

**Law's Hidden Canvas
Teasing Out the Threads of Coast Salish Legal Sensibility**

by

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BCL & LLB, McGill University, 1999
LLM, Université de Montréal, 2007

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Abstract

This dissertation seeks to illuminate key aspects of Coast Salish legal sensibility. It draws on collaborative fieldwork carried out between 2007 and 2010 with Stó:lō communities from the Fraser Valley in southern British Columbia, and on the rich ethnohistorical record produced on, with, and by members of the Stó:lō polity and of the wider Coast Salish social world to which they belong.

The preoccupation underlying this inquiry is to better understand how to approach an Indigenous legal tradition on its own terms, in a way respectful of its distinctiveness – especially in an ongoing colonial context, and from my position as an outsider to this tradition. As such, a main question drives the inquiry: What makes a legal tradition what it is?

Two series of legal insights emerge from this work. The first are theoretical and methodological. The character of a legal tradition, I suggest, owes more to implicit norms than to explicit ones. In order to gain the kind of understanding that allows for respectful interactions with the principles and processes that inform decision-making within a given legal order, one must learn to decipher the norms that are not so much talked *about* as tacitly *modelled* by its members. Paying attention to pragmatic forms of communication – the mode of conveying meaning interactively and contextually, typically by showing rather than telling – reveals the hidden normative canvas upon which explicit norms are grafted. This deeper layer of normativity inflects peoples' subjectivity and sense of their own agency – the distinctive fabric of their socialization.

This lens on law – emerging from a reflection on the stories that Stó:lō friends shared with me, on the discussions had with them, and on the relational experience of Stó:lō / Coast Salish pedagogy, and further informed by scholarship

on Indigenous and Western law, political philosophy and sociolinguistics – yields a second series of insights. Those are ethnographical, about Coast Salish legal sensibility itself. They attach to three central institutions of the Stó:lō legal order: the Transformer storycycle, longhouse governance practice and the figure of the witness, and ancestral names – corresponding to three sets of key relationships within the tradition: to the land, to the spirit, and to kin.

Among those insights, a central one concerns the importance of interconnectedness as an organizing principle within Stó:lō / Coast Salish legal orders. Coast Salish people are not simply aware of the *factual* interdependence of people and things in the world, pay special attention to this, and happen to offer a description of the world as interconnected. There is a normative commitment at work here. Interconnectedness informs dominant interpretations of how the world *should* work. It is a source of explicit responsibilities and obligations – but more amorphously and pervasively yet, it structures legitimate discourse and appropriate behavior within contemporary Coast Salish societies.

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Dedication

For my mother

Section One
Introduction

Chapter One

Orientation

I. Beginnings

This thesis seeks to contribute to the conversation that is building momentum in Canada between Indigenous and non-Indigenous legal traditions. It presents a picture of key traits of the Coast Salish legal sensibility, discussing the character of this legal tradition by teasing out some of its aspects as they manifest today within the legal order of Stó:lō society – the twenty-four Coast Salish First Nations living along the southernmost part of the Fraser River, in British Columbia.

Stó:lō, the word for “river” in Halq’eméylem, is now predominantly used to refer to a people: the Indigenous society whose vast traditional territory spans the lands and waters along the lower 190 kilometers of western Canada’s largest river. The Fraser is one of four waterways coursing through Coast Salish territory, the others being the Strait of Georgia, the Strait of Juan de Fuca, and Puget Sound. They inscribe this territory with a four-pointed star, at the heart of which lies the Salish Sea.¹

The Coast Salish, a “society of societies,” also include the Skwxwú7mesh (Squamish), Tsleil-Waututh, Musqueam and Nooksack peoples (among others), and across the Salish Sea, on Vancouver Island, the Quw’utsun (Cowichan), TS’ou-ke, Songhees, and WSÁNEĆ (Saanich) peoples (among others too). Deeply rooted in the specific parts of Salish territory they have inhabited for millennia, each of those societies has its own stories, ancestral techniques, as well as its own legal

¹ See Keith Thor Carlson, *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010) at 12-27 and 55 [*The Power of Place*]. For a map of Stó:lō territory within the broader Coast Salish world, see Keith Thor Carlson, ed, *A Stó:lō-Coast Salish Historical Atlas* (Vancouver: Douglas & McIntyre, 2001) at 3-5 [*Stó:lō Atlas*].

order, jurisdiction and internal distribution of powers and responsibilities.² But they also have much in common with each other: their extended families overlap; their ancient storycycles share characters, tropes, teachings and narrative conventions; the variations of one ancestral language connect many of those societies and underlie the commonalities of their oral traditions³; and communal spiritual practices, such as the winterdance, nurture strong spiritual fraternities throughout the territory. Although they are distinct, and have not always been on good terms with each other,⁴ these are peoples who have been speaking with each other for thousands of years.⁵

I came to Coast Salish territory as an outsider – arriving in 2006 to begin doctoral work at the University of Victoria. I am from Québec, born and raised in Montréal to a French-speaking family. My father’s family has lived in Québec for a few generations, “French Canadian” on his father’s side, and from more recent Irish immigration on his mother’s. My mother was born in Egypt to a Coptic family on her father’s side, and to a Cairo-born mother from Swiss and Lebanese parents. My mother’s family’s main language in Egypt was French – which led them to choose Québec when they sought to emigrate in the mid-1960’s.

As a non-Indigenous person, and as a jurist trained in the civil and common law

² Although Coast Salish territory shares much flora and fauna, such as multiple species of cedar, salmon, and berries, it also holds extraordinary diversity, in terms of landscape, climate, and of the life it supports in any particular place. The techniques developed by people rooted in particular locations to ensure their sustenance and safety, as well as their particular stories, vary accordingly. But there was also a lot of seasonal movement and exchange, conveyed by the use of the arrow on many of the maps of the *Stó:lō Atlas*, *supra* note 1.

³ Halkomelem is the generic term for the ancestral language of a large portion of the Coast Salish world. It knows three dialects: Upriver Halkomelem, also known as *Halq’eméylem* (the term I will use in this thesis), Downriver Halkomelem (*Hun’qumyi’num’*) and the dialect of communities located in southeastern Vancouver Island, *Hul’qumín’um’*: *Stó:lō Atlas*, *supra* note 1 at 22-23.

⁴ For a sketch of historic intercommunity conflicts, see the *Stó:lō Atlas*, *supra* note 1 at 48-49. See also Bill Angelbeck, “Conceptions of Coast Salish Warfare, or Coast Salish Pacifism Reconsidered: Archaeology, Ethnohistory, and Ethnography” in Bruce Granville Miller, ed, *Be Good of Mind: Essays on the Coast Salish* (Vancouver: UBC Press, 2007) 260.

⁵ The first traces of Aboriginal presence on Stó:lō Téméxw have been dated to the early Holocene period (between 8,000 and 10,000 years ago): see the historical timeline provided in the *Stó:lō Atlas*, *supra* note 1 at 162-69.

traditions in Montréal, learning Stó:lō law and finding my bearings in the Coast Salish legal tradition has amounted to a profound, and ongoing, resocialization process. This process began in the summer 2007, when I had the opportunity to participate in the ethnohistory field school organized by Professors Keith Carlson and John Lutz, in collaboration with Stó:lō communities and with the team directing the Stó:lō Research and Resource Management Centre in Chilliwack (SRRMC).⁶ My research topic during the field school, established in dialogue with the SRRMC, pertained to the establishment of *Xyolhemylh*, a centralized Stó:lō Child and Family Services agency, in 1994, and to its termination in 2004 – coinciding with the ten-year span during which the twenty-four Stó:lō communities were united under a single governance body. This work allowed me to become better educated on the history of residential schools and their legacy, on the ongoing assimilative and discriminatory policies of the Canadian government in regard to child welfare, and on Stó:lō approaches to the well-being of their own children and families.⁷ Packed into a dense month, the research also allowed me to become acquainted – in the concrete and impactful way afforded by interviewing a wide range of people – with the fundamentally dynamic quality of the Stó:lō legal order. This quality, which plays out within the Coast Salish world as a whole, rests on the irreducible, productive tension between people’s local rootedness in their particular communities (overlapping with their respective “bands”, in the language of the *Indian Act*⁸) and the fluidity and flexibility of their affiliations across the Coast Salish world.

Following field school, my budding personal and pedagogical relationships within

⁶ The field school was launched in 1998 and been held biennially ever since: “Ethnohistory Field School with the Stó:lō”, online:

<http://web.uvic.ca/vv/stolo/reports.php#Field_School_Research_Papers>. See also “Stó:lō Research and Resource Management Centre”, online: <<http://www.srrmcentre.com/>>.

⁷ Andrée Boisselle, “Emerging from Colonial Quicksands: Examining Stó:lō Discourse Around the Experience of Taking on Responsibility for the Delivery of Child and Family Services”, (revised in 2008), online: <http://web.uvic.ca/stolo/pdf/Boisselle_Emerging_from_quicksands_2008.pdf>.

⁸ For a definition of the term and its attendant expressions, see s. 2 of the *Indian Act*, R.S.C., 1985, c. I-5.

the SRRMC and Stó:lō communities yielded a research project of broader scope on Stó:lō law and governance. I was interested in focusing my doctoral research on the underpinnings of the contemporary Stó:lō legal order. On the Stó:lō side, the directors of the SRRMC, archeologist David Schaepe and Stó:lō historian Albert McHalsie (Naxaxalhts'i) – known as Sonny – were interested in facilitating fundamental research on the constitutive norms of the contemporary Stó:lō legal order. They were heavily involved at the time in providing daily support to Stó:lō communities engaged in treaty negotiations (iterations of a “Stó:lō Constitution” had been generated in that context)⁹, and overwhelmed by the exponential requests for consultation with regard to projects potentially impacting Stó:lō rights and title under Canadian law, in the wake of the Supreme Court’s 2004 decision in *Haida*.¹⁰ Since the mid-1990’s – when a series of Supreme Court decisions¹¹ articulated the legal tests pertaining to the rights of Indigenous peoples enshrined in the *Constitution Act, 1982*¹² – McHalsie, Carlson, Schaepe and other members of the research team working for the Stó:lō Nation’s Aboriginal Rights and Title Department had been working closely with Stó:lō elders to document and disseminate Stó:lō oral history and traditional practices in relation to the land.¹³ During our discussions through the academic year 2007-2008 to set the direction of my research,¹⁴ Sonny and Dave kept returning to a statement by Steven Point (Xwelíxweltel), an important Stó:lō leader who had just been sworn-in as

⁹ See the “Stó:lō Xwexwilmexw Treaty Association”, online: <<http://sxta.bc.ca/>>.

¹⁰ *Haida Nation v British Columbia (Minister of Forests)*, [2004] 3 SCR 511.

¹¹ See, in particular, the three seminal cases of *R v Sparrow*, [1990] 1 SCR 1075 (Musqueam fishing rights case), *R v Van der Peet*, [1996] 2 SCR 507 (Stó:lō fishing rights case) and *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 (Gitksan land title case).

¹² Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

¹³ The *Stó:lō Atlas*, *supra* note 1, emerged from that work (see Carlson’s “Preface” to the Atlas at xv). So did earlier publications, like Keith Thor Carlson, ed, *You Are Asked To Witness: The Stó:lō in Canada’s Pacific Coast History* (Chilliwack, B.C: Douglas & McIntyre, 1997). So did Keith Thor Carlson & Albert (Sonny) McHalsie (Naxaxalhts'i), *I am Stó:lō! Katherine explores her heritage* (Chilliwack, B.C: Douglas & McIntyre, 1998).

¹⁴ These discussions, facilitated by Professor John Lutz, helped us generate a successful application for a MITACS grant to partially fund my research.

Lieutenant Governor of British Columbia¹⁵: “Our Constitution is set in stone.”¹⁶

Steven Point’s statement hinted at the profound connection between Stó:lō law and the Stó:lō’s relationship to their land, important dimensions of which are the theme of the sacred storycycle of Xexá:ls. This siblinghood of four supernatural beings, also known as the “Transformers” or “Inscribers”, had travelled through Stó:lō territory in mythical time, transforming some individuals into stones, mountains or other dominant features of the landscape, while turning others into the plants, trees, and animals that became central to the livelihood of the Stó:lō over the centuries. Thus Stó:lō *Téméxw*, Stó:lō territory, was thought of as literally constituted of the Stó:lō’s ancestors, their faces and body shapes in some cases still visible, cast in the landscape. I was to inquire into and articulate with Stó:lō practitioners some of the connections between the Stó:lō mythological storycycle and Stó:lō law.¹⁷

To gain a better understanding of the Stó:lō oral tradition, and to experience how traditional norms found expression in current Stó:lō discourse and governance practices, I spent more than a year and a half in the Fraser Valley between 2008 and 2010. During that time, I formed relationships within a widening circle of friends and teachers in Stó:lō communities, some of whom extended their hospitality and made my life and work in the Valley possible. I was generously and caringly hosted by Marilyn and Lloyd Newton in Abbotsford for the first month of my stay. The great potter, multi-media artist, and Halq’eméylem teacher Laura

¹⁵ The Honourable Steven Point led the Stó:lō Nation during its decade of unity (1994-2004), became a British Columbia Provincial Court Judge in 1999, the Chief Commissioner of the BC Treaty Commission in 2005, and the province’s Lieutenant Governor in October 2007: “Steven Lewis Point, 28th Lieutenant Governor of BC”, online: <<http://www.ltgov.bc.ca/gov-house/history/timeline.html>>.

¹⁶ I believe that this was an oral utterance at a gathering. Steven Point’s perspective can further be grasped in his “Foreword” to the *Stó:lō Atlas*, *supra* note 1 at xiii.

¹⁷ I submitted a report to the SRRMC on that theme in 2010: Andrée Boisselle, *Our Constitution is Set in Stone: Looking at the Transformer Stories Through the Lens of Law* (Research report, August 13, 2010) [unpublished; on file with the author and with the Stó:lō Research and Resource Management Centre, Chilliwack, BC].

Wee Lay Laq (or Wealick) then kindly took me into her home in Tzeachtel throughout the spring 2009. This coincided, for me, with a period of immersion in the language, as much as that was possible in the Valley at the time: I took one of Laura's Halq'eméylem courses at the University of the Fraser Valley, participated in the Halq'eméylem after-school program she ran for young families, and focused some of my research efforts on the versions of old stories that had been recorded *verbatim* in the language. Finally, I moved in with Kevin and Dianne Garner, and was warmly included in the circle of their family and friends by them both, and by their children, Shannon and Matt. For more than a year, they allowed me to come and go from the safe base of their Chilliwack home, provided me with space to think, chat and unwind, took me fishing and invited me on various other family excursions. I am grateful to all of those friends for their hospitality. I have been changed and immeasurably enriched by the time we spent together.

During the year I spent at the Garners', I was also involved in a romantic relationship with someone who remains one of my closest friends, Darren Charlie. The time I spent with Darren, his family, and members of his community in Sts'ailes sits with me deeply. I experienced everyday events as well as life-changing ones in closeness with the Charlies – and talked through those events with Darren, and sometimes with his parents, Pat and Tunney, his aunt Ginnie, as well as some of his siblings and their partners, in particular Willie and Ana, Kelsie and Katherine, and the following generation of the family, including Dion, Booboo and Ashley, Angela, and Keegan. The invitations to family and longhouse events that were extended to me, and the stories and experiences that members of the family shared with me in 2009 and 2010, took place in the context of that closeness, and deeply inflected my personal emotional and intellectual journey – as will be clear from many of the chapters of this dissertation. The mutual care and fondness that developed within many of those relationships, and the loving support that continues to animate my friendship with Darren since our separation, mean more to me than I can put into words.

Evoking those relationships brings me back to the ongoing character of my resocialization fostered by Stó:lō legal training. Indeed, this process did not end when I moved away from Stó:lō Téméxw. In some ways, it deepened as I listened to the interviews I had recorded, returned over and over again to the transcripts, came back for visits, and worked through what I had learned in writing. This thesis is the product of this work, and provides a window into the Stó:lō legal order, ascertained from my current location in relation to this order, a decade into this process.

This also means that this dissertation, which from an academic perspective could be understood as the occasion for the acquisition and display of expertise, is written in a very different spirit: that of conveying some of what I was allowed to learn and experience, and how I understand it at this point in my Coast Salish education. Among the many pedagogical strategies to which people resorted with me on Stó:lō Téméxw, one of those that made me feel most included and cared about was, quite simply, to be corrected. As I proceed to lay out what I have learned and how I interpret elements of the Stó:lō normative universe, my hope is to continue this engagement, to be corrected when I need to be, and to keep working toward greater interpretive and practical fluency.

Before turning to the questions and ideas informing my interpretations, I want to start by providing an experiential sense of what the resocialization process of entering the Stó:lō normative universe has consisted in, for me. To illustrate this, I will recount two salient moments of the shift in my own consciousness regarding the land itself, and induced by researching the Transformer stories. In what follows, my purpose is not to draw the reader's attention to myself, but to begin to communicate the nature of Stó:lō pedagogy, and to introduce one of the main arguments of the thesis: that the character of a legal tradition owes more to the implicit norms shaping the conduct and understandings of its practitioners, than to the content of the rules and precedents composing its *corpus juris*.

II. *Learning law on the land*

The first of those moments occurred about a year into my fieldwork, in October 2009. Sonny and Dave wanted to get better acquainted with the pictographs and Transformer sites on the shores of Pitt Lake, one of the large lakes on the northern side of the Fraser Valley. Under Sonny's guidance, I reviewed old maps and read through the ethnographic record to get a grasp of the documented Transformer stories in this part of Stó:lō Téméxw.¹⁸ Sonny already knew those stories well, and had indicated some of their sites in the *Stó:lō Atlas*. Our goal was to actualize this knowledge. I was asked to organize a trip on the lake with Sonny, Dave, Darren Charlie – who procured and drove our boat – and an elder Sonny knew, Mel Bailey.

Mel had spent his childhood in the 1930's on the shores of Pitt Lake – before his family moved to Katzie, a nearby Stó:lō reserve on the Fraser River – and still had strong memories of that time. Although he was frail, and fighting blindness by then, he seemed excited to revisit the site of his childhood. We hoped that the trip would trigger his memory and allow us to enrich the available record with his experience and practical knowledge of the area. With regard to the Transformer narratives in particular, Mel might be one to know where the few stories that had yet to be mapped had occurred. We also thought he might help us identify some of the pictographs and Transformer sites that had already been mapped.

We knew that even the latter would not be a simple task. Pitt Lake is not only one of the deepest lakes in the world, but at more than fifty square kilometers, it is also one of the largest freshwater tidal lakes in the world. The deep tow of its oceanic tidal flow makes for active waters that can be challenging to navigate. Without a guide familiar with its shores, the maps to which we had access would only have been of limited assistance in locating pictographs and Transformer sites *in situ*. In

¹⁸ See the stories recounted by Katzie's Simon Pierre in Wayne Suttles, *Katzie Ethnographic Notes* (British Columbia Provincial Museum, Anthropology in British Columbia, Memoir No. 2, 1955). And in: Diamond Jenness, *Faith of a Coast Salish Indian* (British Columbia Provincial Museum, Anthropology in British Columbia, Memoir No. 3, 1955).

order to increase our familiarity with this part of Stó:lō territory and to develop the practical ability to spot those markers from various points on the vast expanse of the lake, we needed to get our bearings on the lake with someone who knew it well.

Up to this point in my research, I had taken part in multiple tours led by Sonny to see Transformer sites that he knew well, and had read through most, if not all the available Stó:lō Transformer storycycle. I had an intellectual understanding of the Stó:lō belief that a myriad locations on Stó:lō Téméxw were actually their ancestors – people who, sometime in the distant past, had been petrified and become a permanent feature of the landscape. Considering the available record of how long Stó:lō society had been rooted in this land, I could make sense of those stories in my own way: after countless generations on this territory, it was true in a material sense, according to a worldview shaped by the natural sciences, that their human bodies had disintegrated in the earth, sedimented in the rocks, become part of the sustenance of every creature that lived within this ecosystem – and vice versa, in a perpetual cycle of mutual reembodiment. But the Stó:lō perspective meant more than this. It sank in a little deeper for me on that day we spent with Mel.

Our trip was successful: notwithstanding his impaired eyesight, Mel was strikingly assured of his bearings on the lake, and pointed us directly toward sites on the rocky cliffs and shores that would have taken weeks of painstaking scrutiny to discern by ourselves. And while he was not able to pinpoint the sites of the yet-unmapped stories that we evoked with him, what stood out for me during that long day on the water was his mode of relating to the land. In my report to Sonny and Dave after the trip, I sought to capture the tenor of this mode of engagement, and some of the connections it had illuminated for me:

“[Q]uite apart from the small contribution of those few weeks of work to the huge enterprise of documenting the Transformer sites and stories, I learned something important from working with Mel and from the

experience of researching the Transformer sites on the land. What I was hoping for at the outset, I realized, was to be told conclusively by an elder where to look, and what to look at. With the exception of the pictographs, this is not what happened. It was not just what Mel knew, but also his attitude – a certain way of paying attention to the land and of relating to it – that was the teacher. What I picked up on the lake, not only from Mel actually, but also from Sonny and Darren (who is knowledgeable about the Transformer sites of the Harrison River and Lake, the part of S’ólh Téméxw he comes from) is an openness to finding oneself in the land. I learned that this research consists in an attitude of coming *to meet people there*, at various places along the road or the shoreline, aided by the clues that the maps and the meanings of placenames in Halq’eméylem provide.”¹⁹

This passage hints at a small epiphany, and at the beginning of a reorientation to the land taking place in the context of a broader social immersion and dedicated apprenticeship of Stó:lō modes of reasoning and relating – which, taken together, imperceptibly coalesce into a distinctive way of being in the world.²⁰ Years later, I had another occasion to realize that the Stó:lō worldview was continuing to work on my consciousness, reorienting me to the land under a Coast Salish perspective.

This realization, the second “moment” to which I alluded above, happened in the summer 2016. By then, it had been five years since I had left the West Coast. I was becoming familiar with a different Indigenous territory, shared between the Anishinaabe and the Haudenosaunee, on one of the Great Lakes – Ontario – where I had relocated to teach law. Since moving to Toronto, my visits with friends and mentors on Coast Salish territory had been sparse, brief, and highly scheduled. But that summer marked the start of a teaching release, and I had decided to return to southern Vancouver Island and British Columbia’s lower mainland for an extended

¹⁹ Boisselle, *supra* note 17 at 16-17.

²⁰ John Borrows has evoked the multiple facets of such apprenticeship, the immersive work on the land and the learning of an Indigenous society’s legal concepts, mechanisms and modes of reasoning, through its own pedagogy, that are required to become schooled in its law, in John Borrows, “Outsider Education: Indigenous Law and Land-Based Learning” (2016) 33 Windsor Yearb Access Justice 1.

writing retreat, to keep articulating what I had learned of Stó:lō law: five months to spend in quiet – thinking, writing, visiting with old friends, and the forest, and the sea.

My first home during that stay was a little cabin perched on a cliff over the T'Sou-ke basin. These are the westernmost reaches of the Coast Salish world in Canada. I had never had a chance to spend time in this particular location, nor had had any teachers from TS'ou-ke during my research. But though I did not know this particular landscape, the Pacific rainforest, its creatures and its rocks were intimately familiar; and the stories, language, and norms I had studied on the mainland were closely connected to those that ordered this place.

I remember arriving there at dusk, after days driving across the land all the way from Toronto, ferrying across the Salish Sea, and driving some more, onto the Pacific shore. I stepped out on the balcony overlooking the basin and across it, to the rolling hills in the distance – the whole scene golden, glistening in the sunset. I took a deep breath in the wind that came from the ocean. I was so grateful to be back in this part of the world, and stunned once again by its beauty.

Two weeks went by, basking in the colours, textures, scents and sounds. Under any weather, at any time of the day, the landscape outside the window, against which I had set up my writing desk, was breathtaking. I spent hours sitting there, just taking it in as I worked. In the late afternoons, I went on walks through the forest, to the ocean. There were owls in the woods, and eagles that flew right past the rocky point where I paused to look at the snowy caps of the Olympic mountains on the horizon, before heading back to the cabin. It was so beautiful.

Then one morning, as I sat down at my desk and looked out the window, I saw something different. It was not the landscape in front of my eyes that had changed – nor anything unusual happening out there that morning. But a question had suddenly popped up: *What are the stories here?* I did not know the names of the

peaks in the distance, the stories of the people whose bodies and actions gave shape to the TS'ou-ke basin, explained the ragged islands offshore, or the smooth pools a few kilometers away, on the river. I did not know specifically how to read this place, but I knew there was a reading, one intimately connected to the stories and meanings I had been taught on the other side of the Salish sea.

It was like reaching the point, in the encounter with a person, where she starts to mean something to you. Although you may also find her beautiful, from that point on her physical features become just one aspect of her expressiveness and character, one of the signs that you decipher as you learn to read her – however partially and imperfectly. Your experiences together become stories that inflect such readings, as well as the course and meaning of your lives. Likewise, looking over the basin that morning, my experience learning to relate to another part of Coast Salish territory clicked, as it were, “into place”. The landscape suddenly appeared to me laden with the mystery of its meaning. This was a storied place, at once shrouded by my ignorance and populated by what I knew of its kin – not just a pretty, empty face.

In her dissertation on Hul'qumi'num law (in the Quw'utsun part of the Coast Salish world), my friend Sarah Morales described a similar reorientation to the land occurring in the course of her apprenticeship, and its profound significance for her – since the work she was doing was effectively deepening her knowledge of her own legal tradition, on her own people's lands:

“My territory prompts reflection upon what was ‘experienced’ or ‘learned’ in those places. As I spent my days pouring over books, learning about the history of my community and listening to stories about Our First Ancestors, I found my source of strength – the land. I began to picture my traditional territory in a different way. [...] Our laws were written in the lands – quietly and majestically surrounding us, waiting for their renewal. These are the laws that can bring healing and health to my people. As a result, when I now return home to my community I don't focus on the over-development of our territory and

the poverty of our reserve lands. Instead I look up toward Swuq'us; I see the face of my First Ancestor Stutson and remember the teachings he gave me. This realization is what I hope to share with my community through this dissertation. I want to change how they envision our landscape. I want them to draw strength from the laws embedded in the lands."²¹

The normative dimensions of the orientation to the land fostered by a legal education in the Coast Salish legal tradition – differently inflected in different parts of its territory: Stó:lō, Quw'utsun, TS'ouke, etc. – are wide-ranging. Some of the legal principles and mechanisms flowing from it translate directly into laws regarding the land.²² But as the notion of resocialization intimates, this orientation or mode of relating to the land has broader and more amorphous implications, permeating the tradition.²³ The ancient stories that articulate the relationship between the people and the land tie into tacit normative commitments that inform persuasive discourse and more generally, *all meaning-making activity*, in the multiple *loci* of traditional governance within contemporary Coast Salish society.

III. Locating my work in the landscape

In addition to being part of an emerging body of work on Coast Salish normative orders, this dissertation is also part of a broader scholarly movement across Canada supporting the resurgence of Indigenous legal traditions. Stated most generally, this scholarship traces how law is conceived and practiced within non-state, variously decentralized Indigenous orders. The context of this resurgence of Indigenous law and scholarly engagement with Indigenous legal traditions has

²¹ Sarah Noël Morales, *Snuw'uyulh: fostering an understanding of the Hul'qumi'num legal tradition* (PhD Thesis, University of Victoria, 2014) [unpublished] at 41-42.

²² A great example of the articulation of Coast Salish legal principles and mechanisms in the context of environmental risk assessment is the Tsleil-Waututh Nation, *Assessment of the TransMountain Pipeline and Tanker Expansion Proposal* (2015). <<https://cdn2.hubspot.net/hubfs/2551008/TWN%20Assessment%20Report%2011x17.pdf>>.

²³ See, for example, how it ties into the response to negligent harms in the WSÁNEĆ legal order (Coast Salish) in Robert Clifford (YELKÁTTE), "WSÁNEĆ Legal Theory and the Fuel Spill at SELEKTEL (Goldstream River)" (2016) 61:4 McGill Law J 755.; and into the protection of children in the Secwepemc legal order (Interior Salish) in Nancy Harriet Sandy, *Reviving Secwepemc child welfare jurisdiction* (LL.M. Thesis, University of Victoria, 2011) [unpublished].

been decades in the making. With important caveats,²⁴ it can be traced to the decolonization movement that gathered momentum in European colonies around the world following the Second World War. In Canada, the post-war era was marked by the repudiation of the anti-potlatch law – that which criminalized Indigenous gatherings, effectively prohibiting political assembly, legal governance, and spiritual expression in their various communal forms.²⁵ The following three

²⁴ I do not mean to obscure here the ongoing resistance of Indigenous societies to the invasion and appropriation of their lands, limitation of their jurisdiction, and curtailment and criminalization of their way of life. This took place incrementally, through various means in Canada, which are best revealed – along with the Indigenous resistance strategies they were met with – by historical research focusing on particular societies at a particular time. For current work illuminating this resistance in the Stó:lō context, see Megan Harvey, *Living Well Through Story: Land and Narrative Imagination in Indigenous-State Relations* (PhD Thesis, University of Victoria, 2017) [unpublished]. I am also keenly aware that the worldwide decolonization movement of the 1950s and 60s, which did yield a relinquishing of direct European control over Indigenous/local peoples in many places around the world, also generated a response from former colonial powers and global hegemony, mediating their former direct control through international institutions over which they effectively maintain their global domination. See James Tully, *Public Philosophy in a New Key: Volume 2, Imperialism and Civic Freedom* (Cambridge; New York: Cambridge University Press, 2008) at Chapter 5, “On law, democracy and imperialism”. Among the current manifestations of this insidious power play in the Canadian context is the “recognition” by the state of Indigenous authority over themselves and their territories, which has been shown to be a veneer covering, in the context of treaty and self-government negotiations, the imposition of the adoption of legal, political and economic forms of ordering cognizable to the state and to corporate actors, facilitating the co-optation of Indigenous elites to ensure the state’s continued access to the land and its resources: see and Johnny Mack, “Hoquotist: Reorienting through Storied Practice” in Jeremy H A Webber, Rebecca Johnson & Hester Lessard, eds, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (Vancouver: UBC Press, 2011). See also Megan Harvey, *ibid.* and Stephanie Irlbacher-Fox, *Finding Dahshaa: Self-government, Social Suffering and Aboriginal Policy in Canada* (Vancouver: UBC Press, 2009) for nuanced discussions of the agency that Indigenous authorities never cease to exercise through this hard power-play.

²⁵ The potlatch and the winterdance were criminalized in 1885 through s. 3 of the *Indian Act* which then read: “Every Indian or other person who engages in or assists in celebrating the Indian festival known as the “Potlatch” or in the Indian dance known as the “Tamanawas” is guilty of a misdemeanor, and liable to imprisonment for a term of not more than six nor less than two months in any gaol or other place of confinement; and every Indian or person who encourages [...] an Indian to get up such a festival [...] shall be liable to the same punishment.” This section remained in effect until 1951. Note that in the above quotation of the old s. 3, “the Indian dance known as the “Tamanawas”” designates the same practice I refer to, throughout this thesis, as the winterdance or *syúwél*. As Carlson notes, “The Stó:lō, located in immediate proximity to the fastest-growing non-Native urban centres in the province of British Columbia, were relatively easy targets for government agents” seeking to enforce the anti-potlatch law. “Indeed, the first person to be convicted for violating the anti-potlatching law was the Stó:lō man Bill Uslick” in 1896: *The Power of Place*, *supra* note 1 at 206. See also Douglas Cole & Ira Chaikin, *An iron hand upon the people: The law against the Potlatch on the Northwest Coast* (Vancouver & Seattle: Douglas & McIntyre; University of Washington Press, 1990).

decades would see enormous changes in the Canadian political and legal landscape, culminating in the enshrinement of Indigenous rights in the Constitution – following its patriation from Britain in 1982. Since then, the recognition of Indigenous societies as politically and legally complete societies whose rights and jurisdiction have not been erased by the Crown’s assertion of sovereignty over what progressively became Canada, has become entrenched in Canadian jurisprudence – although the negotiation and adjudication of what this means for each of the specific Indigenous territories composing Canada is still underway.

More specifically, the Supreme Court has consistently reiterated that its jurisprudence on the Indigenous rights and title protected under section 35 of the *Constitution Act, 1982* needed to concretize inter-societal law, drawing on both Indigenous and non-Indigenous normative traditions to understand and delineate Indigenous jurisdiction.²⁶ However, this guiding principle has remained mostly in the realm of aspiration. Instead of requiring proof of Indigenous laws, asking questions geared at creating a body of genuine inter-normative reasoning and principles, Canadian courts have built a jurisprudence that relies overwhelmingly on the common law norms with which they are familiar in order to assess which aspects of Indigenous practices can legitimately be crystallized into rights.²⁷ While Indigenous concepts and practices do play a role in this assessment, living together in a decolonized legal space entails deeper work – that of engaging seriously with

²⁶ *Van der Peet*, *supra* note 11 at para 42. See Brian Slattery, “Understanding Aboriginal Rights” (1987) 66:4 1987 Can Bar Rev 727.

²⁷ This point was made by John Borrows, “Creating an Indigenous Legal Community - John Tait Memorial Lecture” (2005) 50 McGill Law J 153 at 173. It was endorsed by Justices LeBel and Fish in dissent in *R v Marshall and R v Bernard*, [2005] 2 SCR 220 .at para 130. It was also demonstrated in pieces commenting on *Van der Peet* (*supra* note 11) *Delgamuukw* (*ibid.*), and recently, *Tsilhqot’in Nation v British Columbia*, [2014] 2 SCR 256, among other Supreme Court decisions: see for example, John Borrows, “Sovereignty’s Alchemy: An Analysis of *Delgamuukw v. British Columbia*” (1999) 37 Osgoode Hall Law J 537. Val Napoleon, “*Delgamuukw*: A Legal Straightjacket for Oral Histories” (2005) 20 Can J Law Soc 123. Andrée Boisselle, “To Dignity Through the Back Door: *Tsilhqot’in* and the Aboriginal Title Test” (2015) 71 SCLR 2d 27, online: <<http://digitalcommons.osgoode.yorku.ca/sclr/vol71/iss1/2>>.

Indigenous law.

The research and reflection I have conducted over the last decade is rooted in this awareness. It has grown through the experiential apprenticeship and exchange I have described earlier with numerous teachers, elders and friends within the Stó:lō / Coast Salish world, as well as through critical conversations with a group of peers and mentors within academia, regarding how to research and understand Indigenous legal traditions on their own terms.

In that respect, my work grows into the space created by John Borrows's pioneering work on Indigenous legal perspectives,²⁸ and by his continuous creative and critical engagement within the Anishinaabe legal tradition²⁹ and across Indigenous normative worlds.³⁰ Two other prominent interlocutors are Val Napoleon and Hadley Friedland. I have been inspired and challenged by their work toward developing a theoretical and practical orientation to engaging with Indigenous legal traditions through a broad array of narratives.³¹ Their pragmatic approach is grounded in their respective intimate experience of governance challenges within Indigenous communities. Foregrounding the existence of conflict within any human society, and the work of law as that of effectively and peacefully managing conflict, their work is breaking taboos and nurturing a robust engagement with Indigenous intellectual resources both within Indigenous communities, and between them and the scholarly and broader legal community.

²⁸ John Borrows, *Recovering Canada: the resurgence of Indigenous law* (Toronto; Buffalo: University of Toronto Press, 2002).

²⁹ John Borrows, *Drawing Out Law: A Spirit's Guide* (Toronto: University of Toronto Press, 2010). See also John Borrows's forthcoming book on Indigenous legal ethics.

³⁰ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

³¹ See Valerie Ruth Napoleon, *Ayook : Gitksan legal order, law, and legal theory* (PhD Thesis, University of Victoria, 2009) [unpublished]. Valerie Ruth Napoleon, "Living Together: Gitksan Legal Reasoning as a Foundation for Consent" in Jeremy Webber & Colin M Macleod, eds, *Between Consenting Peoples: Political Community and the Meaning of Consent* (Vancouver: UBC Press, 2010) 45. Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11 *Indig Law J* 1; Hadley Friedland & Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015) 1:1 *Lakehead Law J* 16; Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" (2016) 61:4 *McGill Law J* 725.

Refining and applying the method developed by Friedland in her LLM thesis³², the body of research and analysis they have developed since 2014 at the helm of the University of Victoria's Indigenous Law Research Unit (ILRU) – in support of Indigenous communities' efforts to revitalize the use of their own legal sources and principles – has already contributed immensely to invigorating the way Indigenous laws are thought of and drawn upon in Canada.

Among the many other researchers whose work, connected to and taking shape concurrently with mine, has been deeply influential, I have already mentioned Sarah Morales and Johnny Mack (in law), as well as, within their respective disciplines, Megan Harvey (in history), Glen Coulthard and Stephanie Irlbacher-Fox (in political science).³³ Emily Snyder's work (in sociology), calling attention to women's voices within Indigenous legal orders, has also encouraged me to deepen my engagement with the women who shared their ideas and perspectives on their governance roles, explicitly and implicitly, over the course of my research.³⁴

There is more to say about the interdisciplinary influences on this dissertation – and indeed, on its own interdisciplinary character. The study of law within any given society, whether or not this is acknowledged or thought through in its legal pedagogy, draws on every aspect of its ways of framing reality, of acting on and responding to the world through language and practice. This fact is perhaps more palpable within Indigenous legal traditions such as the Coast Salish, by comparison with the civil and common law. *Xwélmexw* society fashions its own “silos” to regroup actions and social phenomena under meaningful categories, and fosters expertise accordingly among its members. Thus, for example, the different areas of the territory, types of activities on the land, ceremonies, roles and

³² Hadley Friedland, *The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Saukteaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns* (LLM Thesis, University of Victoria, 2009) [unpublished].

³³ See *supra* note 24.

³⁴ Emily Snyder, Val Napoleon & John Borrows, “Gender and Violence: Drawing on Indigenous Legal Resources” (2015) 48 UBC Law Rev 593.

protocols to observe in order to conduct those ceremonies appropriately, and the seasonal rhythms of each of the above, each compose bodies of knowledge in their own right, with their knowledgeable practitioners. Within this society, normative commitments, legal processes, modes of reasoning and of resolving conflict are not packaged under a single one of those silos – and there is no designation of a lawyerly or juridical class. This does not mean that this society is devoid of law – only that it does not traditionally zero in on it as a distinct activity and body of knowledge. Drawing on the conceptual repository of Halq'eméylem, the word I have heard elders use to point generally to *teachings about how to be in the world*, including good conduct and “being of good mind”³⁵, is *snuw'uyulh*.³⁶ The breadth of this concept suggests that legal scholarship in the *xwélmexw* tradition is inherently “interdisciplinary”, that is, requiring to approach norms within their broader context, informed by the overlapping knowledges that have been, within “Western” or European traditions of thought and learning, distinguished and differentiated over time.

While my inquiry into Stó:lō / Coast Salish law draws principally on direct interactions and experience within Stó:lō society, it is also deeply indebted to the scholarly work carried out to understand *xwélmexw* concepts and practices within the disciplines of anthropology, ethnohistory, the study of folklore or oral narrative tradition, and archaeology. The record I have learned from begins in the 1880's with Franz Boas, and includes the contributions of Charles Hill-Tout,

³⁵ Bruce Granville Miller, “Introduction” in Bruce Granville Miller, ed, *Be of Good Mind: Essays on the Coast Salish* (Vancouver: UBC Press, 2007) 1.

³⁶ Sarah Morales's above-quoted dissertation explores the meaning and ramifications of *snuw'uyulh* from the perspective of Hul'qumi'num elders. My understanding of the term, flowing from the way Stó:lō elders use it, conforms with the explanation she provides in this passage: “*snuw'uyulh* is a Hul'qumi'num word that means “our way of life.” It includes our language, our governance, our culture and traditions, our sacred bathing holes; it also embraces our spirituality and all the teachings. *Snuw'uyulh* helps regulate our relationships and resolve our disputes. It contains standards and practices for judgment and decision-making. It touches on all aspects of life and cannot be separated from our relations to each other, to the natural world or to the spiritual world.” Morales, *supra* note 21 at 16–17.

Norman Lerman, Diamond Jenness, Wilson Duff, Sally Snyder, Pamela Amoss, Wolfgang Jilek, Michael Kew, and Wayne Suttles (as well as the non-academic contributions of Eloise Street and Oliver Wells). Spanning a century, this work is extremely varied in focus and purpose, and perhaps most importantly in the manner of its engagement with *xwélmexw* society and voice in which such engagement was rendered. While some of it is celebrated and still drawn upon within Stó:lō communities, other parts have been discarded. The work conducted since the 1980's by Bruce Miller, Dorothy Kennedy, Alexandra Harmon, Crisca Bierwert, Brian Thom, Bill Angelbeck, David Shaepe, Keith Carlson, and by numerous ethnohistory field school students since 1998, displays a palpable shift in sensibility – in addition to that of Stó:lō scholars including Winona Victor, Jo-ann Archibald, and Sonny McHalsie, whose articulation of their society's institutions, stories and history inform their lives from the inside.

Although I draw heavily on both McHalsie's and Carlson's work in the following chapters, my inquiry as a whole has been informed by those previous encounters and inquiries, and stands in their broad lineage. Like many of these scholars, I have sought to discern the role that key concepts and practices play in shaping the life of my *xwélmexw* contemporaries and in structuring the governance of their communities. My aspiration is not to “document” an “Other”, but to bring a range of conversations I have had with thinkers and practitioners of *xwélmexw* and Western law, respectively, into the same space, so that they may illuminate each other. In this process, I have drawn preferentially on contemporaries on both “sides”, so that the thinkers whose work and experience I draw upon may respond, nuancing and deepening the exchanges in which I have participated. As far as I am concerned, this conversation is real, not metaphorical.

Restated in clear ethical terms, my goal is to cast what I have learned, not only about *xwélmexw* society, but from *xwélmexw* thinkers, in a manner at once faithful to their self-understandings; foregrounding, as best I can, the refraction of these

understandings through my own conceptions, perceptions, and experience – since I do not speak for anyone else than myself here; and connecting my understanding of *xwélmexw* concepts and practices to strands of legal and philosophical scholarship that I see as particularly conducive to a respectful dialogue with *xwélmexw* law.

The ethical purpose underlying this work is to attend to the character of *xwélmexw* law, contributing to the decolonization of relations between Indigenous and non-Indigenous legal orders in Canada by enabling a relationship respectful of the specificity of the *xwélmexw* legal tradition – rather than that established in the colonial context, geared at assimilating Indigenous societies through a variety of means, including the reshaping of their governance institutions in the image of settler society's. The main question driving my inquiry, and constituting the thread of the dissertation, can therefore be phrased as follows: *What makes a legal tradition what it is?* This question approaches the social phenomenon of tradition from a particular angle. I do not focus on illuminating its process of transformation through time, nor on delineating its contours in space. I am interested in its very nature: that which gives a legal order its character and distinctiveness. The phrase I use throughout the thesis to refer to this elusive quality of tradition, as it pertains to social normativity, is that of *legal sensibility*.

In what follows, I trace my trajectory toward forming a sense of the two intertwined strands of this inquiry: the distinctiveness of law from other social phenomena, and the sensibility infusing the various activities performed within a functioning legal order and providing it with its distinctive personality or character, are the two facets of its object. Examining the assumptions underlying my research will also lead me to discuss how they were challenged by the stories and practices I encountered.

IV. Approaching the inquiry into what makes a legal tradition what it is

How is law embedded in a particular story or practice, in the mode of thinking about and dealing with events? And how does this enlarge or nuance our perspective on the forms that law can take, and provide us with a better lens to see the work it accomplishes? To explain what has guided my research, I begin by examining the account of law that has served as my point of departure toward my inquiry into the normativity embedded in Stó:lō stories, practices, and relationships.

This account is particularly relevant in the context of a tradition that, as mentioned earlier, does not construct law as a separate field of action and inquiry. While it may be true for any society that law “inheres in the entire society and its institutions,”³⁷ many Indigenous legal traditions have had no use for a legal “system”. This means that much of the operation and reproduction of social ordering occurs on occasions and through forms of expression where the legal and political are woven in with the biographical, ethical, spiritual, historical, mythological and philosophical – reflecting the fact that law, like many of those other “fields” of human thought and activity, is an aspect of any type of action. Theoretical guidance is needed to help distinguish the “legal” nested in the multiple facets of human interaction. What ideas about law have informed what I have been looking for? What social phenomena did I seek out and focus on as a student of “law” in the Coast Salish tradition?

Law beyond the state

There are a number of pitfalls to the exercise of zeroing in on the work of law, trying to define what constitutes its specific, unique realm, while doing so in terms general enough to remain relevant across cultures. Legal theory is developed in relation to cultural forms and to the historical contexts of their emergence, which

³⁷ Napoleon, “Living Together” *supra* note 31 at 65. See also Borrows, *supra* note 30.

are by definition specific to time and place. There is therefore a tension inherent to the attempt to formulate the nature of the work that law accomplishes everywhere while taking seriously the very different forms of social life that are made possible by and that manifest through particular forms of legal ordering.

Some legal theories resolve that tension by positing that the specificity and plurality of cultural and historical contexts can be transcended, based on the idea that societies follow a pattern of development that is similar everywhere. As such, societies can be evaluated and ranked on a universal scale, from less to more advanced. Associated with the so-called "more advanced" developmental stages are forms of social ordering representing a threshold for qualifying as law. This logic thus denies the very existence of law in societies where it manifests differently.³⁸ Rather than assisting us in understanding the workings of law in such a society, it suggests that efforts be put toward assisting such a society reach a supposedly "higher stage of development" by adopting "properly legal" forms – the forms particular to the culture from which such theories emanate.³⁹

The effort to zero in on law's distinctive realm has also produced accounts which,

³⁸ The "stages of development" ideology has had an influence in the reasoning of Canadian courts. Judge Allan McEachern's infamous quoting of Hobbes, in the decision he rendered at the trial level in *Delgamuukw*, exemplifies this. He wrote: "it would not be accurate to assume that even pre-contact existence in the territory was in the least bit idyllic. The plaintiffs' ancestors had no written language, no horses or wheeled vehicles, slavery and starvation was not uncommon, wars with neighboring peoples were common, and there is no doubt, to quote Hobbs [sic], that aboriginal life in the territory was, at best, 'nasty, brutish and short.'" *Delgamuukw*, *supra* note 11 at 13. See James B Waldram, Pat Berringer & Wayne Warry, "'Nasty, Brutish and Short:' Anthropology and the Gitksan-Wet'suwet'en Decision" (1992) 12:2 Can J Native Stud, online: <<http://www3.brandonus.ca/cjns/12.2/>>. For an in-depth exploration of the roots of this ideology and of its broad ramifications within colonial doctrine and policy in the North American context, see Marc Pinkoski, *Julian Steward and American anthropology: The science of colonialism* (PhD Thesis, University of Victoria, 2007) [unpublished]. Notwithstanding positive developments in Canadian jurisprudence on the issue of "Aboriginal rights" since the 1970s, this ideology remains widespread within the general public, as well as within its governmental, juridical, and lawyerly communities – something which, as John Borrows noted, continues to pose a significant obstacle to the teaching and application of Indigenous laws in Canada: see *Canada's Indigenous Constitution*, *supra* note 30 at 46.

³⁹ See Tully, *supra* note 24 at Chapter 4, "The unfreedom of the moderns in comparison to their ideals of constitutional democracy".

while not as overtly ethnocentric, remain exclusionary insofar as they obscure the diversity of law's manifestations rather than provide keys to learn from them. Here, instead of seeking to understand how law arises as a social phenomenon and is internalized as *binding* by those who abide by it without being *coerced* – usually the vast majority of members of any polity, most of the time – the main preoccupation underlying the tracing of law's contours is related to justifying the state's coercive power to enforce law. Placing coercion at the heart of an account of law focuses the discussion on the difference between legal order and tyranny. The use of force to back up the law being the premise, legality does not hinge on people's participation in the formulation of the norms that bind them, or even on their effective acquiescence to those norms. In both cases, norms may be imposed from above on "subjects" who are expected to "obey." Rather, it turns on the subjects' ability, firstly, to identify without a doubt which norms will be enforced upon them, and secondly, to interpret those norms in accordance with the state's intentions and to abide by them (the norms forming a coherent rather than self-contradictory whole).⁴⁰

Such accounts typically answer the question of what counts as law in terms of its official source or pedigree (the observance of formal, predetermined processes of pronouncement) rather than in terms of the kind of purposive work it accomplishes. Roderick Macdonald and Thomas McMorrow sum up this body of legal theorizing as revolving around four core beliefs:

⁴⁰ One of the flagship scholarly works within this positivistic category is that of H L A Hart, *The Concept of Law*, 3rd edition ed (Oxford, United Kingdom: Oxford University Press, 2012). Hart is also famous for his debate with Lon Fuller on the inherently moral nature of legal activity. As opposed to Hart, who focuses on law's formal pedigree to distinguish it from moral precepts, Fuller argued that a critical determinant of legality was its internal claim to morality. On his view, law was fundamentally incompatible with tyranny, its legitimacy substantively rather than merely procedurally grounded. See H L A Hart, "Positivism and the Separation of Law and Morals" (1957) 71 Harv Law Rev 593. Lon L Fuller, "Positivism and Fidelity to Law--A Reply to Professor Hart" (1957) 71 Harv Law Rev 630. See also Kenneth I Winston, "Three Models for the Study of Law" in Willem J Witteveen & Wibren van der Burg, eds, *Rediscovering Fuller : Essays on Implicit Law and Institutional Design* (Amsterdam: Amsterdam University Press, 1999).

"First, *monism*: the belief in the unity of normative activity. Second, *centralism*: the belief in the law and the state as co-terminus. Third, *positivism*: the belief that a hard ex ante criterion may be propounded for distinguishing between that which is, and that which is not, law. Finally, *prescriptivism*: the belief that law is a social fact existing outside and apart from those whose conduct it claims to regulate."⁴¹

As a counterpoint to this legal orthodoxy, legal pluralism emerges with a focus on human interaction and human agency as the source of normative ordering. "Legal pluralist" accounts point to the normativity that arises in any milieu, through "just about any persistent human association."⁴² The source of norms' legitimacy here depends on how closely they are tied to people's contextualized interactions. Accordingly, the body of legal theory inspired by legal pluralism focuses on how norms spring from and inform the purposes and significance of people's association with each other – referencing the expectations that have taken hold through their past interactions, and continually re-codifying their shifting expectations of each other over time. Legal pluralism thus emphasizes the multiple sites of normative production, and treats the state as only one among the many overlapping spheres of normativity that every individual belongs to, denying its claim to inherent pre-eminence.⁴³ This opens up the study of law inside and beside the state, and in particular, within the complex contexts of decentralized, non-state societies.

However, by acknowledging that many spheres of normativity exert competing claims on people's lives, and denying any legal order *a priori* hierarchical superiority over the others, legal pluralism leaves the necessary arbitration between those orders unaddressed. Some of its proponents theorize that sorting out those competing orders' claims is the realm of individual agency, as if the

⁴¹ Roderick A Macdonald & Thomas B McMorrow, "Wedding a Critical Legal Pluralism to the Laws of Close Personal Adult Relationships" (2007) 1:1 Eur J Leg Stud 41.

⁴² Jeremy Webber, "Legal Pluralism and Human Agency" (2006) 44:1 Osgoode Hall Law J 167 at 187.

⁴³ This summarizes the four countervailing themes underlying the pluralist enterprise, formulated by Macdonald as plurality, interactionalism, poly-centricity, anti-prescriptivism – and by Webber as plural, adaptive, decentring and hermeneutic.

problem of conflicting individual choices and interpretations did not pose itself here too. As Macdonald and McMorrow put it:

"The obligatory nature of a norm depends on the agency of the purported 'norm-subject.' If the human agent does not regard himself or herself as having an obligation then no obligation exists. Because legal subjects are legal actors that play a role in constituting their normative reality, every person is the irreducible site of law. All human agents ultimately decide the relative weight of different normative regimes and different types of norms, and the precise bearing they have in their normative lives."⁴⁴

Macdonald had offered multiple other statements of this idea. One of them, concluding a seminal piece co-authored with Kleinmans, resonates strongly with the materials yielded by my research – Stó:lō people's narrative accounts of important events in their own lives:

"A *critical* legal pluralism presumes that legal subjects hold each of their multiple narrating selves up to the scrutiny of each of their other narrating selves, and up to the scrutiny of all the other narrated selves projected upon them by others. The self is the irreducible site of normativity and internormativity. And the very idea of law must be autobiographical."⁴⁵

The problem with this theorization of law is that it seems to ignore disagreement – or at least, leaves us without an account of what seems like a fundamental dimension of law: that which allows us to manage our disagreements and thus to live together. The critical legal pluralism advocated by Macdonald accomplishes the needed work of dislodging the state's legal order from its unilaterally asserted position of superiority in regard to Indigenous legal orders (among others). But having brought us face to face with the deep plurality of individual interpretations, choices and evaluations, it stops short of tackling the question of how order

⁴⁴ Macdonald & McMorrow, *supra* note 41 at 17.

⁴⁵ Martha-Marie Kleinmans & Roderick A Macdonald, "What Is a Critical Legal Pluralism?" (1997) 12 Can J Law Soc 25. at 46.

actually surfaces and is maintained out of it.

As Jeremy Webber points out, this results in a tendency within pluralist scholarship to naturalize the emergence of normative order, to treat the norms as givens, “imposing an artificial commonality, [...] obscuring and minimizing the presence of dissent.”⁴⁶ For an account of law to take human agency seriously, he argues, it must reckon with the inevitability of conflict and disagreement. Individual positions do not naturally harmonize within any given social context. The work of law is to generate this harmonization – and it is constant work, because any harmonization is necessarily contextual and provisional, in continual need of adaptation and reformulation to address new situations.

This perspective on law reintroduces the notion that legal order consists in the activity of judging between normative positions, and doing so not only at the individual level but with a view to generating common positions within the collectivity. Coming to see how this is done – in other words, theorizing this activity – cannot involve positing “hard *ex ante* criteria” against which to assess whether a norm is or is not “law” – the positivist fallacy I alluded to above, which often tends toward ethnocentrism.⁴⁷ But it does require drawing a distinction between the *normative assertions* made by individuals, in an open contest to lead their community in a particular direction, and actual *norms*. As Webber writes, “[a] distinctively legal pluralism requires, paradoxically, that we seek ways to overcome the radical pluralism of our normative assertions.”⁴⁸

Webber’s legal theory shows law both as an achieved outcome and as an ongoing activity: certainly, the *result* of the conscious work of narrowing down normative

⁴⁶ Webber, *supra* note 42 at 175. Note that this anti-essentialist critique targets scholarly representations of legal orders as opposed to the claims made in the course of political and legal engagement within those orders. I will come back to this difference shortly.

⁴⁷ It tends toward ethnocentrism because it prevents us from tailoring our account to the variety of practices and intellectual resources that have been developed in a given time and place to meet the needs and fulfill the purposes that law attends to.

⁴⁸ Webber, *supra* note 42.

options, but more importantly, that work *itself*, the necessarily and “emphatically social, non-individual process[es]”⁴⁹ through which those provisional compromises are reached. Understanding a legal order will therefore entail identifying that order’s “practices of normative deliberation and decision making – the processes by which normative claims are discussed, disagreement adjudicated [...] and the resultant norms interpreted and elaborated,”⁵⁰ paying attention to “its own methods, protocols, modes of argument, and processes of judgment. [...] It requires that one understand how that order marshals and resolves arguments.”⁵¹

This invitation to focus both on processes and on distinctiveness – calling attention to a legal order’s *own* lawmaking processes – points to two productive tensions integral to the notion of “legal tradition” and to its central dynamic of legitimation. So far, I have mostly paid attention to the first: the tension between plurality and oneness, individual and collective agency, resolved or at least managed through law. The strength of a legal order rests on its legitimacy, which rests in part on how it allows the multiplicity of perspectives to be expressed, listened to, and somehow acknowledged so that resulting norms and decisions may be accepted as binding. The second tension is evoked by the notion of tradition, for the legitimacy of a social order also depends on the ways an agentic community draws on culturally and historically grounded understandings – also referred to as precedent – to make sense of present events, reinterpreting the old in light of the new, folding the new into the known.

