in its full form by s.35(1).[17]

> The Court also has concluded that the fiduciary relationship is entrenched in Section 35(1).

> ...Yet, we find that the words "recognition and affirmation" incorporate the fiduciary relationship referred to earlier and so import some restraint on the exercise of sovereign power.[18]

The Courts have created the shape of the relationship between Aboriginal Peoples and the Crown to be governed by Section 35 of the *Constitution Act*. This relationship continues the constitutional features discussed above – the limits on Provincial Crown title by unextinguished Aboriginal title and the limits on the Province's jurisdiction by Section 91(24). But, the Court has articulated in more detail how Aboriginal Peoples and the Crown can co-exist together, with Aboriginal rights accommodated when the Province wants to grant interests in land to others.

The co-existence is based on a recognition that Aboriginal Peoples have broad rights in land, including the right to make decisions about how the land is to be used. The Province can infringe Aboriginal title and other rights to land under certain circumstances, which we summarize.

The infringement must be for a compelling and substantial objective, which must accommodate Aboriginal and non-aboriginal interests

> ...compelling and substantial objectives were those which were directed at either one of the purposes underlying the recognition and affirmation of Aboriginal rights by

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[16] *R. v. Sparrow* [1990] 1 S.C.R. 1075, p 1103, 1105
[17] *Delgamuukw v. The Queen*, supra, para 133
[18] *R. v. Sparrow*, supra, p 1109

> s.35(1), which are...:
>
> the recognition of the prior occupation of North America by aboriginal peoples or...the reconciliation of aboriginal prior occupation with the assertion of the sovereignty of the Crown.[19]

2) The infringement must be consistent with the honour of the Crown. The Court spelled out the steps that the Province must take for the infringement to be lawful:

(a) Aboriginal Peoples must be given a priority in decisions affecting natural resources:

> ...What is required is that the government demonstrate "both that the process by which it allocated the resource and the actual allocation of the resource which results from that process reflect the prior interest" of the holders of Aboriginal title in the land.[20]

(b) Aboriginal Peoples must be properly consulted:

> ...There is always a duty of consultation...The nature and scope of the duty of consultation will vary with the circumstances...**consultation must** be in good faith, and with the intention of substantially addressing the concerns of the Aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an Aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to Aboriginal lands.[21] (emphasis added)

(c) Aboriginal Peoples must be compensated for infringements to their interests in land:

> ...In keeping with the duty of honour and good faith on the Crown, fair compensation will

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[19] *Delgamuukw v. The Queen, supra,* para 161
[20] *Delgamuukw v. The Queen, supra,* para 167
[21] *Delgamuukw v. The Queen, supra,* para 168

> ordinarily be required when Aboriginal title is infringed.[22]

Although the Province can infringe Aboriginal title and rights, it still may not intrude on the core of Section 91(24); nor may it grant interests in land it does not own. Crown title remains burdened by unextinguished Aboriginal title.[23]

What the Privy Council said in the *St. Catherine's Milling* case bears repeating:

> The fact that the power of legislating for Indians and [their lands] has been entrusted to...Parliament is not in the least degree inconsistent with the right of the province to a beneficial interest in these lands, available to them as a source of revenue whenever the estate of the Crown is disencumbered of the Indian title.

Before a province can treat land that is subject to Aboriginal title as a source of revenue, the federal government must first extinguish, or obtain a surrender of, Aboriginal title. British Columbia avoided this effect by maintaining that B.C. was *terra nullius* – that there was no Aboriginal title in British Columbia which needed to be extinguished. Aboriginal Peoples were clearly present in B.C. before the assertion of sovereignty, but the Government's *terra nullius*argument was based on Aboriginal Peoples being so low on the scale of civilization that their rights to land need not be taken into account.

The Province gave effect to its position of *terra nullius* for more than one hundred years. The Province argued this position in the *Calder* case. In 1970, Davey, C.J.B.C., in the *Calder* case, rejected the plea of the Nisga'a for a declaration that their Aboriginal title in the Nass Valley had not been extinguished in the following terms:

> . . . the Indians on the mainland of British Columbia . . . were undoubtedly at the time of settlement a very primitive people with few of the institutions of civilized society, and none at all of our notions of private property.
>
> I see no evidence to justify a conclusion that the aboriginal rights claimed by the successors of these primitive people are of a kind that it should be assumed that the Crown recognized them when it acquired the mainland of British Columbia by occupation.
>
> If I be wrong and the Indians of British Columbia did acquire any aboriginal rights, I agree with my brother Tysoe that the historical and legislative material which he has cited shows they have been extinguished.[24]

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[22] *Delgamuukw v. The Queen*, supra, para 86
[23] *Delgamuukw v. The Queen*, supra, paras 173-183
[24] *Calder v. A.G.B.C.* (1970) 74 W.W.R. 481, pp 483 and 486

This decision, and its Reasons, were firmly rejected by the Supreme Court of Canada, in 1973. Aboriginal title came out of legal eclipse and the Supreme Court unanimously held that Aboriginal title existed in British Columbia, and that it survived the assertion of Crown sovereignty. But, the Court divided on whether Aboriginal title had been extinguished.

The Province's response was to maintain a position that the *Calder* case stood for the extinguishment of Aboriginal title in British Columbia. The B.C. Court of Appeal in 1996, in *MacMillan Bloedel v. Mullin*, and in *R. v. Sparrow* put an end to the Province's reliance on this interpretation of *Calder*, and held that the jurisprudence leaves open for decision the question of the extent of Aboriginal title in British Columbia.

Yet, the Province continued to deny the existence of any Aboriginal title in British Columbia, arguing that Aboriginal title had been extinguished in British Columbia. Various new extinguishment arguments were advanced from 1986 to 1997, until in *Delgamuukw*, in 1997, all these extinguishment arguments were rejected by the Supreme Court.

In *Delgamuukw*, the Supreme Court created the shape for a relationship based on coexisting titles and accommodation. From an Aboriginal perspective, the relationship was not perfect; the Governments had power to infringe Aboriginal title, but the Court provided a path for a better future, and Aboriginal Peoples looked forward to the application of accommodation principles articulated in *Delgamuukw* in the Province's decisions regarding natural resources and through treaty making.

Yet, once again, the Province ignored aboriginal title by maintaining that the *Delgamuukw*decision does not apply until a First Nation proves their title in Court. This position has recently been rejected by the B.C. Court of Appeal[25], where the Court concluded that the duty to consult arises **before** an Aboriginal Nation proves their rights or title in Court. The B.C. Court of Appeal, in the *Taku* case, concluded that the Ministers, in making decisions affecting Aboriginal rights and title,

> ...had to be "mindful of the possibility that their decision might infringe aboriginal rights" and, accordingly, to be careful to ensure that the substance of the Tlingits' concerns had been addressed.[26]

What the Court said in the *Taku* case had been said by the Supreme Court in *Sparrow* (decided in 1990), and it is consistent with the law governing Canada since 1763; but, British Columbia has not departed from its policy of denial and non-recognition.

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[25] *Taku River Tlingit First Nation v. Tulsequah Chief Mine Project* [2002] B.C.J. No. 155
[26] *Taku River Tlingit First Nation v. Tulsequah Chief Mine Project* , supra, para 193

Now, the citizens of this Province are being asked by the Government to justify the continuation of positions the Province has taken for over a century to deny Aboriginal Peoples' rights - their right to occupy their land - positions which have been repudiated by the Supreme Court of Canada.

3. The Specific Questions

With this constitutional background in mind, we review below some of the questions on the recommended Referendum ballot.

We deal first with the "Whereas" clauses.

Whereas, the Government of British Columbia has committed to providing the public with a one-time, Province-wide Referendum vote on the Provincial principles guiding treaty negotiations.

The power to conclude treaty rests with Canada, not with British Columbia, because treatymaking is at the core of Section 91(24). This Whereas clause does not bring this constitutional fact to the public's attention. Further, this Whereas clause fails to mention that there are already legal principles guiding treaty negotiations, which have been part of the common law since at least 1763, and which cannot now simply be ignored. These principles can be summarized as follows:

Aboriginal Nations are under the protection of the Crown. This means that British Columbia cannot treat Aboriginal Peoples as if their rights are at the Province's pleasure.

Aboriginal Nations are not to be "molested or disturbed" in the territories they occupy, which are reserved for them. This means that British Columbia cannot simply ignore the rights of Aboriginal Peoples or choose what rights, if any, they will seek a mandate to respect. Until treaty, their rights of occupation must be respected.

The Crown must conclude treaty to unburden Crown title. This means that, until treaty, the Province does not have full power to dispose of the resources of the Province and third-party interests derived from the Crown remain uncertain as to their scope and legal effect.

These principles are obligations on the Crown, assumed when the Crown asserted sovereignty in British Columbia. They are not principles which can be altered or abrogated by public opinion.

Whereas, a clear definition of Aboriginal rights and title and new relationships with Aboriginal Peoples are best established in treaties.

An old B.C. excuse for not recognizing unextinguished Aboriginal rights and title has been B.C.'s claim that Aboriginal rights and title are so vague so as to make it impossible

to give effect to "uncertain rights". This drove Aboriginal Peoples to the Courts to have their rights defined. After three decades of litigation, the Supreme Court, in *Delgamuukw*, has now clearly defined both the nature and scope of the rights and the rules to govern the relationship between Aboriginal Peoples and the B.C. Government.

In *Delgamuukw*, the Chief Justice took great pains to state that he was defining the rights because this had not been done in previous cases:

> ...Although cases involving Aboriginal title have come before this Court and Privy Council before, there has never been a definitive statement from either court on the *content* of Aboriginal title...
>
> ...I have arrived at the conclusion that the content of Aboriginal title can be summarized by two propositions: first, that Aboriginal title encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of those Aboriginal practices, customs and traditions which are integral to distinctive Aboriginal cultures; and second, that those protected uses must not be irreconcilable with the nature of the group's attachment to that land...[27]

As discussed in the earlier section, the Court also laid down clear guidelines as to the circumstances under which an infringement of this right could be legal.

The Province does not tell the citizens of British Columbia that the Court has already spoken, and that they do not have a mandate to define the rights and relationship contrary to the law, which is now clearly established.

While there remain a large number of issues which can and should be determined by treaty, the definition of Aboriginal rights and title and the shape of the relationship between Aboriginal Peoples and the B.C. Government are not some of those issues. The real question for Treaty talks is how to implement the rights and the relationship the Courts have taken great pains to articulate.

Whereas, the Canadian *Constitution* and *Charter of Rights and Freedom*s will continue to apply equally to all British Columbians.

Non-aboriginal Canadians were not here first; they do not have pre-existing legal rights that survived the assertion of sovereignty, and they do not have collective rights to land and to lawmaking institutions of government that are entrenched in the *Constitution;* nor is their relationship to the Crown fiduciary in nature.

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[27] *Delgamuukw v. A.G.B.C.*, supra, paras 116 and 117

The individual rights entrenched in the *Charter of Rights and Freedoms* will apply differently in the context of the collective rights of Aboriginal Peoples. This is what the *Charter* says. Section 25 of the *Charter* provides:

> Aboriginal rights and freedoms not affected by Charter
>
> **25.** The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the *Royal Proclamation* of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired...