Law and the porous boundaries of tradition

This tension between continuity and change, present within any normative order, is interestingly revealed by the fact that scholars who derive their insights from the study of differently flexible normative environments place the emphasis differently on either of those terms. As students of Northwest Coast societies have noted,

⁴⁹ *Ibid.*

⁵⁰ *Ibid* at 170.

⁵¹ *Ibid.*

institutions and structures of affiliations get denser and more rigid as we move northward along the Coast, from the state of Washington to the northern end of British Columbia.⁵² At one end of that spectrum, ethnohistorian Keith Carlson, having richly explored Coast Salish historiography and accounted for the transformation of Stó:lō identity over two centuries, places the emphasis on *change* in his description of the dynamic of legitimation. “Traditional identity,” he writes,

“can never be anything more than a particular cultural expression that is informed by past experience and historical understanding. The more informed a definition is, the more likely it is to be perceived and received as legitimate.”⁵³

Near the other end of the spectrum, anthropologist Christopher Roth, who wrestled with the complex name-giving system of the Tsimshian, does not hesitate to use the notion of essentialism to emphasize the *staying power* of historically grounded processes within that same dynamic:

“Essentialism, after all, is an integral aspect of anything one might call culture. Nothing that can be called identity – legal, ethnic, or otherwise – is possible without the essentialization of some ritual, social, or biological process as the source of the reproduction of subjectivity.”⁵⁴

The sedimentary quality of the processes by which the meaning ascribed to experience builds upon itself layer by layer, as novel techniques and ideas are adopted, filtered through and informed by the remembered past, keeps traditions distinct and allows us to continue to represent them as distinguishable entities in

⁵² This Coastal spectrum of flexibility in structures of affiliation evokes that mentioned by Christopher Roth, characterized on the Salish end by the potlatch in its “communal, cooperative, and egalitarian” manifestation, and moving northward toward “more competitive and hierarchical structures”. Roth implies that we should be careful about generalizations concerning the roles and values manifesting within particular social and governance structures such as the potlatch, since those are likely to be inflected quite differently within different societies: see Christopher F Roth, *Becoming Tsimshian: The Social Life of Names* (Seattle: University of Washington Press, 2008) at 7.

⁵³ *The Power of Place*, *supra* note 1 at 272.

⁵⁴ Roth, *supra* note 52 at 213.

relation to each other, even though their boundaries are porous.

Thus, Carlson himself, steeped in the fluidity of Coast Salish identity and shifting internal affiliations, speaks of “opposite sides of a cultural divide” to highlight the contrast between the assumptions underlying “European” and “Salish” notions “of what constitutes a legitimate collective social and political unit.”⁵⁵ Even the products of cultural universes’ mutual influence, integration and hybridization have sometimes usefully been presented in dichotomizing terms to highlight their respective contribution, the fact that new ideas emerge when forms and practices are read through a distinct cultural lens. Notable examples of meticulous engagement both with the boundaries and the porousness of worldviews include Justin Richland’s, who describes how interactions in the Hopi Tribal Court integrate “notions and norms of Anglo-style law and notions of Hopi tradition and cultural difference.”⁵⁶ Tracking the history of economic exchanges between Indigenous and non-Indigenous peoples in British Columbia, John Lutz coins the term “moditional” (from *modern* and *traditional*) to speak of Indigenous peoples’ creative combination of their traditional economies with the modern one, highlighting how their pragmatic participation in the latter often serves to sustain conventions and exchanges prevailing within the former.⁵⁷

The adaptive processes through which a living tradition borrows from its encounters, incorporating new concepts, vocabularies and techniques to meet its changing needs, means that studying “what makes a tradition what it is” can be done by examining a wide range of practices and activities – perhaps any. This is especially pronounced in non-state societies, and among those, in societies such as the Coast Salish, where law’s work is anything but centralized. Depending on the purpose and the circumstances, *xwélmexw* people express their identity, organize

⁵⁵ *The Power of Place*, *supra* note 1 at 8.

⁵⁶ Justin B Richland, *Arguing with Tradition: The Language of Law in Hopi Tribal Court* (Chicago: University of Chicago Press, 2008) at 128.

⁵⁷ John Sutton Lutz, *Makúk: A New History of Aboriginal-White Relations* (Vancouver: UBC Press, 2009).

themselves and determine meaningful courses of action by drawing upon a wide range of references and by implicating themselves in a number of different processes of decision-making. Almost every day, I witnessed new contexts and settings where the Stó:lō mobilized their self-understanding in discourse and practices toward the maintenance and reproduction of their legal order. Still, certain settings, events and experiences began to draw more of my attention as my research progressed. Those settings and events, which are the locus of expression of an important dimension of traditional governance on Stó:lō Téméxw and provide unity to the materials presented in this thesis, require a preliminary introduction.

Choosing where to look

Acknowledging tradition's porous boundaries, and the intriguing process of adaptation which is itself a worthy site of inquiry into the character of a legal order, I could have conducted my inquiry into Stó:lō / Coast Salish legal sensibility by choosing to focus my attention on one of many sites or activities that I was already partially equipped to navigate. For example, I could have looked at how Stó:lō people strategically construe their past, choose which stories to tell, and how to tell them, to achieve their goals in treaty negotiations; to assert their rights before Canadian courts and international tribunals; to make their concerns heard within Canadian democratic fora, from the municipal to the national; to take part in the governance of pan-Indigenous bodies or professional associations, provincially and nationally; to rise to, and navigate positions of influence and authority within Canadian political and legal institutions; etc. In any of these fora, the manner in which the Stó:lō exercise their individual and collective agency flows from, and bears upon, the overall content and style of Stó:lō governance. But the fact that the substance, form and outcome of those ways of engaging is determined to a great extent by outside forces, and that those sites of engagement are already the overwhelming focus of legal scholarship – given the legal

community's access to and familiarity with them – has led me to leave aside, as much as possible, the normativity that arises from the Stó:lō's direct interactions with the state, and to seek out the spaces of normative framing over which they have more control.

The band system of governance presents some of the same constraints, being a creature of the *Indian Act* imposed on the Stó:lō and other Indigenous communities by colonial authorities to make their orders more legible and easier to constrain.⁵⁸ This said, most Stó:lō people I know do identify with their bands, and regard them as legitimate carriers of their voice for many aspects of their society's internal governance, and for their interactions with other Indigenous and non-Indigenous governments. Part of this is due to the fact that the reserve lands over which Stó:lō bands' jurisdiction is recognized by the *Indian Act* were established on longstanding village sites. The bands' authority over those lands, and their legitimacy as vehicles of Stó:lō agency, from a Stó:lō perspective, is based on this historical continuity between band and village authorities.⁵⁹ But as much as it is a crystallization of a pre-existing pole of Stó:lō governance, the fragmentation of the Stó:lō along static (and atrophied) territories and jurisdictions does not account for their ongoing unity as a society across Stó:lō Téméxw as whole, nor for the dynamics of that unity – the shifting alliances and alignments they form within their society and more broadly, within the network of their Coast Salish kin-based political community. To understand the Stó:lō legal order on its own terms – including what drives politics within bands and between them – one has to dive underneath the fraught surface of those Stó:lō governance mechanisms.

⁵⁸ There are 24 Stó:lō band councils – one for each of the Stó:lō “First Nations” under the *Indian Act* – which have over time regrouped under different tribal bodies and alliances for different purposes, such as the Stó:lō Nation and the Stó:lō Tribal Council. See *The Power of Place*, *supra* note 1 at 13. See also Carlson's research on the manipulative device that band elections offered to colonial authorities through the co-optation of individuals within the communities thus governed: *ibid.* at 194-200.

⁵⁹ *The Power of Place*, *supra* note 1 at 12-24. See also Brian David Thom, “The Anathema of Aggregation: Toward 21st-Century Self-Government in the Coast Salish World” (2010) 52:1 *Anthropologica* 33.

What underlies the particular quality of this legal order's decentralization, and characterizes the terms on which the Stó:lō are accountable to each other – what I think of as Stó:lō constitutionalism – is both fundamental and elusive, not so much talked about or theorized as acted upon. It consists in kinship ties, approached from a legal perspective through the responsibilities and statuses that circulate through them, the modes of governance attached to them and the language emanating from those modes of governance, as well as through the teachings encoded in the forms used for their conveyance. Together, these constitute an elaborate body of knowledge learned by practice and reflection throughout people's lives.

Awakening to this body of knowledge and practice as the ground of Stó:lō governance was a gradual process. As I grew more meaningfully connected within the community, I started to be invited to attend gatherings held on a wide variety of occasions: someone was being named, remembered, or honoured; ancestors were provided for through burnings; places were reclaimed, restored, or prepared for building; buildings were inaugurated or spiritually cleansed; monuments were erected, signalling an important event or location on the land; an agreement with a neighboring indigenous nation was formally concluded; the first salmon caught in the spring was celebrated, and stories were told to remind humans of their debt of life to the fish, of their duty to care for it and to share it among themselves. As the winter settled in, the ceremonies changed and became more elaborate: after completing one of the above tasks – crystallizing roles and relationships within a given family, the part of a gathering referred to as “work” – the floor of the longhouse was prepared for the spiritual practice of the winterdance. Compared to the ceremonies I had witnessed in the spring and summer, winter ceremonies were also larger and more frequent: every weekend, from October to March, gatherings were held in many different longhouses on the territory, the attendance often numbering in the hundreds in each place. An important dimension of Stó:lō social, political, legal, and spiritual life unfolded to the rhythm of this ceremony.

The recent history of those practices and of their relationship to Stó:lō identity is a story of repression and rebirth. In the context of the colonial oppression experienced by Stó:lō society and of its resistance to it, language receded and spiritual practices rose to the fore as one of the main vehicles of its identity. Taken away to residential school, Stó:lō children were prevented from learning Halq'eméylem, but also from forming strong affective ties to their immediate family members, and from developing the sense of solidarity within their extended kinship network on which the very fabric of their society had always rested. Combined with the anti-potlatch law,⁶⁰ the residential school policy thus seriously hindered the transmission of the roles and responsibilities that the young Stó:lō coming of age between about 1930 and 1950 would otherwise have grown into within their families and society as a whole.

During those decades, the older generations, who could neither teach Halq'eméylem to their kids nor hold the gatherings constituting one of their main mechanisms of governance, did what they could do: they took their spiritual healing practice – *syúwél*, the winterdance – underground. Old dancers held small, secret gatherings in each other's houses, keeping the practice and the teachings associated with it alive. When the ban on Indigenous gatherings was finally lifted in 1951, the Stó:lō experienced what many refer to as a “renaissance”: elders from different parts of Coast Salish territory – Lummi, Musqueam, Cheam, Chilliwack, Sts'ailes, Vancouver Island – took it upon themselves to initiate new dancers and to bring back *snuw'uyulh*, the teachings and ceremonial protocols associated with both spiritual and governance practices. The first longhouse to be rebuilt in the Fraser Valley was erected in Chilliwack in the early 1960's. Fifty years later, there are more than sixty active longhouses on Coast Salish territory.

The stories and events at the heart of Chapters Three to Seven of this dissertation relate to aspects of the Stó:lō legal order that I began to learn about at gatherings.

⁶⁰ See *supra* note 25.

They emanate from conversations with *xwélmexw* knowledge carriers and practitioners, and from my own experience and interpretation of gatherings and ceremony as a legal process. Most of those who trusted me with stories and teachings were either “young” Stó:lō elders at the time of our exchanges and interviews – people in their sixties who, as young adults in the 1960’s, were part of the first generation to reconnect with their heritage in the post-residential-school era – or members of the following generation, men and women in their thirties and forties, in various leadership roles within the nation.

The Stó:lō legal “order” and the Coast Salish legal “tradition”

From the beginning of this chapter, I have used three different terms to define the terrain of my inquiry: legal *order*, legal *tradition*, and legal *sensibility*. I have described my approach to the research and reflection that follows as seeking to discern aspects of the Coast Salish legal tradition’s very character. This object, the elusive substance of law’s distinctiveness – of a society’s multifaceted notion of legitimacy – is what I call a legal sensibility. I think of it as the ground of the significance of people’s interactions, the tacit normative commitments or “shared understandings”⁶¹ that orient how they frame their social reality. In other words, those culturally-grounded commitments and understandings are the very condition of possibility of individual and collective choice regarding how to act, how to understand their relationships with each other and the world around them – including what makes it possible for them to meaningfully disagree.

To focus my attention on this core quality of any tradition, I zero in on its expression at a particular time, in a particular society. The notion of a Stó:lō legal

⁶¹ This is the phrase I used in an early piece exploring elements of legal philosophy underlying this approach: Andrée Boisselle, “Beyond Consent and Disagreement: Why Law’s Authority is Not Just about Will” in Jeremy Webber & Colin M Macleod, eds, *Between Consenting Peoples: Political Community and the Meaning of Consent* (Vancouver: UBC Press, 2010) 207. The work of Charles Taylor was at the heart of this exploration, in particular his philosophical essays in Charles Taylor, *Philosophical Papers: Volume 1, Human Agency and Language* (Cambridge; New York: Cambridge University Press, 1985). Charles Taylor, *Philosophical Arguments*, reprint ed (Cambridge, Mass: Harvard University Press, 1995).

order points to the bounded reality of the Stó:lō as a polity, conceiving of itself as a self-governing social entity (not centralized, but internally connected and interdependent), recognized as such by its neighbours, and exercising jurisdiction over a territory (Stó:lō Téméxw) in a tangible way; and within which rights and responsibilities are shared and distributed among the twenty-four entities that compose it – referred to alternatively as villages or chiefdoms, bands or “First Nations”. To speak of distinct *legal orders* co-existing within the Coast Salish world is to recognize the acts of governance that those self-identifying polities effectively perform over themselves and their lands.

In this dissertation, as I pay attention to Stó:lō relationships, persuasive discourse, and narrative constructions of their reality, to articulate their underlying norms, I posit, more than demonstrate, that the legal sensibility to which they give expression constitutes a particular inflection of the specificity of the Coast Salish legal tradition. I rely for this hypothesis on the current recognition by the Stó:lō and their counterpart social entities of their cultural commonality; on the historical and ethnographic record of this commonality; and on my own experience of such commonality, travelling with Stó:lō friends to ceremonial gatherings held in longhouses at Musqueam, Nooksack, Tsawout, Somenos, or Chemainus Bay. I will refer explicitly, at various points in the substantive chapters, to Coast Salish stories and examples that evoke a shared sensibility across its legal orders. But the object of my research was not to understand “where”, in social terms, this sensibility morphs into another.

In addition to referring to this shared sensibility as *Coast Salish*, I also use the Halq'eméylem term of *xwélmexw* to qualify modes of thinking or relating that are not only Stó:lō, but that are also likely shared (indefinitely) more broadly within the Coast Salish world. *Xwélmexw* translates as “People of Life”. I understand that this term used to be Stó:lō people’s way of designating themselves, to the exclusion of other Indigenous people (also excluding other Coast Salish polities). Indeed,

Carlson reports it as referring specifically to “those Aboriginal people whose lives are in some meaningful way oriented towards the Fraser Canyon fishery and connected to the lower Fraser resident population.”⁶² A distinct term, *lats’umexw*, applied to the “Aboriginal people who are not part of the Fraser continuum”.⁶³ Although this distinction held at least as recently as about two hundred years ago, my sense is that the term *xwélmexw* is now used in other parts of the Coast Salish world to speak of those who belong to it.⁶⁴

Another term I will frequently return to is that of *community*. This will occasionally be referring to geographically-determined collectives, on one scale or another – such as Sts’ailes, Stó:lō, Coast Salish. But place is, of course, only one of the markers of community, and I will use the word in other contexts to speak of collectives united, for example, by kinship ties, by their belonging to a particular longhouse, or by their membership in the spiritual sodality of winterdance workers and/or dancers as a whole, etc. A tentative definition of community which functions well for my purposes in what follows is that of a group of people who conceive of themselves as a collective and are willing to make contributions to it, as well as to make compromises or sacrifices in its name.

V. *Zeroing in on the specificity of law’s work*

I have begun, in the previous pages, to describe my inquiry into what makes a legal tradition “what it is”. This inquiry into legal sensibility sits at the intersection of two aspects of the character of normativity: first, the distinctiveness of law itself in terms of the kind of activity it consists in, the kind of need it addresses and of work it performs within a society; and second, the distinctiveness of the content of a society’s sedimented assumptions and commitments about reality, which both *shape* its legal institutions and processes and *are shaped* by the operation of those

⁶² *The Power of Place*, *supra* note 1 at 284.

⁶³ *Ibid* at 282.

⁶⁴ See, for example, the Cowichan Tribes’ welcome, expressed as *Shhweenustham ’u tu Quw’utsun Hwulmuhw*, “The People of the Warm Land welcome you”: “Cowichan Tribes - The People of the Warm Land Welcome You”, online: <<http://www.cowichantribes.com/>>.

institutions and processes.

From the above brief discussion of law and tradition begins to emerge a way to think of my task, as a scholar seeking to discern the contours of a legal tradition, and especially as a non-Indigenous scholar inquiring into the character of an Indigenous legal tradition – that is, a clearer sense of what needs paying attention to, but also, of what I must be wary of in researching and accounting for such a tradition at a particular point or period in time. One of the ways in which this task is fraught is that it involves conveying the inevitable essentializations that are part and parcel of the structuring phenomenon of law, as Roth puts it, or the “emphatically social, non-individual processes” that Webber speaks of, without imposing an artificial commonality through the principles and processes that I examine. This involves paying attention to the range of legal interpretations that have currency among the Stó:lō in different contexts, and focusing on the iterative processes of their formulation and application – which possibly manifest most explicitly when outright conflicting interpretations are resolved.

Producing an account of any of those iterative processes that manages to show how commonality is achieved, while also keeping the contentiousness of norms in view, would thus be both theoretically sound, and delineate what I think of as an ethical responsibility on my part, as a scholar (and especially, as an outsider to the polity), to avoid essentializations of my own making. This responsibility can also be expressed as a caution with regard to the notion of authenticity.⁶⁵ The questions most conducive to discerning a legal tradition’s own modes of normative reasoning

⁶⁵ While Webber’s critique of essentializing legal theories is directed at his own community of legal scholars and does not seek to make a more generalized critique of essentialism, what he underlines about rhetoric that closes conversation as opposed to ostensibly presenting a point of view is relevant to other critics speaking to their own communities of belonging. Essentializing norms and pretending to state the contents of “authentic tradition” can be used to maintain power imbalances within groups, silencing those who seek to bring up different interpretations, if not shutting them out completely by making belief in the stated dogma a condition of belonging. I think of the preoccupations expressed by Snyder et al., *supra* note 34 (with regard to the essentialist frameworks silencing women), and by Borrows, *supra* note 30 at 46-51 (with regard to the legitimacy of posited law within Indigenous communities) along those lines.

and judgment lead us away from applying externally fashioned criteria regarding how traditions maintain themselves and preserve their integrity, toward observing and representing exactly *how* participants in the order themselves essentialize, and *do not*. In other words, the scholarly task is to ask: How do *xwélmexw* practitioners wield references to “tradition” – the variously crystallized cultural tropes, narratives, principles and processes codifying their common experience – to argue for certain outcomes, and address the attachments and commitments that they conceive as central to their identity? In which contexts do they do so, and how do those contexts shape their interactions? And to what effect: do they gain support for their perspective, carve a space for themselves to act or rally others to a particular course of action? What consequences ensue for differently situated people within the community?

This connects to the above discussion, grappling with the theoretical debate within legal pluralism, and allows me to further describe the legal pluralist lens of my initial approach to my research. This theoretical lens filtered my perspective on ontological questions (what to know) and epistemological questions (how to know), both connected to the ethics of knowing (how to honour the relationships implicated in our inquiry). According to the lens of that theory, which I think of as “anti-essentialist legal pluralism,” the role of the scholar representing a legal tradition is to sit at the juncture between the commonality expressed in normativity and the plurality that is always there, keeping the contentiousness of norms in view. This legal pluralism is **anti-essentialist** because it refuses to imprison the community into an authentic canon of being, one that prevents the expression of individual dissent and of collective transformation; it is a **legal** theory in that it looks at the ways individuality is both taken into account and transcended into commonality, collaboration, peaceful coexistence, living together; and it is a **pluralism** because it recognizes the cultural-groundedness of forms of ordering, and is committed to listening to how each of those different forms illuminates human experience in its own way, creating specific modes of

being and relating that contribute uniquely to the human conversation.

A particular challenge of legal scholarship is that of respecting the agency of the individual members of a community – which is key to avoiding the dehumanization of that community. This involves finding a scholarly voice that clearly conveys that the community's legal norms are neither predetermined nor fixed – paying attention to the variety of ways in which different interests and perspectives are both given the opportunity to express themselves and taken into account in the ongoing work of crafting commonality, creating and sustaining people's sense of their own capacity to be and to act in the world.

As I hinted at earlier, one particular way of meeting all those challenges is to adopt an approach to the study and discussion of law – and to legal pedagogy – that focuses on conflict, on conflict-resolution processes, and on the modes of reasoning displayed within those processes. As Val Napoleon puts it: "Conflict is an integral and necessary aspect of human societies. The challenge is not to prevent conflict or even to resolve it, but rather, to effectively manage it so that it does not paralyze people."⁶⁶

This focus on conflict and on processes of conflict management was my point of departure for researching *xwélmexw* legal sensibility. What I was seeking, when I sat with my *xwélmexw* interlocutors, or attended the gatherings I evoked earlier, were conflictual situations or disagreements, currently unfolding or recently experienced, from which I could approach Stó:lō legality along the following lines: firstly, what is at stake in those conflicts? That is, what kinds of goods are valued within the Stó:lō social context? What specific entitlements and obligations are the object of contestation? Secondly, how do people construct arguments, drawing on what sorts of intellectual resources, and directing those arguments at whom, in what kinds of fora? And thirdly, how do people concretely work through

⁶⁶ Ayook, *supra* note 31 at iii.

disagreements in practice? How do they act and reason their way through contestation? Who, specifically, does so? In which contexts? And what do people regard as acceptable resolutions or resting places for particular conflicts?

Although the features of what I was looking for were quite open-ended regarding those three aspects of law's work, the stories I gathered and my experiences of Stó:lō gatherings challenged me to reassess the way I conceived of those research questions. To attend to the Stó:lō practices and intellectual resources I had been exposed to, and tease out what they revealed of the *xwélmexw* legal sensibility, I had to come to terms with some of my preconceptions regarding what I implicitly saw as adequate "materials" for learning law. While my tacit expectations operated at a less tangible level than by making me prejudge what was at stake in Stó:lō disagreements, or preconceive of the specific shape of conflict resolution processes, they still constrained my ability to learn from the actual materials I had collected. In addition (or as a corollary) I realized I was not sufficiently equipped to tease out what I was looking for: the distinctive character of law, as expressed within the Stó:lō legal order. In other words, some of the stories and practices I was seeking to understand with respect to the Stó:lō legal order challenged key tacit assumptions underlying the "anti-essentialist legal framework" described above.

In a nutshell, as I pondered the product of my interviews and experiences on Stó:lō Téméxw, I realized that in order to get at the particular expression of normativity within this legal tradition, my focus had to change: from seeking a certain *kind of discourse or practice*, or approaching any discourse or practice through a conflict-centric lens, to an approach that zeroed in on the *implicit norms* shaping *any* discourse and practice. In the next chapter, I retrace my steps on the path to this realization, and the analytical tools I adopted in the process.

Chapter Two

Implicit norms: tools and trajectory

In the previous chapter, I described the theoretical lens through which I approached my research and initially reviewed the materials it had yielded. This lens oriented me to think that the ethically and theoretically soundest way of analyzing the normative dimension of the discursive and practical interactions I had witnessed within the Stó:lō legal order, and of teasing out their distinctiveness, was to seek out contexts of conflict and conflict management. This chapter speaks to the fact that my research yielded other kinds of stories and contexts, prompting me to expand the analytical tools at my disposal as I sought to approach those stories on their own terms, without recasting them through the lens of my conflict-centric legal sensibility.

I. From conflict resolution processes to storytelling

Within the anti-essentialist, conflict-centric, legal pluralist framework described in the previous chapter, I realized there were two key features to what I had been looking for: something explicit, which could be seen, pointed to; and something involving a movement from the plural to the singular. I expected to find an open conflict, disagreement or serious difficulty in the relationship between two or more people – open or explicit in the sense that it would be understood and identified as such by those concerned; and also explicit as to its resolution process. No matter how informal or case-specific, the process I implicitly sought would have involved a third party, so as to be as clearly as possible a social as opposed to an individual or idiosyncratic process; and would have tended to reduce the multiple voices expressing themselves to one. In a nutshell, I hoped to be able to analyze stories revealing how conflicting interpretations of a given situation were being reconciled or put aside within Stó:lō society.

The general tension at work here, between articulating what one is looking for so

as to be able to look for it at all, and leaving things sufficiently undefined, so as to be able to see what is actually there, is probably inevitable and can only be teased out on a case by case basis, in relation to a specific inquiry. What I think is important about the unarticulated expectations I had throughout my research is what they reveal about the emphasis placed, within Western legal theory – and the legal education I received in the civil and common law traditions – on processes of decision-making whereby contending positions are fleshed out explicitly, made visible and audible, and where the process of their pondering must also make a formal show of having seen and heard them. Related to, but distinct from this first assumption is the sense that order is achieved, even if only momentarily, by reducing the plurality of voices, evoking noise and chaos, to one – which bears on the centralizing, authority-bound tendencies of state legal systems.

This twofold bend toward formal explicitness and univocality is present in Webber's legal theoretical writings⁶⁷ – to which I pointed in Chapter One as important to my research orientation. While he does evoke the possibility for legality to manifest through the acceptance of plurality – which may translate as the recognition of spheres of autonomy, or agreeing to disagree⁶⁸ – such acceptance is presented as the clear-cut result of formal mechanisms,⁶⁹ and “the very heart of law” as “the need to establish, at least provisionally, a *single normative position* to govern relations within a given social milieu, despite the continuing existence of normative disagreement.”⁷⁰ The “hard truth,” as Webber puts it, is that norms always involve not only a fashioning but “a kind of

⁶⁷ Webber, *supra* note 42. See also: Jeremy Webber, “A Judicial Ethic for a Pluralistic Age” in Omid A Payrow Shabani, ed, *Multiculturalism and Law: A Critical Debate* (Cardiff: University of Wales Press, 2007) 67. Jeremy Webber, *Indigenous Legal Traditions and Indigenous Governance: Challenges and Opportunities* (paper presented at the Conference on “Inclusion and Representation in Anishinabek Self-Government” - Nipissing First Nation, North Bay, Ontario [unpublished], 2011). Jeremy Webber, *The Hobbesian Premise* (paper presented at Workshop on “State, Security, and Subject Formation” - University of Alberta [unpublished], 2007). The Hobbesian premise foregrounded by Webber consists in the acknowledgement that human beings disagree.

⁶⁸ Webber, *supra* note 42 at 170.

⁶⁹ *Ibid* at 180.

⁷⁰ *Ibid* at 169 [my emphasis].

imposition,” which brings together those two themes into a notion of institutionalized authority with Hobbesian undertones.⁷¹ Webber drives home the point with the striking image that common positions often need to be “hammered out.”⁷²

This account, evoking deal-making and negotiation processes on the models that are familiar within Western legal traditions, also brings to mind the gavel and the adjudicative process, on which Western legal literature has overwhelmingly trained its sights.⁷³ The privileging of open, explicit conflicts on the one hand, and of univocality in their resolution also corresponds to the focus of Western legal education on caselaw, which allows students to walk the fine line that consists in understanding law as an “emphatically social, non-individual” phenomenon (through the institutionalized authority of the adjudicative process), while keeping in view the contestation that underlies normativity at all times (the contentious nature of the norms being fully spelled out in Western adjudicative contexts).⁷⁴ Since both the conflict and the single voice imbued with the authority to settle the conflict are givens in the Western legal contexts, supporting a caselaw-centric pedagogical method, one may walk that fine line without even being aware of it as a balancing act – indeed, one of the functions of institutions within legal orders is certainly to render this process somewhat fixed, predictable, and taken for

⁷¹ *Ibid* at 181-82.

⁷² *Ibid* at 182.

⁷³ Alongside adjudication, the more broadly participative democratic forms of lawmaking also share the tacit normative commitment toward singleness, explicitness and decisionism identified here. As commonly understood, the gavel symbol entwines formal explicitness with a notion of authority as the lone voice that closes discussion. “The sound of the gavel strike, being abrupt to start and stop, and clearly audible by all present, serves to sharply define an action in time in a manner clearly perceivable by all, and to endow the action with practical as well as symbolic temporal finality” (what was not before striking, is after it; or what was before striking, is no more after it): “Gavel”, (1 April 2017), online: *Wikipedia* <<https://en.wikipedia.org/wiki/Gavel>>.

The “case method” advocated by Napoleon and Friedland, *supra* note 31, to tease out the normative dimension of Indigenous traditional expressions (discussed earlier in Chapter One) displays the same bend toward an adjudicative, or caselaw-based, model of legal analysis and scholarship.

⁷⁴ Edward Rubin, “What’s Wrong with Langdell’s Method, and What to Do about It” (2007) 60 *Vanderbilt Law Rev* 609. Note that the Western lawmaking institutions are also built around making disagreement explicit, deliberating, and coming to a single solution.

granted.

The effect of those assumptions throughout my research was to leave me with a sense that I was not finding what I needed to find in order to picture Stó:lō normativity in its complexity.⁷⁵ Rather than witnessing formal adjudicative situations, the gatherings I attended seemed only to publicize uncontentious happenings in the lives of individuals and their families. The stories and narratives that people shared with me, in response to my questions about “their own law” included discussions of outright conflicts and of their settlement only exceptionally. Much more often, I was presented with a very different genre: that of an exemplary story told in a personal mode, a biographical snippet about an important event for the narrator, sometimes honed by him or her into a nugget of experience told and retold in different contexts, to different audiences, shaping relationships within the community in ways often difficult to ascertain – in any case, certainly more difficult than the outcome of formal adjudication. The feeling of inadequacy of my research was reinforced by the fact that some of the best models available for teasing out and reflecting on law in Indigenous and other non-state contexts also adopt this focus on overt conflicts triggering local versions of formal adjudication.⁷⁶

My point is not that the Stó:lō *do not* have open conflicts to which formal mechanisms of adjudication are applied – I did hear and will make use of such accounts in the chapters that follow – but that the focus of my legal education (and lawyerly practice) on full-fledged adjudicative models left me ill-equipped to deal with the analysis of the very significant problem-solving and precedent-

⁷⁵ Maurice Bloch, *Political Language and Oratory in Traditional Society*, academic press ed (London, New York, San Francisco, 1975) at 1.

⁷⁶ See the note on the similar challenge experienced by Maurice Bloch, *supra* note 75. And see, for example, Karl N Llewellyn & E Adamson Hoebel, *The Cheyenne way: conflict and case law in primitive jurisprudence* (Norman: University of Oklahoma Press, 1941). Napoleon, “Living Together”, *supra* note 31; Richland, *supra* note 56; Donald Brenneis, *Telling Troubles: Narrative, Conflict, and Experience* (Oxford UP, 1996). Many of the examples studied by Clifford Geertz, Lawrence Rosen, and Jean and John Comaroff in their respective work are also of formal adjudication.

setting that occurs in more subtle and implicit ways through other genres than adjudicative reasoning. In other words, the storytelling genres used by the Stó:lō in their daily practice – inserting accounts of lived experience into contexts as widely various, in terms of formality and subject-matter, as personal conversations and speeches made at longhouse gatherings – were much more subtle than adjudicative reasoning (my bread and butter as a law student and litigator) with respect to the presence of social conflict and to the manner of its resolution. I had to come to terms with the fact that they were a primary locus of legal reasoning.

The bend of Anglo-American legal education and of the stereotypes it entertains of legal practice⁷⁷ makes it difficult to see how law is knitted into the daily workings of a decentralized society. For those of us who are primarily socialized in Western legal traditions, the challenge is twofold, requiring the development of skills that will allow one to grasp forms of legal process and narrative that are more implicit, layered and dispersed than they are perceived to be in the West, while avoiding the trap of naturalizing Indigenous law. In the following section, I flesh out further both aspects of this challenge and of the theoretical lens through which I propose to take it up. In other words, given the particularities of the Stó:lō texts and events I am looking at, to what should I pay attention in order to elucidate their (tacit) legal dimension (the *established* character of the norms on which they draw) without ever losing sight of the fact that legality is a dynamic phenomenon, an achievement, the result of (tacit) compromise (showing norms to *be* established, not naturally occurring phenomena)?

The first preoccupation consists in learning to decipher legal reasoning in discourse, and normative processes in social interactions and practices, within a tradition where normativity is not thought of separately from other aspects of life in society – and where, as I explained above, the gist of the legal materials with

⁷⁷ This includes Québec, where the civil law tradition is taught on an Anglo-American legal pedagogy.

which I have to work does not allow me the shortcut to explicit normativity provided by contexts of open conflict and of staged, or at least traceable, processes of deliberation, choice and closure. Given that these two ways of framing the challenge represent two of my own culturally-grounded assumptions about, on the one hand, how to think of law – as a social phenomenon that can be isolated and abstracted from others – and on the other hand, how best to access and study it – through adjudication – that do not fit my material, I must peel those assumptions further back to get to a characterization of what I am trying to tease out of Stó:lō events, narratives and processes that suits their particularity.

II. Perceiving legal reasoning in non-adjudicative storytelling

What the focus of Western legal traditions on the adjudication of adversarially constructed situations makes most clear about law is how it serves to effectively frame individual and collective agency, bringing collectively held reasons to bear on people's choices and behaviour, affecting the course of their interactions. In other words, they make explicit not only the contested ground of law but the way in which concrete situations are being sifted through the prism of collectively held reasons so that their course be determined. Setting up interactions adversarially and resolving them in favour of one of the adversaries makes clear that law is a social construct that acts to curtail individual behaviour and agency, bearing consequences for the way in which the rest of the community understands its agency.

One of the ways in which Stó:lō stories and practices demand a shift in perspective is that they foreground the agency of their main protagonists – the storyteller or, in the case of a gathering, of the family organizing it – while leaving the framing of this agency largely unarticulated. What sounds like a simple *description* of events – which the protagonists have set in motion, played a role in, or which they recount as having “happened” to them – *weaves in* the normative framing of people's agency. In contrast, the legal reasoning that prevails in the Western traditions, and

in particular the sharp dichotomy it draws between facts and law, generates its own set of implicit fictions about the character of legality,⁷⁸ but does foreground the notion that a legal order consists in “the enterprise of subjecting human conduct to the governance of rules”⁷⁹ – in other words, of parameters that do not emanate from a single individual or party to a dispute but are, rather, “emphatically social.” In most of the Stó:lō contexts I have been privy to, the audience of a legal story or event seems to be invited to nod to the exercise of the protagonists’ agency – *but this is only because agency is, indeed, exercised in a specific way*. Instead of listening, as we do when reading through a common law casebook, to stories of social pathologies – telling, over and over, of the breakdown of social interaction, of the micro-tearing and tentative mending of the social fabric – we are asked to sit and watch the affirmative knitting of that fabric, which is why those who are trained to look for pathologies do not see anything worthy of their attention, or simply do not know what to pay attention to.

The Stó:lō texts and contexts do not provide ready access to precedents, nor to the mechanics of conflict resolution. Because they explore normative questions and enact normative frameworks in ways that are not narrowly focused on the technical handling of issues, not reducible to a body of legal precepts or *corpus juris*, to “rule structures” or “social devices for advancing interests and managing power conflicts,”⁸⁰ they demand that we apprehend law through something at once broader and more essential: its imaginative power. Thus, approaching their interpretation – and the distinctiveness of the legal tradition within which they find meaning – with the requisite depth of field requires an enlargement of perspective. Here, the seminal work of Robert Cover and Clifford Geertz is helpful and inspiring. Their perspective on legal hermeneutics acknowledges that the

⁷⁸ The cultural specificity of that dichotomy and the role it plays, alongside other aspects of legal reasoning and legal pedagogy, on the character of Western legal traditions, are discussed in the next section.

⁷⁹ Lon L Fuller, *The Morality of Law*, 2nd revised ed (New Haven: Yale University Press, 1965).

⁸⁰ Clifford Geertz, *Local knowledge: further essays in interpretive anthropology* (New York: Basic Books, 1983) at 214.

materials fleshing out a normative universe, or *nomos*, are varied and complex,⁸¹ and that “they do not just regulate behaviour, they construe it.”⁸² Like the narratives studied by Cover and Geertz, the Stó:lō legal narratives and frameworks that constitute my window into the *nomos* of Coast Salish peoples “present not only bodies of rules or doctrine to be understood, but also worlds to be inhabited.”⁸³

Since “[t]o inhabit a *nomos* is to know how to *live* in it,”⁸⁴ the study of the narratives and practices that constitute this normative world requires the articulation of the role they play, as a “resource in signification,”⁸⁵ in giving shape and meaning to human lives.⁸⁶ Analyzing those narratives and practices in their dimension as legal reasoning and legal framework entails showing how they contribute to make sense of actions posed or omitted in that world. Rather than focusing on hierarchies of authority and on the parameters within which their pronouncements are considered authoritative, the skills to develop for this legal analysis attach to how courses of conduct are made intelligible within the Stó:lō normative universe, to the ways in which people draw on “a language and a mythos” to establish “paradigms for behaviour,” “a repertoire of moves” or “lexicon of normative action.”⁸⁷

In other words, the challenge I am facing in parsing Stó:lō stories for law does not lie in the fact that many of those stories consist in representations of facets of the Stó:lō *nomos* by individuals who lack, by the very nature of that legal order, the

⁸¹ See Robert M Cover, “The Supreme Court, 1982 Term - Foreword: *Nomos* and Narrative” (1983) 97:1 Harv Law Rev 4 at 6; Borrows, *supra* note 28 at 57.

⁸² Geertz, *supra* note 80 at 215.

⁸³ Cover, *supra* note 81 at 6.

⁸⁴ *Ibid.*

⁸⁵ *Ibid* at 8.

⁸⁶ Elinor Ochs & Lisa Capps, *Living narrative: creating lives in everyday storytelling* (Cambridge, Mass.: Harvard University Press, 2001).

⁸⁷ Cover, *supra* note 81 at 9. Geertz, *supra* note 80 at 182 uses a similar concept in advocating “an approach to adjudication that assimilates it not to a sort of social mechanics, a physics of judgment, but to a sort of cultural hermeneutics, a *semantics of action*.”

official authority to interpret the law *on behalf of the community as a whole* – or to make decisions that the community accepts as binding. The challenge is in learning to see how, in order to make sense of events and to orient their conduct in ways intelligible to others within their cultural world, people draw on an “imaginative, or constructive, or interpretive power [...] *rooted in the collective resources of culture rather than in [their] separate capacities [as] individuals.*”⁸⁸ Cover makes this point forcefully in the following passage:

“The intelligibility of normative behavior inheres in the communal character of the narratives that provide the context of that behavior. Any person who lived an entirely idiosyncratic normative life would be quite mad. The part that you or I choose to play may be singular, but the fact that we can locate it in a common ‘script’ renders it ‘sane’ – a warrant that we share a *nomos*.”⁸⁹

Beyond their general recasting of law as a meaning-making resource, Cover and Geertz also assist in formulating a somewhat more specific analytical framework for shedding light on the workings of law within variously shaped *nomoi*. They do so by suggesting that *what characterizes all modes of legal reasoning* – which are also modes of historical, political, ethical, philosophical reasoning, etc. within the broadly construed activity that consists in making sense of what we do, giving meaning to our lives – across cultural differences *is that they operate to weld the real with the possible*. This is true in two senses.

First, legal reasoning serves to frame “what happened” in function of what *can* happen within our available constructs. It fits lived experience into a frame of intelligibility. Geertz’s iterative account of how it does so is illuminating: he shows that the dissociation of fact and law characteristic of common and civil law reasoning is only one particular way of making sense of events, and offers a representation of what reasoning consists in that applies to a much broader

⁸⁸ Geertz, *supra* note 80 at 215.

⁸⁹ Cover, *supra* note 81 at 10.

spectrum of legal traditions. On the guidance he provides, drawing out law from Stó:lō stories involves seeing and showing (making an argument as to) how their narrators are:

“[...] representing concrete situations in a language of specific consequence that is at the same time a language of general coherence [;]
[...] describing a particular course of events and an overall conception of life in such a way that the credibility of each reinforces the credibility of the other [;]
[...] connect[ing] the if-then structure of existence, as locally imagined, to the as-therefore course of experience, as locally perceived, so that they seem but depth and surface versions of the same thing.”⁹⁰

Although this may seem like a discourse-centered account of legal reasoning, it also speaks to the creation and reproduction of normative frameworks through the non-verbal dimension of interactions. Stories are an important mode of recording what has been done and of figuring out what to do – but attitudes, actions and omissions also shape, probe, embody and enact social events and relationships in real time. They carry meaning and serve as modes of communication – sometimes through formal codifications or protocols of interaction (the equivalent of stories’ genres), sometimes not. Teasing out Stó:lō legal reasoning involves paying attention not only to what people say but also to what they do – in codified political and ceremonial contexts as well as more informal ones, where norms and protocols are tacitly followed. It consists in articulating, in another of Geertz’s formulations, how they “make sense of what they do – practically, morally, expressively... juridically – by setting it within larger frames of signification, and how they keep those larger frames in place, or try to, by organizing what they do in terms of them.”⁹¹

This notion of a “frame” for experience that legal reasoning seeks to “keep in place” constitutes the first dimension of the relationship between experience and its

⁹⁰ Geertz, *supra* note 80 at 175.

⁹¹ *Ibid* at 180.

normative representation, one that explains the stability that law brings to social interactions by putting the emphasis on the weight that available representations cast on experience. As Geertz demonstrates, legal reasoning “propounds the world in which its descriptions make sense.”⁹² This does not only entail the constraining of the real within the bounds of pre-established narrative patterns and sedimented legal genres and categories. *Propounding a world* suggests as much rendering it concrete, making it come to pass – connoting a sense of finality – as making an argument, offering up a tentative construction of reality (as persuasively as possible) for consideration. Legal reasoning constrains experience within a frame, but its “description” of reality is always also a pitch, one possible construal among many, based on the perspective of the interpreter and on the nature of the events to make sense of – their degree of familiarity or strangeness. It draws on an existing repertoire of images and actions, the creative potential of which is never exhausted, since the significance of past interactions and courses of action is derived in the very act of placing them in relation to those that currently need to be figured out. Although legal reasoning often presents the result of its work simply as “the way things are,” something we can rely on to orient our lives and to determine, more or less consciously, how to act, it actually generates the social reality we experience, and constantly operates this alchemy between the past, the present, and a range of possible futures. Given the constructed nature of social experience, the “reality” of that experience, *what is*, is always entangled with *what should* and *what could be*, something Robert Cover evokes by describing the *nomos* as “a present world constituted by a system of tension between reality and vision.”⁹³

For both Cover and Geertz, one of the main goals of these reflections is to allow the examination of the dominant representation that law gives of itself within the Western traditions as one possibility among many, by bringing into view the contingent nature of the “way things are.” While Geertz resorts to a comparison

⁹² *Ibid* at 173.

⁹³ Cover, *supra* note 81 at 9 [my emphasis].

between European and South Asian concepts of law and modes of adjudicative reasoning to proceed to this provincialization, Cover, and scholars such as Anthony Amsterdam and Jerome Bruner in his footsteps, explore how narrative can serve to gain a perspective on the Western legal canon – the institutions, techniques and theories that have taken hold within that cultural universe as *the* modes of apprehending reality – within the culture’s broader noetic space, the space of imagination, of creative envisioning, of drawing out what else might be possible.⁹⁴ Their insights point to narrative as the form holding the above-described tension between reality and vision, displaying the entwining of the “is”, the “ought”, and the “might be”, and performing their mutual co-construction. As Cover puts it: “The codes that relate our normative system to our social constructions of reality and to our visions of what the world might be are narrative.”⁹⁵ Scholars who have probed the use of the narrative form in a variety of contexts have taken those insights further, informing my inquiry into ways of

⁹⁴ The noetic space of a culture is its imaginative space, or more specifically, all that incites mind and imagination, including beliefs, desires, feelings, hopes, intentions. It is the space of the possible – by opposition to the canon, which generally refers to the limited set of rules, principles, works, institutions (etc.) that are formally approved of, or generally established as “valid” and “fundamental” within a society. In *Minding the Law*, Amsterdam and Bruner discuss it as follows: “Every culture contains an assembly of possible-world constituencies, each animated to modify, bypass, or even destroy the existing canonical order – and sometimes one another. [...] Imagination, like protest, gains intensity when it is channelled within a culture’s recognized forms for challenging the canon.” See Anthony G Amsterdam & Jerome S Bruner, *Minding the law* (Cambridge, Mass.: Harvard University Press, 2000) at 236-9. The noetic space of a culture is not unlimited, but much broader than the canon: “Stories from life may be bizarre, their truths metaphoric, but they must honor the limits of lifelikeness – the limits beyond which they cannot go without losing the imaginative engagement of the audience. So noetic space, like imagination itself, is specialized for testing the limits of the possible.” (*Ibid* at 238). The noetic space of a *nomos* or normative universe does not only hold a number of reasonable interpretations yielding a range of possible legitimate outcomes (an example being the different reasons given by common law judges sitting on appeal of a given case), but also alternative ways of construing order and of producing norms in the first place.

⁹⁵ Cover, *supra* note 81 at 10, adds : “Narratives are models through which we study and experience transformations that result when a given simplified state of affairs is made to pass through the force field of a similarly simplified set of norms.” Amsterdam and Bruner, *supra* note 94 at 141: “Narrative [...] takes for granted, too, that a set of contested events can be organized into alternate narratives and that a choice between them may depend upon perspective, circumstances, interpretive frameworks. In a word, it leaves room for the possibility that things have changed. It is this feature of narrative that makes it invaluable in relating the past to the present and the abstract to the particular.”

approaching the study of law in Stó:lō narrative.

III. *Undoing the false dichotomy of form and substance: accessing law's content and character by paying attention to how stories are told*

In their study of what they call “everyday storytelling” – the “ordinary social exchanges in which interlocutors build accounts of life events [... as opposed to] polished narrative performances”⁹⁶ – Elinor Ochs and Lisa Capps reveal the tension driving storytelling as an exemplar of the dialectic between the canonic and the noetic. This tension manifests, on the one hand, in the need to explain an event, justify a course of conduct, determine just what happened and decide what to do about it; and on the other hand, in the concurrent desire to be faithful to the open-endedness of experience, reflected in puzzling over it, inquiring into its meanders, searching for meaning, and formulating alternatives to any neat storyline that would purport to encapsulate events and interactions, and thus reduce experience. Ochs and Capps show narrative to consist both in the attempt to place experience within a normative frame, and in the messy and sometimes inconclusive work of exploring some of its other possible framings:

“All narrative exhibits tension between the desire to construct an overarching storyline that ties events together in a seamless explanatory framework and the desire to capture the complexities of the events experienced, including haphazard details, uncertainties, and conflicting sensibilities among protagonists. The former proclivity offers a relatively soothing resolution to bewildering events, yet it flattens human experience by avoiding facets of a situation that don't make sense within the prevailing storyline. The latter proclivity provides narrators and listeners with a more intimate, “inside” portrayal of unfolding events, yet narrators and listeners can find it unsettling to be hurtled into the middle of a situation, experiencing it as contingent, emergent, and uncertain, alongside the protagonists.”⁹⁷

Unpacking this tension a bit further illuminates a path to approach narrative as a

⁹⁶ Ochs and Capps, *supra* note 86 at 2.

⁹⁷ *Ibid* at 4.

form of legal reasoning, while keeping with key elements of the anti-essentialist framework for legal scholarship foregrounded in the last chapter. Recall that this framework requires that we distinguish between norms and normative assertions, but that we keep both in view – not merely describing law, but showing its contested ground, so as to keep in sight that it is fashioned, not found lying about in the world, which might merely warrant passive notice or, more perniciously, unquestioned obedience. In the complex whole of descriptive narratives, I seek to discern the *ought* and the *might be* woven into the *is*: the norms that shape the story, create this particular version of what happened, but also the places where the storyteller hints at alternative possibilities.

In line with Geertz, Ochs and Capps describe the activity of telling stories as geared towards “reflecting upon specific situations and their place in the general scheme of life.”⁹⁸ But because they attend to the microscopic details of specific narrative interactions, they also provide clues as to which features of narrative disclose the legal interpretive work that it performs – drawing on norms to conform to them, but also, more broadly, to make sense of things, to understand how they need to be and how to be in relation to them, to choose a path of understanding, of representation, of action among many.

A broad framework for discerning this process of normative interpretation, whereby a strong normative claim emerges from a contested ground, is provided by the two narrative proclivities identified by Ochs and Capps. The first proclivity, which drives toward the construction of “an acceptable, agreed, or communicatively successful version of what really happened,”⁹⁹ derives from the constraints that normative frameworks place on representation and interpretation. Examining a narrative with this proclivity in mind involves paying attention to the ways in which even “[i]diosyncratic experiences become co-narrated according to

⁹⁸ *Ibid* at 2.

⁹⁹ *Ibid* at 285, quoting Derek Edwards & Jonathan Potter, *Discursive psychology*, Inquiries in social construction (London: Sage, 1992) at 204.

local narrative formats, recognizable types of situations and people, and prevailing moral frameworks.”¹⁰⁰ Showing normativity at work here may thus involve uncovering how a given narrative structure conforms to culturally ordained genres – an example of which is the linearly chronological plot, based on an understanding of clarity and coherence as yielding stories that begin with a significant incident and flow “logically towards an ending that provides a sense of psychological closure.”¹⁰¹ More generally, though, what is key is not the sequence of events *per se* but the “sequence of the audience’s perceptions, projections, and re-integrations of the story, typically following a line of development from illusion to disillusionment”¹⁰² rather than a progression dictated by time or causality. In other words, the search for normativity leads to asking which aspects of experience are emphasized, and which ones are occluded, in striving to lend a sense of orderliness and closure to life, and to construct a version of events that seems true, relevant, coherent, worth listening to, interesting or involving to the intended audience.

The competing tendency, as delineated above, steers away from such streamlining. Rather than creating “a single line of development from a multiplicity,”¹⁰³ the storyteller leaves alternatives in view. He may use a technique called sideshadowing, a term coined by Bernstein and Morson in contrast to foreshadowing – where it is clear that the narrator knows what will follow, and casts characters and events in the light of this already determined future:

“Against foreshadowing, sideshadowing champions the incommensurability of the concrete moment and refuses the tyranny of all synthetic master-schemes; it rejects the conviction that a particular code, law, or pattern exists, waiting to be uncovered beneath the

¹⁰⁰ Ochs and Capps, *supra* note 86 at 55.

¹⁰¹ *Ibid.*

¹⁰² *Ibid* quoting Thomas M Leitch, *What stories are: narrative theory and interpretation* (University Park: Pennsylvania State University Press, 1986) at 130.

¹⁰³ Ochs and Capps, *supra* note 86 at 5, quoting Gary Saul Morson, *Narrative and freedom: the shadows of time* (New Haven, CT ; London: Yale University Press, 1994) at 6.

heterogeneity of human existence. [... It] stresses the significance of random, haphazard and inassimilable contingencies, and instead of the power of a system to uncover an otherwise unfathomable truth, it expresses the ever-changing nature of that truth and the absence of any predictive certainties in human affairs.”¹⁰⁴

The effect of this narrative approach, focused on “cultivating a sense that something else might have happened,” is to restore “the *presentness* of the past.”¹⁰⁵ As Ochs and Capps remark, casting events as “ambiguous, conflictual, unstable, subject to constant revision, perhaps even unknowable”¹⁰⁶ allows narrators to share the contingent quality of an experience and to bring their audience alongside the protagonists “to imagine possibilities, weigh alternatives, shift mindsets, and act without knowing what lies in the future.”¹⁰⁷

Placing in parallel the framework provided by the two narrative proclivities just described with the dialectic of the canonic and the noetic, of norms and their contested ground, adds a set of analytical tools to the study of Stó:lō legal reasoning in narrative. But this parallel should not be taken as a simple, straightforward one. Normativity is not only to be found in the stories or parts of them that follow clear patterns or develop along a single, seamless plotline, while normative assertions and visions of alternative futures dwell exclusively in topical detours, incomplete, unresolved, or open-ended narratives. While Ochs and Capps draw attention to the value of conversation in figuring out the meaning of puzzling or problematic events, and thus focus on a kind of storytelling that is by essence fragmentary, unfinished and importantly, dialogic, many of the Stó:lō narratives I examine in the following chapters have passed the stage of being early works in progress. They are told *to*, not *with*, and have been to various degrees polished and formalized to encapsulate portions of personal, historical or mythical experience. Yet, like the dynamic co-tellings analyzed by Ochs and Capps, they are often

¹⁰⁴ Ochs and Capps, *supra* note 86 at 5-6.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

characterized by a recreation of experience in its presentness, conveying the uncertainty of the protagonists, the contradictions or dilemmas they grapple with, their lack of control on the way things unfold, or simply the sense that things could have been different. As Julie Cruikshank has noted, one the hallmarks of Indigenous oral traditions is to provide listeners with direct experience of situations without having to live through them.¹⁰⁸ This, in itself, is a genre – an ideal form or favoured pattern of narration – which, among other things, responds to an imperative: that of letting listeners figure out the meaning of a story¹⁰⁹ and weigh alternative approaches to their own problems or choices with the detachment provided by its depersonalized setting. In other words, while such narratives may not present “a straightforward projection of ideal behaviour,”¹¹⁰ be geared toward closure, or spell out a moral, their form may still embody a normative framework that both emanates from, and contributes to reproduce aspects of an ordered social reality – such as the way members of a society construe their very agency, referring to their capacity to act, but also to the realm within which they expect to be respected and to respect others in the exercise of that capacity.¹¹¹

How does this exploration of narrative as a form of legal reasoning orient my approach to Stó:lō legal materials, methodologically and theoretically? In contrast

¹⁰⁸ Julie Cruikshank, *Life lived like a story: life stories of three Yukon native elders*, American Indian lives (Vancouver: University of British Columbia Press, 1990) at 340-2. Accumulating such direct experience without having lived it, is what stories well told in any storytelling tradition allow us to do, as novelist Siri Hustvedt remarks in her essay, “The Real Story”. The “magic of fiction” as of “great memoirs partake[s]”, as she puts it, “of a vivid re-experiencing, a re-seeing of the past that is also a fantasy, but it is nevertheless true to the present self [...]”. She adds: “What I do know is that in my own life as a reader [...] I have taken those people [authors and their characters] into myself, and they have changed who I am. Fictions are remembered, too, and they are not stored any differently in the mind from other experiences. They *are* experience.” Siri Hustvedt, *Living, Thinking, Looking: Essays* (Picador, 2012) at 114–115.

¹⁰⁹ Borrows, *supra* note 29, tells stories without telling us what to make of them, and points to his grandfather as doing the same, at the one place in the book where he derogates from this tradition.

¹¹⁰ Cruikshank, *ibid* at 341.

¹¹¹ This does not merely evoke a realm of control, a bounded space of physical or psychological freedom, but the semantic realm within which actions are susceptible of being understood.

to systems that purport to clearly delineate law through the formalization and centralization of the mechanisms of choice between competing assertions, and through the dichotomization of fact and law in their prevailing forms of legal reasoning, legal traditions, such as the Coast Salish, that work through the contested ground of human interaction predominantly through narrative do not seek to pull apart the *is*, the *ought* and the *might be*, but invite us instead to grapple with the complex alchemy of their mutual construction. When the norms that determine the outcome of a story are not articulated within the story, they have to be inferred using elements both internal and external to it.

A narrative may serve to do all the hard work of wrestling with a range of alternative interpretations, but remain elusive as to the choice actually made between them. To be able to say which one prevailed may require to be finely attuned to the state of relationships between people. Conversely, the background to a story or the preparation leading up to an event may need to be brought into view to make negotiation and compromise visible. Peripheral stories showing the manner in which dissenting voices express themselves, the kind of spaces in which they do so, and whether and how they are heard, may have to be drawn upon to see how interpretation, reasoning and choice are always part of the contested, living ground of rules. It is also important to recognize that when imagined alternatives to conventions find expression within narratives, it is not necessarily in the form of arguments or assertions raised in outright contestation or resistance to a prevailing normative interpretation, but often more subtly, in the way a story hints at how things could have been otherwise.