It is a complex question to determine how *Charter* rights and Aboriginal rights interact, and negotiations to conclude a treaty are a good forum to address such issues. However, the Province cannot offer to the people of British Columbia the possibility of providing a mandate which is contrary to the express terms of the *Constitution*.

We deal now with the questions as framed.

Openness # 3: Local government participation in the treaty process is guaranteed.

This issue raises two problems. One is the issue, already discussed, that the power to conclude Treaty lies with Canada. When the British Parliament debated the question of which level of government (Provincial or Federal) should be entrusted with jurisdiction to maintain Crown obligations to Aboriginal Peoples, the conclusion was that the Province should not have the power because local interests are in conflict with the duty of the Crown to protect Aboriginal Peoples. The Report from the Select Committee on Aborigines (British Settlements), 1837, concluded

> The protection of the Aborigines should be considered as a duty peculiarly belonging and appropriate to the Executive Government, as administered either in this country or by the Governors of the respective Colonies. **This is not a trust which** could conveniently be confined to the local Legislature. In proportion as those bodies are qualified for the right discharge of their proper function, they will be unfit for the performance of this office. For a local Legislature, if properly constituted, should partake largely of the interest, and represent the feeling of settled opinions of the great mass of the people for whom they act. But the settlers in almost every Colony, having either disputes to adjust with the native tribes, or claims to urge against them, **the** representative bodies is virtually a party, and therefore ought

not to be the judge in such controversies.[28](emphasis added)

The Province now not only wants a mandate to determine matters in the Treaty process which should not "conveniently be confined to the local legislature", but asks for a mandate to include a subordinate local legislature, the municipal governments which the Province created by Provincial statute. This mandate goes far beyond the Province's jurisdiction.

A further legal problem arises with this question. It is the problem of fair dealings and goodfaith negotiation. Aboriginal Peoples who have participated in the British Columbia Treaty Commission ("B.C.T.C.") process have borrowed multi-millions of dollars to negotiate a treaty, based on terms for the B.C.T.C. process, which had been agreed to through tri-lateral negotiations between the Federal Government, the Province and representatives of Aboriginal Peoples. This agreement was reflected in the Task Force Report on which the B.C.T.C. process is based. Recommendation #10 specifically states that third parties should **not** have an independent seat at the Table.

If the proposed question means that the Province wants to create an independent seat at the table for local governments (over and above their participation, which is already guaranteed as part of the B.C.T.C. process), this will contravene the agreement upon which the Treaty process is based. This could be an expensive about-face. To the extent that any of the founding principles for the B.C.T.C. process are changed, without the consent of the affected Aboriginal Peoples, a legal challenge is invited to question whether money borrowed in reliance of a process which has now been unilaterally changed by one party must be repaid. In our opinion, it would be open to Aboriginal Peoples to challenge whether they must "pay back" borrowed money when the terms for the negotiation process have been unilaterally changed to their detriment.

Property and Interest Issues #4 – Private property is not negotiable unless there is a willing seller and willing buyer.

How Aboriginal title and the interest of those who hold fee simple title can or cannot co-exist is a complex one. The Courts have held that certain Aboriginal rights can co-exist with fee simple. For example, certain hunting rights can co-exist on private property.[29] Courts have also granted injunctions preventing holders of land in fee simple from using the land, inconsistent with treaty rights.[30]

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[28] U.K. Select Committee on Aborigines, Report from the Select Committee on Aborigines (British Settlements): With the Minutes of Evidence, Appendix and Index. Ordered, by the House of Commons, to be Printed, 26 June 1837 (London: [s.n.]. 1837) at 77 [hereinafter Select Committee]. Found also as "report from the Select Committee on Aborigines (British Settlements)" in Irish University Press Series of British Parliamentary Papers,Anthropology Aborigines, vol. 2 (Shannon, Ireland: Irish University Press. 1968), session 11837.

[29] *Regina v. Bartleman* (1984) 55 B.C.L.R. 78 (B.C.C.A.)

[30] See, for example: *Saanichton Marina Ltd. v. Claxton*, (1987) 18 B.C.L.R. (2d) 217 (B.C.S.C.)

Generally, Aboriginal Peoples have been sensitive to ensure that their neighbours who hold land in fee simple are not affected in their efforts to have the Crown recognize and respect their rights. For example, in the *Delgamuukw* case, the Aboriginal Peoples in that litigation exempted fee-simple interests from the relief sought in the case. However, there will be instances in the Province where a fair settlement must consider private lands, such as where sacred areas are located on private lands, or where a private land owner (or owners) occupy the vast extent of an Aboriginal Nation's traditional territory.

In *Delgamuukw*, the Province argued that a grant in fee simple extinguished Aboriginal title. The Court rejected this argument both because Provincial Crown title was burdened by Aboriginal title under Section 109 and also because the Province lacks the power to extinguish Aboriginal title because of Section 91(24).

This question, in effect, asks the citizens of British Columbia to provide a mandate contrary to the decision of the Supreme Court of Canada on an issue which was legally contentious for over a decade, and where the Courts decided the issue against the Province.

Question #5: Continued access to hunting, fishing and recreational opportunities will be guaranteed for all British Columbians.

Hopefully, there will be sufficient resources available in the Province for all British Columbians to have access to hunting, fishing and recreational opportunities. However, the Supreme Court in the *Sparrow* case confirmed that because of the entrenchment of Aboriginal fishing rights in the *Constitution,* and flowing from the fiduciary relationship, the Government must give effect to a priority in its management of the resource, as follows:

First, the resource is managed for conservation;

Second, the requirements of Aboriginal Peoples to fulfil their constitutional rights are met;

Third, others share in the resources.