This discussion also allows something else to come into view. In laying out some of the conceptual tools that enable one to probe as much the canon as the broader noetic space of a tradition, our cursory exploration not only reveals how to discern, in the complex whole of Stó:lō narratives, the kind of norms that govern the resolution of specific issues – the norms that Western legal institutions and their

style of legal reasoning formally articulate, hierarchize and isolate from their plural ground. It also speaks to discerning the norms that govern the *mode* of their resolution. The normativity that lies at that level remains implicit in any society: it channels the power that, as Maurice Bloch writes, “permeate[s] through social intercourse on a day-to-day basis in a totally unconscious and completely accepted way,”¹¹² shaping the legal order as a whole and deeply, if invisibly, influencing the outcome of ongoing problem-solving at the surface. With regard to this daily problem-solving and its concrete results, people may agree, disagree and acquiesce to interpretations they do not favour for the sake of social peace and orderliness. But the deeper layer of normativity does not lend itself to agreement and disagreement: in this realm, norms shape intelligibility itself. In other words, it is a realm where what is at stake is not to forge an opinion as to the desirability of a particular outcome or the value of a given interpretation, but to exercise and assess *degrees of skill in communicative performance, within a range of intelligibility*. Elsewhere I have used the image of the iceberg to help visualize the relationship between explicit and implicit normativity, whereby explicit rules, principles, and formal processes sit “above the surface” on a much larger body of tacit / invisible normative expectations below.¹¹³

Studying narrative to tease out that deeper layer of normativity entails looking at the narrative forms to which people resort in different contexts with an eye to what those forms *make possible*, in other words, how they shape prevailing attitudes and modes of relating in the society. At that level, as illustrated above, the canonic may dwell as much in patterned discourse as in a more searching, inchoate narrative form – since the expression of unique experiences and perspectives, including dissent from prevailing outcomes, is also socially forged.

¹¹² Bloch, *supra* note 75 at 3. He adds: “In one’s own culture only those few rare aspects of traditional authority which we challenge inevitably stand out, while the great hidden mass of what we all accept is not the focus of our attention.”

¹¹³ See Boisselle, *supra* note 61.

Two methodological observations sum up these remarks in connection with the theoretical framework discussed so far. First: to access the bottom part of the iceberg – the deep layer of normativity that informs every aspect of a legal order – we can look *both* to the norms and to the normative assertions that serve to fashion outcomes at the surface. And second: in a legal tradition where legal reasoning does not yield officially spelled-out norms in neat relief from competing normative assertions, the mode of inquiry into the normativity that lies above and below the surface is very similar: in both cases, it consists in looking closely at what is being said and what is being done, trying to see what this material implies in terms of the intentions of practitioners and in terms of the implications of the type of speech or other mode of communication they draw upon.¹¹⁴

This helps to clarify what I seek in the Stó:lō narratives and communicative practices that form the core of the following chapters. Those stories and practices are *about* legal categories and legal processes – they reveal the content of those categories, the principles that animate them, and how people construe the meaning of what they do when they follow protocol and take on important formal roles at gatherings and ceremonies. This is important and valuable. But my goal here is not so much to make a series of arguments about the dominant contemporary interpretation of the contents of a particular subset of those principles, processes or categories within the Stó:lō legal order. It is to gain insight into the legal sensibility that shapes them.¹¹⁵ This legal sensibility is basically shared within a society because it remains tacit and as such, usually escapes conscious or direct shaping, although it is also subject to creativity and change. Law at this level is the most internalized. It lives in “the mode of interacting and getting along and getting things done.”¹¹⁶ It is a content that depends on forms of

¹¹⁴ See Bloch, *supra* note 75 at 4.

¹¹⁵ The notion of sensibility carries an understanding of the world and how to be in it. As such, it overlaps with the notion of ideology, an orientation (an integrated set of attitudes and beliefs) that characterizes the thinking of a group, and by which it orders reality so as to render it intelligible.

¹¹⁶ Amsterdam and Bruner, *supra* note 94 at 219.

discourse and interaction, that does not stand apart from those forms, and that cannot be reduced to propositions.¹¹⁷

IV. *The polyphonic legal order*

The basic observation that the prevailing form of legal reasoning within the Coast Salish tradition does not treat law as a discrete category of knowledge and practice, *is* such a tacit norm: without ever being articulated, it still governs the way people speak in traditional legal fora, and to do differently would sound foreign and alienating to the audience in traditional contexts.¹¹⁸ The possibility to observe it as a norm comes from the acquaintance with a tradition that does otherwise; from a Stó:lō / Coast Salish standpoint, it remains invisible. How does this underlying normative assumption bear on the character of the Stó:lō legal order? In other words: What is *made possible* by the fact that narrative is the prevailing mechanism for working through the contested ground of law in the Stó:lō / Coast Salish legal tradition – given that narrative is a form that allows the line (artificially drawn, in other forms of legal reasoning) between the *is*, the *ought* and the *might be* to remain blurred, the choice between norms and normative assertions to remain unstated? The short answer, developed and illustrated over the following chapters, is *polyphony*.

In contrast to legal traditions within which legal reasoning and legal processes are geared toward the staging of conflict and its closure in univocal mode – the

¹¹⁷ Much like the basic plot of stories is replicated within many narrative traditions, any society's body of surface norms resembles that of any other, once distilled to precepts or values: some Stó:lō examples that find correspondence in other legal, ethical and spiritual traditions around the world are to take only what you need, to share what you have, to be of good mind, etc. What gives each tradition its unique character is the *how*, not the *what*. Form shapes content, ultimately yielding different understandings of the world and how to be in it. Much of my understanding of this fundamental idea emerged from reading Robert Bringhurst, *A story as sharp as a knife: the classical Haida myhtellers and their world*, Masterworks of the classical Haida myhtellers v. 1 (Vancouver: Douglas & McIntyre, 1999). For a discussion of canonical French civil law doctrine along those lines, see Nicholas Kasirer, "Portalis Now" in Nicholas Kasirer, ed, *Le droit civil, avant tout un style?* (Montréal: Éditions Thémis, 2003) 1.

¹¹⁸ The closest "rule" that speaks to this underlying norm is that in those fora, people should "speak from the heart" – as opposed to, among other things, analytically or legalistically.

legitimation of a single voice to prevail over others in the face of irreducible plurality – the study of Stó:lō narrative legal reasoning in connection with the structure of Stó:lō traditional governance shows that legality need not rest on univocality. The singular achievement of this Indigenous legal order¹¹⁹ is to create harmony in a polyphonic mode – allowing a plurality of normative interpretations to coexist while still ordering society through shared modes of meaning-making.

Stated in general terms, the central insight developed and illustrated over the following chapters consists in the idea that *there is an intimate connection between the privileged mode of legal reasoning in a given tradition, and the distinctive architecture of its social order* – the way in which power is channeled through society.

With regard to the Coast Salish legal tradition and the Stó:lō legal order, this connection manifests between the narrative forms employed for political discourse and legal reasoning, and a mode of governance that achieves order and unity through quite a radical, flexible decentralization – a mode of governance I prefer to call polyphonic because, in contrast with the notion of decentralization, it does away with the idea of a center altogether, and its connotation of devolution of powers to local authorities. Free from association with the Western state, its institutional hierarchies and forms of channelling authority, polyphony is “a cohabitation of voices,”¹²⁰ a form that “*enacts and embodies* plurality.”¹²¹ The fuller definition offered by poet and linguist Robert Bringhurst applies to the concept as I use it:

“Polyphonic music is music in which two or more interrelated but independent statements are made at the same time, creating a statement that none of these statements makes on its own. The statements that are made may imitate each other (as they do in a canon

¹¹⁹ As, I suspect, of others which also use narrative as the prevailing mode of legal reasoning.

¹²⁰ Robert Bringhurst, *Everywhere Being is Dancing: Twenty Pieces of Thinking* (Kentville, N.S.: Gaspereau Press, 2007) at 36.

¹²¹ *Ibid.*

or a fugue), or they may go their separate ways with one eye on each other (as they usually do in a motet). But they retain their independence either way. Their relation is that of coequals, not of musical servant and lord. This coequality is *why* what they say can exceed the sum of the parts.

Polyphony, in short, is singing more than one song, playing more than one tune, telling more than one story, at once. It is music that insists on multiplicity – instead of uniformity on the one side or chaos on the other. [... It] creates a kind of musical and intellectual space absent from music of all other kinds.”¹²²

Before delving into Stó:lō legal materials, and showing the ramifications of this polyphonic form expressing itself throughout the Stó:lō legal order, I need to bring to the conversation some of the tools developed by scholars who have also come upon and sought to analyze the relationship between forms of reasoning and modes of governance.

V. *Delving into tacit normativity: language as the mirror of law*

Although at best marginal within legal and political theory, insights regarding the existence and texture of this relationship are not new to linguistic anthropologists such as Michael Silverstein, Charles Briggs and Elizabeth Mertz, who have noted “[h]ow intriguing it is that so many of the key political and ritual discourse forms [...] can structurally mirror, in very subtle and complex ways, the very model of society or language that they attempt to reinforce.”¹²³ Examining this mirroring of language and polity in a variety of societal and cultural contexts, they show that “the line between linguistic structure as a ‘model of’ and a ‘model for’ the social world blur[s], so that our analysis reveals the mutually reinforcing role of political

¹²² *Ibid* at 33-34.

¹²³ Elizabeth Mertz, *The Language of Law School : Learning to Think Like a Lawyer* (Oxford: Oxford University Press, 2007) at 19, referring (among others) to Michael Silverstein, *Metaforces of Power in Traditional Oratory* (University of Chicago, Anthropology Department, 1992) and “The poetics of politics: ‘Theirs’ and ‘ours’” (2005) *J Anthropol Res* 1. See also Charles L Briggs, *Learning how to ask: a sociolinguistic appraisal of the role of the interview in social science research*, *Studies in the social and cultural foundations of language* (Cambridge: Cambridge University Press, 1986).

language and politics itself.”¹²⁴ Exactly *how* does this scholarship proceed to unpack the mutually constructive relationship between communication and the tacit normative expectations that form the backbone of social order? Mainly by deciphering how meaning is conveyed through context as opposed to direct reference. In the remainder of this chapter, I map out the distinction between contextual and referential modes of signification and explain how these analytical tools will inform my inquiry into Stó:lō legal materials.

Pragmatics 101

The distinction just highlighted between contextual (or indexical) meanings, and referential ones, describes the respective realm of two domains of sociolinguistics: pragmatics and semantics. Semantics refers to the study of the referential function of language, which lies in its ability to represent people, things, ideas, and events, and ultimately rests “on a perceived correspondence between the ‘content’ of expressions and some state of affairs in ‘the real world’ ”¹²⁵: the word “chair”, for instance, designates an object with certain typical properties. Pragmatics, on the other hand, designates the realm of meanings that depend on features of the context of an utterance, those meanings that “cannot be discerned without interpreting their relationship to the situation.”¹²⁶ Because it shifts depending on the circumstances, this is a rather slippery kind of meaning by comparison with referential / semantic meanings, which are more literal, independent of context and thus amenable to being encoded in dictionaries. In actual usage, the two modes of conveyance are deeply intertwined. Some words, such as pronouns, inherently need context to have meaning, but even words that have context-independent definitions will most often *acquire* their meaning from a range of features that surface in the particular communicative circumstances of their use. As Briggs puts it, “[i]t is not simply that some signs are indexical or that indexical

¹²⁴ Mertz, *ibid.*

¹²⁵ Briggs, *supra* note 123 at 42.

¹²⁶ *Ibid.*

meanings are simply ‘added on’ to referential ones. As Silverstein notes, ‘the sign modes of most of what goes on in the majority of speech events are not referential.’¹²⁷

Pragmatics thus seeks to interpret the whole array of verbal and non-verbal markers that contribute to creating and conveying context-specific meaning.¹²⁸ The general structure and genre of narrative discussed earlier is only one of those markers, which also include prosody – the rhythm, stress, pitch and intonation of speech – gesture, syntax, the conventional expressions used by a speaker, but also the physical set-up of an interaction, the events leading up to it, the social situation at play and the relationship between interlocutors – all elements that surround and attach to speech, shaping the meaning of a communicative moment.

Such indexical markers vary much more along the lines of culture, class, ethnicity, geography, social status, etc. than referential functions,¹²⁹ which entails that within any given language, there are many different *spheres of pragmatic competence*, and that people who think of each other as speaking the “same” language, but whose spheres of pragmatic competence only partially overlap, are susceptible to deep misunderstanding. Pragmatic competence is part of the knowledge shared within any linguistic sub-community about how to communicate effectively and appropriately, and it rests largely on interpretive inference – the ability to perceive context-specific cues and to piece them together to work out what is intended.¹³⁰ Contextual meanings are also called indexical because rather than being fully spelled out, they are only *pointed to* by a number of expressive features of an interaction.¹³¹

¹²⁷ *Ibid* quoting Michael Silverstein, “Shifters, linguistic categories, and cultural description” in Keith H Basso & HA Selby, eds, *Meaning in Anthropology* (Albuquerque: University of New Mexico Press, 1976) 11 at 15.

¹²⁸ Betty J Birner, *Introduction to pragmatics* (Chichester, West Sussex: Wiley-Blackwell, 2013) at 9 and 4.

¹²⁹ Briggs, *supra* note 123 at 43.

¹³⁰ See Birner, *supra* note 128 at 3.

¹³¹ See Mertz, *supra* note 123 at 48 and 56.

Related to this is the fact that, in contrast to the vocabulary of literal, referential meanings, pragmatic knowledge tends to remain implicit, beyond the limits of the speakers' own awareness.¹³² While interlocutors draw on their shared pragmatic knowledge constantly to understand each other and to creatively recount new experiences in ways that others will be able to grasp instantly, what exactly they draw on at any moment and how they do so remains unarticulated, an untheorized practice, in that they would “encounter difficulty in describing the role of a number of sociolinguistic skills that are crucial to their own assessment of rhetorical competence.”¹³³ Studying pragmatics thus involves looking at “interpretive regularities and [making] explicit the implicit knowledge that guides [the members of a linguistic community] in selecting interpretations.”¹³⁴

The inferential nature of this knowledge, which makes space for new creative expression, does not entail that it is any less clear or precise than semantic vocabulary. It is also just as rule-governed and shared amongst a cultural community as the rest of linguistic knowledge, as it must in order to play a role in effective communication. Rather, what the nature of that knowledge does entail is that pragmatic competence is passed on and learned predominantly through modelling, observation and practice. This extends to the guidance and correction offered by fluent speakers in the course of socializing others, often taking the form of “metapragmatic” commentary – a judgment about communicative performance that is itself carried by indexical forms, ie signs that point to the evaluation of said performance – as opposed to an explicit analysis that would spell out abstract “rules” of skilled communication and articulate how they have or have not been followed.¹³⁵ This is key to understanding the two factors that make pragmatic

¹³² Michael Silverstein, *The Limits of Awareness*, Working Papers in Sociolinguistics 84 (Austin, TX: Southwest Educational Development Laboratory, 1981).

¹³³ Briggs, *supra* note 123 at 65.

¹³⁴ Birner, *supra* note 128 at 3.

¹³⁵ Sociolinguists refer to the latter explicitation as “verbal exegesis,” in contrast with metapragmatic commentary, which remains in the domain of the indexical, of the indirect, of the “practiced rather than spelled out” realm, also labelled implicit: see Briggs, *supra* note 123 at 44-45.

expression an ideal (and indeed privileged) vehicle for the transmission of the tacit cultural premises, interpretive frames and social roles that underlie all the more explicit forms of social ordering: the linguistic norms that govern a community's pragmatic expression are deeply entwined with the broader normative underpinnings of its legal order, and both operate "reflexively rather than consciously"¹³⁶ for the members of that linguistic community/nomos. Let me touch on these two points in turn.

Pragmatic competence and legal fluency

As Elizabeth Mertz writes, a community's "subtle norms of communication [...] are deeply imbricated in the sociocultural systems in which speakers live,"¹³⁷ making the development of pragmatic competence a process of socialization into norms of effective communication that necessarily implicates a socialization into a broader-ranging normativity.

Charles Briggs illustrates this by analyzing exchanges between members of a *Mexicano* family in the course of which a two year-old child is being taught how to respond to playful teasing on the part of older children.¹³⁸ He shows that within any linguistic community, acquiring communicative competence involves a great deal more than "learning to mimic series of sounds."¹³⁹ It is a process that exposes the learner to a wide range of social roles and relationships, to "metacommunicative commentary on the appropriateness of these roles,"¹⁴⁰ and to "insights into the rights and obligations that accrue to individuals who stand in these relationships."¹⁴¹ The process whereby children (or outsiders) develop the ability to interpret what passes between people and to play a meaningful role in

¹³⁶ Mertz, *supra* note 123 at 49.

¹³⁷ *Ibid.*

¹³⁸ See Briggs, *supra* note 123 at 66-77.

¹³⁹ *Ibid* at 76.

¹⁴⁰ *Ibid* at 71.

¹⁴¹ *Ibid.*

the communicative patterns of a community¹⁴² cuts through all the layers of the normative order. Communicating effectively is a know-how, a set of skills that reflect the fact that one has learned to comport oneself appropriately in relation to others. Indeed, if we look to the definition given of it by linguists, “communicative competence” appears quite straightforwardly as a form of practical legal reasoning: it is the “ability to articulate [in action] an experienced social setting with [one’s] understanding and memory of abstract rules and norms.”¹⁴³ Pragmatic competence consists in the highly skilled and creative exercise of figuring how norms of interaction apply in a given situation – being able to instantly (that is, in the real time of a live interaction) take one’s pick among a range of expressive possibilities, and to decipher what someone seeks to convey by locating utterances within (or outside of) that range. It requires intimate knowledge of a pragmatic code that mirrors and indexes the society’s broader normative underpinnings.

Importantly, we are taught how to apply those intimately interconnected norms in daily life predominantly by being *shown* rather than *told*. I experienced such a shift, between the *what* and the *how*, the referential and the contextual, and being shown rather than told, while researching Transformer sites with elder Mel Bailey as described in the previous chapter. Had I been narrowly focused on referential meanings, on being told about the correspondence between a story and a site, I would have emerged from our trip on Pitt Lake oblivious to its central teaching. Rather than pointing out such correspondences, Mel was quietly performing a relation to the land. His behavior embodied norms of communication, as much as norms about the life-force and agency of the people cast into the landscape.

Since the mode of transmission of pragmatic competence is through modelling correct practice, the norms of communication are usually mastered in their

¹⁴² See *ibid* at 77.

¹⁴³ *Ibid* at 75, quoting Aaron V Cicourel, “Some basic theoretical issues in the assessment of the child’s performance in testing and classroom settings” in Aaron V Cicourel, Kenneth H Jennings & Sybillyn HM Jennings, eds, *Language Use and School Performance* (New York: Academic Press, 1974).

complexity by the members of a community without ever being articulated or examined – just like the broader social norms that such practical know-how calls up and rests on. It is the “doing” that matters for the purposes of communication, as more generally, for the quotidian workings of a social order. The fact that the gist of the rules and principles that make for effective communication, just like the gist of the conventions on which explicit legal norms rest, are passed on, reproduced and creatively engaged with *without ever being spelled out* is significant: the implicit character of that normative substrate keeps it at a remove, not from change, but from quick, conscious, wilful change, and this allows the members of a community to maintain enough in common to have meaningful conversations, including meaningful conflicts.

Those implicit norms can be articulated to a degree – indeed this is what the critical project of understanding, comparing, relating to, respecting and questioning different forms of legality (“legal traditions”) requires. The intimate connection between linguistic and legal norms provides a key element for this inquiry in that each set of tacit norms provides insights into the other. In particular, deciphering the “interpretive regularities” and “subtle norms” encoded in pragmatically sensitive forms of expression provides a gateway into the portion of the broader-ranging normativity which, within any society, lies beyond the limits of its own members’ awareness and largely constitutes their legal sensibility.

A brilliant example of such an inquiry into the implicit normative underpinnings of a legal order through the tacit dimension of its mode of conveyance is provided by Elizabeth Mertz in *The Language of Law School*.¹⁴⁴ Her work sheds light on the underlying tenets of Anglo-American law through an in-depth examination of the pragmatics of its legal pedagogy, providing a rich source of methodological inspiration and of substantive comparisons for my study. Unpacking what it means to “think like a lawyer” in one of the prevailing Western liberal legal traditions by

¹⁴⁴ Mertz, *supra* note 123.

studying how this particular mode of thinking is inculcated and absorbed, her inquiry shows that formal legal training in those traditions involves a profound resocialization process centered on the development of a new relationship with language.

In the remainder of this section, I summarize what she finds to be some of the dominant traits of Western legal sensibility, and even more importantly for the purposes of my upcoming analysis, track *how she does it*. Her undertaking is a close kin to mine both in purpose and approach: it seeks to articulate the tacit norms that characterize a particular legal sensibility, and works from the ground up – that is, from a detailed ethnographic observation of (legal pedagogical) practice. Her raw materials consist in the live interactions between members of a *nomos* actively engaged in its reproduction.

Learning law in the “West”

Mertz’s anthropological “field” is the first-year Contracts class in eight American law schools chosen for their different status and location in the landscape of U.S. legal education, in terms of the race and class diversity of their student body. Her analysis zeroes in on classroom interactions. To unpack the tacit dimension of the resocialization process that takes place there, she examines the relationship that exists between the form and substance of legal pedagogy.

More specifically, she tracks *what* students learn to conceive as proper sources of legal authority by looking at *how* they are taught, 1) to read legal texts – that is, how their analytical attention is trained on specific features deemed relevant to legal storytelling and 2) to be effective advocates – that is, how their skills are honed to embody what the tradition considers authoritative, in terms of attitude and communicative style. Unearthing the deep-seated normative premises that law students imbibe at those two levels – analytical and performative – through contextual forms of communication, she traces the contours of the peculiar

orientation to the world that constitutes Western legal culture.

1. Pragmatic features of interactions in the classroom

a. Space

The features of classroom interaction that begin the students' reorientation at those two levels (analytical and performative) start with the physical set-up of the first-year classroom. Most often, instruction takes place in a large room seating about one hundred students in auditorium-style, rows rising from the front to the back of the room around a focal point where the professor sits at a desk, or stands behind a podium.¹⁴⁵ The context created without words by this particular spatial organization is replicated and reinforced in other institutional legal contexts. It carries with it a definite sense of hierarchy and authority, characterized by the distinction and distance it maintains between professor and students. This facilitates the enforcement of a particular form of discursive discipline, remarkably consistent across different schools and professorial styles.

b. Discursive discipline

Adapted from the Socratic method, this pedagogical approach is characterized by a form of exchange between the professor and students where the students are expected to submit to a flow of questions, and where the professor remains in "tight control" of classroom discourse.¹⁴⁶ The pragmatic aspects of question-and-answer types of interactions – including the power dynamic between interlocutors, and the assumptions they may share about the nature of their exchange – can carry a wide variety of implied meanings.¹⁴⁷ In a Socratic type of exchange, the

¹⁴⁵ Mertz, *supra* note 123 at 50-52.

¹⁴⁶ *Ibid* at 56.

¹⁴⁷ Think of the difference between an exchange where only one of the parties is seen as having the power to ask questions, as opposed to when each of the parties has that power. Even staying within one cultural universe, there is a whole array of differences between the questioning form of exchange that occurs in the pedagogical exchange we are focusing on here and a dialogue among friends, a journalistic interview, the questions asked by police officers of someone under custody, the discovery process by lawyers out of Court, the questioning of their own client or witnesses during trial versus that of the other party's, and the questions asked by a judge to lawyers and to

questioner leads his interlocutor to take a specific route toward a specific conclusion, all the while keeping him engaged and participating. By contrast to a listening stance, which would allow the latter to wander into private thoughts, build up his own questions or criticism of the exposé he is listening to, or fall into passivity and not listen at all, this form of exchange requires the party *not in control* of discourse to be *the main producer* of discourse. Even if the resulting “conversation” is on the questioner’s own terms, the responder takes such an active part in expressing ideas that he is in much less of a position to resist the conclusion. Mertz notes that this is a monologue in the guise of a dialogue:¹⁴⁸ a form of interaction that recognizes the thinking power and agency of the responder, only to mold them by directing them toward the questioner’s own ends.

c. *Uptake*

One of the main pragmatic features of this type of question-based interaction, its uptake structure, is used throughout law school to teach students how to read caselaw. “Uptake” refers to the degree to which each question is formulated by reference to the immediately preceding answer “thereby indicating that the questioner heard and took note of that answer.”¹⁴⁹ As Mertz puts it, “[r]epeating the original question is perhaps the purest form of nonuptake possible, as it contains no referential acknowledgement of any intervening answer.”¹⁵⁰ A professor who repeats his question “in essence notifies the student that her previous answer was on the wrong track,”¹⁵¹ whereas the “student whose answer is acknowledged in subsequent questions is having some impact on the direction of

the witnesses directly. Most, if not *all*, of those differences are conveyed by the pragmatic features of the exchange. See Briggs, *supra* note 123, on the interview process and how the parties’ different assumptions about their exchange can result in deep misunderstanding.

¹⁴⁸ Mertz, *supra* note 123 at 59.

¹⁴⁹ *Ibid* at 54.

¹⁵⁰ *Ibid*.

¹⁵¹ *Ibid*.

the conversation.”¹⁵² Mertz’s record of law school classroom exchanges shows the interaction between law professors and their first-year students to be characterized by the predominance of nonuptake.¹⁵³ Looking at the kind of answer that is taken up in the formulation of a subsequent question reveals uptake to occur when students produce a technical term appropriately invoking either a legal concept or category, or one of the procedural features of the case under discussion. Nonuptake, on the contrary, results from the students’ attempts to “produce a narrative that tells us a story about two people.”¹⁵⁴ The uptake structure of the law school Socratic exchange thus serves to draw the contours of what is *legally relevant* in a story, without the professor ever having to explicitly dismiss as irrelevant what falls outside of that frame. “In this subtle way,” writes Mertz, “stories of human conflict, complete with their social contexts and moral overtones, are inexorably supplanted by new readings focused on layers of textual and legal authority.”¹⁵⁵

d. *The lens of Western law*

To read like a lawyer involves learning to filter human stories through the lens of applicable categories and text-based analogies, teasing out the aspects that are directly relevant to those analogies and relegating the rest to the background – the unquantifiable suffering, the systemic injustice and complex social contexts, the moral dilemmas. Students learn to parse legal narratives for another story than the one underlying the case: the story of how the case has been framed so far and could yet be reframed in legal terms. Most relevant to *this* story are its location in a procedural context; the layers of legal authority and the version they have established of “what occurred;” the interrelations between precedential texts; the repetition of key phrases and terms that serve to delimit what is at stake. In other words, what law students learn to privilege – over the ramifications of the story

¹⁵² *Ibid* at 55.

¹⁵³ *Ibid*.

¹⁵⁴ *Ibid* at 56.

¹⁵⁵ *Ibid*.

that gave rise to the case – is the *text of the case itself*.

The passage from lay person to legal person in the Anglo-American world thus involves a fundamental shift in language ideology – what we understand ourselves to be doing when we use language – from one focused on the referential content of texts to one that looks primarily to their pragmatic structures, that is, to the *legally specified contexts* they index; and from an understanding of texts as “mere vehicles for telling [a] story”¹⁵⁶ to a vision of them as privileged instruments for performing socially powerful acts:

“A legal reading is first and foremost about textual and legal authority – about pragmatic warrants – and often that authority is to be deciphered from unpacking metalinguistic connections among legal texts and authors. When these connections have been established to frame the discussion, then the teaching of legal reasoning can proceed within this frame. The core questions and issues become ones dictated by the legal warrants, and students are taught to reason and speak within this legally delimited view of the conflict at issue in a particular case.”¹⁵⁷

The uptake structure of the classroom exchange is one of many pragmatic forms of interaction between law professors and students that both indexes and mirrors the normative assumptions that students need to integrate in order to wield law’s power effectively. Through those interactions, the meaning of which is highly dependent on context,¹⁵⁸ students learn how to read caselaw and other legal texts. This involves understanding that those texts’ authority is itself contextually grounded, and knowing how to draw upon that contextual grounding to infuse

¹⁵⁶ *Ibid* at 57.

¹⁵⁷ *Ibid* at 59. Following Toulmin, Mertz defines “pragmatic warrants” as “the background information allowing speakers to make assertions.” *Ibid* at 58. See Stephen E Toulmin, *The Uses of Argument*, updated ed (Cambridge, U.K.; New York: Cambridge University Press, 2003) at 98–99.

¹⁵⁸ The structure of classroom exchanges characterized by the physical elements described above (Socratic questioning, uptake, non-uptake, and the repetition of key technical terms and phrases) is pragmatic because it rests predominantly on its contextual grounding: that provided, on the one hand, by the legal texts under study and, on the other hand, by the course of the interaction between professor and students, where the meaning of every utterance is shaped by the preceding ones as well as by the various non-verbal features of the interaction.

new situations with meaning and new propositions with authority. In particular, it is by reference to the legal contexts created by doctrinal concepts and categories and by procedural history that those texts wield social power. Since those two constructs – doctrine and procedure – so significantly shape legal storytelling and interpretation in the Western legal traditions, it is worth unpacking what Mertz means when she writes that they constitute the *context* of the stories lawyers tell, and what this entails in terms of the legal practitioner’s orientation to the world.

e. The context of the legal story: relating to procedure and to precedent

What does it mean to speak of procedural history and doctrinal categories as the contexts from which legal texts derive their authority? It is relatively straightforward to understand procedural history as providing “conceptual presuppositions that allow subsequent texts to speak authoritatively.”¹⁵⁹ As Mertz explains:

“[T]he words in the opinion have force only because the case was formulated and reformulated in a particular way through successive procedural stages, and they have only the force that is prescribed by the procedural stance of the opinion.

[... D]epending on the manner in which a case was appealed, this court is empowered to decide on some things but not on others, and the words of the court have effect only within that framework.”¹⁶⁰

Understanding doctrinal categories as context has more complex ramifications. It holds one of the keys to seeing the particular form of reasoning by analogy that has taken hold in the Western legal traditions as a specific intellectual practice with deep implications for Western liberal legal sensibility. Approaching this practice with the tools of sociolinguistic analysis requires revisiting what is meant by “context” in the first place.

As Charles Briggs puts it, we tend to think of context as a “situational given”, “the

¹⁵⁹ Mertz, *supra* note 123 at 58.

¹⁶⁰ *Ibid* at 57.

sum total of physical, social, and psychological stimuli that exist at the time of an interaction.”¹⁶¹ Understood in that sense, context can be conceived of and described as *separate* from a verbal exchange or text, yet shaping the dynamic meaning of the words exchanged. However, in their quest to unpack the significance of the pragmatic / contextual dimensions of interactions, both Briggs and Mertz draw on literature showing that we should rather understand context as “a phenomenological construct that is created jointly by the participants”¹⁶² to an exchange. It is thus dynamic, inherent to the interaction, and “continually renegotiated” in the course of that interaction. “The words of the [interlocutors] do not simply occur within this frame; along with nonverbal components, they are the very stuff of which the context is constructed. Each utterance thus reflects this ongoing process, just as it contributes to it.”¹⁶³

This understanding of context as the multi-faceted realm and texture of an interaction, framing it, but also *itself in motion* and transformed by the unfolding interaction, is transposable to our interactions with text, too. Applied to legal texts, it brings up the activity of reasoning by analogy – that of using texts (which carry elements of the contexts of their original creation) as the context of present problem-solving – and implies that precedents should not be construed as a static content fixed in the past. Reasoning by analogy effectively *creates* the precedent by placing past and present in dynamic interaction.

In other words, the very meaning of past judgments and the way in which new interpretive activity inflects our understanding of a legal concept or category is reconstituted and changed every time it is invoked to shape the meaning of new circumstances. Yet it also, in a very real way, constrains the meaning we are able to make of those new circumstances. The precedential text, the context of its original meaning and the new circumstances are all brought to bear on each other. At any

¹⁶¹ Briggs, *supra* note 123 at 25.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

point in time, the meaning of each of them is changed *and* framed by their interaction. The precedent is not static: it does not depend only on the original context of its writing for its meaning, but also on the context of its subsequent invocation. As Mertz explains,

“the creation and use of precedent [is] a complex interactive process wherein our very perception of the original text as a precedent depends on a segmentation of some part of the precedential text that removes it from its setting in the prior case and recontextualizes it in a subsequent legal case. It is in a very real sense not a precedent until it is reconstituted as such. In this creative process, the precedential text as it is now reconceptualized is in one sense recreated and reconfigured. At the same time, aspects of the precedential text (including features of the prior context it is deemed to carry with it) now shape the new textual context in which the prior text is being invoked. There is a blurring of the line between text and context.

[... Thus,] subsequent interpretation at once creates the authoritative meaning of a precedential case, and yet is constrained by the framing discourse of the language used in that precedential case. *What a case means emerges only as it is interpreted as precedent in subsequent cases.* At the same time, because subsequent discourse is constrained and framed by the terms of argument set up in precedential cases, any subsequent authoritative interpretation relies in a fundamental way on the authority of the prior text. *In terms of meaning and authority, these legal texts are mutually constitutive.*¹⁶⁴

Mertz’s analysis suggests that this particular form of reasoning by analogy effectively

“collapses historical time and social context in the service of a new legal framework whose organizing principle is a genealogy of texts. Vast differences in the cultural meaning of particular kinds of actions or items are elided and translated into a common legal language [...] They are brought together in a legal genealogy that binds plaintiffs, defendants, and causes of action across time and space [...] and] creates

¹⁶⁴ Mertz, *supra* note 123 at 46 and 63 [my emphasis].

new temporalities and contexts, while translating and eliding others.”¹⁶⁵

The authority yielded by this particular way of reasoning by analogy, and of drawing on / generating precedent, is of a very specific kind: it is a textual authority – actually made possible by the presence of written text¹⁶⁶ – that abstracts the relevant analogies away from their complex social contexts, “concealing the social roots of doctrines”¹⁶⁷. It has what Mertz calls “a double-edged quality”: it seeks to treat everyone the same way regardless of the specifics of their situation (and will sometimes succeed at doing so), but can also obscure social differences pertinent to making just decisions.

f. Arguing and strategizing

Another important element of Mertz’s analysis attaches to the role that law professors play in orienting their students toward a particular form of dialogue: the strategic argumentative exchange. According to her observations, contract law professors tacitly convey that the most salient characteristics of legal actors (be they the parties to a case, lawyers, judges, etc.) are their strategic thinking toward seeing their position affirmed, and their argumentative stance toward explaining such position persuasively. The teachers do so not only by modeling this form of exchange through brands of Socratic dialogue with their students, but often by reproducing imagined interactions between legal actors in argumentative mode, and more broadly, by framing broader discussions of problems and philosophies embodied in the law in terms of opposing positions.

¹⁶⁵ *Ibid* at 64.

¹⁶⁶ This is one of the ways in which the oft oversimplified distinction between oral and written traditions may actually hold up. Approached from the angle of the creation of doctrinal categories through the reliance on textual precedent, the difference between oral and written traditions does not have to do with the greater ability of the first to change or to adapt to new circumstances, but with the quality of the transformation binding neutrality with abstraction. Abstraction from social, moral and emotional contexts seems to be made possible by a focus on key terms used to carry analogy. Val Napoleon, who focuses on reasoning by analogy in her work, makes quite clear she sees the form of reasoning by analogy practiced by the Gitksan as different from the common law’s: see Napoleon, “Living Together”, *supra* note 31.

¹⁶⁷ Mertz, *supra* note 123 at 5.

Exposing a variety of examples of this modeling of strategic argumentation provided by her research, Mertz articulates the message carried by the pervasiveness of this form of dueling interaction in Anglo-American pedagogy. It emphasizes the “language form as the actual source of epistemological certainty: that it is in and through speech that cases unfold, arguments emerge, and legal truth is discovered.”¹⁶⁸ This process, she adds, quoting Matoesian, “conceals how law ‘constructs claims to knowledge, truth, and facticity in the details of discursive interaction’ because the message is conveyed through tacit metalinguistic structuring and ideology and is therefore naturalized.”¹⁶⁹ “In other words,” she explains,

“students are never explicitly told that epistemological certainty lies in dialogic form. Instead, they are gradually tutored in a way of reading and speaking, at the same time as they are slowly reoriented to conceptualize people as above all producers of argument and strategy. From this position, it appears natural to accept that the facts emerging from the nested authoritative levels of discourse in legal settings will be the basis for definitive legal findings, just as it seems unremarkable that we would understand people who could be characterized quite differently (as distraught, in conflict, behaving emotionally) as constantly motivated by their best possible strategic positioning in an argumentative territory defined by legal outposts.”¹⁷⁰

2. *Thinking like a lawyer: knowledge, justice, selfhood*

The shift in linguistic ideology, “the metalevel understandings of what it is we are doing when we use [...] language,”¹⁷¹ which involves the transformation of the legal

¹⁶⁸ *Ibid* at 110.

¹⁶⁹ *Ibid*.

¹⁷⁰ *Ibid*.

¹⁷¹ *Ibid* at 46. She explains: “The ideas that speakers and readers have about spoken and written language are not neutral, and they shape how that language is understood and used.” She notes that the ideology governing the approach to texts transmitted to young people through the Western educational system “views texts as in a sense self-contained, as carrying determinate meaning that inheres in the written words themselves. What is central about texts, in this view, is their referential or semantic content, and that content or meaning exists within the writing, the written text.”

apprentice's relationship to language, is the Trojan horse through which a whole range of other profound transformations occur with respect to "how knowledge or truth is obtained but also how justice is achieved."¹⁷²

One illustration of that transformation pertains to the claim that the "facts" of a legal narrative make to truth and authority:

"On the one hand, there is a far more modest claim as to the factual authenticity of these recounted events than in everyday trouble telling. The claim is not a strong assertion that these events actually occurred. Rather, the claim is that this version of what occurred is to be accepted as true, based on the legal status of the case. [...]
At the same time, a statement of legal facts contains a highly determinative epistemological claim. More than would be possible in everyday discourse, a court, in stating the legal version of what has occurred, is rendering an authoritative account."¹⁷³

Becoming a legal professional in the Anglo-American legal tradition thus entails adopting an epistemological outlook which regularly requires a "suspension of disbelief"¹⁷⁴: indeed, in reading and wielding appellate cases – which are key to the ongoing activity of reasoning by analogy and of producing legally sanctioned outcomes, and which have also remained, since Langdell, the predominant kind of material used to train students in the common law tradition¹⁷⁵ – "it really doesn't matter what occurred, because all we can know is what the legal decision maker has accepted as fact for certain purposes."¹⁷⁶

A particular conception of justice as neutrality is bound up in this notion of authority as flowing from this genealogy of texts. The dispassionate treatment of conflict ties into the kind of abstraction afforded by textual analogies, categories and genealogies; and into a particular form of interaction, the dueling argument.

¹⁷² *Ibid* at 59.

¹⁷³ *Ibid* at 67.

¹⁷⁴ *Ibid* at 66.

¹⁷⁵ Rubin, *supra* note 74 at 655.

¹⁷⁶ Mertz, *supra* note 123 at 67.

Mertz makes convincing argument herself that the neutrality sought as the marker of just reasoning is achieved by stripping down the live conflicting agents to the dimension of their agency that strategically seeks economic maximization.

The kind of neutral authority that this pedagogy inculcates and naturalizes does not rest on values or ethical stances – such as, for example, the “seven grandfather teachings” of the Anishinaabe tradition: love, respect, bravery, humility, honesty, truth and wisdom¹⁷⁷ – but on intellectual devices. Neutrality can itself be thought of as a value or ideal connected to some of those ethical stances. But what is elucidated by Mertz’s ethnographic approach and sociolinguistic analysis of legal pedagogy is the manner in which such values, which are shared among many cultural traditions, are actually inflected and given meaning. The *manner* of teaching conveys fundamental normative *content*. It is not the interchangeable *vehicle* of content, a part that could be discarded or changed without changing the substance of the teachings. Adopting an approach to legal traditions that seeks to elucidate their character or sensibility means paying attention to what those traditions, consciously or not, explicitly or not, hold up and *practice* as the best way to transmit what they value.

As Mertz emphasizes, the “quiet but radical reorientation”¹⁷⁸ with respect to epistemology and morality that occurs for students of Anglo-American law through contemporary legal pedagogy and the transformation of the relation to language it operates, “carries with it implications for conceptions of self, defining the contours of relevance that also shape legal conceptions of identity and personhood.”¹⁷⁹ The strategic legal actor, motivated by economic maximization; the dispassionate arguer who, in the process of invoking categories and authoritative analogies, abstracts people and the situations in which they find

¹⁷⁷ See John Borrows, *Freedom and indigenous constitutionalism* (Toronto; University of Toronto Press, 2016) at 10.

¹⁷⁸ Mertz, *supra* note 123 at 67.

¹⁷⁹ *Ibid* at 59.

themselves from many elements of their social context, from moral considerations and emotionality¹⁸⁰ – those are crucial dimensions of what the pragmatic dimension of legal pedagogy achieves by modeling, *showing rather than telling*, a particular approach to what justice entails.

Through pragmatically rich interactions, law schools in the “West” train their students to *perform* this new relationship to language without ever articulating what it consists in, putting words on what it does, and examining it. In this process of learning by doing, students come to adopt the unspoken assumption that justice is bound up in this kind of abstract and formal neutrality. A culturally specific form of legal reasoning – involving the distillation of issues into doctrinal categories that detach them from their full social, moral and emotional context – becomes naturalized through law school training. It mirrors a set of norms and smuggles them in. This is how a resocialization occurs, and what makes it powerful: it is effected mostly through pragmatic modes of communication, meaning that it reorients people to the world by modeling and inviting the *performance* of interactions (to people, to text, to the land) without making such performance an *object* of discourse and critical examination.

By tracking the specific contours of what makes for authoritative *textual analysis* and *argumentative performance*, and describing how those are transmitted within Western legal pedagogy, Mertz has made a crucial contribution to grasping the current tenor of Western legal traditions. This is because the pragmatic structure of the classroom exchanges that she peers into is an important indicator of the widespread pragmatic features of authoritative interactions within Western legal orders. The messages conveyed by their classroom interactions with their professors prepare students to wield law’s power within those broader authoritative contexts, inculcating the tacit normative premises that uphold the legal order as a whole – the implicit assumptions, ways of seeing the world and of

¹⁸⁰ *Ibid* at 97-137.

behaving appropriately that inform legal institutions' features and functions, as well as the very self-conception of the privileged actors of those institutions: lawyers, judges, elected representatives, administrative decision-makers.

This is the key point of Mertz's study, for my own purposes in developing an approach to elucidating aspects of Coast Salish legal sensibility. It offers a model for examining how forms of communication are implicated in legal ordering – and one that pays attention to how they operate at a subterranean level, governed by norms that bind without ever needing to be enunciated. The norms that underlie (and are conveyed by) pragmatic meanings remain implicit. They are taken for granted, “the way things are.” Becoming practitioners – upholders and reproducers of the basic unspoken tenets of a normative universe – occurs through a resocialization that occurs tacitly, by showing rather telling. Examining interactions with a focus on pragmatic meanings thus holds much promise for articulating what makes a legal tradition *what it is*.

VI. Summary of Section One and sketch of the thesis

I began the two chapters composing this introductory section of the thesis by discussing the context of my encounter with the Stó:lō, the terms of my broad research question developed in collaboration with the SRRMC, and the theoretical framework that has guided my inquiry into the character of the Stó:lō / Coast Salish legal tradition. This framework illuminates law's two fundamental dimensions: first, the social nature of the processes through which norms are spelled out, come to embody collectively held reasons, and effectively frame individual behaviour; and second, the irreducible underlying contentiousness of those norms: the fact that there are always, within any society, a multiplicity of competing interpretations that seek to rise to the fore and achieve normative status through the processes just evoked, and that keep doing so in the various sites where those norms play a role – which makes for law's dynamic, living character.

I have also described the subset of Stó:lō normative spaces on which I have focused for the purposes of this work, and explained that my research has yielded a different genre of legal process and of legal “text” than I was aiming to find: lawmaking settings neither inquisitorial nor adversarial, neither outright hortatory nor deliberative, and narratives combining iterative lawmaking and legal pedagogy on modes that are neither self-consciously “legal” nor offering forms I am accustomed to recognize and to discuss as legal. Indeed, those narratives are told in a mode and spirit somewhat at odds with boiling them down to codes of conduct or sets of abstract principles. And although they sometimes do speak of problems and of their resolution, or flesh out the norms applicable to a particular, concrete situation, they neither depict adjudicative scenarios, nor present adjudicative reasoning *per se*.

My point is not that open social conflicts and explicit adjudicative strategies to manage them are inexistent or even rare within Stó:lō society, but rather that the character of the Stó:lō normative order finds an important expression – is fundamentally constructed through and generative of – genres and settings of normative production that we overlook if we privilege univocal, explicit forms of normative production. As a corollary, the realization that a substantial dimension of this Indigenous legal order occurs under the radar of a legal theory tacitly privileging explicitness and univocality throws those tacit assumptions into question, suggesting the need to become attuned to ways of inquiring into the attributes of legality that might better account for it.

In the Stó:lō context, I argue that normativity often does not consist as much in *provisionally superseding* the plurality of normative assertions as in *holding them together in balance*. The assumptions on which this order rests, and the forms to which it has given rise, allow it, as a veritable *legal* order – one based on collectively held reasons and achieving, as much as any, what can variously be understood as the framing of individual freedom, individual self-restraint, and the

channelling of individual conduct – to exist in what I call a polyphonic mode. A related, but distinct, quality of this mode of legal ordering is that it deals with conflict, argumentation, and normative expression in other ways than by forcing them into self-conscious explicitness – again, not always, but at a rate significant enough, I submit, to be presented as a feature of the legal sensibility that underlies Coast Salish legal orders.

This intellectual and research-based trajectory – through which I developed insights into my pre-existing assumptions about the work and nature of law, in parallel with my growing acquaintance with Stó:lō narratives and sites of traditional governance – led me to look for tools to approach Stó:lō normativity on its own terms. In this process, I encountered one of sociolinguistics' key insights: that the prevailing discursive forms of a legal and political tradition often *structurally mirror*, in subtle and complex ways, the model of society they reinforce. In other words, the norms underlying those communicative forms reveal some of the fundamental normative tenets of the legal order as a whole. Furthermore, the web of norms underlying a society's very functioning, *law's hidden canvas*, is the privileged realm of pragmatic forms of communication – the mode of conveying meaning interactively and contextually, transmitted and reproduced by showing rather than telling. Making parts of this canvas visible involves paying attention not only to *what* is said, but *how*, and deciphering the pragmatic messages thus implicitly conveyed.

This mode of analysis – supporting my focus on teasing out the implicit norms encoded in pragmatic forms of communication, and my ultimate purpose of illuminating key aspects of Coast Salish legal sensibility – forms the thread of this dissertation. However, the work remains organized and presented under the central themes that dominated my interactions with teachers and closest interlocutors. They revolve around three central institutions of the Stó:lō legal order: the Transformer storycycle (Chapter Three), longhouse governance practice

and the figure of the witness (Chapters Four and Five), and ancestral *xwélmexw* names (Chapters Six and Seven). Those correspond to three sets of key relationships within the tradition: to the land (Section Two), to the spirit (Section Three), and to kin (Section Four).

Listening intently to what people talk *about* on each of those themes already importantly elucidates how they think through and articulate some of the central tenets of their legal order. Paying attention to the norms framing their communicative practices themselves – the norms that, as narrators and practitioners, they *tacitly abide by and convey* without ever articulating them – delves into a deeper layer of normativity, reaching into what shapes people’s subjectivity and sense of their own agency – the distinctive fabric of their socialization.

Section Two
Land

Chapter Three

“What ties us?”

Relating to the visible and the invisible on Stó:lō Téméxw

I. Introduction

I want to start the exploration of Stó:lō normativity and normative reasoning by examining a piece by Stó:lō ethnohistorian Albert (Sonny) McHalsie, Naxaxalhts'i. Sonny's thoughts, offered in the context of an exchange with anthropologist Bruce Miller, were recorded, transcribed and published as a book chapter titled, “We Have to Take Care of Everything That Belongs to Us.”¹⁸¹ At the time of recording, Sonny had spent about twenty years researching place names with elders – discussing stories and events associated with particular locations on Stó:lō Téméxw (Stó:lō traditional territory), recording the names used to refer to those places in Halq'eméylem, and travelling on the territory to identify them.¹⁸²

This piece, in which he shares some of the things he learned through his work, presents a good point of departure to study Stó:lō law for a few reasons, starting with the general observation that one of the most important and pervasive aspects of Indigenous legal sensibilities consists in their rootedness in place.¹⁸³ Sonny's discussion of his research on place names provides important clues to the

¹⁸¹ Albert (Sonny) McHalsie (Naxaxalhts'i), “We Have to Take Care of Everything That Belongs to Us” in Bruce Granville Miller, ed, *Be of Good Mind: Essays on the Coast Salish* (Vancouver: UBC Press, 2007) 82.

¹⁸² For a map of this work in progress, see Carlson, *Stó:lō-Coast Salish Historical Atlas*, *supra* note 1 at 6–7.

¹⁸³ For a theoretical exploration of the tie between the relationship that Indigenous peoples have to their traditional territories and their systems of governance, see, for example: Vine Deloria, *God Is Red: a Native View of Religion*, 2nd ed (Golden, Colorado: Fulcrum, 1992). This strand of Deloria's theorizing is picked up in Glen Coulthard, “Place against Empire: Understanding Indigenous Anti-Colonialism” (2010) 4:2 *Affinities: A Journal of Radical Theory, Culture & Action* 79. Other authors who examine the specifics of that tie include Keith H Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache* (Albuquerque: Univ of New Mexico Pr, 1996) and John Borrows, *supra* note 20. See also James Youngblood Henderson, “Postcolonial Indigenous Legal Consciousness” (2002) 1 *Indigenous L.J.* 1.

relationship that the Stó:lō have with their traditional territory and yields insights into how Stó:lō governance articulates with that relationship.

Sonny explicitly frames his contribution as being about the meaning of Stó:lō “Aboriginal Rights and Title” on Stó:lō Téméxw. This terminology references the body of Canadian law that defines and delimits Indigenous rights on the land, and the use of these terms by Sonny suggests that he carries out his work mindful of how the State’s legal concepts and categories frame the Stó:lō’s relationship to their traditional territory. While the documentation of Stó:lō knowledge and use of their land can serve the purpose of meeting Canadian legal standards regarding Aboriginal Rights and Title, the knowledge that Sonny brings to the fore remains clearly framed by a Stó:lō legal sensibility, evidenced by a very different mode of relating to the world than that captured by the notions of “use” and “ownership” foregrounded in the Western legal traditions. This legal sensibility manifests not only in the *objects* of his research and of his narrative – the rights and responsibilities to the land, the activities and relationships sustained with all the beings that the land supports – but also in the normative commitments that shape the way he tells the story of what he has learned, and more broadly, conducts himself as a researcher (something into which his storytelling also affords us a window). As such, the “story of his telling” illuminates aspects of Stó:lō legal reasoning and shows how Stó:lō society’s customary governance literally maps onto its relationship to land – more deeply and pervasively than through the governance of specific harvesting activities – at a level that I think is constitutive of Stó:lō society’s very mode of ordering.

I will start by zeroing in on what Sonny talks about in this text, highlighting the principles he either articulates explicitly as general statements or that are exemplified in the unfolding actions of the stories he shares. In a second movement, I will pay attention to the norms that underlie his own narrative performance, the ones he *follows* as opposed to those he *references*.

II. *What Sonny talks about. “Everything – we’re connected to it”*¹⁸⁴

Sonny anchors his discourse on Stó:lō rights and title to the land in the Halq’eméylem phrase “*S’ólh Téméxw te ikw’elo. Xolhmet te mekw’stam it kwelat*”: “This is our land and we have to take care of everything that belongs to us.”¹⁸⁵ Over fifty pages of text, he brings up a wealth of intellectual resources to discuss what I think of as the Stó:lō conception of sovereignty: their relationship as a political entity to their life-sustaining territory, which translates into Western legal language as the combination of “property” (this is *our* land) and “jurisdiction,” the capacity to flesh out the rights and responsibilities on and to that land (we have to take care of everything that belongs to us). Sonny’s account revolves around this second phrase. In his interpretation, what dominates the Stó:lō conception of sovereignty, ownership and jurisdiction, literally grounding the Stó:lō legal sensibility in the land, is a caretaking ethos rooted in a concrete connectedness to “everything.” Recounting formulations of Stó:lō experience that exemplify a particular relationship to “everything” that forms part of their territory, and what “taking care of everything” entails, Sonny’s account offers a window into the Stó:lō normative construction of reality.

At first glance, the text can be somewhat disorienting for a non-Stó:lō reader: it presents itself almost as a stream of consciousness, an association of events, principles and concepts – knowledge that Sonny has accumulated over years, the meaning of which he keeps developing, enriching, and bringing to his work and life as they unfold. The way in which he ties together the stories and interpretations he offers brings about this sense of accumulation and free association:

“Those are just three examples; there are a lot of other[s...]”;¹⁸⁶
“The other thing, too [...]”;¹⁸⁷

¹⁸⁴ McHalsie, *supra* note 181 at 108.

¹⁸⁵ *Ibid* at 85, quoting Tillie Gutierrez.

¹⁸⁶ *Ibid* at 89.

“There are all these different things to talk about, just with dipping”;¹⁸⁸
 “Then I remember the story by [so-and-so...]”;¹⁸⁹
 “There are other places where [mythical transformations happened].
 Like [...]”;¹⁹⁰
 “There are other examples of what is out there, of the things that we
 have to take care of”;¹⁹¹
 “The other thing, though, I always like to talk about, [...]”;¹⁹²
 “There are a whole bunch of other protocols as well”;¹⁹³
 “She tells this other story, too [...]”.¹⁹⁴

Sonny is literally giving us a tour of the territory, but we are not covering the ground exhaustively or even systematically, spatially speaking – going from one end to the other, stopping at every significant place along the way. Rather, the main principle governing the tour consists in Sonny’s personal connection to the places where he is taking us. This is not to say that the significance of those places is merely personal: the relevant connections are established through kinship – with far-reaching social and legal significance – and are illuminated by reference to things Sonny has learned from elders about other places and the proper ways of conducting oneself in relation to the gifts and risks one finds in those places.

An additional noticeable element of Sonny’s discourse is that he devotes an equal amount of attention to the tangible and intangible realities that the Stó:lō experience on their land. Stó:lō conceptions of rights and responsibilities and of the organization and regulation of relationships arise from their longstanding interaction with tangible as much as intangible things, beings and forces with which they have grown intimately acquainted on Stó:lō Téméxw. Sonny’s narrative shows that Stó:lō law is grounded in place, not only through its visible, embodied,

¹⁸⁷ *Ibid* at 91.

¹⁸⁸ *Ibid* at 102. “Dipping” is a fishing technique that will be discussed later in this chapter.

¹⁸⁹ *Ibid* at 104.

¹⁹⁰ *Ibid* at 106.

¹⁹¹ *Ibid* at 110.

¹⁹² *Ibid* at 116.

¹⁹³ *Ibid* at 120.

¹⁹⁴ *Ibid* at 123.

tangible features, but also through the invisible (or not visible to all), disembodied, intangible. In other words, the powers and “duties of care” that arise from encounters with the intangible dimension of the Stó:lō world are as real as the norms governing the priority over fishing sites or the coordination of a drying rack. Those intangible forces, and the norms that govern conduct in relation to them, are *as rooted in place* as the cedar and the salmon run. Actually, speaking of these two dimensions as dichotomous is misleading: as I will show, the distinction itself dematerializes the deeper we peer into it. Ultimately, Sonny’s discourse on Stó:lō stewardship rights and responsibilities offers a vision of sovereignty as *identity*: Stó:lō society does not “only” *depend on* the land. Its practices, norms and beliefs are indeed rooted in a sophisticated knowledge of, and interdependence with the land – but its construction of the world is even more profoundly “grounded”: Stó:lō spirituality, a relational ontology relying on the awareness that everything is connected and in constant transformation, holds that the Stó:lō are the land. This has normative consequences.