The question, as posed, suggests that even if the resource is incapable of sustaining itself, and fulfilling the rights of Aboriginal Peoples, nevertheless, all British Columbians should share in what little there may be. This question runs contrary to the priorities established by the Supreme Court of Canada.

Question #6: The Province will maintain parks and protected areas for the use and benefit of all British Columbians.

This may or may not be problematic, depending upon the history of the park. Some parks have been created without consultation with First Nations, in violation of what the Court in the *Delgamuukw* and the *Taku River* case has determined must occur. These decisions

establishing parks will need to be reviewed and proper consultation occur. After consultation, some of these lands may or may not remain park lands, depending on the outcome of the Province substantially addressing the concerns of Aboriginal Peoples. The Courts have been clear that it is bad-faith negotiation for the Government to create a park without proper consultation, when the lands are the subject of land-claims negotiations.[31]

Question #7: All terms and conditions of Provincial leases and licences will be honoured.

Because the Province had disregarded Aboriginal rights and title for a century and has refused to accept a duty of real consultation, there are now many third-party leases and licences granted by the Province, which are probably illegal. Not all leases and licences are problematic, but some will need to be reviewed because, by their terms, the tenure granted has the capacity to create further injustice to Aboriginal Peoples extending well into the future.

For example, long-term forest tenures, such as tree-farm licences, grant exclusive rights to a company to completely transform the landscape from old-growth forest to 90-year rotational crops without any benefit to Aboriginal Nations over many decades.

The mandate the Province seeks suggests that all tenures, no matter how completely they prevent any accommodation of the interests of Aboriginal Peoples should continue.

Question # 9: The Province will negotiate Aboriginal government with the characteristics and legal status of local governments.

These two governments are different in origin and purpose. Local governments are created by Provincial statute. Aboriginal governments arise from the pre-existing laws and legal institutions of Aboriginal Peoples and are not created by statute or governmental recognition. Local governments manage the business of municipalities, as these powers are delegated by the Province. Aboriginal governments carry forward the laws and institution of Aboriginal Peoples maintaining their cultural survival as distinct peoples on their territories. The Province has full jurisdiction to create a municipal government and no jurisdiction to define an Aboriginal government.

The Province lost its legal challenge in the *Campbell* case[32], where it argued virtually the same legal position that is assumed in this referendum question. The Court affirmed, among other things, the continuation of a right of self-government in Aboriginal Peoples, who were recognized as political communities, whose law-making powers could not be illegally intruded upon by the Governments. The Province's referendum question runs contrary to this decision.

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[31] *Nunavik Inuit v. Canada* (1998) 164 D.L.R. (4th) 463 (F.C.T.D.)
[32] *Campbell v. B.C. (A.G.)* [2000] 4 C.N.L.R. 1

Question # 11: Province-wide standards of resource management and environmental protection will continue to apply.

The Supreme Court of Canada has taken great pains to define principles for reconciliation, which should assist the parties in negotiating the terms of treaty. The mandate the Province seeks, in effect, requires that whatever laws First Nations' governments pass must conform to laws passed by the Province. This is not reconciliation. Aboriginal laws will likely be tougher in the area of environmental standards, and will require more sustainability of the resource in areas of resource management. This conclusion is in keeping with Aboriginal Peoples' cultural preoccupation spanning centuries to teach and practice respect and protection of the land; it is also in keeping with the definition of Aboriginal title, as determined by the Supreme Court of Canada, that the land cannot be used in a manner which is unsustainable for future generations.

The Province's question undermines the Courts' careful articulation of reconciliation principles and stands to deprive all of British Columbia with the contribution Aboriginal Peoples can make to preserve the landscape of B.C. for future generations.

Question #13: Affordability should be a key factor in determining the amount of land provided in treaty settlements.

No land is "provided" in treaty settlements. Aboriginal Peoples have a legal right to occupy and possess their land. Treaties can determine areas over which Aboriginal Peoples will have exclusive rights, and areas over which certain shared rights and jurisdictions will operate. But, to say that a treaty "provides" land is to turn the doctrine of Aboriginal title on its head.

Question #14: Treaties must ensure social and economic viability for all British Columbians.

The necessity for treaties arises from colonization and the laws governing the Crown when this land was settled. Today, treaties must also address historic wrongs and provide a path for Aboriginal Peoples to come out of the shadows of economic marginalization that has been created by the Government policies of denial of benefits to Aboriginal Peoples from their lands and resources. Treaties are not legally about benefiting the economy of British Columbia, although some studies indicate that this is a likely consequence.

Question #15: The existing tax exemptions for Aboriginal People will be phased out.

The jurisdiction to govern taxation exemption is squarely within the domain of Canada under Section 91(24). The Federal Government has legislated in this area through the provisions of the *Indian Act*. The Province has no jurisdiction in this area.

Summary

The questions are as problematic not only for what they include, but also for what they exclude. Many of the questions are recycled positions which the Province has advanced through the Courts, and which have been resoundedly rejected by the Supreme Court of Canada.

Absent is any reference to a mandate to give effect to Crown obligations owed to Aboriginal Peoples or to try to do justice to a century of denial of rights and title; nor is there a mandate to take steps as can be negotiated to ensure the survival of distinct First Nations within their territories - by focussing on language survival, or to facilitate education for non-aboriginal people about Aboriginal Peoples, and provide access to higher education for Aboriginal Peoples. The right of self-determination is entirely absent from the mandate. Nor do the questions reflect a mandate which addresses how reconciliation will occur between the preexistence of Aboriginal societies and the assertion of Crown sovereignty; how Aboriginal Peoples can make decisions as to how the land will be used, while at the same time, co-existing with Federal and Provincial laws. No attention is paid in the mandate to providing a path for Aboriginal Peoples to decolonize or to repair their political institutions.

The affordability principle is a red flag, which attracts unprincipled and fearful discussion. Take, for example, the Nisga'aa Treaty, which Gordon Gibson, representing views promoted by the B.C. Liberal party criticized publicly as being costly, "compared to past practices, creating an unrealistic floor for expectations within British Columbia."[33] The cost/benefit analysis of the treaty was never undertaken, but we explore some comparisons.

Compare, for example, the approximately 2,000 square kilometres of Nisga'a settlement lands, where several thousand Nisga'a must make their homes and economic future, with the land assets of the Douglas Lake Cattle Co., which at its height controlled four million acres of land,[34] or with MacMillan Bloedel, which, at the time of the Weyerhaeuser takeover last year, was reputed to "manage" 1.1 million acres in British Columbia.[35] Compare the limited powers to govern the Nisga'a land base and citizens with the authority given to Alcan when in the 1950s it acquired among other benefits, water in the entire drainage system of the upper Nechako River, roughly 5,475 square miles[36]. The company was also granted municipal status for its dams, hydroelectric developments and the village of Kemano. Alcan does not pay any provincial or regional taxes on these

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[33] *B.C. Studies: The British Columbian Quarterly* 1998-99, Volume 120 (Special Nisga'a Treaty Issue), edited by Cole Harris and Jean Barman

[34] Campbell Carroll, *Three Bear: The Story of Douglas Lake* (Vancouver: Mitchell Press, 1958), at p. 18

[35] "U.S. Firm Says Its Takeover of MacBlo Creates a Global Leader", *Vancouver Sun*, pp. A1, A4, June 22, 1999

[36] B.C. Water Rights Branch. "Water Powers, British Columbia, Canada," 1954, p. 64, *British Columbia Archives,* GR 884, box I, file 24

lands. The effect of the agreements has been described as creating a form of "sovereignty association"[37]. Compare the estimated $200 million to $400 million in cash to be paid to the Nisga'a over the next decade with the estimated $478 million in compensation and penalties paid by the Liberal government in 1993 to cancel the Conservative government's prior agreement to purchase 50 EH-101 helicopters.

The point being, that when a Province has denied the existence of Aboriginal title for a century, and has received the benefits from this denial, there is a big problem. The task of treaties is to do justice to the parties in keeping with established legal principles, while at the same time fashioning solutions which are sustainable to Aboriginal and non-aboriginal people alike.

The referendum questions seek a mandate to perpetuate an outdated colonial relationship, many features of which have been expressly repudiated by the Courts.

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[37] Bev Christenson, *Too Good to Be True: Alcan's Kemano Completion Project* (Vancouver: Talonbooks, 1995), pp. 73-75

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Endnotes

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[1] Mr. Brumell was a speaker at the public fora held October 25, 2001 in Kamloops. All quotations following this style are taken from the transcripts of the public hearings that preceded the referendum. Quotations by Committee members can be distinguished from those of presenters by the use of bold font in the reference.

[2] Though not written in quite the same language, the 'highlights' of the Liberal government's first year in office are summarized in their New Era Review, "A Platform for Prosperity," May 30, 2002.

[3] *Campbell et al v. AG BC/AG Cda & Nisga'a Nation et al.* 2000 BCSC 1123. Retrieved May 31, 2002. http://www.courts.gov.bc.ca/jdb%2Dtxt/sc/00/11/s00%2D1123.htm

[4] "BC Treaty Negotiations: Moving Forward Together"

[5] The federal government, the third party at the treaty table, practiced non-intervention and thus offered consent by non-action.

[6] B.C. New Democrats. Retrieved May 31, 2002. http://www.bc.ndp.ca/news/010827_refcomboycott.html

[7] Ministry of Attorney General, Treaty Negotiations Office. Retrieved May 31, 2002. http://www.gov.bc.ca/tno/news/2002/government_honours_referendum_commitment.htm?5394

[8] I will use this term, drawn from Furniss (1999) to designate those most privileged non-Aboriginal groups.

[9] I will use "First Nations" to designate those nations involved in treaty negotiations and "Aboriginal peoples" to refer indigenous communities more generally. I use the former in the same context as Claude Denis: "This usage of 'First Nation' is different from common political parlance in Canada that restricts the term to 'Indian' bands as defined and organized by the *Indian Act*, to the exclusion of Inuit and Metis peoples and non-status Indians. I am ignoring these legally derived distinctions precisely to highlight the source of the legitimacy of aboriginal claims: they are peoples, or nations, and they were first to occupy this land of the Americas" (1997:13).

[10] See, for example, Nancy Fraser (1997), Iris Marion Young (2000), Chantal Mouffe (2000), and C.B. MacPherson (1975) for such critiques.

[11] I am strongly influenced by Dorothy Smith (1999) in my emphasis on locating individuals in their everyday/everynight realities, as opposed to lifting individuals from these places.

[12] I recognize that many academics have spent lifetimes trying to establish what 'justice' means. For the purposes of this paper, I suggest that what is just will have to be formulated by the diverse citizens of a given society, but that such a formulation cannot be made in the presence of large inequalities of power.

[13] More specifically a powerful English minority within a powerful White (Afrikaaner-English) minority (Crapanzano, 1985).

[14] Biko argued that the Christian tradition of finding fault in oneself detracted from the apartheid struggle, and also cast responsibility onto blacks for their social, political and economic locations.

[15] Other sources of governance identified by Rose include experts, consumerism and numbers.

[16] I recognize that although apartheid officially fell in 1994 when Nelson Mandela was elected president, South Africa continues to be plagued by inequality based on race.

[17] I am thinking specifically of the conviction of Saskatoon police constables Ken Munson and Dan Hatchen who, on a bitterly cold night, drove an intoxicated Aboriginal man out of town and left him there to find his way back to town (Barnsley, 2002).