“Uses” of the land

The first thing that comes to a Western legal mind when inquiring into whether and how law and governance are rooted in the land is to examine the practices of land “use” – the relation to the land that derives from the way in which “resources” are harvested and from the claims that arise in that respect. How do people manage their relationships with each other regarding the use and apportionment of the “things” that are out there to satisfy their needs? This material focus is the main theme of Canadian caselaw on Indigenous rights. The legal standards defining the rights of Indigenous peoples on/to the land turn on their use of the land, then and now; what they did with the product of their harvest; and how they determined among themselves who could do what, where, when, and how.

Understood through Western legal, scientific and religious traditions, the non-human world is the “object” of harvest – a reified conception that inflects the

notions of ownership and use in a very specific way. Within these traditions, a right on/to the land is the outcome of a story that puts humans in a privileged position with respect to the rest of creation. The worldview underlying those traditions is characterized by a strong demarcation between humans as subjects (capable to act on ourselves and on creation) and the “rest” as object (being acted upon). The study of the world and the knowledge of its properties are driven by the desire to push back the limits of what can be done to “it” – including to the “components” of humans’ own material selves – to serve human purposes. Law is human-centric: determined by our needs, and opposable only to ourselves. It determines the manner and limits of what we can appropriate, consume, and do to creation. While those limits are the object of debate, the underlying ethos of control and exploitation is not.¹⁹⁵

Although Sonny too employs the notions of “ownership” and “use” in his talk, his research into Stó:lō stories and practices imbues those notions with a very different meaning than the one they hold in the Western traditions. The source of that difference seems to rest on the paramountcy of the notions of interconnectedness and caretaking in the Stó:lō worldview, as he presents it. My goal here is to elucidate the normative import of those notions, first by attempting to discern the role that those notions play in the way the Stó:lō construe their relationships to the tangible and intangible dimensions of their world (in the two parts of this section); and second, by asking how those notions shape Stó:lō legal reasoning, as exemplified in the performative aspects of Sonny’s discourse (in the following section).

¹⁹⁵ On the anthropocentric shift I am glancing over, see Charles Taylor, *A Secular Age* (Harvard University Press, 2007), ch 6. The book develops a theory of how the “secular age” came about: the passage from an “understanding of the human predicament [... placing] us in an order where we were not at the top” to a modern social imaginary “accepting no final goals beyond human flourishing, nor any allegiance to anything else beyond this flourishing” (*Ibid* at 18). Among the components of this shift are the passage from reverence and awe of the forces of nature to their harnessing for our ends – as well as a ‘great disembedding’ of the individual from his social and cosmological matrix.

The Stó:lō's sense of their connectedness to their world and the centrality of that connectedness to their culture and identity could not be clearer from Sonny's text: it is the main message of the text, repeated numerous times through it.¹⁹⁶ However, the way connectedness actually functions as a normative, interpretive principle is not self-evident, especially for the non-Stó:lō reader. Sonny often presents it as a fact, simply the way things are: "Everything – we're connected to it";¹⁹⁷ at other times, he makes it sound as a norm, but stops short of explicitly reasoning through it or explaining it as such: "there always has to be a personal connection to the place."¹⁹⁸ This is not a shortcoming on Sonny's part but a feature of Stó:lō tradition, which he makes a point of underlining – again without providing reasons: "One of the teachings of the elders is that we're always learning; [...] You're told to do things. You're never told why. You're just told to do it. [...] And it isn't until later on that you start putting things together, you start realizing why."¹⁹⁹

The notion of "taking care" is equally amorphous. At one level, it is descriptive: an acknowledgement by the Stó:lō that they are nurtured, "taken care of" by their environment. Everything on Stó:lō Téméxw, including human beings, depends on everything else. In this first sense, caretaking seems like a synonym for interconnectedness – just another way of expressing a factual awareness of the interdependence of all things within a complex physical and metaphysical ecosystem, as in "the water babies take care of us and we take care of them."²⁰⁰ Like interconnectedness, it is also explicitly formulated as a normative principle: "We have to take care of everything that belongs to us."²⁰¹ "Having to take care" seems intuitive enough as an obligation, and Sonny presents connectedness as the circumstance that gives rise to a duty of care: "Anywhere where one of our

¹⁹⁶ McHalsie, *supra* note 181 at 92, 93, 95, 99, 100, 103–6, 108, 110, 115, 125, and 130.

¹⁹⁷ *Ibid* at 108.

¹⁹⁸ *Ibid* at 95.

¹⁹⁹ *Ibid* at 85. See also at 113.

²⁰⁰ *Ibid* at 113.

²⁰¹ *Ibid* at 85.

ancestors is transformed into a mountain, there's that connection that we have [...] to that mountain, and we need to take care of it."²⁰² The duty applies to a broad range of things: "Those are all the things out there that were transformed, all our resources that we take care of because we are connected to them. We take care of our land because we're connected to the land."²⁰³ However, Sonny uses the phrase not only to refer to a person or group's obligations, but also to their rights: "[T]here was nobody fishing at Aseláw. [...] I remember the late Peter Dennis saying, 'Yeah, by all means! You go there and get using that spot. It should be used. It needs to be taken care of.'"²⁰⁴ Given both their centrality and amorphous quality, it seems important to examine how those two notions work *as norms* – the premises or basic understandings they spring from, how they act as interpretive principles lending significance and legitimacy to what people say and do, and shaping the Stó:lō legal order, from its concrete modes of social organization to the much less tangible but even more important forms of reasoning that carry legitimacy. This involves taking a closer look at some of the illustrations provided by Sonny.

The most accessible of those examples concerns fishing in the Fraser canyon. Here, Sonny explains what he personally learned while searching for a site that he could use to provide fish for his own children, teaching one of the most important chapters of Stó:lō customary law as he does so. The fact that he was not already using a site on Stó:lō territory despite his mother being Stó:lō was due to the fact that his father was Nlhaka'pamux – the Interior Salish people who are the Stó:lō's immediate neighbours to the northeast. At the time, his mother had to take her husband's band affiliation upon marriage, so Sonny grew up using one of his father's family's fishing sites. His continued use of that site became contested by some Nlhaka'pamux when he married a Stó:lō woman and moved into her band,

²⁰² *Ibid* at 106.

²⁰³ *Ibid* at 108.

²⁰⁴ *Ibid* at 96.

Shxw'ōwhámél. Moreover, another one of his family sites became inaccessible to him after the Fraser River itself was altered by the construction of a fish ladder at Hell's Gate.²⁰⁵ In a nutshell, colonial measures that transformed both the physical and the social landscape resulted in Sonny having to inquire into accessing another fishing site through his mother's family.

To determine where he was entitled to fish, Sonny consulted with his elders, who draw upon the accumulated memory of the family's history, its genealogy and connection to particular places on Stó:lō Téméxw. This oral record of connection to people and place, called *sqwélqwel*, is a body of knowledge that grounds a body of law. As Sonny explains, a site is not owned individually but held by the family: "Ownership of fishing grounds is through family."²⁰⁶

Who is "the family"? Sonny does not give a formal definition of the Stó:lō family "unit," but does mention that knowledge of one's family would traditionally extend at least to one's fifth cousins, which entails knowing your family tree up to your great-great-great-great-grandparents.²⁰⁷ In principle, everyone in this extended family would have a claim to some of the same resources – but it does not mean that anyone within the kinship group is entitled to fish at just any of the sites held by the group on the river. It is clear from Sonny's narrative that he never contemplates simply showing up at either of the spots where his relatives fished for their respective nuclear families' needs. He consults with his family elders not only to learn about his connection to different sites, but also to verify their current availability. The site at which he is granted a right to fish – Aseláw, a place to which he is connected through his maternal great-great-great-grandfather, Sexyeltel²⁰⁸ – was not used by anyone at the time:

²⁰⁵ *Ibid* at 95 and 102.

²⁰⁶ *Ibid* at 97.

²⁰⁷ *Ibid* at 100. The principles governing kinship are the object of the two chapters composing Section Four of this dissertation.

²⁰⁸ *Ibid* at 94-95.

“I talked to Ralph George about it and the late Bill Pat Charlie, and the late Peter Dennis Peters: those were the three elders that I talked to. And all three of them mentioned the different places where I had rights to go fishing. There were already people fishing there, but there was nobody fishing at Aseláw. [...] All three of them agreed. I didn’t see them all together – I asked them individually – and they all agreed.”²⁰⁹

While hereditary principles form the normative basis of access and possession of sites and things in many legal traditions, examining the scope of those rights as conceived by the Stó:lō highlights some of the particular grounding assumptions of their legal tradition. Sonny helps us do that by underlining the contrast between Stó:lō conceptions of privileged access and use and those that prevail within State law: he mentions, for example, how the Department of Fisheries and Oceans’ fishing permits restrict the right to fish to the sole individual whose name is on the permit. The atomization of the individual rights-holder reflects a need for certainty and simplicity, facilitating interpretation and in turn, control. Giving a definite and definitive answer to the question of who is the rights-holder is also reflected, more broadly, in the extensive and exclusive qualities attached to an unrestricted fee simple title at common law. Placing decision-making power in regard to the object firmly in the hands of a single person removes the need for deliberation and consideration of other people’s needs in deciding what to do with the thing owned. It can be consumed at the whim of the fee simple owner, even wasted or destroyed.

The considerations underlying the Stó:lō governance of the fishery are fundamentally different. They reflect an order based on intricate personal relationships, where the proper rights-holder and the scope of the right itself remain part of an open-ended conversation. The Stó:lō fishery is built on the recognition of the ties that bind the Stó:lō together in inter-related clusters within extensive kinship networks. Assigning exclusive individual harvesting rights would

²⁰⁹ *Ibid* at 96.

amount to undoing those ties. Although the right to use a particular fishing site is stable and indefinitely granted – which is what makes Sonny speak of “ownership” when he refers to fishing grounds – it is not definitive: “The family gives it to him and the family can take it away.”²¹⁰ Moreover, within the extensive group understood as “the family,” exactly who can contribute to make authoritative assignments of fishing grounds is not either fixed, definite, nor abstractly defined: it is not necessarily a woman nor a man, “the oldest” person in the family or a preordained number of wise people. At any point in time, when the need arises, those who are respected as able to bring relevant knowledge to make appropriate connections will take on that role. The lack of finality does not compromise people’s sense of security in the exercise of their rights. They are bound in close personal relationships of mutual reliance, of which the fishery is only one component. In that context, entitlements are compatible with flexible arrangements and ongoing conversations, where the scope of those entitlements may be revisited over long spans of time.²¹¹ Compromise, sharing, and taking into account changing needs within the community are integral to its governance.

The normative ramifications of the ethos of connectedness and care extend far beyond the hereditary connections recorded in the *sqwélqwel* and the attribution of fishing or hunting grounds they warrant. A specific facet of the larger Stó:lō fishery further reveals the depth of their reach as interpretive commitments and shows how much the Stó:lō’s legal sensibility derives from their relationship to their territory: this is the set of practices associated with harvesting and preserving fish in the Fraser canyon.

The canyon begins at Yale: at that point on Stó:lō territory, the expansive valley narrows dramatically into a deep gorge, and the river becomes too swift to navigate, going upstream. This is the last stretch of the river flowing through Stó:lō

²¹⁰ *Ibid.*

²¹¹ This point is similar to that made by Brian Thom, “The Paradox of Boundaries in Coast Salish Territories” (2009) 16:2 *Cult Geogr* 179.

Téméxw: about 20 kilometers north of Yale, we move into Nlhaka'pamux territory.²¹² The narrow canyon walls densify the salmon run, and generate such a strong water flow that the fish are forced to seek rest in the pools formed by the rocks on each side. The Stó:lō developed special techniques to take advantage of those unique features, which make for the best fishing on their territory. Standing on platforms built on those rocks, each fisher dips a net shaped like a deep basket at the end of a pole into the pools crammed with resting fish. “One time,” Sonny says, “my brother was able to catch 350 sockeye in one hour. Just incredible! In one dip he'd catch six sockeye. When they're running really well it's just a very efficient method of catching them.”²¹³ This efficiency is not only a function of the quantity of fish that can be caught for relatively little fishing time and effort, but also of the careful selective fishing that dipping allows for. As Sonny notes, fish that is either too red (too close to spawning), or not the type you are fishing for can be returned to the river and let on its way to the spawning grounds without suffering any harm – unlike what happens with gill nets.²¹⁴

The best traditional way to preserve this bounty of fish, still used today, is to wind-dry them on the spot. This is why the centerpiece of the canyon fishing grounds is not even the platforms built over the natural fish pools, but the adjoining drying racks – the size of a cabin, without walls – around which each family sets camp over many days as its members tend to the drying process.²¹⁵ Like the dip-netting fishing technique, adapted to the canyon's particular geography, the Stó:lō developed a mass drying technique to take advantage of the canyon's distinctive climate and location inland. In the following passage, Sonny explains what makes wind-drying possible, pointing to a number of converging factors:

²¹² To refer to this stretch of the river as the “last” on Stó:lō territory denotes a salmon-centric perspective: the travelling direction is upstream.

²¹³ McHalsie, *supra* note 181 at 101.

²¹⁴ *Ibid* at 101-02.

²¹⁵ See the illustrated explanation of the wind-drying technique in the *Stó:lō Atlas*, *supra* note 1 at 26 (plate 8B) and a map of the family-owned fishing rocks, *ibid* at 59 (plate 19).

“[O]ur people went up in the canyon to fish because that was the only place to dry the salmon. If you tried to dry salmon downriver, the dew that forms every night would get on your salmon and just cause them to go mouldy. Whereas you get up in the canyon and the mountainous rock absorbs the heat; it dissipates the heat at night and doesn’t allow the dew to form. You don’t have to worry about dew forming on the salmon. Plus you have the dry air that blows from the Interior because you’re a lot closer to the Interior, so it’s a little bit drier. And not only that, you also have the migrating salmon that have just spent the first 160 kilometers in the river [moving upstream between the mouth of the Fraser and the entrance of the canyon], and they lose 11 to 12 percent of their body fat [by the time they get there]. The higher the fat content, the easier it is for the salmon to spoil. When we dry a sockeye the very thin stomach part of the salmon which is really rich in fat is usually cut out. If it doesn’t get cut out, it gets a real strong taste to it after it has dried. That’s if it does dry: most of the time the fatty part of the fish doesn’t dry because it has too much oil in it. After the salmon lost 11 to 12 percent of their fat, it makes them just ideal for drying.”²¹⁶

Climate plays such an important role in this sophisticated site-specific fishery that the end of the drying season in the canyon occurs by mid-summer, long before the end of the successive salmon runs. Only the spring and the sockeye salmon can be dried. By the time the coho, the pink and the chum start running,

“[...] the weather isn’t right any more; there’s too much rain up there. In August the blowflies come out. The blowflies lay the maggots on the salmon, and the maggots burrow into the fish and then they spoil it. So a lot of people prefer to have their fish dried by the end of July because at the beginning of August is when the blowflies come out. [... So t]here was a lot of smoking of the pink and the chum [in the lower parts of the river].”²¹⁷

As basic as it is, this preliminary sketch of the canyon fishery already begins to illustrate the extent of the Stó:lō’s knowledge of the complex interconnections composing the distinctive ecosystem(s) of their territory. Wind, heat-absorbing

²¹⁶ McHalsie, *supra* note 181 at 101.

²¹⁷ *Ibid* at 102-103.

rock face, water pools, presence and absence of dew, dry and rainy seasons, timing of the blowflies, transformation of the salmon anatomy throughout the run, types of fish, selective fishing for conservation: the Stó:lō master all the nuances of their environment. But unlike Western science, the knowledge they accumulate is not geared at reproducing or domesticating the resources that serve them – aspiring, for example, at “making salmon”.²¹⁸ Nor is it geared at eradicating the parts they may consider bothersome – the mention of the blowflies in the canyon brings to mind the draining of Sumas lake on account of the annoyance presented by its mosquitoes.²¹⁹ Rather, Stó:lō knowledge and techniques aim at allowing them to insert themselves within the environmental interconnections they observe, to take advantage of what is already there. This is not to say that some of their techniques do not alter their environment, as the cedars stripped of a portion of their bark stand to show – nor even that all of their traditional ways necessarily always minimized the suffering of the creatures they depended upon.²²⁰ However, what their knowledge-based interventions on the land do reflect is the self-understanding of the Stó:lō as embedded in a larger, subtle, enormously complex whole, rather than at its helm.²²¹

²¹⁸ Joseph E Taylor III, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis* (University of Washington Press, 2009). Taylor shows the astounding complexity of the Pacific Northwest ecosystem of which salmon is a part. He demonstrates how the multiple man-made alterations to this environment – for example, by building dams, human inhabitation, or altering the chemical balance of streams by cutting down the forest – blocking, altering, or destroying spawning grounds, have played a role in the dwindling of the wild salmon stocks over the last century. He also shows that the attempt to control the salmon reproduction through artificial spawning grounds and salmon farms has generated further problems such as the spreading of disease, the upsetting of the balance with other species and with the forest itself, and has resulted in a degradation of the quality of the salmon itself. See also Bruce I Cohen, *The uncertain future of Fraser River sockeye. Volume 2, Causes of the decline* (Ottawa, Ont: Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, 2012).

²¹⁹ *Stó:lō Atlas*, *supra* note 1 at 104 (plate 34). See also Sandra Shields & David Campion, “Memory and the Valley”, *Geist* (2009) 37 at 48–49.

²²⁰ In an expert testimony on behalf of Stó:lō fisher Patricia Kelly, Kwitsel Tatel in the Provincial Court (Chilliwack), Keith Carlson described a practice whereby sturgeons were placed in a closed pool in the river to be kept alive over days while their meat was progressively cut away as needed. See *The Queen and Kwitsel Tatel v. Canada*, (3 April 2013) Chilliwack 47476 (BCPC), Crabtree J.

²²¹ For a fuller discussion of land management and tending the wild among Coast Salish peoples and many of their neighbours, see Nancy J Turner, *The earth’s blanket: traditional teachings for sustainable living* (Vancouver ; Toronto: Douglas & McIntyre, 2005). See especially Chapter 6,

Being attuned to the Stó:lō's extensive knowledge and respect of the life-sustaining interconnections of all beings and features of their land, the way in which their social arrangements mirror these interdependencies is hard to miss. The sustainable harvest – which entails keeping in mind how every single element depends and acts on all the others, as well as respecting the land's limits and nurturing its productivity – echoes within Stó:lō governance through the social sustainability of mutual reliance, sharing and exchange. Coming back to the example of the canyon fishery, this is reflected in the fact that the needs of the different parts of the extended family, spread out in clusters in different villages on the territory, are all taken into account by the *Sia:teleq* – the coordinator of the fishing ground – when planning their rotating access to the drying rack throughout the canyon fishing season:

“The *Sia:teleq* was the person who was appointed by the family *to take care of the fishing ground* and of the access to it [...]. He wasn't the owner because no individual could own it. But based on his knowledge of the extended family, his knowledge of the various fishing methods, his knowledge of the capacity of the dry rack, his knowledge of the capacity of the camp, of the number of children that extended families had, of the numbers of fishing rocks that were accessible according to the varying levels of the river – with all of that in mind, he was able to co-ordinate. ‘I'll tell you who can fish now. You should be fishing these rocks now, and this is the number of sticks you have. And because you have this many children you should be making sure you have this much fish put away.’ [...] From Western society's perspective, somebody who witnessed this would probably assume that he was the owner. But not really, he wasn't really the owner. He was just the person *who took care*

“Looking after the lands and waters” for an array of techniques used to enhance the growth and productivity of particular plants and animals, such as controlled burnings, selective harvesting, moving plants around, weeding, pruning and fertilizing. The contrast I draw between the Western scientific outlook and that of the Stó:lō echoes Canada's Royal Commission on Aboriginal People's finding that “the Aboriginal tradition [...] is [not] usually human-centred in the same way as the western scientific tradition, for it does not assume that human beings are anything more than one – and not necessarily the most important – element of the natural order of the universe.” René Dussault & Georges Erasmus, *Report of the Royal Commission on Aboriginal Peoples: volume 1 : looking forward, looking back* (S.l.: Canada Communication Group - Publishing, 1996) at 33.

of the site."²²²

This description of the *Sia:teleq*'s central role in the canyon fishery sheds light on the relation of caretaking to connectedness at the heart of Stó:lō legal sensibility. The role consists in combining a detailed knowledge of all environmental and social interdependencies to exercise one's judgment so as to meet everyone's needs, in the short and long term – distributing the access to fish, but also letting the salmon spawn. To further clarify the *Sia:teleq*'s role, Sonny emphasizes how different it is from ownership at common law: "He wasn't the owner [of the fishing ground] because no individual could own it."²²³ The statement could simply pass as pointing to categories of property – public, collective, individual – among the Stó:lō, but it really hints at a profoundly different mode of relating to the natural and social world, where a collective caretaking responsibility toward the land and the people, rooted in their factual interdependency, displaces the notion of ownership as an autonomous right to exploit a thing.

When the Stó:lō gathered in the canyon every summer to make salmon provisions for the year, they used, as we have seen, preservation techniques that made sophisticated use of every feature of their fishing grounds. But to understand the meaning and importance of caretaking and connectedness as normative commitments in Stó:lō law, it must be emphasized that those techniques were also labour-intensive, requiring immediate, skilled work to clean and hang to dry large quantities of fish as they came out of the water. In other words, no one could possibly accomplish this alone. People had to work in teams. In addition, they had to work fast, so that other parts of their family would also gain access to the fish and drying rack before the end of the harvesting season in the canyon.

Those two related facets of social interdependency – having access through one's kinship network to an important harvesting place, and having to work with others

²²² McHalsie, *supra* note 181 at 98, emphasis added.

²²³ *Ibid.*

to carry out a successful harvest – played out not only with respect to fishing, but with regard to all other harvesting activities. If you lived in a village downriver, you would travel up to the canyon for the drying season, and if you lived upriver, you would go down to your family’s camp at Qiq̓a:yt (New Westminster) for two weeks of cranberry picking,²²⁴ to the mouth of the river for eulachon or clams,²²⁵ up to the mountains at Xoletsa and Lexw̓yó:qwem and Q’aw for other kinds of berries and wild vegetables,²²⁶ and so on. “And it’s the *Sia:teleq* who will know who all our relatives were up and down the river so that we could gain access to different resources.”²²⁷

This discussion of the Stó:lō canyon fishery begins to illustrate how the Stó:lō legal order is rooted in place. Showing a close connection between the traditional knowledge and techniques underlying Stó:lō harvesting practices and their ways of constructing their rights and responsibilities to each other and to the land, the fishery reveals one of the ways in which the governance of their society maps onto their relationship to the land. At the heart of this mode of relating to the natural and social world, the two interpretive principles that Sonny highlights – “being connected” and “taking care” – combine into what I think of as an *ethos of embeddedness* profoundly shaping Stó:lō legal sensibility.

The traditional fishery is evidence of a keen observation of the ways in which everything on the land is connected.²²⁸ This realization of interconnectedness, a factual discovery based on observation, is also normative, in that it informs the Stó:lō’s dominant interpretations of how the world *must* work. Human society is not separate from this; it is subject to the same principle, obeys the same law, on

²²⁴ *Ibid* at 100.

²²⁵ *Ibid* at 101.

²²⁶ *Ibid* at 86-89 and 101.

²²⁷ *Ibid* at 100. There are gendered aspects to this access to seasonal resources, which will be discussed in Section Four of this dissertation.

²²⁸ As quoted earlier, Sonny says: “Everything – we’re connected to it.” *Ibid* at 108. Note that Turner, *supra* note 221, summarizes what she learned from Indigenous elders belonging to a number of different Northwest Coast societies in a chapter titled: “Everything is one.”

par with other beings, not uniquely agentic among them.²²⁹ This mode of thinking has many ramifications. Instead of compartmentalizing their knowledge, of isolating the components of existing relationships²³⁰ and of altering ecosystems with a view to reconstituting the world to their advantage²³¹ – or of developing technologies that ignore those connections altogether and treat anything not immediately useful to them as worthless²³² – the Stó:lō tend to use their knowledge and techniques toward inserting themselves within existing connections, to use those connections to their benefit without upsetting them. Likewise, every individual is embedded in a social network where everyone has a role to play and everyone is provided for. Rights and responsibilities within this order cannot be defined in the abstract or impersonally. They depend on concrete personal relationships: who you are to others, and who they are to you. The ethos of embeddedness entails a valuing of the criss-crossing network of natural and social relations within which one is located, a commitment to *taking care* of those connections – for one’s own sake.

What I have just articulated is a partial view of the nomos grounding Stó:lō aspirations. I am suggesting that Sonny’s research into the traditional knowledge and practices surrounding the canyon fishery allows us to paint this essentialized picture of the Stó:lō worldview, where perceptions of the world and prescriptions for how to act in it *feed each other* and create a harmonious whole.²³³ Of course Stó:lō society is much more complex and interesting than this picture, for it is in motion. It cannot be captured with a fixed, composed, coherent image. Practices, technologies, norms and observations about the world certainly do inform each other, but they are moving parts. They remain in conversation, provoking mutual

²²⁹ See John Borrows’s point about the agency of the earth in *supra* note 30 at 241–70.

²³⁰ See Charles Taylor, *Dilemmas and Connections: Selected Essays* (Harvard University Press, 2011) at 39.

²³¹ Taylor, *supra* note 218.

²³² I am thinking here of ocean fishing techniques, such as are employed in commercial fisheries worldwide, that use rakes to scrape the bottom of the ocean and throw away as garbage what was not meant to be caught.

²³³ This echoes Geertz, *supra* note 80, about the relationship between fact and law.

reinterpretations, without presenting a seamless fit.

I think this is true of the relation between the normative principles underlying Stó:lō modes of reasoning and their practical form of life. In particular, a specific set of practices may change without uprooting its intellectual, legal and ethical apparatus, which has broader ramifications and is nurtured by broader range of experiences. In his talk, Sonny speaks to such changes in the traditional Stó:lō fishery: the fishing permits, the motor boats, the freezing and the canning – all those things that allow individuals to fish and preserve fish alone, without a connection to land and to other people. In addition, country foods are now substantially supplemented, if not replaced, by a variety of food accessible in stores all over the territory – there is no need to rely on relatives spread across Stó:lō Téméxw to have a richly diverse diet.

However, the ethos of embeddedness in the natural and social world continues to characterize Stó:lō legal sensibility, past a specific set of historical living conditions and traditional harvesting techniques. It has a life of its own, informed by a relationship to the land that goes much beyond the material or economic dimension of its resources – indeed imbuing those so-called “resources” with a completely different meaning. To understand how deeply the Stó:lō legal order is rooted in the land, and to understand embeddedness as an ethos – not just a neutral “fact” about the relationship between things in the world, but an interpretive commitment, a principle that guides the Stó:lō in making sense of events and recreating the “natural” order of things – we must look further than Stó:lō harvesting practices, into the Stó:lō experience of their land as literally embodying their people and providing them, beyond sustenance, with power.

Transformations: relating to the visible and the invisible on Stó:lō land

Sonny’s text is divided in two roughly equal parts. The first, which I have been drawing on so far, begins to reveal, through the Stó:lō’s material uses of their land,

the ethos of embeddedness that permeates their legal tradition. The second continues to open the window on the significance of this ethos for Stó:lō hermeneutics by introducing the canonical narratives that make sense of their relationships to each other and to their land through time. Those stories offer interpretations of the ways in which visible and invisible forces purposely interact to concrete effect on the lives of the Stó:lō on their territory. They show an Indigenous spirituality rooted in the land – as other Indigenous traditions have been shown to be.²³⁴

Understanding what this entails in the case of Stó:lō culture, and how it connects to Stó:lō legal sensibility, involves engaging with the specificity of those iconic Stó:lō narratives and of the intellectual resources they contain, with a view to deciphering how those resources are implicated in shaping contemporary Stó:lō modes of reasoning. In what follows, I will suggest that this canon plays a role in current constructions of persuasive discourse and significant action, shaping the meaning of events in people’s lives. This role is not obvious, for people only rarely, if ever, make direct references to the mythical stories in narrating their own lives and relationships. They do not either typically approach, construe or revisit their lives on any of the models provided by the characters and plots of those stories.²³⁵ The mirroring, as I see it, is more abstract. The canon plays a role in what they tacitly construe as relevant goals and considerations, and as legitimate behaviour.

In discussing the cultural constructs and intellectual resources that contribute to shape what I call “Stó:lō modes of reasoning,” I do not want to hide or overlook the role that individual thought, agency and choice plays in shaping those cultural framings. Those framings do not constrain people into thinking the same things –

²³⁴ See *supra* note 183.

²³⁵ Cruikshank, *supra* note 108. A notable exception, that of Herb Joe, T’xwelátse, who reads his life explicitly in relation to the mythical ancestor whose namesake he carries, will be discussed in Chapter Six. Herb Joe is a rare case of someone bearing the name of a person not only turned into stone, but into a human size stone – heavy, but movable, and much easier to relate to as a person than many of the other stone-humans whose stories are part of the Transformer canon.

erasing their individuality and yielding natural, society-wide consensus. For all my focus on understanding the elements of a shared legal sensibility, I do not want to obscure the fact that a wide range of persuasive arguments about how to understand the world and to act within it are made, on a daily basis, by people who stick to the same underlying normative commitments; in other words, that people who share those commitments still think and act in unique ways, which sometimes clash. This will be illustrated shortly, for Sonny's own individuality is traceable through the discursive *modelling* of the norms he talks about.

The purpose of Sonny's text is to ground the "rights and title" of the Stó:lō to their territory in the multidimensional relationship they have with it – a relationship on which, he argues, their very identity as Stó:lō depends, and on which the land and the life of all of its beings depend, too. Different aspects of this relationship which he brings to the fore can be used to make an argument as to the Stó:lō's "rights and title" under Canadian law, but as I said at the outset, they can also be used to understand Stó:lō sovereignty on its own terms, for they are linked to the continued existence and distinctive quality of their legal tradition. For example, the normative import of the relationships he describes as the backbone of Stó:lō spirituality is different if envisaged through the respective lenses of Canadian and Stó:lō law. Under Canadian law, establishing the factual existence of those relationships and their importance for Stó:lō spirituality can translate into a duty not to interfere with them except with adequate justifications, a protection defined in the caselaw interpreting section 35 of the *Constitution Act, 1982* affirming Aboriginal rights, or section 2(a) of the *Canadian Charter of Rights and Freedoms* protecting freedom of religion.²³⁶ The source of law here is the Canadian state, not Stó:lō society.

Under Stó:lō law, the normative implications of these relationships go far beyond

²³⁶ Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c11.

the specific respect and protection they might receive as falling under a category of rights defined and delimited by the law. They supply some of the conceptual building blocks of Stó:lō thought, permeating their very understanding of power, as well as the rituals and caveats surrounding its mode of exercise – at all levels, ranging from the practical to the symbolic through the philosophical.²³⁷ Therefore, while Canadian law may be looking at Sonny’s account with a view, for example, to identifying the boundaries of specific sacred places on Stó:lō territory in order to leave those undisturbed, understanding Stó:lō legality on its own terms involves engaging with Stó:lō spirituality much more holistically, paying attention to the ways in which spiritual experiences and beliefs inform the modes of relating and reasoning that order society.²³⁸ This includes a range of fundamental assumptions, such as: how people conceive of the spiritual boundaries of their community, how they think of the way valuable knowledge is acquired, and how they perceive the goal, structure and driving force of a good story or compelling argument.

The Stó:lō spiritual canon is a body of mythical oral literature including what is referred to in Halq’eméylem as *s̓xwō̓x̓wiyám*, by contrast with the *sqwélqwel* described above.²³⁹ Although the *s̓xwō̓x̓wiyám* have been the object of extensive documentation, the earliest records date only from the late 1890’s, and few of those stories have been recorded verbatim in the language, as was the case in other parts of British Columbia.²⁴⁰ As Sonny laments, much has been lost – but much work

²³⁷ This major thread of *xwélmexw* legal sensibility is the focus of Section Three of this dissertation.

²³⁸ The lack of separation in Stó:lō thought between the legal, moral, spiritual, political, ecological realms of knowledge, discourse, and action makes that broader view necessary – but of course those realms are also connected in the Western traditions, where spiritual and religious historical constructs also inform the law (the notion that humans stand above the rest of creation being one in point). See Taylor, *supra* note 195, and Harold J Berman, *Law and Revolution, I: The Formation of the Western Legal Tradition*, revised ed (Cambridge, Mass.: Harvard University Press, 1985).

²³⁹ I discuss the contrast between those two categories of stories / bodies of knowledge *infra*, in the text accompanying footnotes 260 to 262.

²⁴⁰ The main published stories available *verbatim* are in M Terry Thompson & Steven M Egesdal, eds, *Salish Myths and Legends: One People’s Stories* (Lincoln: University of Nebraska Press, 2008). Oliver Wells, *The Chilliwacks and their neighbors* (Vancouver: Talon Books, 1987). Oliver Wells, *Myths and Legends: STAW-loh Indians of South Western British Columbia* (Sardis, BC, 1970). Norman Lerman, *An Analysis of Folktales of Lower Fraser Indians, British Columbia* (Master of Arts

also remains to understand that which has been recorded, to make connections between the available stories, and to enrich the interpretation of those stories by cross-referencing them with other types of stories, teachings and practices that Stó:lō elders have transmitted – illuminating the latter in the process as well.²⁴¹

The main theme running through the *s̓xwō̓x̓wiyám* and other narratives about the spirit-world is that of transformation and transformative power. Those stories narrate past and present encounters with different kinds of spirits and spiritual beings whose respective powers represent as many gifts and risks for human beings. In his talk, Sonny refers to narratives implicating four of those kinds of spiritual beings:

- *X̓exá:ls*, also referred to as the Great Spirit or as the Transformer, a shape-shifting force spoken of in either the singular or the plural, since “it” is composed of four mythical beings, three brothers and a sister.²⁴² *X̓exá:ls* gave much of the land its current shape (or rather, the shape it had when the settlers arrived, for they have changed it too). It does not live on the land, but can travel through it and up to the sky.

Thesis: University of Washington, 1952). Norman Lerman, *Lower Fraser Indian Folktales* (typescript, 1950). Charles Hill-Tout, *Linguistic Sections: Appendix to The Salish People*, typescript ed (Vancouver, 1983). Wayne Suttles, *Musqueam reference grammar* (Vancouver: UBC Press, 2004). Suttles, *Katzie Ethnographic Notes*, *supra* note 18, and Jenness, *Faith of a Coast Salish Indian*, *supra* note 18. In addition, elderly members of the Chilliwack tribe were recorded in the 1960's by Oliver Wells, some of them providing versions of the same story in Halq'eméylem and English: see Oliver Wells, *Taped Interview Collection and Notes* (Sardis, BC: Coqualeetza Cultural Education and Training Centre 1967) [unpublished]. The typescript of those recordings, with transliterations by Brent Galloway, Edna Bobb and Amelia Douglas, is filed in the Stó:lō Research and Resource Centre archive.

²⁴¹ McHalsie, *supra* note 181 at 107-08.

²⁴² I will return to this below, but wish to signal here the echo between this mythical force and the Stó:lō social order's polyphony. The most powerful force of the Stó:lō oral canon is not itself a single being with a definitive voice, but a *unity of four* who are very powerful, but not *all* powerful (they are duelled with and sometimes defeated), nor all-knowing or wise (some stories show them changing their mind). They find out about the world and about each other, acting upon it as they go (the girl throws her little brother's cap in the fire, and he cries until his tears create a flood that engulfs him; the others escape the rising waters by going to higher ground).

- Three other kinds of non-human spirit-beings live in various places on the territory, or move between them: *s'ó:lmexw*, or “water babies” dwell in lakes and waterways; “little people” live in the forest; and *stl'álegem*, four kinds of monstrous creatures (giant snakes and maggots, underwater bears, and a being that only ever shows its glowing red eyes) live in a number of specific, usually somewhat remote places on the land.
- The spirits of animals and insects who can lend specific powers to human beings through a spirit quest.
- The spirits of the ancestors themselves.

To each of those kinds of spirits corresponds a sacred relationship between the Stó:lō and their territory, each one representing a layer of the connection that embeds them in their land. Every one of the narratives fleshing out those relationships presents its own puzzle, its own invitation to think, as well as its own singular illustration of some of the assumptions composing the kaleidoscope of Stó:lō sensibility. But just as interesting, for the purposes of my inquiry, is the way in which, taken as a whole, those stories tie the Stó:lō, the different parts of their territory and all of its physical and metaphysical inhabitants together into a cycle of common tropes, characters, and events. This storycycle influences their current legal practice, though not necessarily through a direct drawing on its “content,” in a way that would treat the relationships between protagonists as literal precedents for living together – although from time to time people use the stories that way as well, making explicit reference to them in conversation or in oratory. The spiritual oral literature does not either translate into a homogeneous Stó:lō experience of the relationship to the spirit-world, or in their sharing the exact same beliefs. It certainly contributes to ceremony, which is an intense communal experience, an extraordinarily lively part of the seasonal rhythm of Stó:lō life, and as such undoubtedly shapes shared societal understandings – including the way people understand Indigeneity, inhabit their identity, and draw on tradition to construct

persuasive accounts of their experience. But the most direct impact on Stó:lō legal reasoning of the canonic storycycle that ties them to each other and to the material and immaterial dimensions of their world, is in the reverence for that tie itself. At the heart of Stó:lō legal discourse is a respect for the imperative of nurturing this tie; and the mode of doing so, which accounts for the specificity of Stó:lō legal thought and action, owes more to what is common to Stó:lō literature as a whole – the implicit assumptions underlying the canon, reflected in its formal qualities – than to the lessons derived from the stories’ plots or from their characters’ motivations, blunders, and ultimate fate. This is what the remainder of this chapter will show.

1. Xá:ytem and the Transformer storycycle

Just outside of Mission, travelling eastward on the Lougheed Highway, a huge boulder sits in the middle of a field that used to be a pasture – a remarkable, lone figure in the landscape. In 1990, the land was acquired by a developer for residential purposes. As the site was being cleared for construction, hundreds of artefacts were uncovered, soon establishing this as one of the oldest dwelling sites in British Columbia. The land was transferred to the Stó:lō, who created an interpretive center. Alongside Sonny, another important historian of the Stó:lō, Keith Carlson, talked to elders to learn about the rock. Their research led them to Bertha Peters, who told them the story that follows. The word she used to refer to the rock and its story, Xá:ytem, means “suddenly transformed.”

The Myth of Xá:ytem

as told by Bertha Peters
to Sonny McHalsie and Keith Carlson
on September 20, 1995

A man from Chilliwack Landing told me this story:

But they didn't know about these sicknesses,
and so the man went up the mountain to die.

He was laying there naked
and a snake came up to him
and ate all the sickness off his penis,
then wiggled away.
Then it ate three types of plants and got well.

So the man went
and ate the three plants
and got well.

So they knew a cure for this sickness,
but they couldn't write it down,
so they lost it.

This story is as intriguing to me as it has been eye-opening. It not only captures, as do other Transformer stories, the encounter between Stó:lō characters and Xexá:ls, “the Great Spirit,” but is also a uniquely self-conscious discourse about power, language, and knowledge framed in mythical terms. There is much to learn by paying attention to what it explicitly seeks to communicate, but also by looking into the assumptions it shares with other narratives within the Transformer storycycle – and beyond, with the stories that speak to ongoing transformative Stó:lō relations with the spirit-world.

The story is divided in two parts: the first, introduced by Bertha's reference to the “man from Chilliwack Landing” who told her the story, is the actual *sxwōxwiyám* – a story happening in mythical time about the deeds of Xexá:ls, “the Great Spirit” who came, as other storytellers explain, “to make the world right.” This part develops over the first three stanzas. Bertha then relates a more recent story about a lived community experience, to illustrate some of the consequences of the failure of the three *sí:yá:m* to fulfill their responsibility to the people. Bertha marks the

transition to this part of the story by recalling her source again: “This man came to see me and he told me...”

The *sxwōxwiyám* prophesies great loss at the contact of newcomers, “people from all different lands [who] will come and take all the knowledge from the people.” The story explains that this loss could have been prevented if only the people had learned “how to write their language” and in the third stanza, actually suggests that the knowledge to be lost is that of the language itself – that “all the knowledge” is recorded in the language and as such, depends on the language being known and continuing to be transmitted.²⁴³ The Great Spirit had taught three *si:yá:m* how to write, and they were supposed to teach everyone, but they neglected to do so, and so *Xexá:ls* used its power and turned them into stone.

Xá:ytem prefigures the vulnerability of *xwélmexw* culture at the hands of colonial policies that would separate families and unimaginably, in the space of a generation, seriously impair the oral transmission of Stó:lō language and knowledge that had been effective for hundreds of years. But the story is more than a warning about the conditions of Stó:lō society’s survival in the face of the colonial onslaught. It is also about the nature and limits of authority in the Stó:lō legal tradition. The three *si:yá:m* were punished because, by neglect or intent, they kept something that neither emanated from nor belonged to them, and concentrated power in their own hands. The teachings must be shared – or they will be lost. Status, in Stó:lō society, is tied to knowledge, but it is also a function of how well you mobilize the knowledge and resources at your disposal to benefit

²⁴³ Note that much work is being done on language revitalization on Stó:lō Téméxw and across Coast Salish territory. See Brent Galloway, “Language Revival Programs of the Nooksack Tribe and the Stó:lō Nation” in Bruce Granville Miller, ed, *Be of Good Mind: Essays on the Coast Salish* (Vancouver: UBC Press, 2007) 212. Margaret Macdonald, “Halq’eméylem Language Revitalization: Walking in Both Worlds” (2009) 18:2 *Native Stud Rev* 51. Ewa Czaykowska-Higgins, “The Coast Salish Language Revitalization CURA Project - Language Revitalization in Vancouver Island Salish Communities: A Multimedia Approach”, (2011), online: <http://web.uvic.ca/~slrpcura/Coast_Salish_CURA_Report.pdf>.

others.²⁴⁴ Xá:ytem testifies to the intimate relationship between power and knowledge, and hints at the fact that their wide distribution across Stó:lō society is an important normative principle underlying the Stó:lō order.

In the body of stories to which we have access, it is difficult to find other narratives that speak to the nature and limits of authority as explicitly as Xá:ytem does. Part of this may have to do with the fact that only a fraction of the Stó:lō/Coast Salish oral literature has made its way to us.²⁴⁵ But I think it actually has more to do with the fact that the sxwōxwiyám are not, as a whole, geared toward yielding a clear normative framework or set of foundational moral or legal principles. In contrast to the narratives grounding other spiritual and legal traditions, such as the Gospels' parables, they are not generally meant to supply cases for thinking through right and wrong – what good conduct entails as a child, a sister, a husband or wife, as a hunter or fisher, or as a sí:yám, someone enjoying the trust and respect of his community and bearing the responsibilities of leadership. In Xá:ytem, the three sí:yám are “heaped into a pile and turned to stone” as punishment for wrongdoing, and this is what happens in other cases too – but just as often, people are transformed for their generosity or resourcefulness, or simply for being on Xexá:ls' path. Norman Lerman, who conducted much work on Coast Salish mythology in the 1950's, observed the same both from his own research and from the stories collected since the 1890's by Franz Boas, Charles Hill-Tout and James Teit in the region: the “list of different persons engaged in various activity [sic], who are transformed into stone [...] shows such multiformity that it is

²⁴⁴ In my understanding, this teaching applies even to the types of knowledge which are protected by secrecy, in the sense that even the knowledge that must be kept secret or shared discernedly – unlike that which is discussed in the story of Xá:ytem – must be used with other people's well-being in mind.

²⁴⁵ There are a number of reasons for this. The decimation of smallpox, the incapacity of the foreigners to understand the language, the fact that few stories were recorded *verbatim*, the lack of interest of researchers for stories (Sonny speaks to this in relation to Oliver Wells, in McHalsie, *supra* note 181 at 109). The number of placenames for which we do not have the corresponding story is a small indication of this. Sonny mentions this a number of times in his talk.

possible to state the transformer's victim may be anyone, undertaking any task."²⁴⁶ From the lack of moral motivation for the transformations, Lerman concludes that the "main point of many of those transformer tales is probably the explanation of various local geographic formations [, ...] the fulfillment of the change from a mythical world to the present one."²⁴⁷ I think the *s̄xwō̄x̄wiyám* accomplish more than that. The fact that they cannot be read as a straightforward moral or legal code does not mean that they do not reflect constitutive norms of Stó:lō society.

2. *Storytelling and authority in Stó:lō society*

Stó:lō conceptions of authority are a case in point. On its own, the fate of the three *sí:yá:m* at *Xá:ytem* does not reveal much about norms governing the distribution of power and knowledge in Stó:lō society, or generally, about Stó:lō conceptions of authority. For that, we must look to the conceptualization of the mythological canon and to the way storytellers relate to it. This is evidenced, in *Xá:ytem* and other stories, not only by the stories' plot but by the narrative devices storytellers employ. Those can be quite subtle, and appear peripheral to the stories because they do not directly contribute to furthering the action, but they represent key features of storytelling in the tradition. Correlated with features of the canon itself and of its main characters, those imperceptible narrative conventions point to traditional Stó:lō ways of thinking about the act of storytelling, including the relation of the teller to the story, her personal input in the story, teaching role, legitimacy and credibility in that role, which are all connected – in this and other narrative traditions – to ways of thinking about authority, and the coding and decoding of truth claims. Indeed, it is worth noting that messages of authority linked to sharing knowledge are conveyed in two ways in the story just told – in its explicit content and in the norms implicit in Bertha Peters' telling.

This connection between storytelling and authority is encoded, in some of the

²⁴⁶ Lerman, *Analysis*, *supra* note 240 at 94.

²⁴⁷ *Ibid.*

languages that descend or borrow from Latin, such as English, in the shared etymology between *authorship* and *authority*. Tracing the commonality of those concepts through to their current connotations allows us to put the corresponding Stó:lō perspectives in relief. The root of author/authority is found in the Latin “augēre,” which means *to augment*. Authority also draws on “augure” (omen) and august (respected, charismatic) to speak to forms of leadership that are effective because they are legitimate. The notion captures the elusive nature of credibility – the “added value” that the opinions of certain people hold within a polity, making their judgments count for “more.”

To the connotation of a “plus,” another one grafts itself: the notion of source or *origin*. Michel Humbert, scholar of ancient Greek and Roman political institutions, explains this by reference to the role of the Roman Senate: when its prestige became such that any politically significant act needed its deliberation and accord, *it came to be seen as the initiator of those acts*.²⁴⁸ This has become a dominant connotation of those notions: the English dictionary describes an author as a creator, the person who *brings something or somebody into existence*.²⁴⁹ Likewise, an authority – the person or institutional body formulating law, whose accord (*authorization*) is necessary for a rule to come into force or whose reasoning leads to an enforceable decision – is source of law. The predominance of this notion of source/origin seems to generate a framework in which the delimitation and boundedness of the author/ity and its creation/decision are central – something that contrasts quite sharply, to my mind, with Stó:lō ways of approaching equivalent notions. In the Western legal traditions, the “creator” of a piece of work needs to be delimited and bounded so as to be ascertainable, credited and accountable for his actions. In terms of the creation, genesis and its emphasis on newness, requires drawing a sharp distinction between the “new” and the rest. In such a framework, knowledge, experience and their expressive inflections need to

²⁴⁸ See Michel Humbert, *Institutions politiques et sociales de l'Antiquité*, 8th ed (Paris: Dalloz, 2003).

²⁴⁹ *Oxford English Dictionary online*, third ed (Oxford University Press, 2014).

be thing-ified to be respected, and their owner-creators must be identifiable. The language of property and its extensive quality underwrites both artistic creation and sovereignty, each in its own realm credited with exclusive rights against all.

Interestingly, the second part of *Xá:ytem* alludes to the clash between this *xwelítem* culture of appropriation and the *xwélmexw* worldview in the specific realm of “intellectual property.” The story prophesies that Stó:lō knowledge that goes unrecorded and un-reified will be “lost,” taken away by the combined operation of direct colonial policies disrupting the transmission of teachings, and of colonial laws supporting the appropriation of medicinal knowledge – with the correlative dispossession of its initial holders, people whose obtaining, holding and wielding of knowledge and power remains underwritten by a different cosmology and legal ideology. What does *Xá:ytem* teach us about the latter?

One of the striking features of the story is that despite its brevity, Bertha Peters makes a point of referring twice to the fact that someone shared it with her. This person remains anonymous – what seems important for Bertha is to make clear that she is not the source of the story, only an interpreter, a link in a formal chain of transmission. This speaks to the fact that Stó:lō / Coast Salish mythology, like many other mythologies, consists in a narrative canon: a sanctioned body of stories that can be told and retold but not *added to*. In a sense, then, like Ancient Testament stories which may be among the literary and spiritual equivalents of the *sxwōxwiyám*, this canon *can* be thought of as fixed. However, in contrast to biblical stories, in oral traditions such as the Coast Salish’s there is no such thing as a *canonical version* of the myths.²⁵⁰ Each story comes to life a bit differently

²⁵⁰ I suspect that this is true of many Indigenous traditions. For example, Bringhurst makes the same observation of Haida mythology, *supra* note 117 at 337. Importantly, it is also true of some of the religious traditions that have the Bible as their sacred text. To illustrate this, qualifying my suggestion that the Bible necessarily presents the fixed, canonical *version* of the stories it contains, I will provide here a few evocative examples drawn from the work of Avivah Zornberg, a contemporary scholar of the Jewish midrashic tradition. Midrash can be defined as “the art of reading between the lines of sacred text – and uncovering intellectual, spiritual and sensual layers of meaning.” (Krista Tippett, see reference below). Passages from an interview that Zornberg gave

every time it is told depending on the storyteller's skill, on the context of the telling and on the interaction between the storyteller and her audience. The storytelling performance is a singular event illuminating different aspects of the

in 2005 to Krista Tippett (released in full in 2014) show the congeniality of the midrash to the approach I perceive Stó:lō interpreters to be taking to their own storycycle. In this interview, Zornberg speaks to the midrashic approach, and to its justification in the text of the Bible:

“Over and over again, God says to Moses, Moses says to the people, ‘All this is happening so that you shall tell the story. [...] It’s so upside down, you might say [...]. Since it’s happened, all right, tell the story. Make sure people remember it. But that’s not the point. It’s not telling the story so as to remember what happened. It happened so as to be the stimulus for a meaningful story. And the stories will develop and change through time. And perhaps, in the end or along the way, you might find yourself telling a better story than what is actually written in the text. So long as there is some connection. So that what you have, for instance, on the Seder night, on Passover, is basically the commandment to tell the story of the Exodus, which doesn’t mean reading the Bible. It means – you know, it isn’t just opening up the Bible and reading. [...] There is a fixed text, but it’s supposed to be just a kind of opening for the proliferation of more ideas and more attempts to tell the story in a way that will come closer to what can really affect us.”

Krista Tippett, *Avivah Zornberg — The Transformation of Pharaoh, Moses, and God [On Being, American Public Media]* (2014).

At the end of this conversation, Zornberg adds:

“The stories remain very powerful as written. And then there is all the amazing cargo of hidden stories that emerges in the midrashic tradition. And then there is the invitation to the participants to tell their own stories and to ask their own questions and to elaborate further. So there is this sense of infinite elaboration.”

In her book about the biblical narrative of Exodus, Zornberg develops this idea:

“The notion that knowledge of reality is singular, absolute, static, and eternal is tested in these midrashic narratives of the foundational events in Jewish history. The midrashic versions convey a plural, contextual, constructed, and dynamic vision of reality. The “Platonic ideal” of the history of philosophy is described by Isaiah Berlin: it posits ‘that all genuine questions must have one true answer and one only, all the rest being necessarily errors; in the second place, that there must be a dependable path towards the discovery of these truths; in the third place, that the true answers, when found, must necessarily be compatible with one another and form a single whole for one truth cannot be incompatible with another – that we knew a priori. This kind of omniscience was the solution of the cosmic jigsaw puzzle.’

As against this view, which obtained in Western philosophy till the late nineteenth century, the midrashic literature presents a heterogeneous, even – consciously and ambivalently – a heretical multiplicity of answers. Exodus as a narrative that consistently deploys the ‘omnipotence effect,’ to use Meir Sternberg’s term, is significantly diffracted by the many counter-narratives that the midrash generates from within the triumphal and unequivocal master story. ‘What really happened in Egypt?’ becomes a less important question than ‘How best to tell the story? Where to begin? What in the master story speaks to one and therefore makes one speak?’”

Avivah Gottlieb Zornberg, *The Particulars of Rapture: Reflections on Exodus*, reprint ed (New York: Schocken, 2011) at 4–5. See also: Krista Tippett, *Avivah Zornberg — Exodus, Cargo of Hidden Stories [On Being, American Public Media]* (2007).

story's significance.²⁵¹ As Robert Bringhurst points out, "the telling of a myth is a serious form of thinking."²⁵² In mythological traditions such as the Coast Salish, where the storyteller is not the creator of the story, and where she does not either typically explain what the story means (as do the judeo-christian traditions through the device of the sermon during mass, or of the interpretive discussion in the synagogue, following the recitation of the canonical story), the performance itself consists in the original thinking. Each performance adds to the "fragile continuity of minds and voices nurturing the stories, thinking through and telling them differently as circumstances [change]."²⁵³

By referencing the anonymous man who told her the story of Xá:ytem, Bertha inscribes herself in this continuity. In the few other available *verbatim* records of Stó:lō/Coast Salish mythological tellings, a similar referencing device is often found – the Halkomelem version of a literary convention common to many Indigenous oral traditions. Harry Uslick, one of the storytellers consulted by Norman Lerman, provides an example when speaking of the murderous dispute between Black Bear and Grizzly Bear that precipitates Xexá:ls journey through Stó:lō Téméxw:

“The Grizzly Bear became kind of angry and said, ‘You’re not killing my lice. They are all crawling back on me. Let me look in your head now.’ She started looking in Black Bear’s head and began to kill her lice. (I don’t know what kind of lice it was. *They never say.*)”²⁵⁴ (my emphasis)

Likewise, Mrs. August Jim, a Stó:lō elder who did not speak English and was over 80 years-old when she told the story of Mount Cheam to Oliver Wells, begins her

²⁵¹ A great example of this is Crisca Bierwert, *Brushed by Cedar, Living by the River: Coast Salish Figures of Power* (Tucson: University of Arizona Press, 1999) at 156–57. Bierwert recounts Upper Skagit elder, Vi Hilbert’s deft use of a Skunk story to make a point against what Bierwert calls “cultural separatism” – the idea that non-Indigenous people should not talk about, nor teach through Indigenous stories.

²⁵² Bringhurst, *supra* note 117 at 262. This resonates with Val Napoleon and Hadley Friedland’s point about Indigenous stories being “resources for thinking”: see “An Inside Job”, *supra* note 31.

²⁵³ Bringhurst, *ibid.*

²⁵⁴ Lerman, *Analysis*, *supra* note 240 at 70.

narration like this (as translated by her daughter directly in the transcript):

“It’s only that *the Indians say that* the Lhilheqi people were sisters close in age, but I don’t remember how many. So the youngest sister cried and cried. She wants to be the one sitting right in front and looking at the water in the river. And so the youngest sister stayed right in front, facing upriver. *At least, that used to be the talk of the Indians of long ago.* Then something happened to start transforming them to become like that, to become a mountain.”²⁵⁵ (my emphasis)

Another example is provided by James Point who, speaking to Wayne Suttles in 1963, begins the story of the mythical plant that gave Musqueam its name with the phrase: “It must have been long ago, *according to what the people of the past used to tell.*”²⁵⁶ His narration proceeds with many references to the nameless collective source of the story: “There was just a lake, a small lake. *It was said* to be where that monster was. It was a sealthkey. *They were always telling.* It was impossible for someone walking to go near there.”²⁵⁷ (my emphasis)

Likewise, in her 1978 rendition of the story where Mink ridicules himself by attempting to beat up his wife made of pitch, only to get stuck and “all doubled up,” Susan Jimmy says: “Little Mink is travelling, going along, *they say.*” He sees a beautiful girl and walks up to her: “He’s going to talk to her, *they say,* that Little Mink says.”²⁵⁸

Robert Bringhurst offers the thought that this device, “they say,” which also recurs throughout Haida mythological tellings, serves not only to signal the canonicity of myth but also to navigate its ambiguous truth claim:

“The quotative casts a statement into narrative relief. It can suggest that what is said has been tested by tradition and found true, or warn that it bears no guarantee because it lies outside the speaker’s own experience.

²⁵⁵ Wells, *supra* note 240 at 61.

²⁵⁶ Suttles, *supra* note 240 at 539.

²⁵⁷ *Ibid.*

²⁵⁸ See Thompson & Egesdal, *supra* note 240 at 309 (story edited by Ralph Maud).

It lifts a statement out of the realm of history or experience and drops it into one of the two realms (the timeless and true, the persistent and false) we now call myth. Skaay [the Haida storyteller] uses this device [...] to dance back and forth between his own fallibility and the perdurable truth of the myth [...]. He also uses it [...] to feint, to dodge, and actually to leap back and forth across the line between the credible and the outlandish.”²⁵⁹

Myth, adds Bringhurst, “is neither fact nor fiction. Myth is a species of truth that precedes that distinction.”²⁶⁰ This insight rings as a more accurate account of the species of truth claim made by the *sxwōxwiyám* than the Halq’eméylem Dictionary suggests when it translates the word as “child’s fable or fairy tale” and implies, by contrast to the stories defined as “true” (the *sqwélqwel*), that the Transformer stories are not.²⁶¹ The *sxwōxwiyám* do not construct solid ground under our feet: although they occasionally create the opportunity to reflect in moral terms on right or wrong behaviour, that is not their point *per se*; nor do they serve to solidify the distinction between fact and fiction. They point to a conception of relationships – to people, land and all other beings – that cannot be captured solely by reference to facts or history. Instead of offering iconic representations of dichotomies between right/wrong, truth/falsehood, fact/fiction, natural/supernatural, *sxwōxwiyám* present those relations as dynamic, to be reflected on and deciphered in context. In a sense, they fuel the inquiry rather than provide closure.²⁶²

In contrast, the metaphorical “they say” that anchors fundamental spiritual and

²⁵⁹ Bringhurst, *supra* note 117 at 113.

²⁶⁰ *Ibid.*

²⁶¹ See Brent Douglas Galloway, *Dictionary of upriver Halkomelem* (Berkeley; Los Angeles; London: University of California Press, 2009) at 1015. The Dictionary also translates a sentence containing the word *sxwōxwiyám* as meaning “It’s not true but it’s like a fable.”

²⁶² The understanding of “myth” ascribed to Solon, statesman of Ancient Greece, fits well with the interpretation I offer here of what the *sxwōxwiyám* points to: “Myth is not about what never happened, but about what happens over and over again.” This understanding ties in with the midrashic interpretation of the Torah discussed above, as evidenced by Krista Tippett’s use of Solon’s quote to introduce Avivah Zornberg’s reflections on Exodus: see “Exodus, Cargo of Hidden Stories” *supra* note 250.

legal texts in the West usually represents a regression in time, back to an authority construed as ultimate and whose pronouncements are often invoked to command obedience. This conception of authority as “source,” in the sense of being a point beyond which we stop looking, bears a relationship to what we think of as true or factual. Think of the important convention according to which lawyers interpreting a case trace the factual truth of its underlying situation to the assessment made by the trier of facts. As Elizabeth Mertz has pointed out, the “source” of facts, both in terms of truth and relevance, from that point on, becomes what the judge said about them, and this in two ways: first, one is usually not allowed to challenge this assessment on appeal; and second, what “really” happened, beyond the narrow frame of the legal questions and standards of proof that the judge has used to make his determination, is irrelevant.²⁶³

Beyond the quotative – eliding authorship, reaffirming the continuity of the Stó:lō’s relationship to their ancestors and land, and maintaining the ambiguity of the distinction between fact and fiction – other features of the Stó:lō oral tradition and of the *s̓xwō̓xwiyám* storycycle support the absence of concern for mythologizing absolute beginnings, and the connection between this absence and a notion of authority. The depiction of *Xexá:ls*, the Great Spirit itself, is interesting in that regard: it is composed of four beings, three brothers and a sister. They do not pre-exist all things: Black Bear, their mother, is killed by Grizzly Bear, sending them on their journey through Stó:lō Téméxw. Their siblinghood does not contain a sense of hierarchy as would the relationship between different generations – or the different status afforded to uncles and nephews, for instance, even when the two are similar in age. Moreover, *Xexá:ls* are not all-knowing nor all-powerful. They make mistakes and stand to be corrected by humans;²⁶⁴ they lose power

²⁶³ Mertz, *supra* note 123 at 67.

²⁶⁴ See the story of the flounders, “*Te Skaíaq ke te Qals*: Mink and Qals,” told by Pat Joe of Scowlitz, in Hill-Tout, *supra* note 240. Another version, told by Ms. George, is titled “Transformer Take – First Version (Lower Fraser River)” in Lerman, *Analysis*, *supra* note 240 at 87.

contests;²⁶⁵ they even tease or harm each other and provoke unforeseen events.²⁶⁶
This Great Spirit is made of fallible, if powerful beings.

As noted by Teresa and Keith Carlson, Brian Thom and Sonny McHalsie in *You Are Asked to Witness*, none of the Transformer stories is an absolute origin-story. The *sxwōxwiyám* “did not traditionally include ‘creation’ narratives outlining the beginning of the world,” but rather “acknowledge the existence of people who lived before the ‘first people’.”²⁶⁷ Second, *sxwōxwiyám* should not be thought of “as a series of short independent stories, but rather as one incredibly long and complex story,”²⁶⁸ which means that a storyteller who would have been knowledgeable about large segments of the bigger story could have decided where to start and where to end his narrative on any given occasion. No so-called “part” of the greater story has a clearly defined “beginning” or “end,” and it is not particularly relevant to try to place the different episodes of the Transformer journey in chronological order. Neither time nor space on Stó:lō Téméxw present an obstacle to the Spirit, the main protagonist of those stories – and there is no beginning and no end to either the people or their story on this territory. Continuity, continuous transformation, is the very nature of being.

By its very nature as an “incredibly long and complex story”²⁶⁹ taking place in

²⁶⁵ For example, the peeing contest yielding Spuzzum Creek: Charles Hill-Tout, *The Salish People - Volume III: The Mainland Halkomelem*, talon books ed (Vancouver, 1978) at 146.

²⁶⁶ As they set out on their journey, prompted by the murder of their mother Black Bear by Grizzly Bear, one of the older *Xexá:ls* siblings throws their youngest brother’s red cap into the fire. He cries so much that their camp is flooded by his tears. While the older siblings escape the rising waters to higher ground, the youngest stays underwater. See three versions of this story by Dan Milo in Thompson and Egesdal, *supra* note 240 at 257-61; Wells, *The Chilliwacks*, *supra* note 240 at 89-90; and Wells, *Myths and Legends*, *supra* note 240 at 3-5.

²⁶⁷ Carlson, *You Are Asked to Witness*, *supra* note 13 at 186.

²⁶⁸ *Ibid* at 187. Brent Galloway makes a note to that effect in the *Dictionary of Upriver Halkomelem*: telling even a part of this story typically took a long time, as signalled by the presence of a marker of duration in the construction of the word itself. As he puts it, commenting on the word *xwiyám*: “durative meaning is plausible because the legendary stories told were often very long with many episodes”: *supra* note 261 at 1014.

²⁶⁹ This echoes Robert Bringhurst’s insight into Haida mythology: “If we are experienced listeners [...] we remember the echoes, allusions and names that link these poems, and the larger poem they make, to the whole body of Haida mythology – a body that every student of Haida literature learns

various locations over a vast expanse of land, the Transformer storycycle puts the entire story – if this notion applies in the first place – beyond the reach of any single individual or small elite. It deflects aspirations to fit all the parts together, to assemble a whole view, to seek the control of complete, coherent knowledge. This is mirrored in the Stó:lō legal order: no one is at the apex, nobody has a full view of the story, and Stó:lō legal reasoning reflects the fact that there is no “view from nowhere” to aspire to, just a multiplicity of perspectives to seek out.

Sonny’s reaction to the vastness of the mythological cycle – which he highlights by asking: if this is what I have learned by inquiring only into those few spots, “what about all the other rocks?”²⁷⁰ – suggests that what is important about the Transformer stories is the sense they generate, as an aggregate, about *xwélmexw* people’s embeddedness in Stó:lō Téméxw. The Transformer stories are less about what they teach individually, and more about the intricate network that they form. The overarching principles that this network support guide Sonny in his role as researcher: to keep researching the connections and locating himself within that network; to respect the numerous perspectives on the whole by seeking them out and giving them voice. These normative principles are the cornerstone of Stó:lō legal reasoning – as I will illustrate in a moment by looking at how it shapes Sonny’s discourse. But before, there is more to say on the centrality of transformation to Stó:lō ontology.

3. *From Xexá:ls to Stó:lō ontology*

I have sought to show that – by contrast with Judeo-Christian mythologization of origins, echoed in Western law’s twin emphasis on finality and finiteness in conceiving of authorship, authority and sources of law²⁷¹ – some of the most

to recognize and imagine, though it is a body that, in its entirety, no one has ever depicted or seen.” Bringhurst, *supra* note 117 at 200.

²⁷⁰ McHalsie, *supra* note 181 at 105.

²⁷¹ The notion of certainty resonates with these principles, and is often reiterated by state actors in official statements about the role of law and treaties in relation to Indigenous communities: see for example, Irlbacher-Fox, *supra* note 24.

pervasive features of Stó:lō foundational “texts” (the nature of its central characters, of its narrative devices, of its very architecture) support, through the elision of authorship, a distinctive emphasis on the continuity of voices and on the diffusion of authority. I now turn to the notion of transformation itself. Starting with the Transformer stories, and moving outward to some of the other narratives and beings mentioned by Sonny, I want to examine what those stories and relationships reveal about Stó:lō tradition’s understanding of *xwélmexw* people’s embeddedness in their territory and their community. This will lay the ground for discussing the manifestations of this ethos in Stó:lō legal reasoning.

The story of Xá:ytem provides, here too, an interesting point of departure for this discussion. As noted above, the story foreshadows the loss of much of the Stó:lō’s millennial knowledge, which could have been prevented if only the people had learned “how to write their language.” In the third stanza, a slippage happens in the story, from requiring the *sí:yá:m* to teach people how to *write* the language, to requiring them to teach *the language*. As a result, the storyteller seems to suggest that the knowledge to be lost is that of the language itself – that “all the knowledge” is recorded in the language and as such, depends on the language being known and continuing to be transmitted.

Xexá:ls turns the three *sí:yá:m* into stone. In Xá:ytem, this typical result of an encounter with Xexá:ls – whether one is doing something wrong or not – acquires a striking and unusual dimension, for here Xexá:ls does not only punish disobedience, he directly enacts the subject-matter of the story: the transformation of the piled up chiefs leaves a mark on the land that amounts to a manner of writing. The subtle way in which the story weaves together the notions of transformation and writing hints at a deep relationship between them, actually ingrained in the very etymology of those words in Halq’eméylem. Indeed, the dictionary of Upriver Halq’eméylem – the result of years of work by Stó:lō elders and linguist Brent Galloway *to write down the language*, in what could be

understood as an ultimate effort to fulfill the duties of the Xá:ytem chiefs and keep the prophesy from realizing itself – shows that the Halq'eméylem root of xexé:ls (to leave a mark / to write), is the same as that of xéyt (to transform). Interestingly, that root (xéy) also links the ideas of teaching / disciplining / being disciplined: two verbs stemming from that root, xít and xéywét, respectively mean “to growl with words” and “to advise someone not to do something bad,” while the verb xéyxe (to be ashamed) refers to how it feels to be caught doing something wrong, to be scolded or punished.²⁷²

Those three etymologically related actions (leaving a mark / transforming / teaching and disciplining) are also etymologically connected to the actor who performs them: the Spirit, the sacred, immensely powerful force who acts with intent to form and transform the landscape and the people. The group of elders working with Brent Galloway taught him that another name for Xexá:ls was Xéyt (the Transformer). The Transformers are a manifestation of the “Great Spirit,” as Halq'eméylem-speaking elders Rosaleen George and Elizabeth Herrling told Sonny,²⁷³ hypothesizing that the name of Xexá:ls derives from the word xáxe, “sacred.” The elders also recorded in the Dictionary that the verb xéyt (to transform) refers to the action of burning foods at open fires in order to pass them over to the spirit world and feed the dead. In a few different ways, Halq'eméylem thus associates spirituality, sacredness, and the act of transforming.

By weaving together these notions and pointing to Halq'eméylem itself as the repository of Stó:lō knowledge, Xá:ytem points toward a conceptual universe where the human world, the physical world of Stó:lō Téméxw (the landscape and

²⁷² See Galloway, *supra* note 261 at 987: the root xéy is recorded as meaning “*against*”, in the context of a change or transformation. It is found in many other words than those I have selected for discussion above, but in all of those words, seems to suggest either an antagonism of sorts, or a comparison or foil, where some characteristic or state is set against another, to understand it by contrast. In a sense, then, what possibly unites all those words under this root is the idea that their meaning emerges in relationship or in contrast to something else.

²⁷³ Interview on Xexá:ls and spirituality by Sonny McHalsie with Rosaleen George and Elizabeth Herrling, February 23, 2000 [Stó:lō Research and Resource Center Archive, Chilliwack, BC].

all the life it supports), and the spirit-world are all but phases in a cycle, instantiations of the living force called *shxweli*.²⁷⁴ At the heart of this universe is an action, a dynamic force at work, *transformation*.²⁷⁵ Its centrality connotes that it is the relationship between things that counts. The most important normative commitment of the Stó:lō legal order is to nurture those connections. Taking a closer look at the relationships between the Stó:lō and the material and spiritual dimensions of their world reveals the depth and breadth of their entanglement in their society and territory as a whole. The concreteness of this entanglement is one of its hallmarks. It contributes to the distinctiveness of Stó:lō legal reasoning, in sharp contrast with the abstraction of Western law. I will show this by looking at each of those relationships in turn: the human to the material, the material to the spiritual, the spiritual to the human.

²⁷⁴ See McHalsie, *supra* note 181 at 103-08.

²⁷⁵ A striking statement by the Honorable Steven Point supports this: “The ancestor of everything is an action,” quoted by Carlson in *The Power of Place*, *supra* note 1 at 265.

THE THEMES OF ΧÁ:YTEM AND THE CONCEPTUAL WORLD OF HALQ'EMÉYLEM

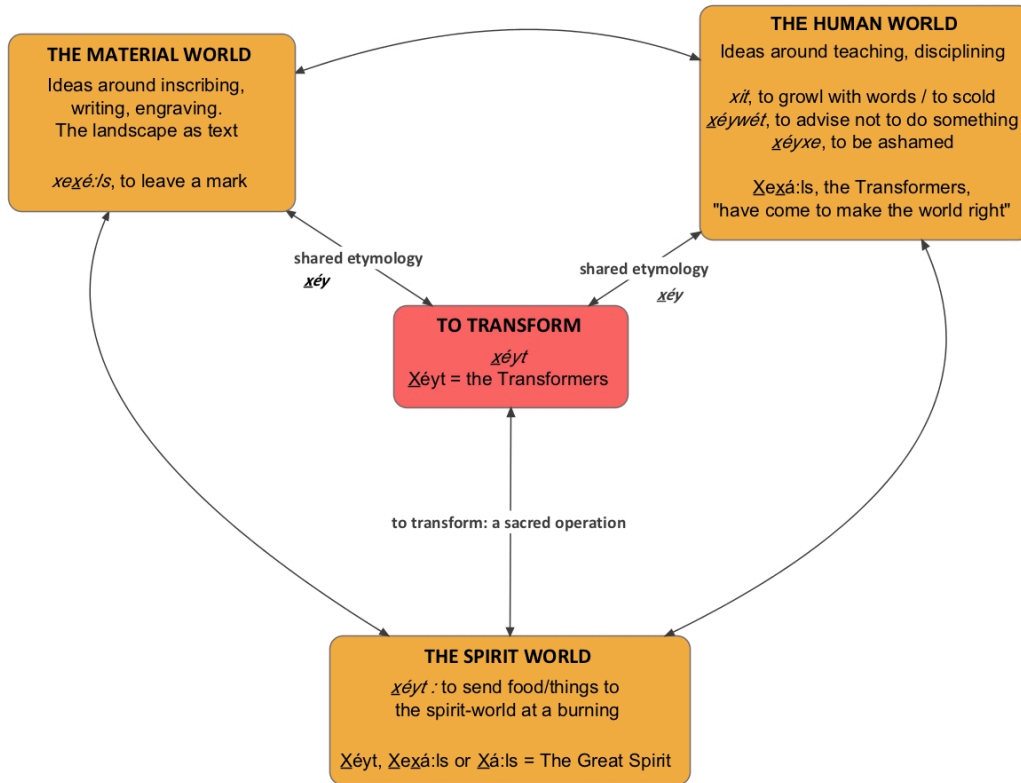


Figure 1: The themes of ΧÁ:ytem and the conceptual world of Halq'eméylem

a. Human / material : “We don’t own the land, we **are** the land”

In his talk, Sonny draws on Stó:lō mythology to demonstrate the Stó:lō’s connection to their territory and all the beings that are a part of it. The stories can be drawn on for metaphor, but they are not only metaphors. The mountains, boulders, all the rocks and cliff faces that are the result of people’s encounters with Χεχά:ls are petrified ancestors, and they still encapsulate those people’s life force or *shxwelí*: “That hunter was one of our ancestors,” says Sonny, speaking of Tewit, a large rock planted upright on the river’s edge at Hill’s Bar, south of Yale, “and his *shxwelí* is inside that rock.”²⁷⁶ He continues: “Anywhere where one of our ancestors is transformed into a mountain, there’s that connection that we have, through our

²⁷⁶ McHalsie, *supra* note 181 at 106.

shxwelí, to that mountain, and we need to take care of it.”²⁷⁷

This may create the impression that the Stó:lō have a special kinship to specific sites on their territory, and that while the number of such places may be great, they are still discrete, and as such could be identified, bounded, and protected on a case-by-case basis – something that would respect the Stó:lō’s relationship to the territory. But the conception of the land as a literal part of the people, and vice versa, is more pervasive than a relation to discrete Transformer sites suggests. Stó:lō cosmology not only accounts for the identity of specific features of the landscape as ancestors, but also talks about how the Stó:lō are related to the animals and plants that sustain them. Sonny hints at a number of those stories: the salmon are people, they used to take human form and to intermarry with humans – a kinship that the Stó:lō still acknowledge by returning the salmon bones to the river to allow them to reconstitute themselves after they have nourished their human relatives;²⁷⁸ the sturgeon male and female are a transformed couple who gave up their human shape to become a form of life that could feed the people in a time of famine;²⁷⁹ the seagulls and the raven used to be men who tried to keep the fish to themselves but were found out by their wives and transformed into birds;²⁸⁰ the cedar emerged from the remains of Xepa:y, a man who was exceptionally generous – and whose body as cedar is used for spiritual cleansing as well as to make everything that Stó:lō people have needed through the ages, from houses, poles and canoes, to clothing and watertight baskets.²⁸¹ “So,” writes Sonny,

“the *shxwelí* of that ancestor is inside each of the trees. [...] So again, the tree is not looked upon as just a resource, it’s looked upon as one of our ancestors and we need to pay respect to that ancestor so we have, again,

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid* at 91. This kinship is evoked by Simon Pierre from Katzie, in Jenness, *supra* note 18 at 35 and in Diamond Jenness, *The Corn Goddess and Other Tales from Indian Canada*, reprint ed (Ottawa: National Museum of Canada, 1973) at 77–82. See also Hill-Tout, *supra* note 265 at 152, and Hill-Tout, *supra* note 240, “*Stcálisten Sqáqēam*, Salmon Myth”.

²⁷⁹ McHalsie, *supra* note 181 at 103.

²⁸⁰ *Ibid* at 90. See four versions of this story in Lerman, *Analysis*, *supra* note 240 at 144–62.

²⁸¹ McHalsie, *supra* note 181 at 104.

the prayer that is said to Xepa:y, thanking him for all the different things that we get.”²⁸²

Likewise, the black bear with a white spot on his chest is a man from the Wileliq (or Wealick) family in Chilliwack who shape-shifted, creating a kinship between the Stó:lō and the bears.²⁸³ Transformations do not only proceed from the human to the animal or plant, accounting for the origin of a variety of species: in some stories, humans are also created out of available materials. The elder Dan Milo finishes a section of the Transformers’ journey with an encounter between Xexá:ls and a lonely man who wishes for a wife. The youngest Xexá:ls creates a companion for him out of a large alder branch – the one closest to the man’s own skin colour.²⁸⁴

Many other mythical narratives also speak of animals as people, beyond those whose plot specifically revolves around the formation of a species out of another. Harry Uslick, one of the storytellers of the Transformer cycle, points this out: of the young bears who are the main protagonists of the story, he says “They don’t call them cubs, they call them boys.”²⁸⁵ There are also indications in the Dictionary of Upriver Halq’eméylem that the language does not distinguish between humans and animals.²⁸⁶

Taken as a whole, the mythological narratives show that the literal kinship between the Stó:lō and their world extends far beyond any number of discrete important places on the land. Furthermore, Sonny also talks about another kind of transformation that keeps happening, beyond the supernatural ones that occurred in mythical time. When burial sites were washed up in the Chilliwack River Valley,

²⁸² *Ibid* at 105.

²⁸³ *Ibid* at 108.

²⁸⁴ Thompson & Egesdal, *supra* note 240 at 257-61. Chapter Five of this dissertation owes its title (“It’s the spirit that makes the person”) to this story, which will be discussed in more detail then.

²⁸⁵ Lerman, *Analysis*, *supra* note 240 at 117. See also June Collins, “The Mythological Basis for Attitudes Towards Animals Among Salish-Speaking Indians” (1952) 65 *J Am Folk* 353.

²⁸⁶ See, for example, *chítmexw*, the horned owl, which bears the suffix *mexw*, for person. Galloway, *supra* note 261 at 42.

he says, “it seemed like that was okay. [...] There’s that sense of going back to the ground or going back to the earth and of becoming part of the earth again.”²⁸⁷ This speaks to a phrase I have heard many times on Stó:lō territory: “We don’t own the land, we are the land.” The Stó:lō *are* their land because they have lived and died on it for millennia. They are related to the fish, the berries, the deer, the moose, the bear because those have constituted them for all time, and because they have also returned to this land, transformed themselves into its earth, and sustained the lives of all its animals and plants – literally, concretely, physically. The land is their ancestor not only in the specific places where a story marks the mythical petrification of an ancestor, or even in all the places where the animals and plants created from a Stó:lō person long ago, live and grow. Stó:lō Téméxw as a whole is a relative, an ancestor of the Stó:lō because it has literally absorbed the bodies of their ancestors for countless generations.

b. Material / spiritual: even the disembodied is rooted in place

Sonny provides a window into Stó:lō cosmology’s understandings of the spirit-world and its relationship to the material world by discussing some of the protocols concerning how to interact with the spirits. As noted above, the verb *xéyt*, to transform, refers in context to the act of burning food or clothing in a sacred fire to pass them to the other side: “it’s through the fire that the clothes and food are able to reach our ancestors’ spirits.”²⁸⁸ The burnings show that people who pass away continue to exist in a very real way, and that we can continue to communicate with them. When people pass away, they undergo a transformation: while the material part of them returns to the earth, as Sonny says in the above-quoted passage, their spirit lives on. In a sense, the spirit is released from its physical body. But the spiritual burnings are also a sign that there is not a complete dissociation between the physical and the spiritual: spirits still have material needs. The point of the burnings is to care for those needs. The spiritual

²⁸⁷ McHalsie, *supra* note 181 at 110.

²⁸⁸ *Ibid* at 118.

practice hints at the conception that there is a materiality to the “other side,” although one that appears to us, on “this side” as a dematerialization. By attending to the relationship between the material and the immaterial, the burnings, which are a door to the spirit-world on Stó:lō Téméxw, suggest that the spirits themselves remain tied to place – to Stó:lō territory, where they underwent their transformations into a human body, and then away from it. In other words, within Stó:lō / Coast Salish cosmology, even the disembodied is rooted in place.

This is also the case for the other kinds of spirit-beings that Sonny talks about: the *s’ó:lmexw* (water babies) dwell in particular places in the rivers and lakes;²⁸⁹ the *mimestíyexw* (little people) live in the forest, although they can also show up in Stó:lō houses to appear to certain people if they need to communicate with them;²⁹⁰ the *stl’álegem* are the supernatural, monstrous creatures that live in remote locations on the territory, such as deep waters.²⁹¹ Sonny argues that the Stó:lō’s relationships to each of those beings contributes to their own rootedness on their territory. They also play a role in the transformative force that acts on Stó:lō Téméxw and influences *xwélmexw* people’s lives. This leads to examining the multifaceted relationship between the spirit-world and the human world on Stó:lō land.

c. *Spiritual / human: the spirit-world has agency and is part of Stó:lō society*

Just as human beings can interact with the spirits and send them things through sacred fires, spirits and spirit-beings can also manifest themselves to humans and send them things (or power) to help them. The most prominent example of this is given by the *sxwó:yxwey* mask.²⁹² As Sonny points out, there are many stories

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid* at 122-24.

²⁹¹ *Ibid* at 126-29.

²⁹² The *sxwó:yxwey* masked dance is one of the most prominent ceremonies practiced today on Stó:lō/Coast Salish territory, and constitutes one of the important “spirit-based fraternities” giving expression to *xwélmexw* collective identity: see *The Power of Place*, *supra* note 1 at 75-6. (Another one is the winterdance, which I discuss in Chapter Five). For descriptions of the *sxwó:yxwey* mask,

associated with how the mask came to people in different parts of Coast Salish territory.²⁹³ Sonny's account of the main Stó:lō story about the reception of the mask from the spirit-world involves the *s'ó:lmexw* (water babies) that dwell in Kawkawa lake, near Hope. Sonny uses this story to discuss important teachings about reciprocity, protecting the water and the water beings, and to reflect on how culture is transmitted through stories – how old teachings and new events combine into stories that are meaningful to the Stó:lō because they carry the specificity of their relations to their past and to their territory. I will come back to this in a moment, when looking at the normativity encoded in the pragmatic aspects of Sonny's discourse. For now, I mostly want to look at how the *sxwó:yxwey* story, which is not a Transformer story, is still centrally about transformations and partakes in reproducing an ontology of transformation – this notion being key to Stó:lō society's understanding of the very nature of existence.

The story that Sonny tells, referring to the few versions he heard from Amelia Douglas and other elders, is about a young boy who became sick with painful sores all over his body. The boys in his village were mean to him, telling him that he stank and that he should kill himself. The boy wanted to die. He went to Kawkawa lake, jumped or fell in the water, and drifted down to the bottom of the lake. There, he landed on the roof of the longhouse of the underwater people, the *s'ó:lmexw*. They took him in and healed his sores. In turn, he too was able to help the underwater people: they also had sores from the disrespect shown to them and to the water by humans – a disrespect manifesting by people spitting in the water. The boy was able to see the spit on the *s'ó:lmexw* bodies, scraped it off with cedar, and they were healed.

The boy stayed there for seven years – longer than the four years of the Stó:lō mourning period – and was considered dead by his family. When he decided he

in addition to that provided by Sonny below, see Wayne Suttles, *Coast Salish Essays* (Seattle: Talonbooks, 1987) at 109–14.

²⁹³ McHalsie, *supra* note 181 at 114 and 117–18.

wanted to go home, the *s'ó:lmexw* told him he could take whatever he wanted with him. He chose something beautiful he had seen in a basket inside the water people's longhouse: the *sxwó:yxwey* mask and its regalia, which come with sacred songs and dances. They agreed to give it to him, but with this important condition: "Well, you can have it but you can't take it by yourself. You have to have the help of your sister."²⁹⁴ The boy's sister learned that he was coming home in a dream she had the night before he reappeared. She was not surprised when she saw him, and was ready to do what the water people asked: that she make a basket to receive the mask. The *s'ó:lmexw* also enlisted the help of the animals to bring the mask from their world to the humans' world. Different animals dug tunnels from Kawkawa lake to the little lake next to the boy's village of Iwowes. The boy's sister cast her fishing line in the water, and when she felt a tug, slowly reeled it in. A water baby wearing the mask came out of the water. "And then," says Sonny,

"they taught the young man and his sister all the different songs and dances that go along with it. Songs and dances for birth ceremonies and puberty and namings and weddings and funerals. It's like a cleansing or a blessing to prepare you for the next important phase of your life."²⁹⁵

The story of the *sxwó:yxwey* is that of a healing transformation brought about by relationships of trust and mutual care between humans – men and women – animals and plants, and spirit-beings. Each of them has a role in the outcome, based on his or her own knowledge, talent, or strength. Each of them is called upon to give something, and receives something in exchange. The fact that the mask is used to bless transformative moments, the passage to a different phase of life, is significant. The story attached to the mask dance is one of empowerment, where the depths of discouragement, depression, and physical weakness are overcome by crossing over to the spirits' world, understanding something important there, and receiving but also providing care. It weaves together

²⁹⁴ *Ibid* at 113.

²⁹⁵ *Ibid* at 114.

unbearable suffering, a lengthy supernatural journey, and the ultimate physical and spiritual empowerment of the boy, on the condition that he share the gift he received with others. The boy “wanted to kill himself,” says Sonny – but the different versions of the story create ambiguity as to whether he gave up on life or went looking for a way to confront the pain he was experiencing from sickness and rejection, walking straight into his fear, and finding help and strength in the process. Regardless of the particular orientation of his courage and determination, he sought a transformation.

Like the man in *Xá:ytem* who, sick with syphilis, went up to the mountain to die and ended up being rescued by a snake, the boy in the *sxwó:yxwey* story gave up control over his life and was taken care of by supernatural and other living beings. The relinquishing of control, or rather, the implicit recognition that forces are at play in the world that much surpass humans and cannot be controlled – nor can the outcome of coming face to face with them – is a common theme of *Stó:lō* narratives recounting transformative encounters with the spirit-world²⁹⁶:

“One of our biggest teachings is that whenever there’s something bad, there’s always got to be something good. It’s kind of a balance, *you never really know*. An encounter with a *stl’áleqem* could be bad – it could harm you. Or else you could get something good out of it, like the encounter with the water baby. You could learn something or you could die from it!”²⁹⁷

An encounter with the Little People can either protect you or kill you. The quest for one’s own spirit-power is also dangerous – it involves facing risks posed by animals, plants, and spirits, in order to learn something important about one’s relationships with them that may empower and protect. So is the encounter with the fearsome *stl’áleqem*: “wherever there’s a *stl’áleqem*, *shxwlá:ms* [Indian doctors] would go to train and would interact with the *stl’áleqem*, not get their power from

²⁹⁶ This important theme is the focus of Section Three of this dissertation.

²⁹⁷ McHalsie, *supra* note 181 at 116.

the *stl'áleqem* but from the fact that they're able to be there and to co-exist with it. They get their power from that."²⁹⁸ Short of control, one must learn to relate to and be responsible for one's own fear, for one's own power.

These aspects of Stó:lō spirituality connect to the tradition's epistemology and to its legal sensibility. If spirits are agentic, capable to act in their own ways in the world with tremendous power that can destroy or help people, they are an unpredictable but very real part of the community. Relating to these powerful interlocutors will contribute to shaping governance practices, the way people think, talk to each other, reason through problems, construct arguments and make sense of events. Understood in relation to the spirit-world's agency, human agency takes on a particular significance. There is at once no total control of individuals over themselves and over what happens to them, and great respect for individual power established in relationship to the spirit-world, since no one can pretend to control anyone else. The space of forming and maintaining such relationships, of learning how to take responsibility for one's power and how to care for oneself and others, is an intimate one, that the Stó:lō respect and protect through requirements of secrecy. Spiritual encounters can teach and empower, but only through direct personal experience – the kind that may throw one's life in question and push the limits of one's understanding. The next Section of the dissertation will delve more deeply into the relationship between Stó:lō law and spirituality by examining how notions of agency and authority weave their way through forms of governance and spiritual practices alike.

By taking us on a tour of Stó:lō Téméxw, teaching us what he knows about significant places on the territory, Sonny wanted to show what *xwélméxw* rootedness in the land consists in, and that the Stó:lō's connectedness to “everything” on their land has made them who they are. His talk reads as a gentle

²⁹⁸ *Ibid* at 127.

exhortation to his people to care for themselves, which amounts to caring for all of their relationships to their land and their world. Likewise, drawing on his talk, I have sought to convey my own understanding of the way in which Stó:lō culture as a whole derives from its particular localization. The accumulated Stó:lō knowledge of *how to be in the world* emerges from their centuries-old encounter with the particular features of that world. It is rooted in, adapted to, dependent on those features. The Stó:lō have become who they are by facing the risks, receiving the gifts, and developing intellectual and practical resources in specific relation to those risks and gifts. Their history and all of their stories are the archive of their encounters with those risks and gifts – of all the ways they have learned and been transformed by what has happened to them *there*.

Stó:lō order is rooted in the land through the duties of care, the principles of good conduct on the land, the rights and mostly responsibilities, the cautions and prohibitions that Sonny talks about. But the specificity of the Stó:lō expression of Coast Salish legal sensibility, what actually makes this legal tradition recognizable as part of a family of Indigenous legal traditions – and distinct from others – would not be found in a hypothetical compendium of those rules and principles. The ongoing life of the tradition does not depend on its members holding themselves to the observance of those specific rules and principles – but to the qualities of their reasoning itself. The deep rootedness of the Stó:lō in their territory translates into their mode of relating to each other and to the world, but it does so predominantly through a transposition of the qualities of their physical and spiritual relationship to their land, rather than through the maintenance of those exact relationships and beliefs themselves.

The normativity that underlies Stó:lō hermeneutics and legal reasoning stems from a particular form of life – a way of knowing, of understanding and expressing all aspects of human experience. But it also has a life of its own: not only is it informed by the evolving features of this way of life, it also informs the evolution

of those features themselves. In other words, the mode of thinking and relating that is key to the character of a legal tradition is not tied to the maintenance of the particularities of a given way of life. What characterizes Stó:lō legal sensibility and roots it in the land can be found by examining whether and how the mode of reasoning of Stó:lō legal and political actors reflects the body of principles and features of the canonic stories concerning the land. Stó:lō people abide by those pragmatic norms of discourse, regardless of what any of them actually believes about the role and agency of their ancestors' spirits in their community, about the origins and power of the *s̥xwó:y̥xwey* mask, about *syúwél*, spirit-power, *s'ó:lmexw*, *mimestíyexw*, or *stl'álegem*.

Having paid attention to what Sonny talked about, I now turn to the features of his discourse itself. In the next and final section of this chapter, I examine whether and how the character of the norms he explicitly referred to as underlying the storied relationships that root the Stó:lō in their land translates into those he implicitly follows and models in his research practice and in his construction of persuasive discourse.

III. Stó:lō pragmatics: "It's not just about the language and the meaning of the words"²⁹⁹

The cursory account of the distinction between referential and contextual meanings offered in Chapter Two associated the first with explicit definitions and the second with the implicit knowledge and assumptions that guide people's interpretations of interactions with members of their meaning-making community. Unlike the vocabulary of referential meanings, this second category of semantic knowledge, regrouped under the term "pragmatics," tends to remain below the radar of even its most skilled practitioners. A similar distinction can be drawn, supported by the work of Elizabeth Mertz among others, between two kinds of normative knowledge: the first finding expression through definitional

²⁹⁹ *Ibid* at 109.

rules and principles – those that are usually the explicit object of interpretive discourse and interpretation; the second consisting in normative commitments that tend to remain untheorized – all the more pervasive and widely shared that they remain implicit, learned through modelling and imitation rather than articulation. I argue that the latter kind of normative expression plays the larger role in constituting the elusive mode of relating that accounts for the specificity and stability of a legal tradition.

Most of Sonny's talk exemplifies those two types of communication. In section II of this chapter, I reflected on the normativity Sonny explicitly *refers to*, *talks about*. I will look at the normativity he *performs*, and how the two mirror each other. But there are also a few moments where Sonny makes a metapragmatic commentary, putting the spotlight on contextual meanings and their transmission. In one of those moments, describing a pragmatically-rich interaction with elder Peter Dennis Peters, Sonny highlights both the importance of pragmatic expression and the difficulty of articulating the norms that underlie those communicative performances. The elder had realized that Sonny's family was serious about carrying out traditional burnings again, and came to share some of the rules he knew regarding how to proceed. Sonny listened carefully to the rules and has followed and disseminated them since. But something about the manner in which those rules were transmitted seemed to him equally, if not more important than the prescriptions themselves:

“When our family started doing the family burnings again and we had been doing it for a couple of years, Peter Dennis Peters would just donate money or something and never really came to the meetings. It was about two years after we were doing the burnings that I remember we had a meeting at his daughter Thelma's house. And he just lived across the street, so he came over. *He was really humble and he knew how to teach. He wasn't forcing, wasn't imposing, but he was doing it in a respectful way, and that's the thing that really struck me so much, was how he did that.* He didn't come and say, ‘Okay, this is what you guys

better do, you'd better do this' or – he didn't do that. He came over and he said, 'Oh, I noticed you guys are doing these burnings.' He said, 'When you guys first started it I didn't think you were going to stick with it, but it looks like you are so I thought I'd better come over and tell you a little bit of what I know about it.'"³⁰⁰ [the emphasis is mine]

After discussing some of the rules that the elder shared surrounding the practice – burnings have to be performed early in the morning; cedar should only be used to help light the fire, but not for the ceremony itself; children are not allowed to be at burnings; women who are menstruating should not be involved in preparing the food – Sonny emphasizes once more his sense that the manner in which they were transmitted was a crucial part of the normativity conveyed:

“The way Peter Dennis Peters presented it made it just so much more meaningful. It was just done in such a respectful way – the way an elder would do it. And a respected elder. I mean, it wasn't just being imposed or forced on us or something. You know, just the way he did it, it just meant so much to me.”³⁰¹

In another comment, Sonny explicitly laments the focus of researchers on referential meanings to the detriment of the wider context that modulates such meanings and truly breathes life into them. The fact that Sonny targets the epitome of this kind of focus – the work of recording definitions fit for a dictionary – is telling: referential meanings, of the codifiable kind, are merely the tip of the iceberg. What is most important about a cultural tradition is found in contextual knowledge, but “[r]esearchers,” Sonny deplores, “do not ordinarily include these kinds of connections in their work.”³⁰² He goes on:

“For example, linguist Brent Galloway was talking about how he'd collect the name and the meaning of that name. And that was the full extent of his work. He wasn't interested in any other context that could

³⁰⁰ *Ibid* at 118-19.

³⁰¹ *Ibid* at 120.

³⁰² *Ibid* at 109.

be provided. [...] he never asked, 'Why was this young girl transformed into stone?' or anything like that. [...] As for me, I'm interested in those sorts of things. And the other example is amateur ethnographer Oliver Wells. I just get so frustrated reading his transcripts because he was only interested in language. So every single time he writes in his book, 'Oh, okay. That's very... that's very nice! I'll come back and talk to you about that.' Every time, you know the elder's just going to tell him something, wants to tell him something that's just *so important!* And then Wells cuts him off and says, 'What's the word for this?' [...]. That's all he was collecting – the language. He didn't realize that what these elders were trying to do was to provide him with a context that would enable him to understand – it's not just about the language and the meaning of the words."³⁰³

Those two excerpts discuss different kinds of contextual meanings. The first focuses on the elder's communicative performance, on the set of norms about *how to teach* that he abided by and would not likely have theorized or articulated. The second is about the kind of context the elders could have provided in the form of further stories and reflections. Both passages present a window into what Sonny values, and how he himself has carried out his ethnographic work within his own society, following its own norms.³⁰⁴ His own way of speaking, and many of the comments spread throughout his talk that seem peripheral or irrelevant to the rules he lays down, are actually most telling of what is most deeply relevant to Stó:lō legal reasoning. After all, what Sonny does in this talk is build an argument, laying out the evidence toward a normative conclusion: *This is our land, and we have to take care of everything that belongs to us.* The way in which Sonny transmits the knowledge he has acquired provides a window into some of the most deeply held norms underlying the legal tradition within which his argument has purchase. Those are norms he has learned by doing, and that are so firmly ingrained that he abides by them without ever fleshing them out fully, if at all.

³⁰³ *Ibid*, emphasis in the original.

³⁰⁴ Looking at how Sonny himself *performs* connectedness and network maintenance or creation, drawing out the relations between people, amounts to applying his own interpretive key to his own discourse.

Putting in practice the shift in interpretive focus to which he points in the above excerpts, I now turn to those seemingly peripheral aspects of his discourse as a site for examining the implicit normativity that presides over the construction of meaning in the *xwélmexw* legal tradition.

The concrete polity, the personal order

The discussion of the Transformer stories in section II of this chapter has shown that the relation between the human, the material and the spiritual realms on Stó:lō Téméxw is rooted in the *xwélmexw* narrative canon and in the Halq'eméylem language itself. It has also shown the relationship between those realms to be exceptionally fluid and dynamic. A transformative force is constantly at work between them, ensuring that people grow through different stages of their human lives, return to the earth that fed them and to the spirit-world that animated them, where they continue to act purposefully and to deepen the Stó:lō lifecycle *on, in, with* their living, agentic land. When the Stó:lō say “*We are the land,*” they mean just that. It is a statement with two dimensions: first, inclusiveness – their community of transforming relatives and ancestors extends to all the animals and things that make up Stó:lō Téméxw; second, literalness – people identify with the land quite literally, which involves seeing it in its specificity as a unique being. Stó:lō Téméxw, with all its tangible and intangible beings, has an embodied personhood, a richly textured face, a character, that is a part of the *xwélmexw* community. This ties into a conception shared by many Indigenous cultures: that of society as a *concrete* entity. As Bruce Dadey puts it, “tribal peoples are not contained within a social circle, but rather are themselves the circle.”³⁰⁵ This conception is connected to important features of Stó:lō legal reasoning.

In his study of the recovery of rhetorical traditions in 1960s’ African-American and

³⁰⁵ Bruce Dadey, *Rhetorics Rising: The Recovery of Rhetorical Traditions in Ralph Ellison’s Invisible Man and N. Scott Momaday’s House Made of Dawn* (PhD thesis in English, University of Waterloo, 2006) [unpublished] at 138.

Native American literature, Dadey sums up the contrast between this view of community as a concrete entity and its Western counterpart, and begins to point to the rhetorical implications of each:

“In democratic societies, and in particular the modern nation-state, the social structure is an abstract entity (in Benedict Anderson’s phrase, an imagined community) that exists independently of the population it contains or embodies, and so it is possible for a speaker to alienate a fellow member of that community without distending or destroying the structure that contains them both. For many Native American tribes, however, the tribe traditionally is not an abstract entity but is, rather, consubstantial with the actual people who form it; indeed, the vernacular label that Native American tribespeople apply to themselves [...] is often translatable simply as ‘the people’ (one might compare this to the more abstract names commonly given to western empires or nation-states).
[...Thus,] one cannot make a fellow tribal member into an Other without threatening the actual structure of the tribe. In the imagined democratic nation-state, identification is abstract, but in a tribal society [...] it is division that is abstract, a realm of Otherness that by definition exists outside the tribe, and so the rhetor must carefully manage the divisive aspects of rhetorical action. Given how concretely interwoven tribal members are, an individual rhetorical triumph that alienates another member may end in a pyrrhic victory that reduces the overall stability of the entire group.”³⁰⁶

The correspondence between, on the one hand, the West’s conception of the polity as abstract and its adversarial rhetorical tradition and, on the other hand, the Indigenous views of their polities as concrete and the non-eristic nature of their rhetorical traditions, also manifests in a fundamental difference between how narrative operates within each of those traditions. On Dadey’s account, Western rhetoric often deploys narrative as a

“weapon [...] to illustrate, exemplify, or provoke in the service of a particular cause. To fulfill its function in eristic rhetoric, narratio must

³⁰⁶ *Ibid* at 138-39.

not only state the facts plausibly but, overtly or covertly, control their interpretation; otherwise, [...] the audience may understand the narrative in a way that is unflattering to the cause it is intended to support. [...] In western rhetoric, narrative moves toward closure, a narrowing of interpretive possibilities that reflects the desire to win the audience over to a specific, limited viewpoint.”³⁰⁷

By contrast, Indigenous rhetoric does not seek to “fix text and meaning, but to provoke more storytelling and meaning-making, *to effect a network of relationships through story*,”³⁰⁸ reproducing, reinforcing and extending the personal bonds that literally constitute the community. Instead of moving toward closure, narrative “tends to move toward openness,”³⁰⁹ embracing, indeed valuing indeterminacy, and ensuring its continued presence “by merging the hermeneutic with the personal.”³¹⁰ This starts with the teller speaking from his own point of view, but it also translates more broadly in the understanding, shared with his audience, that he cannot, even if he wanted to, supply the whole story. This understanding profoundly shapes the attitude of speakers and audiences with respect to each other and to the stories they tell and make sense of. It also shapes the stories themselves. No story can be fully told; to any given narrative, there will always be missing parts: those that the listeners are expected to supply, if only privately, through their own personal experience and intellectual efforts. On this interpretive approach, any story “derives its meaning from a context composed of other stories, and of other speakers and audiences. [...] This dependence on personal, social, and narrative contexts implies that the meaning of a story can never be fixed.”³¹¹ As Dadey puts it, in the great family of rhetorical traditions that share this hermeneutic, asking “What does this story mean?” amounts to asking, “Who are

³⁰⁷ *Ibid* at 140-41.

³⁰⁸ *Ibid* at 142, emphasis added.

³⁰⁹ *Ibid* at 141.

³¹⁰ *Ibid*.

³¹¹ *Ibid* at 142.

you to me, and who am I to you?”³¹²

Sonny’s text is not a straightforward instance of Stó:lō oratory: his discourse is spoken, yet is intended for a book, which entails that his audience, a readership, is abstracted away. At first glance, he appears to be speaking to a non-Stó:lō audience, introducing them to Stó:lō ways of thinking, doing and relating. This is felt most strongly in moments such as when he makes explicit an aspect of Stó:lō pedagogy: “You’re told to do things. You’re never told why”³¹³ – something quite banal to his fellow community members, that fosters and respects their individual meaning-making process. However, even if the text appears destined to outsiders, it follows a form that puts it, at one level, out of reach of a non-Indigenous audience. The fact that it is not composed as a literary text is the first challenge to their expectations of a book chapter in a scholarly publication – but its foreignness goes beyond that. Even once the reader has adjusted to the relative casualness of speech, the repetitions, the fluidity and the tentativeness that are a normal part of oral form, something about Sonny’s address remains awkward – difficult to categorize, therefore difficult to grasp, to know what to do with. This is an autobiography, an ethnography, a political speech, and a legal argument about the relationship of a political community to a given territory, all rolled into one. Envisioned from the standpoint of Stó:lō rhetoric, those genres fit together, and what Sonny does reveals itself as the telling of a compelling narrative *geared at other Stó:lō people* to share with them what he has learned about his identity, history and territory through twenty years of research and reflection to re-appropriate what makes his people who they are. The underlying purpose and assumptions of Sonny’s narrative, different from those of a Western audience, are precisely what make it uniquely compelling to Stó:lō audiences. I read his speech as addressed to them: those who would tacitly appreciate and assess what is being

³¹² *Ibid* at 141. Dadey examines a Navajo text (Scott Momaday’s) and draws on scholars belonging to a number of Indigenous traditions throughout his discussion, including Coast Salish author and literary critic Lee Maracle.

³¹³ McHalsie, *supra* note 181 at 85.

said through the way in which personal, social and narrative contexts are woven and deployed toward the ultimate goal of effecting a network of relationships – illuminating connections between people and places within a vast web of relationships, endlessly woven; filtering pre-existing stories through Sonny’s own familial background and lived experience so as to situate himself within that web; all of which, at a time when the knowledge and practices he talks about need to be broadly recovered.

The normative requirement of speaking from a personal standpoint is something that Sonny explicitly recognizes from the outset, and upholds throughout his talk. His main theme being the Stó:lō’s rights and responsibilities to their territory, he formulates this obligation in relation to place itself: “That’s one thing I’ve learned as well – that it’s really important to have personal connections to places.”³¹⁴

Throughout the text, his discussion of any location and its significance always either begins with, or includes how he personally relates to it – sometimes through lineage, other times through an event of which he was a part, at times simply because he was told about it personally by an elder. Sonny does not explain why the discursive practice of drawing a personal connection to each of the places he talks about is crucial. But from the text as a whole, it becomes clear that it has to do with much more than establishing a right of use or access. It is the legitimacy and relevance of speech itself that is at stake – the authority to engage in discussion of the place in question. The personal connection does not only ground rights to act with or on the land, it is how knowledge is acquired: personal experiences with place and people is what adds value to what is already known – what makes it worthwhile to put one’s voice forward, and to listen.

This, of course, extends beyond place, to anything else about which one claims knowledge. For example, while Sonny does not demonstrate the direct lineage that would grant him and his immediate family the right to be involved in the sacred

³¹⁴ *Ibid* at 92.

practices surrounding the *s̄xwó:ȳx̄wey* mask, he takes care to outline that his family comes from Kawkawa lake before discussing the *s̄xwó:ȳx̄wey* story. Significantly, he also talks about his personal spiritual experience in connection with that story – something to which I will return in a moment. Likewise, when explaining spirit-power and commenting on the winter dance, he traces his knowledge through close kin and elders. He also speaks of burnings through his personal experience of learning about them through research and practice, telling stories of incremental recovery and of mistakes made in the process. What he shares more broadly about his acquaintance with the spirit-world is highly personal, derived from events involving him, his mother, father, and elders he was close to. He mentions his own experience simply and directly, as in the case of the Little people in the forest: “When I’m up there I see them.”³¹⁵

Beyond any itemized examples, Sonny’s personal standpoint pervades the text: throughout, he speaks in the first person. At the outset, he had introduced himself: “It is important that I provide some context on my own background as I believe it has contributed to my personal growth.”³¹⁶ In this introduction, he presents his very vocation as a historian, his claim to the right and responsibility of carrying out this work in the first place, as a form of inheritance from his two grandfathers – the one, because he was knowledgeable about place names; the other, because he was a non-drinker: awake to who he was, to his culture, and to what was happening around him. Situating himself in the community provides his audience with clues as to the particular vantage point from which he is about to speak – who his teachers were, what part of the territory he likely knows best. The most concise version I have seen of the discharge of this duty is by elder Dan Milo, who, before launching into a part of the *X̄ex̄á:l̄s* storycycle, says: “I suppose you all know me” or, “My friends, maybe you’ll recognize me,” or briefer even: “You folks, my friends,

³¹⁵ *Ibid* at 124.

³¹⁶ *Ibid* at 82.

it is I.”³¹⁷ In his nineties at the time, the revered elder really needed no introduction.

The privilege accorded to the personal standpoint in Sonny’s discourse happens in another way too. Not only does he speak of things he has learned first-hand, through his own experience or direct interactions with knowledgeable elders and kin, but he also takes care to represent what he has learned from others in a way that highlights the unique voice and perspective of the person speaking. An example of this is when he conveys the meaning of *shxweli*:

“I didn’t – I still don’t understand that. What did they mean? The *shxweli*. It’s the spirit or life force that’s inside that rock. So I went to see the late Rosaleen George and I said, ‘What is a *shxweli*?’ I’ve never forgotten her answer, and I always tell people because I think it’s probably the best way to explain it. She put her hand on her chest and she said, ‘*Shxweli* is inside us here.’ And she put her hand in front of her and she said, ‘*Shxweli* is in your parents.’ She raised her hand higher and said, ‘then your grandparents, your great-grandparents, it’s in your great-great-grandparents. It’s in the rocks, it’s in the trees, it’s in the grass, it’s in the ground. *Shxweli* is everywhere.’ So I kind of understood that. And I’m still trying to put that together.”³¹⁸

Sonny literally recreates Rosaleen George’s presence, using direct speech and describing her gestures; he communicates at once the impact of this short interaction on him, the accuracy of his memory, and the embodied character of the explanation. But even when he does not use direct quotation to bring to life the person to whom he refers, powerful teachings warrant a similar emphasis on the fact that the person in question *lived through* what she shared with him, in order for the authenticity and reliability of her teachings to be established. Here the rhetorical device deployed is repetition rather than quotation:

“That was the time when Tillie Gutierrez shared that one statement with

³¹⁷ See Wells, *Taped Interview Collection*, *supra* note 240 at 49-56 [typescript].

³¹⁸ McHalsie, *supra* note 181 at 104.

us, and that statement means a lot to me now. [...] *She said* that when she was a little girl she remembered being up in Yale. *She said* that during the summer when she was fishing up there people would get together – the leaders would get together and start talking about the land question. *She said* every time they got together before they started their meeting, they all started off with one statement, and that was ‘*S’ólh Téméxw te ikw’elo. Xolhmet te mekw’stam it kwelat.*’ And that basically means, “This is our land and we have to take care of everything that belongs to us.”³¹⁹

The use of personal connection and experience as a centerpiece of Stó:lō rhetoric – the expression of an epistemology, pedagogy, spirituality, political philosophy – is similarly exemplified throughout Sonny’s discourse. As noted before, the purpose of his text is to articulate some of the rules governing Stó:lō modes of relating to their land, and to provide the cultural background within which those rules operate. Within this discourse *about* cultural objects and explicit normativity, I already highlighted two moments where Sonny makes comments on the contextual or pragmatic dimension of meaning-making: in one case, he points to the importance of paying attention to storied contexts in order to understand the kind of referential, codifiable meanings that can be included in a dictionary; in the other case, he speaks to the fact that something crucial is contained not in what elder Peter Dennis Peters was saying, but in how he was saying it.

There is another occasion in his talk where Sonny offers an even fuller, richer metapragmatic commentary – a commentary about the fact that meaning derives from context, and about what constitutes such context. True to Stó:lō rhetorical convention, this commentary takes the form of a story narrating personal experience. It is a story about a disconnect, all the more striking in a text devoted to the positive exemplification of connectedness, and concerns the relationship to an audience, allowing us to see more clearly than perhaps anywhere else in the talk – whose audience is abstract – how the personal, the social and the narrative

³¹⁹ *Ibid* at 85, emphasis added.

contexts are interwoven in Stó:lō rhetoric as performed by Sonny. In other words, this is the closest we come to an explicit discussion of the interpretive key to Stó:lō discourse or implicit normativity underlying this rhetoric – something Dadey summed up in the contrast between asking for the meaning of a story, as detached from the context of the telling, and seeing it as dependent on the concrete relationship between the teller and his audience. I quote the passage in its entirety:

“If something special happens to us, we’re not allowed to talk about it. [...] If you talk about it too much, it loses its power. That’s something I truly believe because when I do my place names tour and I get to Kawkawa Lake – because of my own belief and my faith and my connections I have my own experience that prove that these things are there. For instance, one time I was telling the *sxwó:yxwey* story about the young boy and how he was being teased by other boys who were telling him ‘Oh, you stink, why don’t you go kill yourself?’ Just as I was telling that part I connected with his spirit. I felt a connection and I was just sad – just almost – like I almost wasn’t able to speak. I had to collect myself before I could carry on telling the story because I got really emotional, because I just connected to his spirit. Another time I was telling the story and I felt like I was losing something, I felt like I was losing something. And so I told the elders about that, and asked, ‘Should I be telling this story?’ I even took family members out there who are connected to the *sxwó:yxwey* and said, ‘Is it okay if I tell the story?’ I said, ‘This is what I ask – is it okay?’ And they said, ‘Yeah, you have to tell the people what our relationship is because it’s to do with the *sxwó:yxwey*, it’s important.’ They said, ‘The stuff you can’t talk about is some of the teachings that they have to follow, like the preparations they make for the dance and all those kinds of things.’ But I don’t know anything about those sorts of things anyway. So I can’t talk about it. I felt like I was losing something. It all depends on the tour group, too. Some groups, I feel really good about it, I just share it. But there are some groups that just make me feel that I’m losing something, like they’re taking something away.”³²⁰

While here too, Sonny gestures toward an explicit “rule” protecting Stó:lō modes of

³²⁰ *Ibid* at 124-25.

relating – in this case, concerning the secrecy that must surround spiritual encounters and experiences – what he ends up doing is rather illustrate a much more implicit interpretive commitment of Stó:lō narrative reasoning, which might be described, picking up on Bruce Dadey’s analysis, as conceiving stories as “a form of personal action that requires a personal reaction.”³²¹ When an audience does not share the understanding that *what the story means* depends on the listeners’ engagement, both with it and with the teller – who they are to each other, what they *mean* to each other – the story is endangered. Its meaning, its point are lost. Sonny’s narrative reveals that the answer to the question, “Who are you to me, who am I to you?” does not depend on kinship or even shared cultural background. It is about the ability for the storyteller and his audience to connect intellectually, emotionally, spiritually through the story.³²²

Thus in a few words, Sonny has exposed one of the main implicit objectives of Stó:lō narrative discourse – to keep the world connected, to keep locating teller and listeners in this web of interconnections. That *everyone counts* in the concrete relationships that constitute this web has direct implications for meaning itself: As Sonny’s story shows, it changes and may be lost depending on what the parties bring, or fail to bring, to their interaction with and through the story. An additional dimension of the social web activated and recreated through Stó:lō rhetoric is the relationship it fosters to authority.