[18] http://www.prsp.bc.ca/history/history.htm, Retrieved Aug. 19, 2002.

[19] The Eurocentric conception of how land is 'owned' has led to the astonishment of many Euro-Canadians when it is stated that First Nations in B.C. have claimed more than 100% of the land base. This astonishment, however, is the direct result of the failure of Eurocentric concepts to adequately deal with alternative understandings of 'ownership.' For an in-depth case study analysis of the inadequacy of the dominant system to deal with Aboriginal perspectives and traditions, see Claude Denis' We are Not You: First Nations and Canadian Modernity, 1997.

[20] Civil disobedience and direct action are, of course, options available outside of these dominant institutions, but are rejected by the Liberal government, and, I would argue, the majority of British Columbians.

[21] I wish to point out to the reader that Fukuyama's use of evolutionary metaphor is inaccurate. Evolution, as proposed by Darwin and understood by scientists, is neither directional nor finite, but is an ongoing response to changing environmental conditions. Thus to suggest that liberal democratic theory has escaped evolution through its victory over other forms of political and economic systems is misguided.

[22] ...and to some, most disagreeable...

[23] See Chapters Two and Three for in-depth analysis of the enactment of these discourses through the referendum process.

[24] Note that these tenets are not distinct, but rather are strands of the same web. I have attempted to highlight them separately in the analysis that follows for the purposes of clarity. However, any clear distinctions that emerge between these principles are illusory.

[25] I am grateful to Dr. J. Tully for his seminar in "Freedom" in which numerous approaches to freedom were explored. I have chosen to use Berlin's conceptions of freedom to illustrate the relationship between the referendum and liberal democratic theory as Berlin specifically connects freedom to democracy and because the distinction between negative and positive freedom provides an important contrast evident in everyday realities. Moreover, I have encountered these conceptions in several separate texts, indicative of their importance in this field of thought.

[26] The analyses in Chapter Two focus on the ways in which the state-sponsored organization of the referendum minimized dissent.

[27] I am following Freeman's (2002) distinction between classical liberalism and high liberalism.

[28] Public hearings were held in all regions of the province.

[29] For further analysis of the discourse of 'equality' as it played out in the discourses throughout the referendum process, see Chapter Three.

[30] See Appendix III for the ballot text.

[31] See Chapter Two for a transcript excerpt in which the speaker is challenged as racist by an audience member.

[32] Moreover, by holding the referendum as an ostensible means to pursue the freedom and equality of its citizens, the state further legitimated itself as a democratic government in a time of controversy and resistance.

[33] I recognize that in pure liberal democracy the public, not the state, would identify this good. However, the state only receives input from the public on those public goods designated by the state. Again, this issue is indicative of the disconnect between liberal democracy as theory and as practice.

[34] This is not to say that marginalized individuals and communities are unilaterally excluded from such spaces, but rather that they actively choose not to participate as a form of resistance.

[35] Arguably, Rawls would challenge that being 'reasonable' has support from all citizens as it is drawn from all citizens and as the Liberal government unilaterally set the parameters of the referendum process, this process could not be considered to be 'reasonable.' However, the

Liberals justified this action on the grounds that they were overwhelmingly elected on an election platform that included a referendum on treaty negotiations.

[36] B.C. Treaty Commission. http://www.bctreaty.net Retrieved April 13, 2002.

[37] See Chapter Two.

[38] In order to take control of their oppression under the racist regime, Blacks had first to develop Black Consciousness to overcome the psychological trauma of apartheid. Black Consciousness was a reflexive project to overcome the psychological residue of apartheid and develop pride and dignity in Blacks. This project would lead Blacks to act on their own behalf, rather than allow White liberals to act for them, a crucial arrangement for Black empowerment.

[39] Not capital 'L' Liberals.

[40] Nov. 2: 624

[41] See Chapter Two.

[42]The inversion of gaze is informed by Michelle Fine's (1998) observation that elites are protected twice: first from the institutionalized scrutiny (as in government welfare offices) and then from academic analysis, which focuses primarily on the subjugated.

[43] While "privilege" is clearly contestable and relative, in this category I include those who may be marginally privileged, but who benefit from the activities of the highly privileged elite. My construction is informed by Marx's construction of the petit bourgeoisie, the lower middle class comprised of small manufacturers, artisans, and shopkeepers among others. This sector of society benefitted from the capitalist system, but their existence was threatened by large-scale capitalists. Although they resisted the capitalist elite, their resistance was conservative as they sought not to overthrow the capitalist system, as Marx predicted the proletariat would, but rather to maintain the relatively small privilege they held within this system. While B.C. clearly has an economic elite and a political elite (in this instance the Liberal government and the Committee), during the referendum process there were several presenters who aligned with this elite although they are not privileged to nearly the same extent (e.g. fishers and farmers). I will use "the elite" to refer to those with substantial resources who wield considerable influence over government policy; I will use the term "privilege" to refer more generally to groups variously privileged by social structure.

[44] Select Standing Committee on Aboriginal Affairs. "The Committee's Mandate." Retrieved Nov. 5, 2001. (http://www.legis.gov.bc.ca/CMT/37thParl/aaf/index.htm)

[45] Geoff Plant is the Attorney General and Minister Responsible for Treaty Negotiations, the official who oversaw the referendum.

[46] Also see Oct. 25: 459; Nov. 1: 527; Nov. 2: 607.

[47] See also D. Konsmo, Oct. 3: 110; K. Buchanan, Oct. 4: 171; D. Croft, Oct. 11: 256-7; P. George, Oct. 18: 391.

[48] See 'Rules of Procedure', this chapter.

[49] See **J. Les**, Oct. 3: 106 and Oct. 24: 403.

[50] See also Oct. 10: 215 and Nov. 1: 542.

[51] See, for instance, M. Mazur, Oct. 12: 289; A. Knight, Oct. 25: 454; D. Carter, Oct. 26: 477; and L. Dore, Nov. 1: 513.

[52] In the public hearings on the referendum, I suspect the Committee was not unconscious of its power, given its sanction by the provincial government.

[53] I recognize that I am complicit in perpetuating the privilege for those with these skills: the individuals who I have chosen to quote are those who presented ideas clearly and concisely.

[54] I first encountered the illusion of power that is, in fact, confined to a very narrow location and thus is ultimately disempowering, in the context of classroom privilege. In parallel situations in the classroom, marginalized students find themselves in positions of authority in certain

classrooms, yet this authority does not transcend the classroom to form the basis of any meaningful challenge to structural oppression (Mohanty, 1993).

[55] It is not unwittingly that I choose a masculine pronoun in the immediate provincial context.

[56] See 'Economic Hegemony' in Chapter Three

[57] This behaviour is in contrast to the many who forwarded their ballots to First Nations for independent auditing. See 'Disengagement' in Chapter Three.

[58] For further analysis of equality and non-racialization, see 'Equality' in Chapter Three.

[59] **D. MacKay**, Sept 5: 17, Sept. 19: 26.

[60] I have reproduced the quotations from Hansard as they exist in the transcripts so as to contrast this usage with the capitalization of these terms associated with recognition of a distinct status. In quotations, I have noted the uncapitalized form as an error. This error reflects on the process of transcription, not the speaker.

[61] E.g. Y. Lattie, Oct. 4: 173; J. Dick-Billy, Oct. 25: 453; R. Martin, Nov. 2: 593.

[62] This style guide is not available as a public document.

[63] To illustrate this difference, I chose a presentation in which the speaker was speaking conversationally and not reading from a written submission.

[64] Transcribed from my recording of the hearings in Victoria, Nov. 2, 2002.

[65] While I do not agree that a referendum constitutes public debate, such has been the stance of the Liberal government and thus this logic fits within their framework.

[66] For example Oct. 5: 201; Oct. 17: 297; Oct. 17: 306; Oct. 25: 463

[67] For example Oct. 11: 249; Oct. 11: 255; Oct. 17: 314; Oct. 18: 368; Oct. 25: 463. The exclusion of this principle is particularly interesting, given that the federal Minister of Indian and Northern Affairs, Robert Nault, announced on July 22, 2002 that in an effort to speed up the treaty process, treaties would be negotiated incrementally. All parties apparently agree to this new approach. Perhaps the omission of this principle of incremental settlements indicates that B.C. was already committed to this approach and could not be assured that its voters would endorse it.

[68] For example Oct. 18: 356; Oct. 24: 415; Oct. 26: 475; Nov. 2: 565

[69] For example Oct. 26: 475; Nov. 1: 492; Nov. 1: 511

[70] For example Oct. 18: 359; Oct. 24: 423; Oct. 25: 441; Oct. 25: 457; Oct. 26: 468

[71] Another theme that was not included in the Committee's report was that of cash settlements in lieu of land. However, in his notes on a referendum motion, Geoff Plant addresses this suggestion, arguing that to negotiate cash settlements would "doom the treaty project to certain failure" on the grounds that Aboriginal title to land has been recognized in the courts (Plant, 2002a).

[72] http://www.legis.gov.bc.ca/CMT/37thParl/aaf/media/AAF-Chilliwack-Vancouver-Ad.pdf. Retrieved Feb. 7, 2002.

[73] Phil Steenkamp, Deputy Minister responsible for treaty negotiations. Sept. 19:33.

[74] See Appendix III, the Referendum Ballot.

[75] My emphasis.

[76] http://www.gov.bc.ca/tno/rpts/bcctf/conclsn.htm. Retrieved Sept. 1, 2002, Appendix 6, recommendation 1.

[77] While some critics of the B.C. Treaty Process argue against certainty as a means for the state to provide stability for capitalist investment and development of resources (Ratner, Woolford and Carroll, 2002), Alfred draws on another meaning of certainty, one advantageous to Aboriginal peoples, indicating that 'certainty' in the context of the treaty process, has been distorted to privilege the needs and wants of settler governments and investors over those of Aboriginal governments and communities.

[78] Also see K. Gooding, Oct. 5: 181; M. Werstuik, Oct. 11: 243; C. Gillis, Oct. 25: 458; and T. Jones, Nov. 1: 518-9.

[79] See Appendix III.

[80] This responsibility includes those who failed to participate on the terms of the government and have since been chastised as having failed to capitalize on an opportunity to make a difference

[81] In this case study of the Alpac Environmental Impact Assessment Review Board hearings,

[82] These will be further developed below.

[83] See, for example, Oct. 5: 196; Oct. 10: 225; Oct. 17: 295; Oct. 18: 360-1; Nov. 1: 514; Nov. 1: 526; Nov.2: 576; Nov. 2: 608; Nov. 2: 623

[84] Avigail Eisenberg (2001) addresses the elemental (and perverse) role of equality in referenda that are perceived to address difference. While referenda in which there is the perception that others are being granted the same rights as are enjoyed by the majority are generally endorsed, referenda that are perceived to grant special rights are rejected (even though the definition of these rights as 'same' or 'special' within a given referendum is highly contingent on standpoint). The entire treaty negotiation process is founded upon rights that are, at the very least, 'distinct' from those held by the rest of the population. On Nov. 2, 2002, Dr. Eisenberg presented this empirical information to the Committee at the public hearing in Victoria. In spite of this information, the Committee chose to use a tool predicated on sameness to seek public input on issues marked by difference.