Authority: Aggregating perspectives

A relationship to authority manifests through Stó:lō rhetoric. Its markers are as clear as the personal standpoint through which the speaker engages his audience. They relate to this personal stance, perhaps stem from it, but also clearly add to it.

³²¹ Dadey, *supra* note 305 at 141-42.

³²² This hermeneutic key potentially illuminates the riddle with which Inuk filmmaker Zacharias Kunuk begins his rendition of the mythical Inuit story of Atanarjuat, *The Fast Runner*: “*I can only tell this story to someone who understands it...*”: Zacharias Kunuk, *Atanarjuat, the fast runner*: (Alliance Atlantis, 2002).

The contours of this relationship begin to emerge, in Sonny's speech, in the striking humility of his tone. While he does put himself forward to share what he has learned during two decades of active research work on the land with numerous elders, he does so without claiming special authority or expertise for himself. Rather, he is constantly underlining the limits of his own perspective and understanding. The humility of his stance begins with the act of making clear his point of departure:

“I had limited exposure to our traditional culture when I was younger, but enough to think about the importance of it and to try to understand some of it. [...] I took quite an interest in it and really began to learn what the places mean to the Stó:lō people. And it took quite a few years to try to learn this.”³²³

The time it takes to learn, the commitment it requires, and the tentative nature of the exercise, are tied to the above-mentioned expectation within the pedagogical, narrative, and hermeneutic sensibility that Sonny operates in, that the learner or listener play an active role in making sense of the things he is told. As he explains, this expectation articulates with the notion that learning is a life-long quest:

“One of the teachings of the elders is that we're always learning; we never quit learning from the day we're born to the day we die. It seems like that was one of the teachings in the past. You're told to do things. You're never told why. [...] And it isn't until later on that you start putting things together, you start realizing why.”³²⁴

The quality of Sonny's voice owes much to his never losing track of being engaged in a process. He makes explicit statements to that effect, such as this one about the phrase *we have to take care of everything that belongs to us*:

“I knew it was a profound statement about something that was important to us. But I mean, even at the time I knew it meant something, although I didn't quite understand what. Now I have a better

³²³ McHalsie, *supra* note 181 at 83-84.

³²⁴ *Ibid* at 85.

idea but, like I said, I'm still learning as well."³²⁵

However, he does not only speak of this process as such, or as something to remain aware of in principle. The normative role that his consciousness of the provisional and incomplete nature of his knowledge plays in his thinking, research and teaching, runs deeper, manifests in different ways and reveals itself cumulatively, through the talk as a whole. In other words, his awareness of simply being *somewhere* on a learning path profoundly shapes the way he relates to and conveys everything he knows. One of the features of this consists in how he repeatedly signals the tentativeness of his current understanding:

*"I think that it might have been s'ólímexw, or water babies, the little people that live underwater."*³²⁶ [...]

"I often wondered, 'Why did he do that?' I [...] wondered what personal connection he had there. [...] So when I found out that Siya:mia [was his name, I thought:] *That's probably the personal connection* that he had to the place [...]"³²⁷

"So Iwówes – something that doesn't want to show itself – *I think might even have to do with the fact that the village doesn't want to show itself.*"³²⁸

Even when he is making a point forcefully, such as that concerning the familial 'ownership' of fishing sites, something he has researched extensively, he still does so carefully, drawing in other interlocutors whose perspective matters to the outcome: "So looking at some of the contemporary dry rack sites, wherever there's a dry rack and a cabin, *I'm quite certain* if you talk to the family there, no one is going to claim individual ownership."³²⁹ He also makes a point of underlining cases where he misinterpreted something and was corrected:

"[...] where there's a *stl'áleqem* there will be a place where people who

³²⁵ *Ibid.*

³²⁶ *Ibid* at 86 [my emphasis].

³²⁷ *Ibid* at 92 [my emphasis].

³²⁸ *Ibid* at 111 [my emphasis].

³²⁹ *Ibid* at 98 [my emphasis].

want to become *shxwla:ms*, or Indian doctors, can go train. That's one of the things I got mixed up on: I thought they got their power from the *stl'aleqem*. When I suggested that to the elders, again I got into trouble."³³⁰

On other occasions, he shows surprise at some of the things he learned: "And so the very old people [...] would still go up there to pick berries!"³³¹ He does not even shy away from outlining what is still beyond his grasp: "I haven't been able to find out the context of that;"³³² "I never quite understood it. I didn't really know what it was all about. It wasn't until *Xá:ytem* [...] was first talked about that I began to pay more attention. [...] *And I'm still trying to put that together.*"³³³

Sonny also often places a marker of time on things he has come to understand:

*"I just recently learned that that was a place that was attached to the flood story."*³³⁴

*"It wasn't until quite a few years later that I realized who that was."*³³⁵

*"I put that together a few years later."*³³⁶

Related to this, he often talks about learning in terms of a *start*, conveying the sense that no matter how much time is spent learning on the scale of a lifetime, one cannot approach the end of what there is to know – be it about the stories associated with a single place or type of fish, and even more so, about the history of a family, of a ceremony. In part, this is because no story stands alone – it connects to all the others. Indeed, what may be most important about things, as I suggested it might be for the Transformer stories, are all the storied connections, old and new, that exist between them. In the following excerpts, note how each subject opens up onto another:

³³⁰ *Ibid* at 127.

³³¹ *Ibid* at 87.

³³² *Ibid* at 88.

³³³ *Ibid* at 104 [my emphasis].

³³⁴ *Ibid* at 87 [my emphasis].

³³⁵ *Ibid* at 94 [my emphasis].

³³⁶ *Ibid* [my emphasis].

“And so you start talking about the First Salmon Ceremony to people. Or even when you start letting them know about different records that talk about [it], they start finding that there are other ceremonies as well. [...] You start looking into our traditions today. And you start trying to find elements of that First Salmon Ceremony [...].”³³⁷

“You learn the *sqwélqwel* of a particular place, you start learning about your family history, you start learning about the importance of ownership, and you start learning about the different things that had negative effects on our own perspectives of our own laws and our own protocols.”³³⁸

“If you start looking at those types of salmon and start learning, you then find out that the sturgeon is another important fish. When you start talking about sturgeon you start finding out about more history.”³³⁹

A related point is that so much remains to be learned, that there is always more to talk about:

*“There’s all kinds of different things when you just talk about that one place, there’s so many different aspects of Stó:lō culture and history that you can learn just from that one place. And that’s just one of the berry-picking grounds.”*³⁴⁰

*“[...] what about all the other rocks?”*³⁴¹

*“I talked a little bit about some of the places that have taught us things [...]. I talked a little bit about burial grounds, about fishing. But what are some of the other things that are out there? There are other things that are important.”*³⁴²

Sonny’s tone recalls his description of the manner of his elder Peter Dennis Peters. He is following a model he has seen in action, abiding by the norms that shape Stó:lō rhetorical form – which start with being respectful, sharing what he has learned without “forcing or imposing” it on others. This is a norm rooted in the recognition that everyone has their own perspective, holds a piece of the puzzle,

³³⁷ *Ibid* at 90.

³³⁸ *Ibid* at 101.

³³⁹ *Ibid* at 103.

³⁴⁰ *Ibid* at 87 [my emphasis].

³⁴¹ *Ibid* at 105.

³⁴² *Ibid* at 110 [my emphasis].

provisionally and uniquely filling a gap in knowledge and meaning.³⁴³ A learning/research process and an interpretive commitment flows from this, allowing to build one's own perspective by piecing together, through time, the teachings and events of one's own life. It consists in accumulating the perspectives of respected others, peers and elders who have followed the same process, being attentive to their own elders and reflective about their own experiences. Sonny provides a wonderful summation of this basic norm of Stó:lō hermeneutics: "You talk to different elders about each of those places, and each of them has a different experience or a different story. And we can learn from all of them."³⁴⁴ More than any statement describing what he has done and emulated for twenty years, however, it is the way he speaks and draws on more than thirty elders and knowledgeable peers in his talk that reveals his description as an actual norm, and truly demonstrates its importance for Stó:lō modes of relating – its actual, prominent role in ordering Stó:lō society today.

"*You look at all the stories,*"³⁴⁵ says Sonny. From a Western legal perspective, this still begs the question: how does order actually emerge, how is law *achieved* from there? The principle of "looking at all the stories" sounds good, but it is only a prelude to the defining legal moment, which should consist in choosing between them. The art of Stó:lō legal reasoning is not primarily geared toward that choice. Rather than seeking to end the story – to resolve conflict or contradiction by giving some people the power and responsibility to tell a *definitive* story – Stó:lō legal interpretation is bent on making all the stories coexist. This does not mean it does not differentiate between them, casting their contribution or their truth claim in a range of different lights. But because the goal of interpretation here is to articulate individual autonomy within a concrete web of personal relationships, it proceeds

³⁴³ Note that Sonny recognizes that this is also the case for the researchers whose work he has deplored as marked by the failure to pay attention in the open, contextually-driven way mandated by his own pedagogical, rhetorical, political sensibility: "Everyone has limitations; it all just depends on what they're asking about or what they're trying to understand." *Ibid.*

³⁴⁴ *Ibid* at 89.

³⁴⁵ *Ibid* at 117 [my emphasis].

differently than in the traditions where autonomy is defined in a context of abstract ties. In the Stó:lō context, *looking at all the stories* really does capture the main operation of the legal mind, the principle on which order rests.

Sonny's talk as a whole, juxtaposing stories, connecting and aggregating perspectives, illustrates how this is done. Most of the talk does so without recourse to conflictual cases, which would clarify how Stó:lō reasoning proceeds toward a resolution while refraining from imposing on either party. In the few cases of explicit clash that Sonny raises, concerning fishing rights, the interpretive difficulty seems to arise from the impossibility for Stó:lō and Canadian legal sensibilities to coexist. When we remain within the bounds of the Stó:lō normative framework, the clashing positions seem to become reconcilable – even when someone is found fishing in someone else's spot. The latter's legitimate right of access is construed as a simple priority:

“The protocol is that when the rightful owner gets to the fishing ground, if somebody else's net is there you pull that net out, put it on the shore, leave their fish for them, and then you set your net. [...] It's still okay for people to fish there. It would be good if they'd contact you and let you know they're going to fish there, but still people are allowed to do that: much of our teaching focuses on sharing.”³⁴⁶

A more intriguing example finds Sonny discussing two different sets of apparently contradictory perspectives on the origin of the *sxwó:yxwey* mask. The first potential clash is quite easily reconciled. While some elders say that the story of the boy “with sores all over his body” originates in the devastating experience of smallpox, an opinion corroborated by the fact that the genealogies of mask-holding families are traceable back to Kawkawa Lake around the 1780s, other elders maintain that the *sxwó:yxwey* is “thousands of years old.”³⁴⁷ Sonny reasons: “Well, they're partly correct as well because after the smallpox epidemic there were

³⁴⁶ *Ibid* at 99.

³⁴⁷ *Ibid* at 116.

certain teachings that needed to be retained, and elements of those teachings that were retained were inside the *s̥xwó:y̥xwey* story.”³⁴⁸ He continues: “That’s what’s made it *real*, so that it could be believed and could become a sacred part of our culture and our tradition.”³⁴⁹

Sonny then turns to discuss the second set of perspectives on the origin of the *s̥xwó:y̥xwey*, now in relation to space rather than time. Alongside the story that locates the *s̥xwó:y̥xwey*’s origin at Kawkawa Lake are a number of other stories rooting it in different parts of Stó:lō and Coast Salish territory. Here, he says, quoting Rosaleen George, the *real story* is the one that takes place at Kawkawa Lake. Yet he adds that Rosaleen “really wanted to make sure that we paid respect to these other stories and recognized that there were other origin stories.”³⁵⁰ How could she possibly designate the story taking place at Hope as *the real one* without discrediting all the others?

I think the answer lies in the different notions by contrast to which “the real story” is drawn in each of those two excerpts, respectively. In both cases, Sonny is tackling the historical grounding of the *s̥xwó:y̥xwey* story, the tangible, lived reality that gave rise to the need for the blessing of a sacred cleansing ceremony. What Sonny and Rosaleen are saying is that the historical event of suffering represented in the story, and the gift of the sacred mask that ensued, happened at Kawkawa Lake during the smallpox epidemic. But what gives this story, as much as the stories that relate the mask to other parts of the territory, their reality in the cultural sense are the images they employ and the recognizable connections with the natural and spiritual world they draw upon – connections that vary across Stó:lō and Coast Salish territory. *Real*, as Sonny employs the term, does not mean “true”; it is not drawn in contrast to falsehood. A further example of this elsewhere in the text arises in connection with *stl’áleqem*. Sonny explains, quoting Elizabeth

³⁴⁸ *Ibid* at 116-17.

³⁴⁹ *Ibid* at 117, emphasis added.

³⁵⁰ *Ibid* at 118.

Herrling and Rosaleen George again, that it is erroneous to think of the Sasquatch as a *stl'álegem*: “Sasquatch isn’t *stl'álegem*!” they exclaimed. “*It’s real!* It’s out there.”³⁵¹ This is not to say that *stl'álegem* are fictional – but rather, that they exist in a different order of reality than the physical.³⁵²

IV. Conclusion

This chapter has begun to explore the character of Stó:lō legal sensibility by examining the Stó:lō’s relationship to their land. Based on a seminal talk by Stó:lō ethnohistorian Sonny McHalsie, in which he explains and illustrates the deep connectedness of the Stó:lō to their territory, the chapter has sought to show how this connectedness translates into an ethos of embeddedness in land and society that profoundly characterizes Stó:lō culture, including legal culture.

This manifests both at the level of explicit and implicit normativity – a necessarily imperfect dichotomy which, like that between content and form, referential and pragmatic meanings, simplifies a complex phenomenon to better grasp some of its dimensions. Most often, what we tend to think of as law are the explicit rules and principles that attach to specific situations and behaviours, and derive from equally well-articulated practices, experiences and beliefs. This cultural and legal “substance” is also the substance of Sonny’s talk, what he talks *about*: duties of care that arise in relation to other humans, the land and the spiritual world; principles of respect, reciprocity and sharing; sustenance practices requiring everyone’s collaboration and ensuring that everyone is provided for. Sonny speaks to the “content” of traditional narratives, practices and beliefs – the archive of the Stó:lō’s deep encounter with, knowledge of, and adaptation to the risks and gifts of their land. He explains how the prescriptions and prohibitions contained in certain protocols capture Stó:lō experience, opening a window, through his

³⁵¹ *Ibid* at 126.

³⁵² This point is supported by Carlson’s explanation of Stó:lō historical understanding as unfolding simultaneously between two orders of reality – the familiar physical world, and the spiritual world: see *The Power of Place*, *supra* note 1 at 64-65.

interpretations, into Stó:lō modes of thinking and relating.

But the Stó:lō legal tradition is more than the sum of the rules and principles that arose and were given expression through a particular way of life – and in Halq'eméylem. People adopt new practices; the techniques that mediate their relations to each other and to the land change; amazing efforts have been done to learn and teach Halq'eméylem, but the re-creation of a community of speakers is still a work in progress: *xwélmexw* people speak English now; only bits and pieces of the ancient stories are still widely known and regularly evoked; and while there has been a real renaissance of old spiritual practices among the Stó:lō and the wider Coast Salish family, those too have changed through loss, different sets of influences, new events, and current needs. Continuity can certainly be found in the application of old principles to new situations. But there is another site than this explicit normativity, where the ways of thinking, reasoning and relating that characterize Stó:lō legal sensibility are reproduced and the normativity that underlies those ways can be observed. It is the realm of the norms that *shape* discourse – communication more generally – rather than being the object of discourse. These norms are implicit because they are typically followed without ever being articulated. Teasing out aspects of this implicit normativity involves turning one's attention to *how* people communicate, rather than focusing only on what they are talking *about*.³⁵³

Examining the norms that Sonny follows in the construction of a narrative meant to have influence within his community reveals a way of relating to his community as a concrete entity, that is, composed of individuals who are all unique and whose

³⁵³ With regard to language, recent scholarly work in the field of ethnopoetics corroborates and enriches the argument developed throughout this dissertation. It shows that the implicit norms of Indigenous languages and narrative traditions continue to be passed on, even through expression in colonial languages. The forms and conventions of Indigenous languages thus have been shown to imprint the way in which many Indigenous writers express themselves in English, *even when they are not speakers of their respective Indigenous languages*: see Mareike Neuhaus, *The Decolonizing Poetics of Indigenous Literatures* (Regina, Saskatchewan: University of Regina Press, 2015). This research brings to my mind a quip by John Borrows, with which I once heard him challenge the participants to a conference: *When will English be considered an Indigenous language?*

perspective and experience are valued as such. Sonny's humble tone, his way of grounding everything in his personal experience, and of deferentially aggregating other personal voices in support of his interpretations, points to an important quality of the Stó:lō legal order, where the personality of the one speaking is at once the condition of possibility and the inherent limit of his or her authority. Moreover, the hermeneutic process that Sonny performs is not about nailing down the meaning of each story individually, about pitting different interpretations against each other, or about creating a hierarchy among stories or storytellers, but rather, about accumulating perspectives, teasing out and nurturing the connections between the stories that tie the Stó:lō together. The absence of closure about meaning, which Sonny regularly underlines, pointing to the things he has not yet understood, is part and parcel of how the order actually works.

On the model displayed by Sonny, the underlying purposive norm of Stó:lō political and legal address is to establish where you fit in the world, how you are embedded and inscribed in a network of relationships, human and not. The outcome sought, or resolution of the narrative, is not a focus of discourse, nor an end point. Good discourse keeps relationships alive and in motion – authority accumulates toward strengthening bonds, rather than making final pronouncements. This hints at how legal order is achieved in this tradition: quite literally and directly, by having as an objective of discourse and behaviour, that of remaining in relation, of investing in relation, of displaying relation. Rather than abstraction of responsibility into rules, it rests on the direct invocation of the concrete relationships constituting the community upon which every single person depends.

All those features of Sonny's address resonate with key features of storytelling in the tradition, with features of the mythological narrative canon itself, and with the notion of transformation that continues to play a central role in the Stó:lō's expression of their embeddedness in their land. The exploration of Stó:lō implicit

normativity thus reveals Stó:lō legal sensibility to be rooted in the land, without necessarily being tied to the maintenance of any specific set of sustenance practices and spiritual beliefs, and the “rules” governing those. Related to, yet distinct from the latter, the normative commitment that literally grounds Stó:lō legal sensibility finds expression in the force of a question posed by Sonny in his talk, one that durably underlies political and legal rhetoric within *xwélmexw* communities: “*What ties us?*”³⁵⁴

³⁵⁴ McHalsie, *supra* note 181 at 104.

Section Three
Spirit

Chapter Four

“You sit still and you watch and you feel”

The *work* of traditional governance: ritualizing the relational construction of subjectivities

I. Introduction

In the last chapter, I examined a transcribed and published speech in which Stó:lō historian Sonny McHalsie lays out central intellectual resources of the Stó:lō tradition – concepts and constructs with which the Stó:lō have made sense of their experience on their land through time. Sonny’s exposé builds up toward the demonstration that Stó:lō identity is intimately connected to Stó:lō Téméxw by expressing many dimensions of Stó:lō modes of relating – ecological, spiritual, ethical, political, legal – in terms of the Stó:lō people’s deep historical experience of themselves in that particular place. On the basis of what he articulates explicitly, but also of the implicit norms that underlie his address and form of reasoning, I began, in the previous chapter, to tease out some of the elements that contribute to the unique character of the Stó:lō legal tradition. The modes of relating that are the object of Sonny’s exposé are reflected in his oratory – a fact that speaks to the relationship between the Stó:lō historical way of life and the living quality of their legal tradition. Studying how Stó:lō people “argue with tradition,” to use Justin Richland’s rich expression, reveals the life of the tradition in the norms they implicitly feel compelled to follow when constructing discourse directed at their community.

The qualities of Sonny’s talk – which are a current manifestation of longstanding Stó:lō thought and ethics, developed in relation with the land and encoded in their historical harvesting techniques, mythology, and spiritual practices – reveal that Stó:lō legal sensibility is centrally shaped by a conception of community as a concrete entity, the sum of unique individual personalities and of the personal

relationships they have with one another; and by a conception of authority resting on the depth and breadth of one's own experience – at once valued as such, and inherently limited by its personal, partial nature. Sonny's talk also exemplifies a fundamental commitment of Stó:lō normative discourse and unspoken *grundnorm* of the Stó:lō legal order, which consists in keeping asking and answering *what binds people and place* – starting with the speaker himself – in the network of relationships that literally constitute the community. Whatever is specifically argued for, the normative commitment underlying discourse is that of serving the continuation of relationship and the valuing of each unique voice within the community.

The way in which those voices are brought together does not, I submit, amount to a choice between interpretations or positions, to the reduction of alternatives to a single course of thought or action that must either be imposed or acquiesced to. Rather, it consists in a form of holding together different interpretations and courses of action in their plurality, maintaining the integrity of each person and of her irreducible experience within a plural whole. I gestured at this earlier by describing the Stó:lō legal order as polyphonic: one where legal mechanisms seem to act so as to enable the coexistence of many melodic lines (ie. decisions and decision-makers that do not necessarily act in concert and whose ways of directing themselves may be at odds) rather than forcing a choice between them, closing the gap or the conversation, entrusting a body with the authority and responsibility to lay down dominant interpretations of people's rights, responsibilities and obligations in specific circumstances.

Understanding how such an order functions requires understanding how it *holds open* the plural space within which each person chooses her own course of conduct, makes her own decisions, and is respected in her interpretations, while also *holding together* all those “melodic lines” without predetermined hierarchies or mechanisms of subordination among them. Put differently, it requires

understanding how Stó:lō legal sensibility construes the forces of social constraint and the notions of accountability and responsibility, in relation to the autonomous agency of each person.

Over the two chapters composing this Section of the dissertation, I trace how Stó:lō society constructs and orders individual autonomy, drawing on the norms ordaining the performance of traditional governance (Chapter Four) and of the winter dance (Chapter Five). But before doing so, it is worth examining the concept of autonomy in more detail, since it is a concept that can obscure as much as it reveals. Human autonomy, beyond the basic human capacity to choose and to interact, is not a given or a static human property, nor even one that undergoes formation only for a while, until it is reached or achieved. Rather, it is a capacity constantly shaped by our interactions, continually shifting, becoming stronger or weaker depending on our relationships and on circumstances.³⁵⁵ The laws, institutions, concepts and practices that coalesce into a society's legal sensibility – allowing its members to think through and decide who bears responsibility for what kinds of choices and actions – shape those relationships and circumstances to a degree. As such, a society's legal sensibility plays an important role in shaping the actual autonomy enjoyed by its members.

The conception of autonomy that prevails within that legal sensibility is a crucial part of that equation. Depending on the shape and contours, scope and prescriptiveness of a society's dominant conception of autonomy, acting on it will either foster autonomy and responsibility within the group, or stifle both, (re)producing and reinforcing inequality and power differentials. In her book *Law's Relations*³⁵⁶, legal philosopher Jennifer Nedelsky undertakes an important reflection on that theme, which will help to frame and illuminate the Stó:lō stories

³⁵⁵ On this, see Charles Taylor, *Philosophical Papers: Volume 2, Philosophy and the Human Sciences* (Cambridge University Press, 1985), ch 7 (“Atomism”).

³⁵⁶ Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2011).

and experiences recounted in this chapter and the following one. Part of Nedelsky's discussion zeroes in on the connection between autonomy and responsibility so central to law. In North American settler legal culture, she points out, the notion of control is conventionally placed at the heart of that connection: "when we are acting autonomously, our actions are thought to be under our control and we can be held responsible for those actions."³⁵⁷ While she concedes that there is a grain of truth in this reasoning, insofar as control is understood as "not being passive or merely reactive in the face of the events and interactions of one's life"³⁵⁸, she shows that the nexus autonomy-control-responsibility is too simple. To grapple adequately with the link that exists between autonomy and responsibility, we must rethink them, and largely dissociate them from control – for in most situations, human beings do have a measure of creative agency and conscious choice over how to conduct themselves, and therefore a degree of responsibility over the course of events, while interacting with forces that are beyond their control.

Nedelsky demonstrates this by discussing the complexity of our embodied agency and disrupting the conventional mind-body dichotomy. There are ways in which our actions are indeed "ours" even if, having experienced physical limitations, sickness, pain, emotions and affects, we all know that we do not "control" our body with our mind, and that sometimes our body appears to control our mind. There is a sense in which our conscious/unconscious selves transcend our body-mind, while depending on "it". We can establish a relationship with our thoughts and physical experiences, interact with and impact them, in a complex stance much better described by "receptivity, acceptance, attentiveness, and creative responsiveness"³⁵⁹ than by "control" – a stance that actually altogether depends on *releasing* control. Such a stance can foster our autonomy and allow us, in the face

³⁵⁷ *Ibid* at 278.

³⁵⁸ *Ibid* at 292.

³⁵⁹ *Ibid* at 288.

of situations we cannot pretend to completely master (which are practically all situations, she points out) to take responsibility for ourselves, our health, our conduct. It would be reductive and distorting to describe the focal points of that mode of accountability in the language of fault and blame. Yet, there is agency and responsibility.

In the following passage, Nedelsky sums up this challenge of embracing the complexity of our relationship to the forces beyond our control and to the sources of our knowledge of those forces in acknowledging, with accuracy and sensitivity, our real ability to act upon them, and in making collective choices accordingly, ascribing appropriate social consequences to this ability. She also evokes the crucial importance of doing so:

“In what ways are we autonomous, and what ways subject to forces beyond our control, which at some point we would say negate our autonomy? [...] The solution lies in a restatement of the question about autonomy and the forces beyond our control.

We are not simply *subject* to these forces; we are also part of an interplay with them in which we have a genuine, autonomous capacity to shape and create – a capacity that should not be mistaken for control. This holds true whether we experience the forces in question as lying in our body, in the body politic, in the earth, or in the universe. If we do not pay attention to this core interactive element, we can make a series of common mistakes: we can say that if we do not have control over something, we surely cannot be responsible for it. But that is true neither for our bodies nor our children. If we mistake our task as control in either case, we can do terrible damage – just as we can if we abdicate responsibility (perhaps because we despair of control). Similarly, if we deduce the need to control from a sense of responsibility, we will do damage.”³⁶⁰

Nedelsky’s highlighting of control as a prevailing, problematic notion at the heart of the autonomy-responsibility nexus within North American settler culture and

³⁶⁰ *Ibid* at 290-91.

legal orders provides an illuminating contrast with Stó:lō legal sensibility because of the strikingly different rapport that prevails within Stó:lō society to forces beyond human control. Nedelsky draws on a literature and set of practices known and intelligible to Euro-American culture to convince its members that “relinquishing control” will help them construct relationships that foster autonomy. Heeding her call to form a new relationship to the forces beyond our control, would not only work toward that goal within North American settler cultures, but also foster mutuality – the kind of rapport characterized by the acknowledgement of equality through the acceptance and appreciation of difference – between settler and Indigenous legal cultures.

In this chapter and the next, I explore stories and events that reveal how people within Stó:lō society make sense of their experience of forces beyond their control. Because those stories and events all speak to aspects of traditional governance roles and practices, and to important dimensions of Stó:lō spirituality, they will also allow me to reflect on how those characteristic Stó:lō institutions contribute to shape people’s rapport with those forces, as well as their sense of autonomy and responsibility. I argue that Stó:lō legal sensibility carves a much more subtle path to the ambiguity of the autonomy-responsibility nexus than the settler legal cultures examined by Nedelsky. Rather than misconceiving autonomous agency and responsibility as tantamount to independence and control, it embraces their multi-layered relationship to the very real forces that are beyond human control. Another way of saying this is to note that Stó:lō spirituality deeply shapes Stó:lō legal sensibility.

My analysis remains driven by the two complementary questions: What do I learn about this order and the legal sensibility it embodies from what its practitioners explicitly say *about* it, and what do I learn from their practice itself – how they speak, what they do – revealing the implicit normativity that they articulate solely in performance?

II. Context

The stories recounted in the two chapters composing this Section of the dissertation (titled “Spirit”) all refer to, or took place inside a longhouse, a sacred space of Stó:lō gathering and ceremony. Sometimes, a community centre, school gym, or other hall is used instead of a longhouse – but the proliferation of longhouses on Coast Salish territory since the ban on potlatches was lifted in the 1950’s says something about the importance placed by Stó:lō practitioners on the direct contact with the earth inside those halls – which are also called smokehouses or big houses. The longhouse is a simple wooden hall, without windows, its four inside walls lined with bleachers starting on both sides of the main entrance. They can be small or large, but typically, they can comfortably hold about four hundred people. At the center of the space, the dirt floor is organized around one or many open fire pits or wood stoves. Longhouses used to be the dwellings of extended Stó:lō families.³⁶¹ As gathering halls, they are still usually erected on the initiative of specific families, with their own resources and donations from friends and kin, in the backyard of their own houses on reserve. Many bands also have a longhouse that belongs to the community as a whole – but the fact that traditional governance work and spiritual practice are just as often held in spaces under the care, leadership and authority of the families who can muster to take on such a responsibility is an important aspect of the polyphonic quality of the Stó:lō legal order and sensibility. To talk about a longhouse is as often a way to refer to the building itself as to the governing body it represents, which rests on the spiritual authority of the family taking care of events conducted in its “home.”

To provide a sketch of how governance work unfolds, I will speak to its main elements by recalling one of the gatherings I attended in 2009. Traditional governance ceremonies are usually about rites of passage, occasions for celebration

³⁶¹ See the *Stó:lō Atlas*, *supra* note 1 at 40-47 (plates 13A-D).

such as namings, weddings, graduations – or grief, as in funerals or memorials. The event I will describe now, which took place on an evening in early June 2009 in the Charlie longhouse in Sts'ailes, was a naming ceremony: the old *xwélmexw* names of Ol-toos and El-toos, originally held by brothers, were to be put on little Jeremy, two years-old, and his half-brother Ryan junior, four months-old. The children belong to the Charlie family through their father Ryan, son of Willie Charlie. Among other family members, friends and acquaintances, their grandparents, Anna and Willie Charlie, great-grandparents, Patricia and Tunney Charlie, and great-great-grand uncle, who was a brother to two late holders of the names, were all present at the ceremony: five generations connected to the names.

The first person I saw when I arrived was Darren Charlie, who was sitting by the entrance to greet the guests. I knew Darren from attending his drum-making workshop with a group of students during the Stó:lō ethnohistory fieldschool in 2007. That year, I had also spent time with his mother Pat and aunt Ginnie, who had helped with my research on the recent history of Stó:lō child and family services, and I had listened to his brother Willie – then in the middle of what turned out to be five consecutive terms as the chief of their community – speak at gatherings and share old Sts'ailes stories with children of the family. I had reconnected with the family a few days before, this time to ask for help in learning more about Stó:lō laws and teachings, and Darren had invited me to the ceremony. I said hello, and asked him where to sit. He showed me to the third row directly behind him, by the door, and came to sit with me.

The longhouse filled to a little less than half – typical attendance for a summer gathering, as opposed to the winter, when they are often filled to capacity. In attendance were many young families with small children, and a number of elders from the community and beyond, connected to the Charlies. The elders were treated as honoured guests, sitting on the long side of the house, right of the entrance, on individual chairs in front of the first row of bleachers. Among them

was an elder who would be formally honoured as part of the ceremony, and who was there to pass on another name from her community of Kwantlen to the toddler, Jeremy: the little boy received two names that evening. Other special guests were the family of Margaret, Ryan's partner and the mother of little Ryan junior, who were coming from Alert Bay for this important event.

Once we were all seated, the speaker took the floor. Although Willie is the designated speaker for the Charlies and their longhouse, on this evening the work, being about Willie's own grandchildren, concerned him so closely that another speaker was hired to carry out the ceremony. Dean Sam, a trained speaker from Vancouver Island, married and living in Katzie, welcomed us, stated the purpose of the gathering, and announced dinner. Drummers came to stand next to him and led us into a song as a buffet was brought forth on fully laid-out tables through the wide longhouse door opening into the kitchen. After the elders were served, the rest of us lined up to serve ourselves.

The meal is a joyful moment of the gathering, the occasion for everyone to move around freely and visit. In spite of its relative informality, it still is an integral and essential part of ceremonial protocol – not a dispensable prelude to the work. In Halq'eméylem, thought and feeling are expressed with the same word: *sqwalewel*. By replenishing people, the meal ensures they are at ease with each other, that they feel good and are able to *be of good mind*. The framing of governance work by hospitality fosters good relationships among those in attendance, and allows them to receive the work with open hearts, to think of it and speak to it respectfully.³⁶²

³⁶² The relationship between food or physical warmth and interpersonal warmth has been the object of recent attention by clinical psychologists. See the following recent experiments in psychology: Lawrence E Williams & John A Bargh, "Experiencing Physical Warmth Promotes Interpersonal Warmth" (2008) 322:5901 *Science* 606; Myrte Esther Hamburg, Catrin Finkenauer & Carlo Schuengel, "Food for love: the role of food offering in empathic emotion regulation" (2014) 5 *Front Psychol*, online: <<http://journal.frontiersin.org/article/10.3389/fpsyg.2014.00032/full>> (accessed online on August 16, 2014). In political theory, see Natalie Oman's discussion of Gitksan feasting in Natalie Oman, "Paths to Intercultural Understanding: Feasting, Shared Horizons, and Unforced Consensus" in Catherine Bell & David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004) 70.

Following the meal, Dean Sam came back to the center of the floor and proceeded with the next step in the protocol: the calling of witnesses.³⁶³ Starting near the door – where the guests who have travelled the farthest to attend the gathering are seated – and proceeding counter-clockwise around the house, the speaker acknowledges at least one representative for each family in attendance and asks them to witness the work that is about to take place. Anyone whose experience and authority is particularly relevant to the gathering on that day is also likely to be called. The explicit role of the witnesses is to pay close attention to the work being done, to disseminate what they have seen and heard when they go back home to different parts of Coast Salish territory, and to be the official keepers of the memory of the event. It is also hoped that they will be inspired to respond to the work, that is, to share some wisdom or experience in connection to what they have witnessed – this is the last part of the ceremony, which I will describe shortly. For taking on that role, they are thanked with a symbolic offering – usually a few coins placed in their hands by members of the host family. The proper way to ask someone to be a witness is to call them by their *xwélmexw* name, their traditional name, such as those the little boys were receiving that day. Note that Section Four of the dissertation, on “Kin”, will examine aspects of Stó:lō legal sensibility that are illuminated by norms surrounding *xwélmexw* names.

After the speaker had called the witnesses, the actual “work” began. The two little boys and their parents were called to the center of the floor where they stood up, soon to be joined by some of the friends and cousins of the parents, all young people in their twenties who were taking on the responsibility to be “godparents” of Ol-toos and El-toos.³⁶⁴ Everyone standing on the floor was blanketed. The

³⁶³ After the meal on that day, and prior to the call of witnesses, an additional, exceptional event took place: the drummers came forward and sang while a sculpture was brought to the middle of the floor, where it stayed until the end of the ceremony. It was a beautiful piece representing two otters coming together at the mouth, biting on both sides of a shell, and the face of a woman representing the coming out of the otter song.

³⁶⁴ Note that the ceremony was referred to as a baptism throughout. This is one instance of Christian practices and terminology being actively melded with traditional Stó:lō ways.

names were announced, and their connection to the little boys was fleshed out. Two men who, Darren explained, were current holders of the names were called forth to “verify” the naming, that is, to confirm the connection of the little boys to the names, to consent to share them with the boys as additional holders, and to agree to teach the boys in time about how to carry themselves to honour their names.

Because of the Charlie family’s connection to the *sɔ́wó:yɔ́wey* mask, the ceremony was then blessed with the mask’s song and dance – something that does not happen at every gathering. Even more exceptional was the fact that the clown mask came out to entertain the guests. This sometimes happens when the circumstances are right, such as on this occasion: while the work was important and serious, this was also a children-oriented, light-hearted ceremony.

The speaker then asked the witnesses who wished to respond to the work to come forward. Since using any kind of recording equipment in the longhouse is not permitted, I do not have a *verbatim* record of what they said, nor of the speaker’s oratory – the sketch just provided is also based on notes taken from memory a few days after the ceremony. What stayed with me after the ceremony is that the witnesses – who included beloved elders in their eighties Ray Silver and Ange Peters, a man belonging to Margaret’s community in Alert Bay, and Stó:lō leader Doug Kelly – all spoke to the responsibility of caring for young children and raising them properly. After they were done, the floor remained open for other people to speak. I remember being especially touched by young Keegan Charlie, about twelve years-old at the time, who got up to say a few words in a spirit of care for his little cousins.

In accordance with protocol, the ceremony closed with a distribution of gifts by the host family to everyone in attendance.³⁶⁵ As a last gesture that night, the guests

³⁶⁵ This aspect of ceremonial protocol, which retains strong symbolic political and economic dimensions in contemporary practice, has been a focal point of past anthropological analysis and

were asked to stand in a circle on the floor at the end of the ceremony to welcome two newborns into the community. Their relatives came to each of us in turn to introduce their baby and receive our warm wishes. From beginning to end, the event lasted about four hours.

III. *The “work” of traditional governance*

Having laid down the basic outlook of a gathering conducted in accordance with traditional protocol, I want to look further into the main roles performed. The performance of those traditional roles models a particular kind of relationship that sheds light on the nature of the Stó:lō legal order. What does this relationship consist in? What attitudes to forces beyond human control underlie this relationship? What conception of autonomy does it reveal, what forms of responsibility does it foster?

Traditional governance ceremonies, as mentioned earlier, serve to celebrate and ascribe meaning to important transitions in the life of individuals and families – births, namings, weddings, graduations, funerals, memorials. Aside from the roles contingent on the nature of each of those ceremonies – such as, in the case of namings, that of the verifiers, who explain a family’s connection to a name, publicly legitimizing and blessing its bestowal – other roles are performed at every gathering and essentially give them their characteristic shape. Two of those roles stand out, for they are particularly visible at every gathering, ostensibly mirroring each other and performing a reinforcement of the mutuality and intersubjectivity that holds the Stó:lō together and more broadly, the Coast Salish polity as a whole: those are the roles of speaker and witness.

colonial repression: see *supra* note 25, and Carlson’s extensive discussion of the scholarly debates about the role of the potlatch, its post-contact transformations, and the impact of its suppression in Northwest Coast societies, in *The Power of Place*, *supra* note 1 at 201-08 (and in particular at 202-03 and endnotes 56-59). While the current chapter discusses key roles within contemporary potlatch protocol, and in that context, addresses some of the long-term training and more immediate preparation leading up to those gatherings, engaging with the issues related to the accumulation of wealth and their important implications for governance is beyond the scope of this thesis.

To inquire into the principles and ethics that govern the performance of those two roles, the speaker seems like a good starting point. Both speakers' and witnesses' competence and depth in the fulfillment of their role certainly vary depending on their knowledge, experience, insight and oratory abilities. But while witnesses are spontaneously and punctually called, depending on their particular insights on the nature of a given gathering, and on their representativeness within the attendance at the gathering, as far as I know, people do not undergo specific training in order to be witnesses. Indeed, sometimes, visiting outsiders to the community are even called upon to act as witnesses, and they perform the role as best they can without having practiced or even heard of their duties before the ceremony. Speakers, on the other hand, are picked by their family for their special abilities, and trained in the role.

The speaker

Willie Charlie, Chqwó:qwet, tells this story about an important moment in his training, when his uncle taught him how to approach his role:

“[... O]ne day there was a ceremony in our longhouse, and it was going to be one of the first times that I was going to speak at a big gathering – and my uncle came in, and I was there (hmm... there's two stories, I try not to get them mixed up... hmm...). He said – when he came in I was putting wood in the fire, and he walked by me and he said: ‘Son, are you speaking today?’ and I said, ‘Yeah, Uncle, I am speaking, yeah, I'm really happy.’ And then he kind of said ‘okay’ and sat down, up in the back. And then the next time he kind of walked back I was drumming and singing for somebody, and Uncle tapped me on the back of the shoulder and he said, ‘Son, are you speaking today?’ and I said, ‘Yeah, Uncle, I'm speaking.’ And I kind of carried on singing. And then he went by and I was in the kitchen doing something, helping the ladies or whatever, I was in the kitchen anyway. And he asked me again,

'Son, aren't you speaking tonight?' and I said,
'Yeah Uncle, I am!'
And he said,
'Come and sit down.'
And I said, 'Uh oh.'
'Come and sit with me.'
So we went up into the back and sat in the longhouse. And he said how
you're supposed to put 100% into whatever you're doing.
So he said, 'When you're drumming and singing, do you give 100%
because you pick up that person's spirit?'
And I said, 'Yeah, Uncle, I do, I really believe in that.'
He said, 'When you were looking after the fire,' he goes, 'that's a
connection to our ancestors and the spirit world,' he said, 'do you put
100% in there?'
I said, 'I do, Uncle.'
And then he said, 'If you're in the kitchen helping, are you putting good
feelings and good 100% in that as well?'
I said, 'Yeah, Uncle.'

He said, 'How do you have 400%??' And he said, 'How are you going to
capture the feelings and the emotions of the people if you're too busy
giving everything everywhere else?'
He said, 'Son, when you're speaking,' he said, 'you go and you sit down
up there, and you sit still and you watch and you feel.'
He said, 'You watch to see who's coming in,' he said, 'because when it
comes time to call witnesses you have to know who's there, and you
have to call a representative from each major family, and if you miss one
family it's like you're disrespecting them and you're ignoring them, and
so you're - it's like shaming them.'
And he said, 'If you're too busy fixing the fire and drumming and
singing, you're not gonna know who's there. So you sit down and you
watch who's there.'
He said, 'You sit down and you feel what's in the room. If you're too
busy drumming, fixing fire and cooking, how are you gonna feel what's
in the room and what you're gonna draw upon?'
So he said, 'When you're speaking, sit down and you listen and you feel

what's going on.”³⁶⁶

Willie goes on to tell the story of the second teaching, intimately connected with the first:

“Another example he gave me one time: I was speaking with him at a ceremony in a modern setting, it was in a hall somewhere, and we were going up, the table was set, then, I was training at the time playing soccer so I was always hungry – not different today I guess but – I was really hungry and tables were set, and I said the tables are set and I'm gonna go eat. And he looked at me, he said, ‘Son, are you speaking with me tonight?’ (or today) – and I said, ‘Yeah Uncle, I am.’

And he goes,

‘Well, speaking is just like any other part of the work, you don't eat until your job is done.’

And I said, ‘Oh, okay.’

So we kind of sat down beside him, and I started to tell him about experiencing the longhouse again.

I said, ‘Uncle,’ I said, ‘it's really weird,’ I said, ‘I was throwing up the other night and I'm not like that, I don't have a queezy stomach, and I don't throw up very easily,’ and whatever. I said, ‘It was so weird, I was at the end of the night at our longhouse in a gathering,’ and I was explaining to him who was there and what was going on, ‘and at the end of the night I was just throwing up and throwing up.’

And he said,

‘Tell me what you did that day.’

And so I told him,

‘I went to the smokehouse early, and fixed the floors and lit the fire and swept the bleachers and helped get all of that ready, and I helped sing for the people and I did the work on the floor that night and I sang for the openers for the people and helped look after the people and I stayed till the end.’

And that's the time when my brother Kelsie was a young dancer, and we were up late into the night and I told Kelsie, ‘Go ahead, you know, and sing.’ Right after Kelsie was finished singing and dancing, I went outside and I started throwing up, and throwing up, and so I said – I guess I was

³⁶⁶ Andrée Boisselle, *Interview with Willie Charlie (Chqwó:qwet)* - March 20, 2010 (Sts'ailes).

looking for pity or acknowledgement doing good from my uncle. And he said,

'You're selfish and you're greedy.'

And I said,

'Hmm, Excuse me?'

He said,

'Well son, you're selfish and you're greedy. Why did you, why did you think you had to go into the longhouse early and do all of that work? Because nobody can do as good a job as you? You have to teach them the right way?'

'Yeah, I guess so...'

'Why are you drumming and singing? Do you not trust the other young drummers?'

I said,

'Well, they don't really know all the songs...' and this and that...

And then he asked me, while I was doing all those things, he said 'Well, you're selfish and you're greedy.' And he said,

'How are the young people gonna learn if you don't give them the chance to grow into the roles and the responsibilities that they have, if you're always gonna be there?'

And I said,

'Well, Uncle, they expect me to be there and to do this and that.'

And he said,

'Yeah, because you're not letting them grow, and you're selfish and you're greedy.'

[And he went on explaining:] Everybody in a family, in a spiritual home, there's many many gifts, no one person was supposed to carry all of the gifts. That everybody has their gift and their job that goes along with their gift, and in a strong family all of those gifts, all of those different people come together to spread the work out so that everybody feels that they're included, that they did some part of it and that they have some ownership on it. And at the end of the night they feel good because they've all worked together to carry out a ceremony. So he said, 'You have to allow the younger people to grow, and you have to step back.'

So again, he was – the examples that he, the teachings that he gave me

were not gentle.”³⁶⁷

1. *Interacting with other intentional human beings*

Both stories depict Willie’s fervour and selfless involvement in all the details of the ceremony, and his uncle’s critical reinterpretation of his efforts: in the first case, as a failure to understand a crucial dimension of everyone’s respective role; and in the second, as an attempt to control everything and everyone having to do with the ceremony. In the first story, Uncle Buster teaches that every part of the work is as important as every other and requires the full attention of the person performing it. His definition of each person’s work, be it drumming, tending the sacred fire, cooking, or speaking, underlines its unique spiritual dimension. Every one of those tasks contributes in its own way to connecting the assembly spiritually – each person to herself, to the other people in attendance, and to the ancestors and the spirit world. Adequate performance of the spiritual dimension inherent in each task demands, quite simply, everything a person has to give – “100%”. In other words, dabbling in everyone else’s duties not only misunderstands the depth of focus and attention (what I have in mind here is the French word *recueillement*: a state of self-collectedness that prepares one for prayer) required of Willie’s own preparation to speak, but also belittles the seriousness of all the other roles on which the integrity of the ceremony depends. I will return to the spiritual dimension of the work in a moment.

The second teaching carries the same principle – do your own work and let others do theirs – framed through a complementary set of reasons. This time, Willie’s uncle emphasizes that while he may be able carry out other roles than his own, other people’s gifts make them better suited to accomplish those roles – and that it is in everyone’s interest that they do. By stepping in, Willie is preventing them from practicing the skills, building the knowledge, and developing the experience associated with their particular abilities. Speaking of people’s unique gifts – a

³⁶⁷ *Ibid.*

language with deep spiritual resonance, like the one he used in the first story – Uncle Buster delineates a strong vision of the relationships supporting good governance within Stó:lō families, which articulate with each other to form Stó:lō/Coast Salish society: “in a strong family all of those gifts, all of those different people come together to spread the work out so that everybody feels that they’re included.”

In this vision of what makes for a strong and healthy family, the leadership practiced by its older, more experienced members does not consist in attempting “to carry all of the gifts” but in “allow[ing] the younger people to grow.” Willie is taught to participate in the leadership of his family by fostering all of its members’ autonomy, in a conception of autonomy that emphasizes building confidence in the exercise of their gifts, of their own judgment and creativity, their ability to contribute something that is uniquely their own. Nurturing their autonomy is done by “stepping back” and relying on them to respond to what is required for the ceremony. Letting them exercise their judgment and creativity in fulfilling their own roles and learn what they do not initially know (“all the songs”) develops their responsibility (or response-ability).

Uncle Buster’s teaching, now modelled and transmitted by Willie, acts on a vision of the Stó:lō social order that rejects the dependence of Stó:lō people on a small, empowered elite. It is based instead on interdependence, relationships of mutual trust and reliance that give everyone the space they need to “grow” as autonomous individuals, all equally indispensable to the group. Here again, the constitutive norm of the Stó:lō legal order, at the heart of Sonny’s speech act examined in Chapter Three, is expressed by a figure of authority who adapts it to the context of his teaching – that of training a young man to speak on behalf of his family in a ceremonial setting. Even in the prominent and diplomatically sensitive role of speaker, which rests on an intellectual, spiritual and emotional articulateness highly regarded in Stó:lō society, Willie remains above all embedded in a collective

whose strength does not depend on him, but on the value of each contribution made by its members, and on their ability to work together toward a common goal. As much as anyone else, maybe more so because of the leadership value of his role – speaking on behalf of the family – the speaker is expected to participate in the construction of relationships reinforcing interdependence within the Stó:lō / Coast Salish network. This involves speaking and behaving in ways that uphold everyone’s autonomy within that network – taking one’s own place in it, no more, no less.

This fundamental ethical prescription of acknowledging everyone’s place, which involves taking one’s own place and attending to one’s own responsibilities within the interconnected polity, not only informs the Stó:lō legal order as an implicit norm governing the way to address the community – as in the case of Sonny’s speech – or the way to approach one’s interpersonal relationships behind the scenes within the family or longhouse group, regarding the preparation and performance of ceremonial governance work. It is very much at the heart of traditional governance work itself. Uncle Buster mentions it in the first story above as one of the most important duties of the speaker: “you have to call a representative from each major family and if you miss one family it’s like you’re disrespecting them and you’re ignoring them,” he says, “it’s like shaming them.” When the speaker calls witnesses from each of the families who have responded to the host family’s invitation, he highlights for everyone in attendance some of the connections of the host family within the vast web of relations constituting the wider Salish polity (and beyond, its connections to its Indigenous neighbours and non-Indigenous guests). The calling “lights up” a subsection of the web. The process formalizes the mutual recognition of the host family and of the families in attendance as having the authority to implement changes in the political and legal landscape of the wider Coast Salish network. I will come back to the nature and significance of the governance work performed in a moment, when we turn from the speaker’s role to the witnesses’.

As he teaches Willie to respect and foster the autonomy of the other members of his longhouse family, Uncle Buster acts authoritatively to shape Willie's own autonomy, restricting the field of his choice and action in one direction only to open it up in another, showing him where to focus his attention to deepen and amplify his effectiveness in his own role. To grasp the full richness of the elder's intervention in that regard, we need to pay attention not only to what he says, but also to what he does. Even through the small window provided by the two stories – which hint at the speaker's spiritual attunement without disclosing much about its nature, nor about the practices that will allow its development – we see him modelling what he tells his pupil to do. He quietly stands by and pays close attention to what Willie is doing, for an extended period of time (the activities described by Willie most likely took place through a whole afternoon). He weaves his teaching with the material arising from spontaneous interaction, speaking in a new way each time (as we see from the two versions of his teaching), highlighting different aspects of the norm he transmits by rooting it in the specific context of his interaction with his nephew. These features of his practice point to a striking kinship – at a high level of generality – between the relational philosophy underlying Uncle Buster's pedagogy, and Jennifer Nedelsky's theorization of the human capacity for creative interaction. In the course of describing this capacity as the cornerstone of legal responsibility and of advocating an orientation to the law taking the full complexity of that capacity into consideration, she writes:

“Creative interaction [...] requires the capacity for attention, for receptivity and responsiveness (and more). These dimensions help remind us that since creative interaction involves *interacting*, one must be able to attend, receive and respond to what one is interacting with. Otherwise the full potential for creativity will not be achieved. But that potential also requires the possibility of *new* engagement, breaking or transforming received patterns, giving rise to and acting on one's own distinctive perceptions, insights, and forms of engagement. This is the

dimension of creative interaction captured by the idea of autonomy.”³⁶⁸

Speaking of the inherently relational character of the exercise of one’s creative potential, she adds:

“The capacity for autonomy can wither or thrive through one’s life, and those who value autonomy must not simply posit it as a human characteristic but also inquire into the conditions of its flourishing. And we can only understand those conditions when we understand how relationships shape the development of our core capacities in ways that make interdependence a basic fact of life – throughout our lives.”³⁶⁹

This description of the necessarily relational process that presides over the development (or rather, ongoing fluctuation) of the innate human capacity for genuinely creative action, places Nedelsky’s theoretical understanding in strong resonance with Stó:lō ontological insights. Those insights include the recognition of an innate core to the capacity to tread one’s own path, but also of the profound power of social institutions to enable and constrain that capacity to interact with what is given, and in turn to act upon the frame. The particular interpretations given by Stó:lō people to those insights over time have been incorporated into the intellectual tradition underlying Uncle Buster’s pedagogy. Three interrelated features of this pedagogy inflect his interaction with Willie and shape how the young man will come to think of the contours of his autonomous agency and of its mode of exercise.

a. Respecting pathways: each of us learns in their own way

At one point, Uncle Buster frames the dominant message of his teaching using the language of individual “gifts”: “Everybody has their gift and their job that goes along with their gift.” This entails that “no one person was supposed to carry all of the gifts” nor try to appropriate/oversee all of the roles and responsibilities – concentrating all the power onto himself. For the Stó:lō, the qualities that are

³⁶⁸ Nedelsky, *supra* note 356 at 166-67, emphasis (“interacting” and “new”) in original text.

³⁶⁹ *Ibid* at 167.

uniquely yours, through the development of which you will take, and shape, the place that can only be yours in society, are not a matter of choice. They are part of what is given to you to work with. This translates into a double responsibility for the people around you: first, to help you identify your potential and second, to help you materialize it. Of course, you are not obligated to do the latter – people sometimes wrestle with their elders’ interpretations of what their gifts consist in, set the implications of these interpretations aside, or modulate the nature and intensity of the responsibilities associated with those interpretations.

This process of recognizing who a person “is” leads to Willie’s training as speaker. While this training stems from the identification of Willie’s innate abilities, it also causes him to change, leading him to form a new understanding of himself and of his social world through his uncle’s (and other elders’) interpretation of traditional governance roles, rules and protocol. Uncle Buster’s teachings amount to a transformative discipline – a series of ethical practices with political and legal implications, endeavouring to make Willie fit (for) a role defined externally from him, in keeping with a tradition that long preceded him. But for all this, those teachings are also adapted to Willie’s particular temperament. Uncle Buster does not only recognize Willie’s potential, he also sees his triggers, his limits, his particular bends – which are, as much as his gifts, the means at his disposal to create his life. Although it may not be immediately apparent within the two stories recounted above, there was a point at which it became clear to Willie that his uncle was tailoring his pedagogy to those elements of his temperament. In a coda to the two narratives above, he shares this:

“I asked my uncle Buster that one time too, and he was talking – there’s lots of occasions when he made examples of me, he would stand me up in front of gathering people, and finally one time when we were alone I said, “Uncle,” I said, “I really try, I really believe in this life, I really am sincere about everything that I do, it’s gotta show.” I said, “How come you’re always picking on me?” I said, “I have lots of brothers, I have lots of cousins that are the same age as me and that are older than me, and

they're doing the wrong things, and I'm always trying to do the right thing.”

And he said, “Son, cause I know you're strong enough, that it's not gonna let you, keep you away – and,” he said, “and by teaching you in that way I know that it's gonna sting, but I know that it's gonna stay with you. If I told you in a gentle way, you might not retain it, you might not get the teaching.”

So he identified right away the way that I was gonna learn. He could understand right away the way that I would learn that, if I was stung by something... but he also knew that I would be strong enough to carry on and not be discouraged and walk away.