[85] For the purposes of this paper, I am less concerned with defining race or differentiating it from ethnicity or nationhood than with the fuzzy perceptions of racialization held by non-Aboriginals.

[86] Also note in this quote the speaker's use of the word "offspring" instead of "children" or "descendants," implying that Aboriginal peoples have uncivilized or animalistic qualities.

[87] See Chapter Two.

[88] While I absolutely reject the propositions made by these speakers, the response of the Committee to their suggestions, or lack thereof, demonstrates yet again the inefficacy of the hearings as a place for deliberation and influence on state decision-making.

[89] Note the Chair's objection to the speaker's co-optation of his authority through asking a question of the Committee without seeking permission and directing the procedure of Committee responses.

[90] I note the obvious irony that "enfranchisement", meaning to receive the vote, also means to give up Indian status in the Canadian context (Barber, ed., Canadian Oxford Dictionary, 1998).

[91] This conclusion is tenuous at best, given the *Indian Act*.

[92] I.e. "the land now called Canada and the United States" (Alfred, 1999: xv).

[93] Contribution to Canada was also argued in terms of military service to the country. See D. Angus, Oct. 26: 488-9.

[94] Note the masculine characterization.

[95] E.g. G. Rattray, Oct. 10: 219; B. Hooker, Oct. 10: 222; and M. Forrest, Oct. 18: 380.

[96] E.g. S. Hartwell, Oct. 4: 133; and M. Richardson, Oct. 18: 363.

[97] E.g. G. Gibson, Sept 26: 74; **D. MacKay**, Oct. 10: 223; and D. Jones, Oct. 26: 469.

[98] On September 11th, 2001, terrorists flew two planes into the World Trade Centre, one into the Pentagon, and intended one for the White House. Following these attacks, the United States launched a "War on Terror" on Afghanistan where the terrorists were thought to be hiding. As of the fall of 2002, the US military hopes to expand its scope of 'defense' to any countries it suspects of facilitating terrorist activity.

[99] While the referendum was projected to cost $9 million, the low rate of voter registration (1%) and ballot return (approximately one-third) significantly reduced the costs of the referendum.

[100] Clerk of Committees Office, Personal Communication, July 3, 2002.

[101] For example, C. Stephens, Oct. 3: 121-2; B. White, Oct. 3: 129; C. Cootes Jr., Nov. 1: 531-2.

[102] White guilt was also criticized by a proponent of Aboriginal rights, Gabe Haythornthwaite (Nov. 2: 602), who argued that this guilt either played out as paralysis or denial, neither of which was productive for native peoples.

[103] The Aboriginal organization supporting First Nations in the treaty negotiation process

[104] Times Colonist, April 14, 2002: C7.

[105] http://www.treatyinjustice.org, Retrieved May 1, 2002. This group became involved after hate literature promoting the referendum was distributed through Kamloops: http://www.bcwhitepride.com/referendum.htm, Retrieved May 1, 2002.

[106] http://www.bc.ndp.ca/news/020403_boycott.html, Retrieved May 1, 2002

[107] http://www.cupe.bc.ca/index.php4?id=549, Retrieved May 1, 2002

[108] http://www.treatyinjustice.org, Retrieved May 1, 2002

[109] http://www.bcnu.org/Bulletins_2002/bull_022-2002.htm, Retrieved May 1, 2002

[110] Some of the ballots counted by an independent auditor received a creative end: "BBQ the Referendum" was organized by Judith Sayers and featured a paper mache canoe made of ballots, which was filled with ballots and send out to sea aflame on July 3, 2002.

[111] A full-page advertisement by the FNS in the Victoria Times Colonist, April 5, 2002: A12.

[112] http://www.artfulballot.org/home.htm, Retrieved July 16, 2002.

[113] Bantustans (1996: 80-6) were territories (similar to Indian Reserves in Canada) created by the South African government for blacks as a means to achieve the nationalist notion of " 'separate freedoms for the various nations in the multinational state of South Africa' " (1996: 19)

[114] While this relationship also holds for citizens in general, it is most problematic for those groups seeking to challenge hegemonic power structures.

[115] Union of B.C. Indian Chiefs, http://www.ubcic.bc.ca/atrp.htm; http://www.ubcic.bc.ca/certainty.htm. Retrieved July 2, 2002.

[116] I note that there were earlier movements by these groups. Their earlier efforts, however, saw them fighting for *recognition as people*, rather than challenging insidious biases of social structure.

[117] I believe that institutions and their power exist only as a result of the everyday efforts of individuals and groups who reproduce them. Thus, the hegemony of institutions can be fundamentally challenged by the refusal of individuals and groups to participate.

[118] I do not envision citizens and Aboriginals as passively accepting power inequalities, but rather as contesting and resisting these inequalities. Yet I wish to draw attention to the long-standing, asymmetrical pattern of power within each of these two relations.

[119] This is also the case with the Royal Commission on Aboriginal Peoples, which provided 400 recommendations after 5 years of hearing testimony and gathering information. The federal government has yet to act on these recommendations.

[120] Admittedly, dialogue has not been entirely responsible for the decolonization of any given society. However, major decolonization movements have required dialogue. While Mandela was perceived by some to be a traitor for engaging with apartheid politicians, the dismantling of apartheid was orchestrated in great part by his commitment to dialogue (Mandela, 1995).

[121] "... proponderantly the histories have been written by the winners" (Haley, 1976: 688).

[122] Based on information available through http://www.legis.gov.bc.ca/mla/mla_alphaname.asp, retrieved Sept. 18, 2002.

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Title of Thesis:

Public Space, Liberal Democracy, and Colonialism: British Columbia's Referendum on Treaty Principles

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December 4, 2002