So everybody learns differently, and elders that are wise can see that, and they can understand that – and so, therefore, I was able to grasp a lot of the teachings by being made an example of. So it's the same teachings that I pass on today, but in usually more of a gentle way than my uncle. [...] So I carry some things, a lot of teachings from my uncle. A lot of the elders, and my parents, family members, my aunts – they say that they, when they hear me speak, ‘it reminds me of Uncle...’³⁷⁰

Picking the right pupil for a certain category of teachings, and working with his character to *inflect* his character are part of Stó:lō elders' strategies to guide young people toward adopting desirable behaviours. Their pedagogical wisdom reflects a vision of autonomy with resonances throughout the broader intellectual tradition, and consisting in the capacity to choose how to interact in the face of things over which we do not have a say – such as each person's intimate makeup. This hints at a link between autonomy and respect: you respect something when, at the root of your interaction with it, you recognize that you have power, but that such power does not amount to control.

b. Experiential learning and the interactive construction of experience

In the first story, rather than correcting Willie right away, his uncle asks him a question: “Are you speaking tonight?” At first, this sounds like a simple inquiry – but as soon as he asks a second time, it is clear that he is providing Willie with a

³⁷⁰ Interview with Willie Charlie, *supra* note 366.

chance to think by himself about what he is doing (and not doing). The brief interruptions build Willie's puzzlement: his uncle is acting with intent – what is it? As he keeps buzzing about, he is nudged to start questioning what he is doing and to pay attention to his restlessness. He may become a bit self-conscious, realizing that his uncle is watching. When his uncle sits down with him, he is ready to learn. He has had the space he needed to become self-aware, and curious.

Willie's elder values learning by experience. This does not mean leaving Willie alone to learn by himself, observing and doing, piecing together what went well and what did not. It does not mean either that the Uncle sees himself as the architect of artificial experiences, just for practice. Rather, he places his nephew in the context of having to discharge real responsibilities, gives him space to think and act on his own, and builds an interaction with him that contributes to his experience – magnifying and crystallizing it. More specifically, his interaction with his nephew builds a pattern, a suspense, constructing the experience like a story.³⁷¹

c. *Storymaking, storytelling*

If Uncle Buster, seeing Willie's behaviour, had immediately stepped in to explain that he needed to let others do their job and concentrate on his own, there would have been no event, no depth of experience, no story. Instead, the elder deliberately steps back and leaves room for things to unfold, choosing a course of action that effectively turns both Willie and himself into the protagonists of a story. This sets the stage for Willie to follow in his uncle's footsteps not only as a speaker, but also as an effective teacher for the next generation of young adults learning their ceremonial responsibilities. The interaction with his uncle provides him with more than mere knowledge about the ceremonial ethos of inclusion,

³⁷¹ Julie Cruikshank has shown how the Athapaskan and Tlingit elders with whom she worked constructed their lives in keeping with the patterns developed in the storied body of their society's oral tradition: *supra* note 108. Links can also be made between Uncle Buster's pedagogy and the mode of teaching found in Stó:lō mythological narratives. He is carefully watching how his mentee is behaving, and the significance of such behaviour will emerge in interaction with him – the intentional, attentive, knowledgeable watcher. This approach to intersubjective meaning-making informs narrative patterns used by storytellers of the *sxwōxwiyám* storycycle.

about the uniqueness of individual gifts, and about the qualities and skills attached to his own role – it gives him a story to tell. This enables him not only to transmit his uncle’s teachings, but to reproduce his pedagogy, allowing others to learn by experiencing for themselves the puzzlement he felt at his uncle’s repeated question in the first story, and reiterated scolding in the second.

Willie clearly cherishes those stories. He does not, any more than his uncle at the time of the events, take any shortcut that might reduce either story to one or more of the principles that they illustrate. On the contrary, he brings the characters alive, reproduces the dialogue in direct voices, preserves the effect of repetition, nurtures his listeners’ curiosity and readiness to learn, mirroring his own. Willie suffered by being scolded – sometimes publicly, as he points out. Yet he continues to tell the stories of his training, showing both what he has learned, and how. The storied re-enactment of his interaction with his uncle signals that their exchange contains much that is of value, beyond the principles that are the strict object of the teaching.

Willie is not afraid to talk about his early misgivings, mistakes, and weaknesses. The honest display of his vulnerability allows us to identify with him, but also to take stock of how far he has come in absorbing the teachings – to the point where he now reminds his elders of his uncle, when they hear him speak. Becoming a figure of power, for Willie, involved a transformation, a turning away from individualism and independence, toward developing a deeper trust with his uncle, and with the other ceremonial workers around him. The stories offering this glimpse into the construction of Willie’s subjectivity show him not in control, but in formation. This capacity to transform, drawing on innate / inner faculties and on the relationship with a respected, knowledgeable elder (or with another powerful spiritual force), has a deep echo in the Stó:lō narrative tradition.³⁷²

³⁷² Many stories feature this pattern of transformation of a young person, thanks to their close relation with one of their grandparents: examples include a story about a boy who is abandoned by his whole village because of his criminal behaviour, and who not only survives, but prospers and

The stories of Willie’s transformation humbles him, but also conveys that humility itself is an important attitude to develop in the process of accessing one’s power: to step into his own role and acquire the status he has achieved in time, Willie had to draw on his ability to listen and observe, take criticism, and learn to focus his attention inward and outward – eventually to make the most of his creative and expressive abilities. The stories also display the Stó:lō emphasis on the relational process of learning how to exercise one’s capabilities. You are not self-made and do not learn alone, but in interaction. Part of your status depends on the pedigree of your teachers. No matter how Willie initially fared in his early training days, he was taken up as a student worthy of being taught by a respected speaker in the community. The fact that his uncle put in the time and effort to teach him shows how much he is valued by his family. His capacities were discernible to his elders even when he did not yet know how to use them.

The storymaking / storytelling pedagogy practiced by Willie and his uncle is an authoritative behaviour that rests on a particular vision of autonomy, and contributes to reproducing it. Both Uncle Buster and Willie construct the story, interactively and narratively, and the care they put into it suggests that a crucial dimension of the exercise of their autonomous agency – of their creative capacity to choose how to act and inflect the course of their lives and relationships – takes place through storywork.³⁷³ Choosing to tell the whole story, rather than simply stating the points made by Uncle Buster on each day, teaches listeners to do the same – to use storytelling to deepen a teaching, disseminate it, and recreate the

improves himself thanks to his grandmother, who leaves burning embers in a hole in the ground for him: Lerman, *Analysis*, *supra* note 240 at 30-40 (versions II and III of the “Raven” story). See also the story of Squirrel and his grandmother, *ibid* at 109-11; the story of the boy training to be a doctor under the guidance of his grandfather, *ibid* at 250-54; and the story of the flounders, where a grandfather looks after his grandson: *supra* note 264.

³⁷³ See Jo-Ann Archibald (Q’um Q’um Xiim), *Indigenous Storywork: Educating the Heart, Mind, Body, and Spirit* (Vancouver: UBC Press, 2008). The interpretation I put forward here, discussing the storywork taking place in the pedagogical relationship between Willie and his uncle, is that it serves to express and deepen a particular form of relational autonomy. The storywork they perform together displays a form of exercise of their capacity to choose and act in ways that keep them in the community while also allowing them to define their individuality.

vividness of experience. Giving listeners the story also shows respect for their creative agency in the interpretive realm. This is not only because it allows them to draw on the various contextual elements of the story to distinguish and nuance the application of the principle it stands for, when applying it to a new context – as common law practitioners do when reasoning with stories having precedential value. In the Stó:lō context, where a major part of the body of stories that contribute to reproducing legal order are not adjudicative stories, and therefore principles such as *stare decisis* or *res judicata* do not apply to those stories, the creative and analytical play is freer, with interpreters continuing to draw on new elements of the interaction it puts on display, proposing additional interpretations derived from dimensions of the story so far not explored. Even a story that resolves itself, as here, into an explicit statement of principle by the teacher triggers the listeners' creative interpretive power more than the sheer principle. It lets them “take what they need” from a story anytime they hear it, and to grasp meaning differently or from other elements of the narrative, at another point in their lives. This remark comes up consistently in Stó:lō circles: that interesting, rich stories keep revealing their teachings through time to each listener, as they become able to understand them. It is a phrase I have heard said to encourage people tell or retell their stories (you, the storyteller, cannot presume the value of your story for the listeners) as much as an interpretive principle for the listeners themselves.

The teachings contained in the two short stories of Willie's training, and in Willie's commentary on the stories, have intellectual, ethical, emotional and affective value. Uncle Buster addresses all those facets of Willie's character and capacities in the pedagogy he employs with him, and Willie's storytelling does so as well with its audience. Those dimensions of the rapport between Willie, his uncle, and the stories' audience (you and I), both explicitly expressed and tacitly modelled, have been the focus of the analysis so far. What are some characteristics of a Stó:lō conception of autonomy and responsibility that have been disclosed by examining this interactive triangle? In this part of the analysis, the stories' protagonists were

approached as intentional human agents, acting voluntarily and able to make and explain their decisions. They are for each other forces to be reckoned with, beyond each other's control. The teachings are focused on recognizing each person's realm, giving her the space she needs to take her rightful place, to live, craft and interpret stories in her own way. Yet the importance of relationships between autonomous human agents is also a cornerstone of the pedagogy. There is a sense of deference to people with more developed knowledge, experience and wisdom, but basically the protagonists of Willie's stories are all respected as autonomous agents and represented as standing shoulder to shoulder, on equal terms.

But the stories also make reference to forces of another kind altogether, interacting with humans as well as within them, yet beyond their control and not on equal terms with them. Uncle Buster's teachings address those spiritual forces as a dimension of human agency and autonomy. As such, the teachings/stories not only shape Willie's (and Willie's audience's) understanding of his intellectual, ethical, emotional creative capacities in his relationships to other intentional humans, but also hint at how to use those capacities in his interactions with the spirit world. An important goal of the elder is to render Willie able to interpret what is going on and to take responsibility for his actions and powers in that realm.

2. Interacting with the spirit world

As discussed so far, a main point of Uncle Buster's teachings is that everyone has their own role and responsibility in the ceremony – and conversely, that anyone seeking to micromanage or *take control* of a gathering will not only impair the performance their own responsibilities, but also weaken the social fabric of their extended family / longhouse group. In addition to those strong statements about what not to do, Uncle Buster also provides Willie with guidance on the positive fulfilment of his speaking duties. Their exchange hints at the fact that the traditional governance roles structuring the political and legal order of the

community are also spiritually powerful roles – and need to be handled with care. There is a mode of relating to others, in one’s capacity as a figure of power and authority in the community, that is defined by how one interacts with forces decisively beyond one’s control. Those forces are seen to significantly affect the mental, emotional and physical well-being of individuals, and therefore of all those with whom they are in relation. Understanding the Stó:lō ethics of care, the normative ideas regarding taking responsibility for oneself and for others, thus involves paying attention to the norms, practices and conceptual resources within Stó:lō / Salish contemporary thought concerning the interaction with those forces – the spirit world. Stó:lō conceptions of autonomy and of its limits – including the circumstances, conditions and process surrounding the exercise of force upon individual members of the community – are derived in part from the multifaceted rapport with the spiritual realm of power that enforces itself on humans. In other words, the political-legal order of the community both shapes and is shaped by the conception and forms of exercise of individual and collective autonomy, which themselves shape and are shaped by a form of spiritual attunement that implicates every dimension of being – intellectual, emotional and physical. Exploring the connection drawn, within Stó:lō teachings, between the way of relating to spiritual forces and the performance of traditional governance roles uncovers the particular “dynamics of how autonomous agency, genuine creative interaction with constitutive structures of power”³⁷⁴ is thought of and exercised within this legal order.

The stories that Willie shares about his training as speaker are very short, yet they allow us already to note the strength of that connection and to begin to sketch some of its implications. Let’s start with the first story, which contains a condensed expression of the speaker’s responsibilities. Willie’s elder says that he needs all of his concentration in the hours leading up to the ceremony, and as people gather in the hall of the longhouse at the beginning of the event: “You sit

³⁷⁴ Nedelsky, *supra* note 356 at 168.

down up here, and you sit still and you watch and you feel.” He outlines two distinct reasons for this. The first has to do with making sure Willie does not overlook anyone during the call of witnesses. He must observe who is coming in, identifying mentally who responded to the host family’s invitation, quietly recalling who is related to whom, who should be called on behalf on each major family, and the traditional names of each of those individuals. Calling upon one’s mental map of the wider nation’s kinship network (extending to the Salish world as whole) – which gets more intricate every time you meet a new person – requires knowledge, memory and the ability to work with others to quickly and respectfully fill in the gaps. This takes poise, and by itself warrants that the speaker not disperse himself in the myriad details that must be looked after to ensure a successful gathering.

But however delicate this diplomatic task of properly identifying and calling the witnesses to the ceremonial gathering may be, the second dimension of the speaker’s role hinted at by Uncle Buster is even much more so. The speaker does not only have to “know who’s there – so you sit down and you watch who’s there.” He also has to “*feel what’s in the room and what you’re gonna draw upon,*” and so must “sit down” and “*listen*” and “*feel what’s going on.*” Clues to what this means are provided by other things the elder tells Willie. A moment before, he has summarized each of the roles that Willie dabbled in. His description of every other role shows them all to have a deeper dimension. Every one of those actions accomplishes something in the material world and responds to a tangible bodily need – producing a vibrant sound, ensuring the hall of the longhouse is warm and dry for the guests’ comfort, that the dirt floor is even, compact, and clean so that no one will trip and that dust will not cloud the air. But there is a deeper significance to every one of those down-to-earth, quotidian gestures. Uncle Buster points out that drumming and singing are meant to “pick up the spirit” of the person whose song you are performing; preparing the food involves pouring in one’s “good feelings,” an ingredient that nourishes the guests’ spirits along with

the deer meat, salmon flesh, fruits and vegetables that nourishes their bodies; tending the fire literally amounts to opening and holding open the door to the spirit world. The physical acts tend to physical needs, but also to the relationship with something powerful and intangible, requiring the complete presence and positive spiritual attunement of those performing the task. The body is the barometer and conduit of the spirit world.

Willie's second story further illustrates this reading. Uncle Buster states a rule applying to all the workers at a ceremonial gathering: "You don't eat until your job is done." Fasting is a technique used in many spiritual traditions, with different declinations in terms of the parameters of its practice, its significance and purpose. In this instance the mini-fast, delaying supper for few hours on the day of the gathering, echoes the multi-day fast that new spirit dancers undergo during their initiation (a process I will return to in Chapter Five). Very broadly outlined, the Stó:lō spiritual practice of the fast forms part of a series of self-care techniques to cleanse the body-mind, shed all artifice and disconnect the chatter of the rational mind, renewing one's capacity for alert presence and sensitivity to what is not visible. Spiritual bathing in ice-cold creek pools, being brushed with cedar boughs, wearing a scarf over the eyes during the initiation to concentrate on other senses, are a few of those companion techniques – each with their own teachings, to which I am not privy.³⁷⁵ In their broadest contours, I understand those techniques as contributing to bring about mild sensory shock or sensory deprivation, with a goal to disorient (to better reorient) the initiate, deprogramming their habitual responses and helping them develop a sixth sense: the ability to be attentive to spiritual forces, decipher what they are signalling, and eventually, at a higher level, learn how to interact with them in different ways.

³⁷⁵ While I had the privilege of being led into the form of bathing and brushing I am referring to, the specific meanings associated with the spirit dancing initiation rituals were not shared with me, and I did not attempt to conduct primary research into their content and significance. I am sharing some of the things I have learned outside the formal context of interviews, that structured my own understanding of what happens in a traditional ceremonial gathering, and opened a window into the deeper significance of the roles played by the workers preparing and conducting ceremony.

Thus, Uncle Buster's allusion to the mini-fast to which ceremonial workers are held, along with his focus on the spiritual dimension of each their roles in the abbreviated description he provides of those, points to the collective spiritual responsibility of those working to host a traditional gathering. The transmission of entitlements and responsibilities that they attend to does not simply contribute to the ongoing construction of the "human" personhood of one or more members of the host family, and to their significant political and legal attributes within Stó:lō society. It also contributes to the spiritual dimension of who they are, and as such attends to a layer of relationships within the nation that defies time and space. Each ceremonial worker is effectively called upon to handle an aspect of the relationship with and between spirits: those of every embodied person present at the gathering, or affected by what comes to pass there – and those of their ancestors. Fasting puts them on the path to being receptive and alert not only to fulfil the material, tangible part of their duties for the evening, but to "feel what is going on" in the spirit world.

This sketch of the spiritual rationale behind the fasting rule also illuminates the way Uncle Buster interpreted what happened to Willie when he suddenly got sick and began to throw up violently at the end of one of those gatherings where, prior to Uncle Buster's teachings, he was dispersing himself and micromanaging everyone's job. Uncle Buster's reading of Willie's actions have a strong moral connotation: "You're selfish and you're greedy." The elder reads Willie's sickness as stemming from the fact that he was weakening his longhouse cohort and his family by taking other people's rightful place, attempting to concentrate power and to control every aspect of the gathering. Willie's spirit, the part of his agentic, creative powers over which he does not have control any more than "it" has complete control over him, reacts by weakening *him*, forcing him to reject the food supposed to nurture him. It uses his body as the conduit to alert him to the fact that his behaviour is dangerous, misusing his autonomy and negating that of others – and to lead him to tune into a more respectful interaction with everyone's

spirit. In the context of the events narrated by Willie, throwing up figures as a powerful manifestation of the action of this force within him, distinct from his consciously wilful person. He can grow to “feel” and to act with it, but not to box, ignore nor silence it. Attempting to bracket it, or negligently getting out of touch with it can pose a risk to himself and to his community.

The notion of spiritual attunement does not solely describe something negative – what will allow Willie not to overstep his role and to cease interfering with others’; it positively speaks to a state and to a set of skills at the heart of the speaker’s own role in the ceremony. At its most obvious, this role involves knowing how to accomplish the tasks dictated by protocol in all their intricate detail, which implies knowledge of the significance and teachings associated with each step of the ceremony. The speaker is the pivot of the ceremony – the one through whom every part unfolds in due course, in sequence, and following the applicable rules.³⁷⁶ This necessary attention to rule-bound coordination on the part of the speaker, however, only describes the visible part of his role. Underneath the surface lies an art upon which rests the success (attainment of the goals) of the ceremony. Uncle Buster describes this art as that of grasping “what’s going on” in spiritual terms in the longhouse, once the guests have gathered inside; and of speaking so as to “capture the feelings and emotions of the people.”

The dimension of traditional Stó:lō governance that is properly described as “ceremony” is based on the recognition that there is a powerful dimension to every person’s agency that lies outside of their conscious control, yet needs to be reckoned with, by the person herself and by those interacting with her. The spiritual dimension of the speaker’s role that Uncle Buster addresses in the story consists precisely in that reckoning. It combines two things that are in tension, every time we speak of the deeper characteristics of the ongoing work of law, of

³⁷⁶ For example: who needs to be acknowledged and how; who must be blanketed; who needs to speak, about what; what objects must be brought forward and how, etc. See the opening section of this chapter for a glimpse into how one ceremony unfolded.

maintaining legal order, in the manner of the Stó:lō tradition: 1) a reverential fear for the sacred within each person – the intimate and fierce spiritual power that acts through you, that keeps you alive and thriving but can also sicken, even kill you, and wreak havoc within the circle of your relations; and 2) a belief in the capacity to properly care for, interact with and channel that spiritual power to achieve a powerful spiritual tandem within the self, and a form of unison within the polity referred to as *lets'emó:t*.³⁷⁷ The speaker must *tune into* this spiritual energy within the assembly, and address the aggregate of this power in the collective. This is about as far from a mechanical role as one can imagine. The speaker is anything but a “speakerphone”, going through the motions, merely announcing with a booming voice the different parts of protocol as they unfold. He trains toward a form attunement that allows him to perceive what is going on in the longhouse, and to speak and act accordingly, in the moment, so as to *bring everyone together*.

This form of attunement at the heart of the speaker’s role in Stó:lō and Coast Salish traditional governance is also, as I see it, a capacity at the heart of the other main structuring role of the formal gathering – that of the witnesses. In fact, I would argue it reaches beyond that, to broadly characterize a particular approach to engaging with the forces beyond one’s control in the Coast Salish tradition. This mode of engagement manifests in a range of other contexts than traditional governance. I think of it as epitomized by the current form of traditional spiritual practice within the Coast Salish world – something I will discuss shortly. To point to this mode of engagement at a higher level of generality, examine some of the contexts where it plays out, and start forming a sense of its contribution to the ethos of interconnectedness informing Stó:lō / Coast Salish legal sensibility, I will refer to it as the *witnessing stance*. It signals the deep relationality at the heart of the Salish subjectivation process.

³⁷⁷ This word is used to describe the goal of ceremony by one of Willie’s brothers, Kelsie Charlie, who brings it up regularly in his teachings.

The witnesses

The discussion of the speaker's role at the gathering has shown that, far from being a simple mouthpiece for the host family, he has a delicate task to perform, rooted in spiritual attunement. However, the focus on this role, and the elucidation of its political and spiritual ramifications that Willie Charlie's story about his uncle's teachings has allowed, should not be taken to suggest that the success of the gathering rests entirely or even mostly on the speaker's shoulders. Rather, it will help to think through the responsibilities attached to another role, that of the witnesses, and to inch our way toward grasping the significance of the ritualization of a person's life transition *as a governance event*.

The main relationship that is reinforced and shifts ever so slightly during a gathering, and in its aftermath, is the one between the host family, the Stó:lō polity, and more widely, Coast Salish society at large. While the speaker is in the spotlight – with a responsibility to guide the subtle transformation of the polity on this particular occasion, which requires him to be alert, able to perceive and respond to the explicit and implicit interactions between the family, their guests, and the invisible forces at play among them – the successful actualization of the work at hand crucially depends on the guests' own response. Alongside the months, often years of work that the host family spends preparing for the gathering, and the event-specific protocol to be followed in each case, the central role actualizing that work *at the gathering itself*, and accounting for the very architecture of the Stó:lō / Coast Salish governance event, is that of the witness. In the discussion that follows, I focus on what witnesses do at three moments or stages of the ceremony, and propose a reading of what this says about how Coast Salish families conceive of the exercise of social power in relation to one another.

1. Opening the ceremony: being called to witness

Witnesses are called by their *xwélmexw* name, when they have one. The following Section (Section Four, on “Kin”) being devoted to the significance and process of

name attribution, I will only say enough here to provide a sense of what is entailed in calling people by those names in a ceremonial context. *Xwélmexw* names are not just a way of designating a person to signal who her immediate parents are and to identify her as an individual in the family. A person's *xwélmexw* name identifies her through the unique combination of traits and likenesses she is seen to carry, and of the skills, qualities and responsibilities that her extended family seeks to nurture in her. As the outcome of the very legal process we are describing, they represent a decision made by an extended family after observing a person and her gifts, and in light of the namesakes that it may draw on. Since it connects a person more closely to a specific section of her kinship network, it is a decision with ramifications throughout the Coast Salish world. It speaks to her own individual aptitudes, the gifts she has shown so far, who she is hoped to be – and often represents, when given later in life to a young adult or someone older, not just the hopes but the responsibilities she has indeed capably taken on and that are ongoing. It signals someone's connection to relatives (past and present) in different parts of the territory, and depending on where the name is rooted or understood to originate from, may reveal a person's ties to a part of Stó:lō or Coast Salish territory where she does not currently reside. It discloses ties to ancestral name carriers whose actions may be chronicled through family lore, more broadly through the history recorded in oral tradition, or even in the mythological cycle.³⁷⁸ In short, the name is someone's *legal persona*: it does not merely identify her, but packs a series of clues about her ties, her ethical, political, spiritual and symbolic inheritance, the type of responsibilities and entitlements that flow from those connections, and the group she is accountable to in living up to her name.

This then, is what *xwélmexw* people with some knowledge of the names, of the information and possibilities they encode, will hear when the witnesses are called: identities pointing to status, responsibilities and accountability structures flowing

³⁷⁸ Examples of the latter include T'xwelátse (carried by Herb Joe), and Wileliq (carried by Ken Malloway).

through space and time. The call lights up a subsection of the Coast Salish web of relations for them to see. This is the structural moment of the gathering, where the participants take stock of who has been invited by the host family – and who it is welcoming, whether or not formally invited, in its home. Looking at it from another angle, they notice who has taken up the invitation and deems it important to be there. In other words, this is the moment where the polity taking charge of the governance of this occasion constitutes and discloses itself. Host and guest families are telling each other that they matter to each other, that the way in which they wield power, experience and act upon their ongoing transformation is significant to the society that they constitute. The calling of the witnesses crystallizes the significance of what people have come to do together: attend to their living, shifting relationships. Another way of phrasing this, perhaps elucidating more precisely what is going on during the calling of the witnesses, is to describe it as the moment where the host and guest families *mutually recognize each other's authority* over the governance event about to take place. To start discerning the contours of their respective authority from the manner of its exercise, we need to look at what the hosts and witnesses do during the ceremony.

2. During the ceremony: paying attention to the host family's work

It is time to say more about the allusion made earlier in this chapter concerning the kind of event being ceremonially marked at a traditional Stó:lō / Coast Salish gathering. Traditional gatherings typically mark a major transition in the life of a person and family: a birth, a naming, a graduation from a course of study, a wedding, a funeral, or a memorial. Of these, receiving a *xwélmexw* name is the easiest to grasp as a governance event, that is, as the focus of gatherings that are the epitome of legal life in Coast Salish society, for the reasons sketched out above. But each of the other transitions becomes just as easy to understand as the subject matter of a governance event when seen in the context of a tradition perpetually at work on implementing its constitutive principle of interconnectedness (among and between the land, the life it supports (including humans), and the spirit

world). For each of those events presents something to think about, interpret, and sometimes influence or decide with respect to the living connection between the person whose transformation is the focal point of the gathering, and each of the other members of the polity (as well as the land and the spirit world). Let me unpack a bit further what I mean by that.

As argued in Chapter Three, the Stó:lō polity can be contrasted to the abstract community of the State in that it apprehends itself as a network of *concrete persons*, each of them unique, occupying the place and playing the role only they can play within the living network of their family and the broader organism of the Coast Salish world. Every one of the significant events listed above in the life of a person and family inflects the network in its own way. It does so not only factually, as something that simply happens to the family, but normatively too, as something they may not *control* but are expected to act upon, following certain guideposts and conforming to certain standards of behavior. Again, while this may be more evident in the case of a naming, or of a wedding or graduation, it is also true of life and death themselves. Each presents a relationship to construct anew, and thus power to be wielded toward things going well – for there is also a possibility they might go awry. The new family member is a responsibility for all of her relatives, and the way she grows to use her gifts and to learn from her struggles (which may add to the strength or deplete the resources of her family) will depend *at least in part* on how they discharge this responsibility. Likewise, the loss of a family member – the passing of their spirit into another dimension of existence – involves a series of adjustments on the part of every person they were close to. The nature of such changes certainly varies depending on the circumstances of the passing and on the role that the member occupied relative to others, but – I would venture – will always generate some need, for those who loved the person who died, to understand the significance of the deceased’s life. This means forming a sense of what they brought to the world, and learning to live by those gifts and teachings; perhaps to channel the deceased’s spirit, and learn to communicate with and relate

to them in the new realm they occupy; and to reorganize the family relationships and roles over a period of years after the deceased's passing, figuring out how those who remain should relate to each other anew, and who can take on what (a mediating role, or that of gathering the family, for example). The loving guidance of a community around the family at every step of this adjustment process is crucial, since the blow to a family that death yields can translate, over the long term, into either a tightening of bonds or their lasting severance. It is a vulnerable time – which, significantly, Stó:lō people rather refer to as a powerful time.

It is clear, then, that some of the life events marked at Stó:lō traditional gatherings do bring about transformations that a family may have wanted to avoid – the very opposite of some other events that represent a decision on its part. But what is significant is that every one of those events, even the ones bringing grief, presents the family with an opportunity *to exercise its collective power and judgment toward inflecting its own transformation* – and highlights for its members the consciousness of their role in this ongoing inflection over time. Each event signals a change in the social power that the family will be able to wield through time, and *each calls for a form of power to be wielded to political and spiritual effect at the gathering itself*. Once again, this is most obvious when the very object of a gathering is to lay claim to the power associated with the intellectual, spiritual and status-rich resource of a *xwélmexw* name. But the power purposely wielded at a gathering by a host family to inflect its transformation as positively as it can, in the face of things that humans cannot control, is not limited to such events (ie. those that are inherently about claiming access to a resource and deciding upon its bestowal). It extends to all other kinds of work, because it manifests through practically every aspect of their performance. A notable example occurs when the *sxwó:yxwey* mask ceremony is performed to bless the work being carried out. This cannot be done by just anyone: the blessing is reserved to the families who can show a direct genealogical connection to the young woman who went down to the water to receive the original mask in her woven basket. Any type of work blessed

by the mask thus involves a tacit status claim in the right to access the blessing. And even when this extraordinary ceremony is not performed, the act itself of attending to any of the life transitions mentioned above by going through the elements mandated by protocol is *already always* a way for a family to wield power over its own transformation. Performing the work is in itself a complex act of relating across changing roles and responsibilities, a powerful relationship-building moment among the family members and between them and the guest families – with a consciousness of time and realms of being (that is, *attuned* to their ongoing relationships with the disembodied). One dimension of the power exercised over those few hours is that every gathering implies a knowledge claim, since “simply” performing the work associated with a particular event always entails a tacit claim to be *properly* doing so – for example, by sharing and properly attributing all the requisite tasks so that everyone is included and contributes to the result, as taught in Willie Charlie’s story above.

I should also at least note that the work accomplished by the host family at the gathering itself – *governance work* understood as *work to inflect its own transformation* – does not start on the morning of the event. It represents the culmination of months, more often years of work by the family in advance of the gathering. This other kind of governance work done “behind the scenes” includes reflection, consultation and deliberation among the extended family regarding which of its available namesakes is appropriate for one of its members; mourning, regrouping, and progressively sharing the responsibilities of the deceased over at least four years after they have passed away, and organizing their memorial around that four-year mark; verifying the requisite degree of separation between two young people, that will allow them to marry; etc.³⁷⁹ This work is accounted for at

³⁷⁹ A window into aspects of this process, and a sense of the nature of the preparatory work done “behind the scenes,” again keeping with the Charlie family, will be provided in Chapter Seven with respect to a naming. By listing above the kinds of events being ceremonialized, and providing this sketch of how I think of their significance as governance events, I am conscious that I am merely scratching the surface of what each of them entails. Research and reflection beyond the scope of

the gathering. For example, in the case of *xwélmexw* names, a formal explanation is provided by the speaker regarding both the connection of the host family to the name and the consent of the current name-bearers (there may be up to four at any given time) to its further bestowal. Such accounting, a part of the protocol for namings referred to as “verification”, falls under the broader umbrella of work performed by the family at the event itself, described above as a wielding of power, a claiming of intellectual, spiritual, political resources toward inflecting its own transformation. The overview of this work now puts us in a position to return to the witnesses’ role and ask ourselves, what is the actual work that they perform? Once we begin to understand the nature of the *relationship* between the host and guest families at the gathering, the full scope of the gathering’s significance within the Coast Salish legal tradition comes into view.

As with the naming of El-toos and Ol-toos, a gathering will typically see the witnesses come into the spotlight at only two moments: during their formal calling, and at the very end when they usually are provided with time to “respond” to the host family’s work. I will put forward a tentative understanding of the general role and mode of such response in the next subsection, but for now, just need to underline what it is not: a contestation or objection to the work performed. As such, a typical gathering contains no adversarial moment, nor even a debate or deliberation. In this tradition, the governance forum brings life issues forward to be collectively considered and acted upon, but not in the sense of either

this dissertation would be required for me to be able to speak more about a series of topics with deep significance for the governance work I am talking about in the current chapter, such as:

- the intricacies of each kind of preparatory work;
- the codification of the principles governing who must be consulted, how to mediate any disagreements surfacing among the family, what must be harvested and how, to craft any necessary items, what kind and quantity of items must be amassed for the give-away, etc., and the reasoning behind each of those principles – in short, the protocol associated with each step in this work, for each kind of event; and
- the event-specific protocol to be followed at the ceremony itself.

For now, what I do know is that each of these constitutes ethical and practical knowledge that practitioners spend a lifetime acquiring, honing and applying, and that amount to as many treatises as there are life events being marked by ceremony.

jointly deciding nor adjudicating them.

In this context, the nature of the various elements of the process portrayed above *as claims* is easily lost, and it may look like the witnesses are strictly there to share some of their own life experience and advice. The extent of their own power and authority to inflect the course of events appears to be a function of the inspiring quality, eloquence and depth of wisdom they express in closing the gathering. In other words, witnesses may be seen to lend scope and support to the decision that others make for themselves or to the strength they are already mustering by themselves, by speaking to the significance of the event, its promise, its implications, its potential pitfalls. There is something accurate and important about this account of what appears to the naked eye in the vast majority of traditional gatherings. It is a manifestation of the polyphonic quality of the Stó:lō legal order – each family being, to an extensive degree, the center of gravity of its own self-governing authority. The dimension of the witnesses' role that it highlights is as the formal memory keepers of the event, which involves paying close attention throughout the event, remembering and disseminating it main tenets in the community and part of the territory they call home. From their own experience, as well as physical vantage point in the longhouse, each of the witnesses will see and hear things a bit differently – sometimes actually see and hear parts of the ceremony much better than other parts. Calling witnesses all around the longhouse is, then, understandable as another manifestation of valuing and respecting the multiplicity of perception and understanding that grounds a polyphonic order. But while all of this is true and important, it does not sufficiently account for the way in which Stó:lō families articulate into an actual legal order within the wider web of the Coast Salish world. Witnesses do not take up a family's invitation merely to discharge a passive record keeping duty, but because the invitation is a recognition of their own evaluative authority. The host family places faith in their capacity to record and publicize its self-transformation, but more significantly, acknowledges their capacity to *assess* whether the

inherently powerful acts it will perform at the gathering are within the proper limits of its powers. In addition to all the reasons given above, the gathering is a governance event because it is a jurisdictional check – one with consequences between humans, the earth and the spirit-world, that is, for the ordering of Stó:lō society as a whole. Exceptional cases, where one or more of the witnessing families intervene or object to something being done by the family hosting a gathering, support this interpretation.

In the course of my research, only two such cases have come up in conversation. They were not events I personally witnessed, and once I heard of them, I raised them carefully, with select interlocutors, conscious that they were delicate moments that most people would not feel comfortable discussing with me or putting out in the open. My awareness of them is therefore particularly limited. In this context, I will only provide an outline of those two cases, remaining at a high level of generality and keeping my sources anonymous. As is the case for this thesis as a whole, I would be grateful if the understanding I tentatively put forward was judged worthy of correction and supplementation.

Contesting acts of power

The first of those cases involves the contestation of one family's use of the *sxwó:yxwey* mask ceremony to bless work they were conducting in their own family longhouse, in their home community, within Stó:lō territory [the “host family”]. Among the guests at this gathering, which I understand occurred around 2005, was one of the other major families from the same community. This community had just voted in an election where both the host family and this other major family [the “rival family”] presented one of their own prominent members as a candidate for chief of the band council. The host family's candidate had been chief for many years and was hoping for a renewal of his mandate, while the rival family touted its candidate, a young man with a fresh approach, as someone who would give a new direction to the leadership of the community. After a difficult

election campaign, during which the relationship between those two families became severely strained, the newcomer from the “rival” family won the election by a narrow margin. The ceremony in the host family’s longhouse was the first traditional gathering to occur after the election, bringing the two families under the same roof, the host family recognizing its political rival among its honoured guests, and calling the new chief to witness the work they were about to perform.

Approximately two thirds of the way into the event, as the mask ceremony was being announced to bless the work that had just been laid out, the work was interrupted. A second speaker hired by a group from another part of Coast Salish territory, took the floor. That speaker explained that according to his principals (those on whose behalf he was speaking), the host family did not have the requisite genealogical connection to the original mask family to avail themselves of the blessing. I am not aware of the circumstances and protocol surrounding the way in which the genealogy of this family in relation to the mask was originally formally presented and “verified” – but according to my informants, if there was a mistake made by the host family back then, it did not have to do with its actual relation to the mask, but with the proper explanation of this relation. This would have been the source of the doubt in the mind of some people, degenerating over time into a deeper misunderstanding, bad feelings, and the delegitimization of the host family’s claim to the mask in their eyes.

What ensued, in my understanding, was an attempt to set up a form of “parallel work” on the floor to explain the dissent, discredit the host family, and protect the right to the mask through proper lineage. However, in this case, beside the relatively small contesting group, everyone else in attendance seemed to understand the host family’s lineage as properly grounding its right to the mask. Significantly, the new chief was among this broader constituency *opposing* the contestation. As the disruption proceeded, he went around the longhouse to consult informally with other families, and soon reported to the host family –

whose members were wondering whether they had the resources to renew their demonstration of their lineage on the spot – that if they simply chose to continue with their work, they had the support of all the families within their own community to do so. Thus the work continued. The group who had disrupted the ceremony could not find anyone who would agree to witness and respond to *their* work. They picked up their belongings and left the gathering.

The second case took place in the context of an already extremely unusual event: a gathering called to take a *xwélmexw* name away from its bearer following conduct judged dishonourable on his part. The reason why I raise this case is not to examine the circumstances giving rise to such an exceptional recourse on the part of this person's family, but to bring up the interesting strategy deployed as a counterbalancing mechanism by another branch of that same person's family. This different branch of the family had come to a very different understanding of the circumstances and context surrounding the conduct of their relative. In their judgment, his conduct was anything but dishonourable. While it was not within their power to prevent the removal of a name that did not belong to them, they decided to counterbalance the attempt at shaming their relative by conferring a name *of their own* on him, in the course of the same gathering. Parallel work – work performed under the authority of a *guest* under the host's own roof, to counter or contest the latter's work – was again the path chosen by the contestants, this time to greater effect, since they were doing something uncontestably within their powers.

Those two cases are only two recent precedents in a long line of stories collected since the 1960s by ethnographers working with various authorities within Coast Salish polities. Notwithstanding their variation through time and place, these stories reinforce the consistent picture of a society operating through its extended kin groups to produce an extraordinarily flexible mode of governance characterized by the wide distribution of authority within the social and political

whole.³⁸⁰ This mode of governance allows, indeed shapes each of those coexisting authoritative voices to keep singing its own singular melodic line within an amorphous harmonious range, and as such, to participate in a truly horizontal social structure I have likened to a polyphony, by opposition to anything resembling a vertical hierarchy. Each of the cases just recounted shows aspects of this deep fluidity at play in the articulation of political agency and in the management of disagreement between kin groups within the tradition.

Both cases provide a glimpse into how the tradition shapes the expression of dissent, and as a corollary, how it acts as an elusive mechanism of unity, drawing together family identity and knowledge with the local identity and knowledge developed between different families over time. Indeed, at this particular event, the different families that bonded with each other were from the same community. Their family identities as members of kin networks extending across Coast Salish territory, were overlaid by the bonds they developed with each other, living in a few neighbouring villages for a very long time – a local identity now captured by the band formed on the basis of those villages. As other scholars have shown, both family and local identity are intertwined in complex ways with the ability to exercise jurisdiction over different parts of the territory and of its resources.³⁸¹ Here though, it was simply a closer, more intimate knowledge of the meanders of the host family’s genealogy that allowed their community members from other local families to quickly set aside the questioning of their connection to the mask. This knowledge allowed even the two families that had just gone through a vicious fight for the leadership of their band to transcend any lingering distrust or resentment for the occasion, and to come together with other local families to discard what they considered misguided objections raised by relative “outsiders” –

³⁸⁰ Brian Thom provides an excellent window into the breadth of this ethnographic literature and enriches it in “The Anathema of Aggregation,” *supra* note 59.

³⁸¹ This is one of the main themes of Carlson’s inquiry in *The Power of Place*, *supra* note 1 at 113-54 (Chapter Five: “Events, Migrations, and Affiliations in the ‘Post-Contact’ World”); and of Thom, *supra* note 211.

a group coming from further away in the valley.

The particular dynamic of unity generated by traditional governance is highlighted by contrast with the mode of relating that prevails under the logic of *Indian Act* band governance. As each of the above stories shows in its own way, the traditional forum does not fit a deliberative model as much as a check on power or a balancing of parallel powers.³⁸² Witnesses do not proceed to an exchange of reasons or a contest of arguments among themselves or with the family hosting the gathering, in order to reach a common decision having legitimacy in the eyes of the collectivity. When a group, such as the one that objected to the performance of the masked dance by the host family in the first story, takes the extreme step of trying to shame a family by denouncing its lack of requisite connection, it risks being shamed in turn, and shown the door. Whether or not it is in its proper right, the family group – the inherently amorphous entity that is never fixed, always shifting as people are born and die, marry in, affiliate more or less strongly, and gain or lose status depending on their actions – is a node of power that cannot be controlled or imposed on by others. There is no paramount authority here, as that of the federal government in the Canadian context, when conflict arises in the exercise of federal and provincial powers. It is not that the traditional gathering is not geared at unity, but that its relation to unity is performed entirely differently, and contributes to socializing people to think of unity differently, with a strong sense that families cannot control each other and thus must interact through a combination of speaking to each other's jurisdiction to shape it, act to counterbalance it, and in extreme cases, in attempted shaming – rather than by

³⁸² Something closer to deliberation may be seen to happen inside the family, with prevailing voices usually those of people seen to have more insight and experience than others on particular matters. Chapter Seven grapples in greater detail with how interactions of various degrees of formality inside a family may unfold. I have not been privy to such interactions very often, and although elements of such internal discussions among families have been shared with me (as Chapter Seven will illustrate) I would have to rely on more focused research and conversations to discuss in more depth the process that goes on behind the scenes of a gathering, and the role that deliberative exchanges may play toward reaching a particular outcome, beyond what typically occurs during the “work” of ceremony.

ever designing a hierarchy or designating a paramount authority. In this context, each group has to gauge what it may lose in terms of social capital, help and assistance from others in times of need, and take care not to wind up disrespected, disowned and ostracized. People thus refer to “taking the high road” in the face of disagreement as knowing when to let go of one’s perceived entitlement.³⁸³ However it is composed at any given time, a “node” of family power within a broader kin network cannot be coerced.

Still, the recognition or denial of its connection and access to intellectual resources, spiritual goods, and productive places on the land matter, and will be carefully attended to since they are the very basis of its status, belonging, power and wealth within the polity. At any time, everyone in the polity is invited to watch and monitor that the power exercised by a group is within its proper sphere of authority, and exercised in due respect of process and protocol. The question is never, as in elections under the *Indian Act*, about who will hold power over the destiny and resources of the polity as a whole for a predetermined period of time. The power held individually to vote and the anonymous, impersonal mode of aggregation that voting fosters stands in sharp contrast with the power held through kin affiliation. Within the latter, traditional framework, the options provided to an individual derive from her connection to her kin groups – her father’s family, her mother’s family, as well as her in-laws on both sides – and primordially, to the state of her actual relation to all of those people. Her choices, and her family members’, to emphasize their connection and support her through the events of her life flow from those relationships. This is made even clearer by the second case, where two sides of a person’s family disagreed and each used their own resources to hold their relative accountable and impact his status. Cultivating good relations across one’s variegated network, and nurturing the possibility to choose which subset to rely on and emphasize among one’s many affiliations, depending on the time, the purpose or subject-matter at hand, is the distinctive

³⁸³ This occurs in the Gitksan context as well: see Napoleon, “Living Together,” *supra* note 31.

ethos and genius of Coast Salish traditional law and politics.

The two above precedents, indeed more akin to caselaw than anything else brought up so far, illuminate that an important validation does happen at gatherings – even when, as in the vast majority of cases, none of the witnesses object nor intervene to try to alter the course of the event as planned. I will now turn to the more typical way in which witnesses do inscribe their perspective into the ceremony. This happens at the very end, when space is created for them to share their insights by “responding” to the work.

3. Closing the ceremony: responding to the work

Earlier in this chapter, we have seen that in order to fulfill his role at the deepest level and shepherd the host family’s work to fruition, the speaker must adopt the witnessing stance (“to sit, listen, and feel what is going on”). But the witnesses, whose most obvious role is to sit, listen, and feel, are also typically expected to speak to what they have seen and perceived. In that sense, the two roles mirror each other – as well as the relationship of the host family to the polity as a whole. The witnesses’ words close the ceremony, inscribing the work with their own experience. What do they speak to, and what work do their words perform?

As mentioned earlier, the words spoken in the longhouse cannot be recorded. This trains the attention more acutely and altogether differently than in a learning or governing forum where note-taking and recording devices rule. In the context of the longhouse, people say that what is “meant for” someone at any given time, in terms of material for learning and reflection, will “stay with them” after attending an event. People thus remain attentive throughout the several hours of a gathering, but also return to it in their mind over the following days to let the teachings coalesce and the learning crystallize. This is to say that although I am not able to quote what witnesses have said on specific occasions, and thus cannot show but only tell – the fact that I am prevented from focusing on particular words

requires me to think about the common thread or spirit that stands out, for me, from the speeches given by witnesses at dozens of ceremonies in different parts of Stó:lō and Coast Salish territory, between 2007 and 2010.

What I have heard witnesses do in those speeches is filter the event through their own experience to help the person and the host family see themselves from the outside and acquire some perspective on the life transition at hand. This means different things depending on the event: understanding the significance of an accomplishment and the standards of behaviour or service that a person will now be held to, given their training; sharing one's knowledge of previous holders of a traditional name, or more generally, discussing how to carry oneself in the role and responsibilities attached to a traditional name; helping people understand some of the challenges they will face as spouses or parents, and how to respect oneself and others over time, in those commitments; honouring the life of someone who has passed away, helping the family let them go and attend to the resulting changes in their relationships. In short, witnesses are not just "eye" witnesses, describing what they have seen or heard. They bear witness with their whole being to the visible and invisible forces at work in the life of the family. They do not only speak to what is, but to what *can* and *should* be. This is one of the main reasons why the eldest witnesses in the assembly speak first, setting the tone of the guidance appropriate to the occasion and to the particular family hosting the gathering.

This is to say that the witnesses' "response" does not exactly lay down the general rules or principles to live by. Helping a person understand the scope of their role and responsibilities, or the nature and quality of their relationships, is an interpreter's role. Locating the witnesses' role in the context of the elements of Coast Salish legal sensibility discussed so far, the witnesses help the individual and her family interpret the transformation they are going through in terms of their own unique place within the polity. How does this transition in their lives affect their relations within the polity as a whole, and the role that only they can play in

this web of relations? This is not usually addressed directly or explicitly, and will reveal itself much beyond the gathering. But the work that begins at the gathering, at the highest level of generality, is again, as I understand it, about figuring out one's shifting place in the polity: what is expected of you personally, your role and realm of your contribution as an individual, always situated in the context of your family's inheritance and jurisdiction. The assembly as a whole has a stake in how these questions are understood and navigated, and in managing any disagreement about them so as to prevent their escalation in clashing terms – and every family in attendance, through the voice of their formally called witness, has a chance to influence the unfolding answers by inscribing its perspective into the work.

IV. Conclusion

This chapter's examination of the main object and mode of relating of the parties to the traditional governance forum has zeroed in on the witnessing stance at the heart of the Stó:lō / Coast Salish conception and practice of legal ordering. Taking a close look at the way in which those entrusted with the formal roles of speaker and witnesses at gatherings think of their role, and speak and act in its fulfillment, has also started to fill in what this witnessing stance involves – how it both gives expression to relationships of power between kin groups, and continually shapes individual and collective agency in the Coast Salish tradition. The witnessing stance is not passive but active. It is rooted at the spiritual level, as the way to recognize and respect the forces that humans do not control, at the same time as taking responsibility, interacting with those forces and inflecting the consequences they have on human lives. As an active stance, witnessing achieves something. It is the mode of relating that enacts the interconnectedness between kin groups among the various Coast Salish legal orders, allowing them to speak to and keep watch on their respective jurisdictional claims. Interconnectedness is not a mere “fact” but an achievement. It is a reality in constant motion, as individuals and families undergo transformation. The quality of the society's interconnectedness as a whole thus needs constant attending to. It is *work* – a form of care, of public

service – that consists in reading and channeling the political, legal, spiritual dimensions of power to influence the transformations that individuals and their families are going through, so as to reinforce Stó:lō society as an interconnected entity, uniting all of those who are present at the gathering, whether visible or not. Both the speaker and the witnesses are engaged in this work, mirroring and epitomizing the work carried out by the assembly as a whole – the host family and all the guest families in attendance. Hosting a gathering, and conversely, showing up as a guest, speaks to the ongoing importance of the connection between families and of every person’s embeddedness in the web of those connections. In a legal order where authority is both fluid and widely distributed, the governance forum is built to attend to living relationships – to all the changes that people go through, and to the consequences of those changes for way they look up to and rely on each other.

But the witnessing stance plays out in other contexts than the governance forum. Seeking to further illuminate it as a connective mode of relating with a deep spiritual undercurrent, and as a strongly codified stance that plays a crucial role in shaping Stó:lō / Coast Salish individual selves as agentic and accountable, I now turn to a different kind of interactive gathering – the winterdance. This spiritual practice and the array of practices it supports have been at the heart of Coast Salish renaissance, decolonization and re-empowerment since the 1950s. They illuminate the witnessing stance within the tradition as a mode of engagement with oneself and others that its most congenial counterpart in Western political philosophy would describe as a *practice of freedom*.

Chapter Five

“It’s the spirit that makes the person”³⁸⁴

Power and responsibility in Coast Salish practices of freedom

I. Introduction

As shown in the previous chapter, the mirroring roles of the speaker and the witnesses in traditional governance point to the importance of the witnessing stance in Coast Salish legal sensibility. Paying attention to how practitioners typically conduct themselves in those roles, what they say about what they are doing – and how they behave in exceptional circumstances – begins to reveal some of the implicit norms they abide by, discloses the tenor of the Stó:lō governance forum, and starts to fill in the specific significance that witnessing holds in the tradition.

But the governance gathering is only one of the spaces where the witnessing stance is honed and acts upon contemporary Coast Salish sensibility. After spending time over three summers completing research projects, attending the type of governance gatherings discussed so far, and seeing witnessing discharged as a formal function in that context, I spent my first winter on Stó:lō Téméxw in 2009-2010 and was exposed to the winter dance. Attending *syúwél* ceremony – alongside other sources of learning that I will discuss shortly – made me realize that the witnessing ethos and the variety of practices in which it manifests extend much beyond the gatherings that have governance work as their main focus. Indeed, witnessing is at the very heart of Stó:lō / Coast Salish spiritual philosophy, practices of self-care, and gatherings. The modes of relating that shape Stó:lō individual agency, autonomy, and subjectivity itself are deeply inscribed by those

³⁸⁴ This idea is articulated by storyteller and elder Dan Milo in one of the published versions of the Xexá:ls story, “Grizzly Bear and the Black Bear Cubs”: Wells, *Myths and Legends*, *supra* note 240 at 5 (see the discussion *infra* at the end of subsection V of the current chapter).

practices. Carefully approaching these practices and the norms that underlie them shows the witnessing stance as a pervasive mode of engagement with oneself and with others that continually *discloses possibilities for self-transformation* and provides clues into the complex process through which people become agentic subjects in Coast Salish societies – and indeed, keep morphing throughout their lives as such. By the same token, spiritual practices and the pivotal role of witnessing in them, profoundly shape how freedom and responsibility are conceived and enacted in this legal, political, philosophical, deeply spiritual tradition. I argued above that an important dimension of Stó:lō legal ordering is found in how families relate to one another at governance gatherings, upholding but also delineating each other’s authority by calling each other to witness their respective transformation. Entering the longhouse now for *syúwél* yields further insights into the techniques deployed *beyond the family*, to bring individuals back into the fold when they act in ways that are destructive to themselves and to others. Here, the various witnessing acts tie together *healing* and *governing* in mechanisms of constraint and responsabilization (attending to the person’s *ability* to be responsible) whereby a person is shown how to transform her suffering and reconnect with her spirit. This has the effect of resetting her relationship to herself and others, and of further shaping / disclosing her unique place and identity within the social whole.

II. Social suffering and the medicine of syúwél

Syúwél in 2010

I will start once again with a brief general sketch of a winter gathering, as I experienced it. Throughout the winter, longhouse gatherings usually have the dual purpose of traditional governance and of spiritual practice. The host family brings people together for governance work, and after this has been completed, the floor is cleared for the dance. Like the calling of the witnesses, the order of the dance starts with those sitting at one end of the longhouse, by the main door, and circles

through the attendance until reaching the other side of the entrance, where the host family's longhouse group is sitting. When their turn comes, each individual *syúwél* dancer who wishes to dance ties a handkerchief around their head, hiding their eyes. The dancer starts to cry, and soon her wail turns into a song, picked up by the drummers and everyone else in attendance – sometimes hundreds of people – who knows her song. The dancer then springs up from her seat and finds a path from her seat, through the people sitting all around her in the bleachers, onto the longhouse floor, and performs her dance around it – all along supported by the drummers and the crowd. Every dancer wears “paint” on their face in a pattern of their own received as part of their initiatic vision – in red, brown or black, from the natural pigments found on the land, in a base of deer fat.

Gatherings that begin with governance work in the late afternoon / early evening and are followed by the dance typically carry on well into the night. During the winter of 2009-2010, there were dozens of such gatherings combining governance and spiritual purposes occurring simultaneously, every weekend, throughout Coast Salish territory – and drawing hundreds of people respectively.

It was not always this way. The recent history of *syúwél* practice highlights its role in the resurgence of Stó:lō identity and governance, which includes grappling with the damage done to Stó:lō people's selves – their self-conception and self-esteem, well-being, and ability to act responsibly. In that sense, *syúwél* ties together individual healing and collective governance practice.

Context

During the period when Canadian colonial policy and practice attempted the forced assimilation and cultural genocide of Indigenous societies by removing the children from their families and raising them in residential schools, Indigenous

societies across the country were decimated and thrown into a deep disarray.³⁸⁵ In light of the fact, discussed earlier, that transitions in the life of individual members of Coast Salish extended families are the very subject-matter of traditional governance, it is obvious that the children's removal would bring important governance practices to a halt. This was compounded by the imposition of a Western system of governance for the newly created bands, and by the outright criminalization of Indigenous gatherings (the anti-potlatch law).³⁸⁶

In parallel with those direct assaults on traditional governance, the winter-dance, also subjected to the ban on gatherings, went underground. The old dancers danced in each other's houses, keeping the practice and the teachings associated with it alive. Following the lifting of the ban in 1951, and picking up momentum through the sixties, seventies, and eighties, these old dancers from different parts of Coast Salish territory — including elders from the Island, Lummi, Musqueam, Cheam, Chilliwack, Sts'ailes – took up the initiation of new dancers. Through the revival and spread of the spiritual practice, people recovered contact with *snuw'uyulh*, with their laws and teachings. Alongside initiations into *syúwél* practice, the old teachers guided the new dancers' families into revisiting their heritage and bestowing *xwélmexw* names on the new generation of dancers.³⁸⁷ They attended to the revival of the forms and mechanisms of traditional governance, which began again to play their ordering role in people's lives. Longhouses started to be rebuilt in Coast Salish communities: on Stó:lō Téméxw, the first one was erected in Chilliwack sometime in the sixties. Today, there are more than sixty longhouses throughout Coast Salish territory, and the

³⁸⁵ Truth and Reconciliation Commission of Canada, *Final Report of the Truth and Reconciliation Commission of Canada, Volume One: Summary - Honouring the Truth, Reconciling for the Future* (Toronto: Lorimer, 2015).

³⁸⁶ On the anti-potlatch law, see *supra* note 25 and *The Power of Place*, *supra* note 1 at 200-08; on the imposition of the band system of governance on Stó:lō society, see *The Power of Place*, *ibid* at 194-200.

³⁸⁷ Section Four (on "Kin"), *infra*, examines the legal sensibility informing Stó:lō naming practices – and how traditional names bring individuals more fully into their *xwélmexw* identity, recognizing their unique place in the polity as well as their ties and responsibilities; and making them known to the spirit world. The naming is spirit-work as much as earth-bound, legal and political work.

number keeps rising. As to the number of dancers, it is hard to estimate, but the people I asked have ventured figures going from two to three thousand. In recent years, most longhouses on Stó:lō territory have taken in at least one, sometimes up to ten new initiates a year — most often, young people in their twenties or thirties.

It is important to emphasize that there are many ways to live one's spiritual life as a Coast Salish person. One of the teachings that many of my interlocutors emphasized is that people should be free to pick up any practice that allows them to go through life in a good way. For some people, this translates into membership in the Roman Catholic or Shaker church. Some Stó:lō people, now in their sixties or seventies, who were raised as Catholics by parents who attended residential school, became dancers in their adulthood and today choose to combine a strong winter-dance practice with year-round church attendance. Other *syúwél* dancers take up the Prairie-style “fancy dance” in the summer, a completely different practice that they infuse with their own meanings. Following the powwow trail allows them, as they say, “to stay on a good path” throughout the summer months. Within *syúwél* practice itself, there are also different modes of participation. The teaching given by Uncle Buster in connection with governance gatherings, as discussed in Chapter Four, also applies to the different ways of taking part in *syúwél* during the winter gatherings: one can work in the kitchen to prepare the meal which is a necessary part of every gathering; sing and drum for the dancers; take care of the fires. Each of those roles comes with its own teachings and provides a valued way of living a dimension of one's spiritual life according to tradition. Everyone has a spirit, but not everyone was meant to be a dancer.

However, according to one of my oldest interlocutors, Ray Silver (Xéytelég)³⁸⁸ –

³⁸⁸ See Emmy-Lou Campbell & Ray Silver (Xéytelég), “That's How I Became Xéytelég': The Life Stories of Stó:lō Elder Ray Silver”, (2010), online: <http://www.srrmcentre.com/pdf/Library/FS07_09%20Campbell.pdf>.

who was not a dancer, but was very involved in *syúwél* practice as the caretaker of the community longhouse in Sumas – there are many more dancers now than there would have been in the old days, prior to the ban.³⁸⁹ To me, the large number of *xwélmexw* people who are taken in or feel the call to become dancers points to the fact that the dance, as a particular mode of spiritual expression, rests on the experience of suffering – which ripples through *xwélmexw* society at this point in its history, as it copes with the consequences of past and present colonial policy – and on the avenue it offers to transform that suffering, reclaim one’s power and rebuild one’s identity. In other words, at this point in time, the ancient practice of the winter-dance and the cluster of practices of care that support it, attend, at least in part, to the embodied social suffering that results from colonialism.³⁹⁰

The racist laws and policies that broke up Indigenous families and communities, destroyed or gravely endangered their languages and modes of governance, took away their land and modes of sustenance, produced a deep alienation that manifests in individual *xwélmexw* people in a range of physical and emotional disorders, sometimes recognized by experienced *syúwél* practitioners as symptoms of spirit sickness. Becoming a dancer involves channeling the experience of suffering and transforming it to access and give voice to one’s most intimate and powerful identity, which is one’s own spirit. The healing experience of this transformation, carefully shaped and supported during the initiation process, is reiterated throughout the dancer’s life, each time he shares his sacred song and dance at a *syúwél* gathering. Aspects of this transformation, carried out through the interplay of personal spiritual work on the one hand, and a series

³⁸⁹ Ray passed away in December 2016. Born in 1929, he did not have personal experience of *syúwél* prior to the ban. His reflection on this came from listening to people in his parents’ and grandparents’ generations.

³⁹⁰ I was introduced to the notion of social suffering by Stephanie Irlbacher-Fox, *supra* note 24, whose work draws on Arthur Kleinman, *The Illness Narratives: Suffering, Healing, and the Human Condition* (New York: Basic Books, 1988).

of witnessing acts, on the other, illuminate the ways in which agency and responsibility are construed within the Stó:lō legal order.

III. *Respecting the sacred: secrecy and scholarship*

But sharing what I have learned about and from *syúwél* practice raises a number of concerns. *Syúwél* and the array of practices through which people take care of their spirit are shrouded in various degrees of secrecy. Secrecy is one of the ways in which the Coast Salish have protected their sacred knowledge and experiences from being objectified, appropriated, or eradicated through criminalization by a hostile power. Moreover, within Stó:lō society, enforcing taboos with regard to the sacred relationship between a person and her spirit may also be understood as protecting the unknowable, ineffable quality of personhood, and the autonomy of the person, by preventing others – or even herself – from trivializing her relation to her life force. Some things may simply not be talked about, while others can only be raised among dancers, a secrecy requirement that I interpret as meant to preserve the space where personal experience of the sacred can be had. The absolute prohibition on filming or recording events taking place in the longhouse, first and foremost *syúwél* gatherings, reflects a similar concern with decontextualization, appropriation, trivialization or profanation.³⁹¹ Ensuring that *syúwél* remains a direct, live experience for all those involved demands from attendees that they be fully present to that spiritual experience – the best way to ensure that they situate it in its proper interactive context, respect it, and be

³⁹¹ One of the researchers whose clinical work as a psychiatrist in the Fraser Valley brought him in contact with *syúwél* practice during the early years of the practice's recovery (in the early 1970's), wrote and published a book about it: Wolfgang Jilek, *Salish Indian Mental Health and Culture Change: Psychohygienic and Therapeutic Aspects of the Guardian Spirit Ceremonial*, reprint ed (Vancouver: Hancock House, 1974). His goal seems to have been to explain what he observed as being the genuine therapeutic effects of *syúwél* on his Stó:lō patients – in terms understandable and assessable by the medical profession. When his work emerged, the Stó:lō elders who had welcomed him into the longhouse and allowed him to witness the practice rejected it. Reflecting on the reasons underlying this rejection, Crisca Bierwert writes: "Jilek's account leaves the illness [the spirit-sickness diagnosed by the Indian doctors and longhouse leaders] on the order of a psychological disorder; R.E. [one of the dancers quoted by Jilek] puts it into the realm of the sacred": Bierwert, *supra* 251 at 125.

transformed by it themselves. It also allows the longhouse group hosting the gathering to assess whether they trust those who are coming into its sacred hall, and to expel anyone behaving inappropriately.

By contrast, writing about the ceremony allows any anonymous reader to have a mediated, surrogate (and partial) knowledge of *syúwél* – without the *syúwél* community being able to gauge their character and intentions, nor to hold them accountable for their detached or instrumentalized use of such knowledge. On the other hand, relating respectfully does involve using what you are given, with a good heart and good mind, to learn and reflect on your experience – something that Stó:lō pedagogy emphasizes and facilitates, and for which reading and writing are *also* important tools, if they are used well.³⁹²

In light of those objectives and preoccupations, and of my own situatedness, I needed to figure out what I could actually write about, and how. For me, this has involved reflecting on the difference between, on the one hand, things I had been invited to witness (the ceremony itself), to experience (such as a cold cleansing bath in a swimming hole along a creek in the forest), and been told (such as aspects of how the initiation unfolds); and on the other hand, things I knew existed, but that had never been discussed in my presence – and that I had even been told on one occasion *I was not allowed to ask about*.³⁹³ The latter category seemed to include everything pertaining to a dancer's actual experience and relation to the spirit. The teachings associated with this experience, approaching the very heart of spirit power, how it manifests and how to channel its manifestations, were not meant for my ears.

³⁹² Some of the dancers with whom I spoke had read and spoke approvingly of a book that emerged around the same time as Jilek's, but was more attuned to and representative of *syúwél* practitioners' own understandings of their practice: Pamela Amoss, *Coast Salish Spirit Dancing: The Survival of an Ancestral Religion* (University of Washington Press, 1978).

³⁹³ Andrée Boisselle, *Interview with Boyd Peters and James Leon - October 27, 2009* (Sts'ailes). Part of my Stó:lō socialization involved realizing that the relationship I had to *asking questions* – which could be summed up as “anything goes”, as long as it is done in a spirit of greater understanding – was itself culturally-rooted. Charles Briggs' work, *Learning How to Ask*, *supra* note 123, deepened that understanding.

More broadly, figuring out how to appropriately draw on Coast Salish spirituality in the context of my work involved reflecting on the relationships and experiences that have shaped my approach to Coast Salish spiritual practice – and that are at the source of any insights I may have on its role in shaping the tradition’s notions of agency and responsibility. The different aspects of this reflection (which might be called on the one hand “methodological” and on the other, “substantive”) are bound up with each other. In other words, issues of epistemology and pedagogy present a sort of microcosm of the actual reflection on witnessing in connection with agency, responsibility and legitimacy: How do I know what I know? Is it appropriate for me to share it? And if so, how? I will start with the second of those questions, since it foregrounds directly my teachers’ own authority and the exchanges I had with them on my very ability to use what I have learned in order to teach others.

Checking-in with my teachers: substance and spirit

A first draft of the reflection described above – on how my relationships, and limited experience of Stó:lō spiritual practices, informed my analysis of the witnessing stance and of its role in shaping Coast Salish subjectivity, agency and responsibility – was written in 2011 for the purposes of a public lecture at the University of Victoria.³⁹⁴ It was delivered to a group of about seventy people composed of scholars and members of a non-Coast Salish public. The attendance also prominently included my friend Darren Charlie, who attended explicitly to “verify” my presentation – adopting a witnessing stance in the traditional sense of the word, although admittedly in a non-traditional context. To signal this, I opened the lecture by calling him as a witness, and at the end of my presentation, he responded to the unconventional “work” that this exchange with the public – a scholarly presentation on the role of the witness in the Coast Salish legal tradition

³⁹⁴ Andrée Boisselle, “*It’s the spirit that makes the person*”: *Spiritual practice and political agency in contemporary Coast Salish society* (presented within the Public Lecture Series of the Centre for the Study of Religion and Society, University of Victoria [unpublished], 2011).

– represented.

A few days later, I travelled to Sts'ailes to present my reflection to two of my other most trusted teachers. Just as Darren had during the lecture itself, they listened carefully, and in the discussion that followed, expressed their comfort with the content of my talk. This confirmed my amorphous instincts about “categories” of spiritual work and experiences, and what could and could not be shared. After our discussion – the most open and thorough exchange I ever had with longhouse authorities regarding the permissibility of drawing explicitly on longhouse spiritual practice to inform scholarship – I also felt more confident about the direction of my work, and encouraged to continue while remaining in relation and in conversation with all of those who made it possible. Part of this confidence came from a reassurance that indeed, nothing I had said was out of place – the teachings not meant for me were indeed, simply not being shared with me. But mostly, it came from realizing that the elders listened for much more than my *description* or *factual disclosure* of specific spiritual items, practices and events. What I think they heard, and that warranted their blessing to draw on *syúwél* as I was trying to, was an attempt at reaching insights in a manner and for a purpose familiar to them: that is, through direct experience, close interpersonal relationships, and analogy, and with a goal not merely of *knowing* something I remain external to, but of transforming myself to *be* in relation.³⁹⁵ Months before, in the midst of my

³⁹⁵ This is how I understand what my Stó:lō friends and teachers mean when they say that “speaking from the heart” is a basic requirement of effective reasoning and communication: seeking to place yourself completely in what you are saying – mindfully, physically, emotionally and spiritually – and embodying what you are talking about. This is described by Robert Nichols in a different context, but one I will come to below as very congenial to my inquiry in this chapter, as the difference between a philosophical exercise and a spiritual exercise (see the discussion and reference to Nichols’ work, *infra* note 421). In the Stó:lō context, one gains one’s footing from spiritual practice. This applies to me as a researcher, and to the way I relate to my own personal experiences of *syúwél* practice, and to the spiritually charged life experience I disclose in my scholarship and invite others into. In other words, I think of scholarship as able to respectfully disclose aspects of *syúwél* insofar as it seeks to develop a relation with *syúwél* on its own terms, but also to relate to it through the lens of one’s own life experience. Learning from Stó:lō spiritual practices, I interpret my own experiences anew in light of what I have learned. This allows me to have more meaningful conversations with Stó:lō friends, to make my own experience

research with Stó:lō communities, a particular experience with those very elders had brought home those characteristics and ethos of Stó:lō epistemology.

Approaching *syúwél* through Stó:lō epistemology : Cultural training

In June 2009, after six continuous months on Stó:lō territory researching the mythical storycycle and its connection to the contemporary legal order of the community, I was invited to attend a “cultural training” session in Sts’ailes, in the Charlie longhouse. The training was meant for the team of social workers affiliated with the band’s child and family services, a distinct department within the band’s governance structure simply called *snuw’uyulh* – reflecting the fact that the traditional “law and teachings” that ensure the well-being and good order of the community find expression first and foremost within the family. The cultural training, led by Patricia Charlie, the head of the Snuw’uyulh Department, and by sons Kelsie and Darren, had been scheduled to coincide with the arrival of a few new social workers, unfamiliar with Stó:lō or Sts’ailes, but it was planned as a gathering of the whole team, including both Stó:lō workers and non-Indigenous ones in a longstanding working relation with the community.

I arrived, feeling a little sheepish and strange as a researcher and law student in that group, not sure of my place and wary of making others uncomfortable – but excited to receive cultural teachings that might help me have more meaningful conversations with people. A circle of about fifteen chairs had been laid out on the floor of the longhouse, and as people walked in, I tried to make myself invisible. I walked over to the bleachers to sit apart, where I thought I belonged, pulled out a pen and notebook, and waited for things to start.

Indeed, my cultural training started the moment Pat walked in. I was gently asked what I was doing over there, and told that nobody sits outside the circle. Amid

understandable to them and theirs to me, and to deepen my understanding of the role I can play in relation to the community. This is the spirit in which I have approached the reflection presented in the remainder of this chapter.

smiles and chatter, I joined in. Soon things quieted down, and Pat began to talk. She described how the community had come a long way since her youth, hinting at her own experience of alcoholism and family violence back then. She was providing some of the social, historical and emotional context for the struggles that families on the reserve were still experiencing. Her discourse clearly came from a very intimate knowledge of her community and of the daily hard work of helping people find the strength within themselves to recognize when they were engaged in harmful behaviour, to accept when they needed help to change, and when they had to be separated from their families for everyone's sake. As she talked, I realized that I was waiting for her to get didactic, that she would either lay down rules or principles, or at least speak in a manner that would allow us to infer what those were. But nothing Pat said that day came close to an exposition of criteria, or "when this happens, this is what we do." In a very personal genre stemming from ethical and spiritual principles without laying those out, she blended personal testimony, factual exposition and policy brief, and spoke to the lived experience of violence and addiction; of how to protect children, adults, and the integrity of their family; and of spiritual strength and dignity.

When she was done, Kelsie spoke to the notion of "being one" – the concept of *lets'emó:t* to which I alluded earlier, in Chapter Four. Initially, I made sense of this as being a goal or aspiration of social work in Sts'ailes: to keep the community together. But it could also be heard as guidance for the Snuw'yulh team itself to try to think and act as one. The team had an occasion to do so right then: following on Kelsie's teaching, Darren asked that we all share something in connection to the work at hand. As people spoke in turn around the circle, the co-workers got to know each other much more intimately as people disclosed their own experiences with addiction, family violence, or the separation from a loved one – and what they had learned that opened their hearts, made them more compassionate and firm. Even I, the outsider to this team, to their training, to Sts'ailes and to Stó:lō society, had an experience to share in that circle: that of my

own family's suffering and of its efforts at healing in relation to my sister, who had struggled for a decade with bulimia and cocaine addiction – and who had by then, as I sat in the circle, been sober for almost a year. Part of my own learning at that point was that her addiction signalled pain in our family *as a whole*. Her struggle was only in some ways her own. In other ways, it called upon all of us to take a hard look at our relationships with each other, acknowledge what felt like un-ease (or dis-ease), ask ourselves about the role we played in it, and learn how to cultivate lucidity, honesty, humility, and responsibility toward each other.

This was the cultural training destined for me on that day: that no matter who I was and where I came from, I did have something to bring to the circle. As a learner, and a non-Stó:lō, I was not discounted as an empty receptacle, who needed to sit and wait to be “filled” with distinctive Stó:lō knowledge. The cultural principle I was gently asked to apply, there and then, was that looking at my own life and drawing on my own experience, examining what was happening to me and to the ones closest to me, how we were behaving and to what consequence, yielded teachings deemed relevant in a Stó:lō circle. Within Stó:lō legal sensibility, reflecting on our own lives was seen as a spiritual and legal practice, a source of persuasive analogy and precedent for good relationships in the polity – in short, part of *snuw'uyulh*.

The witness who couldn't: my intimate experience with drug addiction

My sister, Sophie, is almost six years my junior. Although we are close and get along very well, our personalities are quite different – mine seeming to flow from our father's, while my sister seems to have inherited a greater extroversion, a feistiness and an occasional hot temper from our mother. Like our mom, her warm, generous manner also elicits connection and tenderness. Growing up, I remember that while I could spend hours buried in books, she always leaned toward activities that allowed her to enjoy the company of others. She also seemed to take much pleasure in taking care of others; from a young age she was helping

our mom with what others consider chores, and always liked to cook for our family. The intensity with which she embodied her emotions, combined with her talent doing voices and inhabiting worlds other than her own turned her, in high school, into a budding young actress. She was drawn to the arts – with a beautiful voice, a good ear for music and languages, a clear talent for drawing and a sure sense of style. When she entered CEGEP at seventeen, she was a stunning young woman with a rebellious streak who had to decide what she would put her talents to.

It is hard, even for her, to understand exactly what happened then. Looking through what remains of her private correspondence and school assignments during that period, what stands out is how anxious she was at finding her path and her place. This was compounded by the models of femininity and physical beauty that she internalized in late adolescence, as she broadened her social circles and started dating. Food became a focus of her anxiety, something she could control as she tried to relate to the aspects of her life that she could not. A complex dynamic was set in motion then, with its own physical and psychological ramifications, which soon began to feel like they were acting *on* or *through* her, rather than the product of her own will. She became bulimic, and was soon skeletal, a mere hundred and two pounds on her five-foot-eight frame at nineteen years old. She then found, with amphetamines, an equivalent to the physical and psychological effects procured by bulimia – which allowed her to function on practically no food. The person who sold her the drug and eventually became her partner for five years was a cocaine addict, on his way to becoming a cocaine dealer. Sophie had her first cocaine experience with him, and by the age of twenty-four, she was a heavy user.

Throughout those years, I saw my little sister oscillate between being vehemently aggressive and crying for help. The single person willing to stand between her and the harm she was doing to herself, and who therefore stood directly in the line of her fire, was our mother. She confronted Sophie, worried about her constantly,

read extensively, contacted detox centers, basically looking to understand what was happening and to find a way to make it stop. Our mother's gaze was marked by such anxiety and grief that it was an impossible place for Sophie to find herself in. Their every contact was charged – any facial expression, tone or turn of phrase susceptible of creating the spark that led to an explosion – after which we would not see or hear from Sophie for weeks. Our father's approach was softer. He was the one initially able to go in and get my sister to admit to her eating disorder, once we had deciphered what was happening and begun to dread the sound of a flushing toilet in the house. Dad did not avert his eyes, but in them, my sister could see such deep sadness that she avoided them, too.

As for me, I watched from the sidelines and tried to seal within myself the anxiety that her behavior and interactions with my parents caused me. I made sure she knew I was there for her, if she wanted to open up to me, but did not actively seek her out. Things changed when she told us about her cocaine addiction and sought our help. For a moment, then, I succumbed to the delusion that I could step in and “save” her. She and I left Montreal and her toxic relationship with her boyfriend to spend a few weeks in a cabin, hours away. For all I could tell, things went well there – she was sober, she rested, and we talked. But as soon as we returned, she went off the deep end.

I learned then what I would hear repeatedly over the next few months, as my parents and I attended training and therapy for the families of drug users: although we were all involved in the patterns that threatened Sophie's life, it was up to my sister to turn her life around. No one could *go in* and *take control*. As this realization sank in, I felt increasingly helpless and hurt when Sophie called me in the throes of intoxication. If I was able to temporarily comfort her, it was only by transferring her anguish and despair onto myself. It was “up to her,” but she was not *doing* it... Even if I figured things were not that simple, I was lost. I could not relate to her serenely, without giving in to fear – which reduced her to her

addiction, and threw my own life into disarray. I started to shut down. I made myself less available. I asked her not to phone at night. In short, I backed out.

There had to be a way to stand *actively* in relation to her, without any hint of the urge to take control – but on the contrary, to affirm her own agency. Someone inhabiting that active relational space would not be detached, yet be serene enough to bear witness to the complexity of her agency. I remember being struck at the time by how Bernhard Schlink, judge and novelist, had captured this complexity in one of his books:

“Often enough in my life I have done things I had not decided to do. Something – whatever that may be – goes into action; “it” goes to the woman I don’t want to see anymore, “it” makes the remark to the boss that costs me my head, “it” keeps on smoking although I have decided to quit, and then quits smoking just when I’ve accepted the fact that I’m a smoker and always will be. I don’t mean to say that thinking and reaching decisions have no influence on behavior, but behavior does not merely enact whatever had already been thought through and decided. It has its own sources, and is my behavior, quite independently, just as my thoughts are my thoughts and my decisions my decisions.”³⁹⁶

Somehow, among of the friends Sophie made during the years of this long, dark night, some were able to do what I was not – bear witness to her agency, in its complexity. By allowing her to see herself through their eyes, in their hearts, they helped her rekindle the inner light of her self-esteem, re-establish contact with her unique gifts – in short, *reconnect with her spirit* – and played a key role in her recovery. She has been sober since 2008 and as I write this, eight years later, she is beginning her practice as a speech and language therapist.

The intimate experience of helplessness in the face of addiction was my personal point of access into the winter dance, into the notion of spirit-sickness of the dancers-to-be, and into the role of various witnessing acts in allowing them to

³⁹⁶ Bernhard Schlink, *The Reader* (Vintage Books, 1998) at 20.

reconnect with their spirit. I have offered it because it was an important part of my way of knowing and of relating to *syúwél* gatherings and to the other spiritual practices to which I was exposed throughout the winter 2009. Drawing on my own challenges regarding how to relate to my sister during the most painful years of her addiction helped me connect to the scope and ethos of the witnessing role in the context of Stó:lō spiritual practice. Conversely, the role of both individual and collective witnessing in Stó:lō spiritual practice, alongside the standards to which dancers themselves are held, taught me what taking responsibility in the face of forces one does not control looks like, in a tradition that tackles this challenge head on.

IV. Being reborn in syúwél: reconnecting to the spirit-self

The active moral witnessing I just credited with Sophie's recovery, which consists in the act of empathetically beholding the suffering person in her uniqueness, and as an agent, also plays a part in the healing power of the winter dance. This is first experienced and enacted by the dancer during their initiation.

The deep suffering that symptomizes spirit-sickness can manifest in a range of destructive behaviors, and although I am not privy to how it is diagnosed, I know that the close relatives of a new dancer play a central role in identifying it and setting the initiation process in motion. From then on, however, the new dancer's family, including their spouse, must step aside in order for that process to unfold. This teaching recognizes that the depth and intensity of emotional connection between close relatives is not conducive to the kind of witnessing that facilitates healing. The experienced dancers responsible for initiating the new ones into their *syúwél* life sometimes explain this by saying that the family is too prone to "pitying" the initiate. To me, the word evokes codependency – the mutual enabling or triggering of maladaptive defense mechanisms in a relational dynamic that activates both sides' needs and fears. As I see it, what is at the heart of the relationship between longhouse workers and the new "babies" – the initiates who

are being reborn in *syúwél* – is *compassion* rather than “pity”: a kind of *suffering with* that always maintains the suffering person at the active center of her own transformation.

Reconnecting with one’s spirit-self is intimate work, and the teachings that guide a person through that process are meant for the initiates themselves. However, part of the process itself was shared with me – the part of accessing one’s spiritual identity that consists in finding one’s *syúwél* song – opening my eyes to some of the sensitivity and skill of the witnessing work that takes place during the initiation. During a phase of the initiation, the initiate sits in seclusion in the longhouse and cries, as she grieves what is going on in her life. Longhouse workers take turns sitting by her side with their drum. They listen for the rhythm and harmonic line of the baby’s cry. Once they pick it up, they start accompanying the baby, gently singing and drumming to that rhythm and harmony. What this does, quite literally, is *turn the cry into song*, the suffering into medicine.

As I see it, the drummers’ witnessing work during the initiation consists in discerning the initiate’s strength, courage, and resources for self-care – in one word, the *power* always present within her – even when that power has been covered over by grief and anger, distorted into destructive patterns of behavior, and become inaccessible as a source of vital energy to the subject of power herself. They amplify for her those dimensions of her spirit-self that can lift her up and allow her to begin her life again in *syúwél*. In other words, they help her realize that she already has everything she needs, and that with the support of her longhouse community, she can forge a new relationship with the forces acting through her, and learn how to channel her own power in a new direction.

What goes on at a *syúwél* gathering is the re-enactment in turn by each dancer of the transformation of their spiritual suffering into medicine, from deep cry into song. This medicine is, again, *amplified* by the witnessing of everyone in attendance, singing along with the dancer and his or her longhouse drummers as

the spirit takes over and leads the dancer around the floor. The act of embodying one's spirit and of sharing its sacred gifts of song, dance, paint and regalia involves transforming oneself in the eyes, ears and hearts of those who attend the ceremony. It draws on the spiritual resources of both the dancer and the gathered witnesses, healing everyone present by allowing them to experience an alternative way of being in relation with their spirit-self.

The glimpse I just provided into an aspect of the initiation hints at a larger picture of the introduction into *syúwél* as an opportunity that a segment of Stó:lō society provides to some of its members to work through their suffering and empower themselves with the support of an active witnessing community. The initiation in itself – which involves seclusion in the longhouse, purification through fasting and bathing, and seeking to discern one's spiritual identity through song, dance, and other attributes – only lasts a few days. This is followed by an expectation that the new babies spend most of their personal time with their longhouse community during their first winter season, listening to teachings, learning how to help others, solidifying their spiritual identity and sharing it with the *syúwél* community as a whole by traveling across Coast Salish territory to gatherings held at other longhouses. But following this path is up to the babies. People thus speak of the initiation as “opening a door”, recognizing that it is up to the initiates, after a few days of teachings in seclusion, to decide whether or not they will embrace the form of life provided by *syúwél* spiritual practice, the ongoing guidance of their longhouse community, and the opportunity provided to them of charting a new course for their lives. However, this picture of the initiation as *offering an opportunity* to a struggling individual would not be accurate without acknowledging its tone or presentation as an *intervention*.

V. Enforcement as a spiritual show of force

Indeed, while the community does not delude itself that it can *control* its members and the spirit-forces acting on and through them, it will not let those forces

consume a person and the people around her without putting up a fight. This is how I interpret the onset of the initiation, in particular, as a *show of force*. Its usual stark, codified beginning sends five or six of the burliest men among the workers of a given longhouse to the house of the initiate-to-be to interrupt his mundane activity, literally “grab” him and carry him into the longhouse. This can be quite gentle if the initiate does not resist, but rougher if he does. Once inside the longhouse, a measure of at least theatrical “roughing up” typically ensues: the person is lifted up in the air, held by the arms, legs and back, and poked, pinched and scratched, sometimes enough to leave light bruises. This is mostly symbolic, in the sense that it is not done to hurt the initiate in any meaningful way – yet it should be real enough to generate an emotional reaction, especially when combined with the surprise and adrenaline of the “abduction”. The goal is to break through the initiate’s psychological defenses and often denial that they suffer from spirit-sickness, and get them to cry – peeling back the layers of habitual protection and / or aggression, through to their basic human vulnerability, from which they can begin anew. It is also to show the initiate that they matter.³⁹⁷ They are being *claimed*, snatched from the dangerous whirlpool that has caught them and may threaten to engulf some of their most vulnerable family members along with them. They are being told that people care for them, and are willing to fight them for their own good. But they are also being warned: this is their chance to learn to navigate powerful currents. The community does not want them to get stranded, let alone drown. It offers them a new paddle, a navigation course – but they must take responsibility for their own boat.

Seen from this angle, *syúwél* initiation is a particular instantiation of the entwinement of spiritual, ethical, legal and political normative understandings

³⁹⁷ A similar show of force happens at times in the context of Maōri society, where symbolic fighting may happen over the corpse of a deceased community member. “Grabbing” the person’s body for the funeral shows how much the deceased was loved, and how much their memory and legacy matters to their community: Laura Lincoln, “*Takamore v. Clarke: An Appropriate Approach to the Recognition of Maōri Custom in New Zealand Law*” (2013) 44 Vic Univ Wellingt Law Rev 141.

composing Coast Salish sensibility. The event's quality as a forceful intervention overlapping all those realms raises a number of questions: How does *syúwél* initiation inform the tension between the social power legitimately wielded to achieve collective safety and order, and respect for individual freedom – including religious freedom? How does it contribute to the tradition's ongoing construal of all those notions in the first place – moulding people's sense of their ability to make choices and act in the world, as well as the (Stó:lō) polity's sense of itself as a social entity capable of creating, interpreting and enforcing its own rule? More specifically, what kinds of transgression are seen as signalling “spirit-sickness”, thus warranting the cathartic spiritual practice of *syúwél*, as opposed to other spiritual-political-legal ways of either bringing people back into the fold, punishing them or cutting them off? Finally, given the socially acceptable, spiritually justified “show of force” that many initiations present, how is any potential abuse of power by longhouse authorities conceived of and prevented? To articulate elements of answers to these questions, I will draw on two initiates' contrasting responses to their respective initiations conducted in the 1980's in the Cowichan Bay area. Viewing his experience through a Canadian legal lens, the first person characterized it as an assault and sought damages against longhouse authorities in a Canadian court. At the opposite end of the spectrum, the second person thinks of his initiation as having “saved his life” by giving him a chance to reckon with his identity, role and responsibilities as a member of *xwélmexw* society.

David Thomas – Somenos longhouse, Duncan, *syúwél* season of 1987-88

The court case of *Thomas v. Norris*³⁹⁸ provides food for thought regarding the contrasting characterization of a *syúwél* initiation process in Coast Salish law and Canadian law. David Thomas, a member of the Lyackson First Nation, sued two longhouse leaders and five longhouse workers (the defendant Norris was from Halalt; the others were from Malahat and Cowichan, and included one elder not

³⁹⁸ *Thomas v. Norris*, 1992 BCSC 352. The judgment of Justice Hood was released on February 5, 1992 – four years after the events, which took place in February 1988.

formally registered with any of the local bands but recognized as a longhouse authority by all) for damages in connection to his initiation carried out during four days in February 1988. To him, the experience amounted to “assault, battery and false imprisonment.” The judge agreed and awarded him \$12,000 in damages for the pain and suffering incurred, while recognizing that his injuries were not serious.

Although the trial judge reads Thomas’s experience in light of the standards of Canadian tort law, he also writes into his decision enough evidence of the purpose, reasoning and normative commitments of the Somenos longhouse authorities to provide meaningful clues into the parallel legal order at play here. Those clues suggest that something was off-kilter in Thomas’s initiation process, even according to the longhouse authorities’ own parameters.

The judgment describes the surprise “grabbing” of Thomas at the home of one of his friends in Duncan by some of the defendants. It is not clear whether or not he resisted and tried to get away, but he was eventually hauled into a van and transported to the longhouse, where he was kept for four days. The aspects of his initiation relevant to the charges include being isolated in a “blanket tent”³⁹⁹ in the longhouse (“falsely confined and imprisoned”), having to fast (“never given any food”⁴⁰⁰), being struck with a ceremonial rattle⁴⁰¹, “lifted up horizontally by eight men, who then took turns digging their fingers into his stomach area and biting him on his sides [...] daily, four times each morning and four times each afternoon”⁴⁰², “hard enough to hurt and hard enough to make him scream. His skin was marked, but he does not believe that it was broken”⁴⁰³ and being “whipped or beaten with cedar branches”⁴⁰⁴ (all amounting to “assault and

³⁹⁹ *Ibid* at 7.

⁴⁰⁰ *Ibid*.

⁴⁰¹ *Ibid* at 6.

⁴⁰² *Ibid*.

⁴⁰³ *Ibid* at 7.

⁴⁰⁴ *Ibid*.

battery”). He had to go for a purifying bath in the forest (“taken to a creek, stripped naked and forced to walk backwards into the water and to go under three times”⁴⁰⁵).

Alongside these two readings of the ritual itself, which are markedly different but can be placed, as above, in immediate parallel, *other features of Thomas’s initiation hold great significance for the structure of authority and accountability within the longhouse* where Thomas underwent his initiation. However, since the issue at hand in the case is never about understanding and applying Salish law’s own standards and mechanisms of accountability, those features are either laid out as findings of fact but promptly dismissed as irrelevant to Canadian law, or merely hinted at and left incompletely explored. *They include:*

- ***The criteria used for the assessment of Thomas’s conduct in the preceding weeks / months / years, and warranting his initiation.*** The hints provided by the judgment concerning the reason for initiating Thomas flow from the elliptic testimony of Thomas’s common-law spouse, Kim Johnny, with whom he had five children at the time of the events.⁴⁰⁶ According to the evidence, she asked the leaders of the longhouse to initiate her partner “because of [his] marital and other problems.”⁴⁰⁷ She said that it was “for us, it was the right things to do – I thought it would help our relationship.”⁴⁰⁸ One of the longhouse leaders explained that part of the problem, according to Kim Johnny, was that Thomas “was drinking, etc.”⁴⁰⁹ In other words, as the longhouse leaders explain to the judge, Kim Johnny came to them seeking help.⁴¹⁰ The judgment provides only glimpses into a potential addiction and

⁴⁰⁵ *Ibid.*

⁴⁰⁶ *Ibid* at 5.

⁴⁰⁷ *Ibid* at 14.

⁴⁰⁸ *Ibid* at 18.

⁴⁰⁹ *Ibid* at 19.

⁴¹⁰ It is clear from the judgment that a forced initiation is a form of intervention that comes following a request for help from family members. One of the longhouse leaders’ testimony is summed up by the judge as reiterating this as a central criterion both in the decision to initiate,

family crisis, since these do not provide a defense for the charges of assault and false imprisonment – but they would weigh heavily in the Coast Salish normative framework surrounding the decision to make a spiritually grounded intervention. Examining the behavior of the initiate-to-be, its causes, previous attempts, if any, to address the person’s suffering, and taking a close look at the manifestation of that suffering, are part of what would allow the longhouse workers to judge whether the person exhibits signs of spirit-sickness that can actually be addressed through spiritual practice. The closest Canadian legal equivalent to this normative framework, in terms of reasons and criteria for launching an intervention, might be the provincial health laws that allow and mandate to keep a person in the hospital or a mental health institution against her will, when someone (usually very close to them) becomes aware that they present “a danger” to themselves or others.⁴¹¹ Mistakes made by medical professionals in confirming such an assessment may lead to damages, but only if negligence is involved. Such mistakes would not shift the applicable

and throughout the initiation process itself. The elder “reiterated that they were there to help the person initiated if he was having a problem; that they were only concerned about him, ‘they want our help and we are there to help them.’ They felt that Kim Johnny needed help.” *Ibid* at 16.

⁴¹¹ In most provincial jurisdictions in Canada, public authorities (the list of which includes hospitals) are obliged to admit and detain a person against her will if she presents a danger to herself or to another person, in the estimation of a physician and upon the latter’s recommendation. Depending on the province, the initial detention may be for no more than 24-96 hours (between 1 and 4 days). In British Columbia, the *Mental Health Act*, RSBC 1996, c. 288 allows for the person to be detained against her will for up to 48 hours for examination and treatment before admittance. Within that time, a different physician must assess the condition of the patient, and complete a medical certificate in order for her to be detained for a period of up to one month. An additional month is permitted on a first Renewal Certificate, an additional three months on a second Renewal Certificate, and an additional six months on a third or any further Renewal Certificates. The patient detained involuntarily is entitled to a hearing before the provincial Review Board (see sections 22 to 24 of the *Act*).

Of course, this still compares apples and oranges, since we are talking on the one hand of a secular framework with a medicalized approach to mental health, and on the other of a spiritual practice. But in both cases, the focus is on assessing and addressing the suffering of the person being forced through a process for their own protection and that of the people around them. Looking at a similar set of facts, while subtracting the demonstrable need to protect the person from herself, or not meeting that threshold, transforms the characterization of the issue in the Coast Salish legal framework as much as it does in the Canadian legal framework.

normative framework to the one employed here, ie false imprisonment, assault and battery.

- ***Evidence that the diagnosis of spirit-sickness is shared among other family members of the initiate and that they support the initiation.*** In addition to evaluating the nature of the prospective initiate's behavior and suffering, the judgment points to another normative threshold for conducting the initiation: when Kim Johnny requested that Thomas be initiated, the longhouse leaders asked her to obtain the support and consent of her partner's immediate family – his aunt or brother in particular, who were dancers. She came back later pretending that she had, but in fact, Thomas's aunt had made her support conditional on Thomas's brother's – and Kim Johnny did not follow through with seeking this brother's consent. It seems that the longhouse leaders did not know her directly (she became a member of the Lyackson First nation only later, after marrying Thomas, and it is not said where she is originally from), but they still took her word for the family's consent, and did not verify that Thomas's family backed up the request. Of course, this is irrelevant in the Canadian context – as the judge writes, “I need not deal with this aspect further, since even if the defendants had Mrs. Kamar's consent [David Thomas's aunt] it would not be a defense.”⁴¹² But from the longhouse authorities' point of view, the family members' intimate knowledge of a person's struggle, and their understanding and support of the initiation – as well as their knowledge of the prospective initiate's understanding of *syúwél*, and of his psychological and spiritual readiness to change his life – are all important factors in the legitimacy and success of their endeavor.
- ***The quality of the prospective initiate's membership and belonging to xwélmexw society.*** The initiates' trust and identification with the community supporting his initiation are also factors in the initiation process. Whether or

⁴¹² *Thomas v. Norris*, *supra* 398 at 19.

not they are *xwélmexw* themselves, their very recognition of *xwélmexw* longhouse authorities – or at least the potential that they will, through the process, recognize those authorities as meaningful in their lives – plays a role in the decision to *forcibly* subject them to the spiritual power and guidance of those authorities. Becoming a dancer is a process of empowerment deeply tied to finding one’s place in a web of meaningful spiritual and social relationships. If those ties do not already hold deep significance for the struggling person, showing them how to *re-inscribe them* with meaning is not likely to be an adequate prescription – even if the person is indeed presenting the signs of destructiveness and strandedness associated with spirit-sickness.

This, then, is an additional feature of the Thomas case that seems to have been misevaluated or insufficiently assessed, from a Coast Salish normative perspective. In his findings on the issue of consent, the judge notes that David Thomas

“knew very little about the religion of the Coast Somenos people [sic]. He was not, and is not, really interested in learning about their culture. He was not brought up in it and lived off the reserve most of the time. What little exposure he had to it came through hearing his great grandmother talk about it.”⁴³

Thomas was considered “Indian” by the state and *xwélmexw* by his people. He was registered with his band to enjoy the benefits of formal membership. He also seemed to have important social connections within the larger *xwélmexw* community in the Cowichan area. Yet if the judge is correct, he remained culturally and spiritually disconnected from the people who claimed him as one of their own. From the judgment, he truly does not seem to have had any inkling or understanding of what he was being put through. Yet within the Coast Salish tradition, claiming jurisdiction over persons – and therefore empowering them, which involves nurturing, containing and directing their

⁴³ *Ibid* at 8.

power – is a function of the nature and quality of their concrete, interpersonal ties in the community, flowing seamlessly in a non-state order from the personal to the political, the private to the public. The mutual recognition of the person as a member of the community, and of the community as having governance authority over the person, does not simply or straightforwardly overlap with genealogical connection. Examples of this, on the reverse of that presented by David Thomas, include the fact that non-Indigenous members of *xwélmexw* families – spouses and spouses’ children from previous unions – have been seen to suffer from spirit-sickness and welcomed into the spiritual kinship of the dance.

- ***The mechanisms of accountability and oversight in the longhouse, and the notion of abuse of power.*** The testimony of two out of the four elders described as “leaders of the Somenos Big House”⁴¹⁴ outlines the mechanism of accountability applicable inside the longhouse during the initiation – that is, once the initiate is beyond the reach of his family members, whose request / consent that their loved one be *overpowered* for his own good is a *requirement* amounting to the first layer of accountability surrounding the process. The two elders described their role in the process as one of oversight. They were, they said, “responsible for the way in which it [the initiation] was carried out,”⁴¹⁵ and at least one of them was present at any time over four days inside the longhouse “to oversee the initiators”⁴¹⁶ and “to guide the men in the initiation of the plaintiff”.⁴¹⁷ They both knew when and where Thomas would be “grabbed” and were both present when he was brought into the longhouse. Their testimony implies a clear limit placed on what could be done to Thomas: the elder supervising the beginning of the initiation said “he did not see

⁴¹⁴ *Ibid* at 19.

⁴¹⁵ *Ibid* at 12.

⁴¹⁶ *Ibid*.

⁴¹⁷ *Ibid*.

anything done to the plaintiff ‘in excess.’”⁴¹⁸ In fact, according to this elder, both he and the other elder responsible for this initiation “decided that the plaintiff would be ‘babied’ [...] meaning his initiation would be easier”⁴¹⁹ than most, and that nothing would be “done to hurt him.”⁴²⁰ More than one person shared responsibility for the work performed in the longhouse. They consulted with each other to assess and calibrate this work on a case by case basis, and were present to oversee its performance. In the context of the intervention that is the initiation, part of the *point* of which is to curtail the initiate’s will, ensuring that a multiplicity of people be involved in authorizing, supervising, and performing the work of spiritual empowerment appears as an important principle and preoccupation of longhouse practice. This is decipherable even in the context of a judgment not geared at elucidating, much less applying such principles as norms.

This cursory review of some of the normative principles governing longhouse practice suggests that at least on two counts, the decision to proceed with Thomas’s initiation was flawed, failing to meet standards supporting the legitimacy and soundness of the intervention in the eyes of its practitioners themselves. The initiate’s family had not been sufficiently consulted nor rallied behind the process, and the initiate himself seemed too disconnected from the community’s authority structure and from the significance of *syúwél* practice itself to adequately interpret his initiation as a form of empowerment in the face of difficulties, a chance to learn how to reset his spiritual, social and close kin relations. It is unclear, too, whether his underlying behavior sufficiently warranted this form of intervention. More broadly, the *Thomas* case suggests that what I have called the initiation’s show of force – whereby the community reclaims its member from the pull of the destructive forces at play in his own life, disciplining him by

⁴¹⁸ *Ibid.*

⁴¹⁹ *Ibid* at 13.

⁴²⁰ *Ibid.*

showing him how to relate to his own fearsome power in a good way – cannot take place in a vacuum. The community’s spiritual authorities never pretend to *control* the people they initiate into *syúwél* practice. Rather, their attempt at helping the initiates *take responsibility for themselves* rests on allowing them to glimpse their innermost capacity to respond to and channel the flowing source of their own lives. In that sense, the longhouse workers’ mode of engagement with the new dancer always remains *in the domain of witnessing*: presenting the initiate with a presence, a consciousness that *subjectifies* them, not in the sense of reducing or controlling them, but rather in the sense of introducing them to an array of practices through which they can actually deepen and open up their engagement within the social world in which they are already embedded. In other words, *syúwél* as I see it is a *practice of freedom* in the sense developed by a particularly congenial segment of Western philosophy: it allows the dancers to further constitute themselves as *subjects* within their world, that is, to draw upon resources that expand “the horizon of the possible” or the “limit of meaningful possibilities” of thought and action in the world – the very “capacities and possibilities of agency.”⁴²¹ This reading of *syúwél* – and of the tools it offers initiates to navigate the forces they do not control – as an important mechanism of ordering within Stó:lō and Coast Salish society is supported by the reflections of experienced dancers such as Eric Johnny.

Eric Johnny – Chemainus Bay longhouse, *syúwél* season of 1984-85

I spoke with Eric Johnny, We:láych, on November 3rd, 2009, near his home in Sts’ailes. Eric is married into Sts’ailes but he was born and raised in Chemainus Bay, and his traditional name is from his mother’s side at Penelakut (Kuper Island). During our interview, we raised the issue of freedom in and through *syúwél*, beginning with a discussion of how he made sense of the initiation as

⁴²¹ Michel Foucault’s later work on subjectivity, especially as illuminated by Robert Nichols in *The World of Freedom: Heidegger, Foucault, and the Politics of Historical Ontology* (Stanford University Press, 2014), is an important source of inspiration here. The quotations in this passage are drawn from Nichols’ chapter on “The Subject of Spirituality” at 174-75.

something usually done against the person's will, or at the very least presenting as a show of force. The insights he offered in response highlight *syúwél* initiation and subsequent practice as a deeply relational, continuous process of constituting *xwélmexw* subjectivities – a site where *xwélmexw* society attends to its most intimate constitution by allowing each dancer to find and thereafter keep exploring, redefining and expressing their own unique place and identity within their society, with the active support and feedback of their spiritual community. Connected to this sense of one's place is a sense of commitment to one's community. By developing in people a strong sense of their own unique, personal identity, *syúwél* practice strengthens and develops people's ability to respond of their actions (their response-ability), to take care of themselves and to support others as needed, even in the face of events and interactions they do not control.

Eric Johnny was fifteen years old when his grandfather and older brother decided to “put him” in the longhouse. The decision in his case had nothing to do with addiction as a manifestation of existential suffering, but still stemmed from an existential issue – Eric's family was preoccupied that he was becoming spiritually disconnected from his *xwélmexw* heritage and identity. While many people now actually request to be initiated, seeking a new beginning and a way to change their lives, Eric says that for his part, as a fifteen year-old, he “didn't see anything wrong with [his] life.” But his relatives were concerned:

“[...] they said I was straying away, you know, I was forgetting about who I was. A lot of my friends were non-native and I'd rather go and hang out with them in town than go down to the longhouse and help. And that was the reason why they decided to put me in, just because I was straying away – and this is why maybe if they had given me a little more time I would have come back [he laughs] without having to go in.”⁴²²

When they came to take him, Eric resisted, “punched... everything.”⁴²³ Evoking

⁴²² Andrée Boisselle, *Interview with Eric Johnny (We:láych) - November 3, 2009 (Sts'ailes)*.

⁴²³ *Ibid.*

those who ran away from the longhouse and sought the “protection” of Canadian law, he describes how quickly the initiation changed his perspective and caused him to value and embrace the expression of his spiritual identity:

“I remember when I was about maybe one or two weeks in the longhouse, I was just fresh, I was just new, and we were all walking out of the longhouse one day, and there was a police car parked outside the longhouse, and they knew all three of us were minors, we were all under eighteen, all three of us.

And the police officer says, ‘If you wanna come with us, we can protect you, we can take you and protect you.’ And I, I use a lot of humour in my life and I knew we weren’t allowed to be talking to anybody, and I stood there and I looked at him and I said, ‘If you came here on February 4th I said, ‘I would have went with you’ (that was a day after they took me). ‘But it’s too late now, because you don’t know my song.’ And then I just laughed and I just started walking, because by then I accepted what they had given me.

There’s no - I don’t even know the words to explain the feeling of accepting that spirit, or whatever it is that’s given to you then. I still can’t explain it today and it’s been over twenty years. But I knew, if I was to be ‘protected’ and taken away, then I’d be deserting myself, deserting my own spirit.”⁴²⁴

Eric’s reflection on his initiation centers around how it forced him to reckon with his place in the world, at once spiritually, socially and politically. He realized that all the people on whom he actually relied for support were *xwélmexw*, and that running away from the longhouse and from his family would actually involve severing himself from all of his communities of meaning and belonging. Such a process of severance or disconnection is what his relatives feared had begun in a more insidious, incremental way, as he drifted away from them and spent more and more time assimilating into non-Indigenous circles:

“My grandfather, he says, no matter how much *xwélmexw* you have in you, it could be just a little bit, or it could be just a teardrop of

⁴²⁴ *Ibid.*

xwélmexw, you have a spirit to go on with that. He says, **no matter how much you deny**, you know, how much you tell yourself that you are not *xwélmexw* – **that little spirit wakes up, you have no choice but to accept it.**

And he said this to me to calm me down, because I told him I don't wanna be here, **I don't want this life.** And he told me that little bit, and then it gave me something to think about, and I thought about it, and I thought about it for days, and then **I realized there is no getting away from it:** [if] I ran away to Musqueam, they're big followers at the longhouse. [And if] I ran away to Nooksak, the same thing. I'd have to run away to somewhere where I didn't know anybody at all, and **I couldn't live with that.** By the time I was fifteen, I knew who my relatives were, I knew where I belonged in my life, and for me to turn that down...

Still, you know, **I believe they saved my life that day** that they took me in, where the first week or so, I didn't think that – **maybe I didn't want it yet.** But my kids know now, this is who we are, this is what we are."⁴²⁵ [my emphasis].

The emphasis, in Eric's reflection, on the relationship between force and will – through the motif of wanting and not wanting, of having “no choice”, for “there is no getting away from” one's spirit and one's place in the world – highlights that the first and perhaps most powerful among the forces one does not control is that which has you emerge as *somebody, somewhere* – within a family and a people, a time and a place. Strikingly, the moment that Eric characterizes repeatedly as having to do with the *absence of choice*, is the moment when he seized his life by the horns – the moment of extraordinary empowerment when he realized he neither wanted nor had to “run away,” beyond the confines of his *xwélmexw* world, into the confines of another one, to be free. What he did need to do was embrace his physical, spiritual, practical embeddedness as a member of his own society, and engage with the source of his freedom: his capacity *to take up* the activities of self-constitution and self-transformation that were presented to him and to explore how those practices and modes of engagement enabled him to disclose and expand

⁴²⁵ *Ibid.*

the range of meaningful thought and action in his life. In that sense, the show of force of *syúwél* initiation is, in and of itself, a teaching regarding how to *forge a relationship* to the social-spiritual forces beyond one's control, starting with the most pervasive and intangible of them – that which embeds us in a given social universe, the very ground of meaning, selfhood and agency.

“I believe they saved my life that day that they took me in”: by *forcing* the initiatic expression of his spirit-self, Eric's community succeeded at making the elusive, immensely complex phenomenon of his own identity and subjectivity actually tangible to him, as something he was *tied to*, not by external *control* but by his own “conscience and self-knowledge”⁴²⁶ – something he could from then on consciously, intentionally act upon to expand the horizon within which his life would unfold. Drawing on the language offered by Michel Foucault illuminates the *event* that *syúwél* initiation presents within the multidimensional process by which Coast Salish subjects constitute themselves – and points to a congenial place for the intellectual and practical resources of the Coast Salish tradition to meet those of the “West”. Indeed, Foucault adopts of the language of spirituality to describe the very nature of subjectivity and its relation to freedom. We are constantly becoming slightly different as agentic selves by performing actions upon ourselves, taking up the basic modes of involvement with ourselves and the world around us that are made available to us by the way of life within which we are embedded. This very activity, when performed ethically, that is, with care and intent, discloses new possibilities for ourselves and our world – alternative ways of being in the world. We are always subject *to* power and subjects *of* power, acting through,

⁴²⁶ This draws on Foucauldian terminology, as deployed and explored by Nichols who writes: “As Foucault states, ‘There are two meanings of the word ‘subject’: subject to someone else by control and dependence, and tied to his own identity by a conscience and self-knowledge. Both meanings suggest a form of power that subjugates and makes subject to.’ We might say, to use a slightly different vocabulary, that one is embedded within a certain form of subjectivity, not because it is imposed externally, but precisely because it is taken up by the subject herself as the limit of meaningful possibilities”: *supra* note 421 at 175. The passage quoted by Nichols is in Michel Foucault, *Essential Works of Foucault - Volume 3: Power*, James D. Faubion, ed. (New York: New Press, 2000) at 331. The parallel citation in the original text can be found in Michel Foucault, *Dits et écrits. Volume 2* (Paris: Gallimard, 1994) at 1046.

within and upon the constraints of the world in which we are embedded. Foucault's entry point into this discussion is a critique of the idea of the "subject" as a "kind of entity with a determinate and invariable set of properties, the most important of which is a certain capacity for reflection on itself (self-consciousness)."⁴²⁷ As Robert Nichols explains, Foucault's work on Ancient Greek ethics – in particular on the understandings of the self and practices of the self that make it capable of apprehending reality inside and outside of itself – highlights how ethical understandings and practices change over time, within a given tradition. Foucault thus demonstrates that

“[...] the supposedly determinant and invariable properties that define the subject (including reflective self-consciousness) are, in fact, historically variable and *constituted by practices on and by the self*. In other words, it is the ethical activities of (self) transformation – the spiritual activities on the self – that make a particular kind of subject possible, in a specific place, at a specific time.”⁴²⁸

For Foucault and the tradition within which he is a storyteller – crafting new versions of old stories to clarify and expand the tradition's members' view of themselves and of their world – as much as for contemporary *syúwél* practitioners and their fellow members of the Coast Salish tradition, *spirituality* points to the domain and to the set of practices that concern the *transformation of being*⁴²⁹ (for Foucault, toward apprehending a *truth*⁴³⁰, and for Coast Salish dancers, toward accessing their *power*⁴³¹). The way in which Foucault connects subjectivity, agency and freedom, and *explains* freedom as a process of disclosure of new possibilities and ways of being through the performance of spiritual-ethical activities, also

⁴²⁷ *Ibid.*

⁴²⁸ *Ibid.*, emphasis added.

⁴²⁹ On the first side of this equation, see *ibid* at 166-67.

⁴³⁰ *Ibid* at 167.

⁴³¹ As previously mentioned, performing the particular kind of transformation that allows one to tap into the power of one's own spirit by completely channelling it in song and dance, through one's voice and body, under the careful watch of others and with their active support, toward the cathartic healing of oneself and others, is how I think of and relate to *syúwél* based on the aspects of the practice that have been shared with me.

connects closely with Coast Salish resources for self-understanding.

In a story that harkens back to Chapter Three’s discussion of the Stó:lō mythological cycle, elder Dan Milo recounts an interaction between one of the first Stó:lō men, left to fend off by himself in one part of the territory, and the youngest, most powerful of the four black bear cubs within the siblinghood of X̱ex̱á:ls.⁴³² The young X̱ex̱á:ls shape-shifts into a fish to take away the man’s hook – his spiritual power as much as his earthly ability to take care of himself. He then shape-shifts again into a boy to get closer to the man. After meeting him, he decides to return the hook and to spend more time with the man, who offers to take care of the boy. Upon making the man’s bed one morning, the boy finds a piece of wood under his blanket. He throws it in the fire to heat up their house. He then discovers that the man considered the log his “wife” – and proceeds to transform another log into an actual woman, providing the man with a companion of his own kind. One of early published version of Dan Milo’s story has him conclude in this way:

“The man was pleased that the boy had made a good-looking woman. He asked the boy if this was the way the ‘high master’ made people. The little boy, who was the child of the Black bear, told the man *that it was the spirit that makes the person.*”⁴³³

The story raises many issues, including about race⁴³⁴, gender⁴³⁵, and the

⁴³² Dan Milo, from Skowkale, was born in 1867. He was 97 years old when he recorded two versions of this story with Oliver Wells. He is the great-grandfather of the Honourable Steven Point.

⁴³³ Wells, *Myths and Legends*, *supra* note 240 at 5, emphasis added.

⁴³⁴ In every published version of the story told by Milo, the man is given a choice between both cottonwood and alder wives and chooses the alder, with the explanation: “I want it *my* colour.” See *ibid*, as well as Thompson & Egesdal, *supra* note 240 at 260, and Wells, *The Chilliwacks*, *supra* note 240 at 90. A more expansive interpretation is proposed by Thompson & Egesdal (*ibid* at 257-58): Dan Milo has reason to rejoice when he tells this story in 1964. He has lived through the attempted erasure of his people, but now the Stó:lō have really begun to gather strength again. Spirit dancing has returned to the valley in his lifetime. In this context, the line “I want it my colour” may be a way for Milo to celebrate and assert the continued identity of the Stó:lō and of their way of life at that moment in time. Other versions of this story discussed both by Thompson & Egesdal (*ibid*) and by Lerman (*Analysis*, *supra* note 240 at 80-82) have a woman of each kind of wood given to the man as companions, producing children of a range of colours, from brown, to copper red, to white.

incorporation of cross-cultural references by storytellers to make the old stories speak to their Christian interlocutors.⁴³⁶ My summary purposely downplays those issues to focus on the direct exchange quoted above between the man and the boy, concerning *how people are made*. Until that point in the story, Milo's telling raises spiritual teachings implicitly, as stories do, through the characters' behavior and the content of their interaction. Then, it strikingly features a direct discussion of spirituality between the characters. Milo's aphorism – *it is the spirit that makes the person* – evokes spiritual transformation as the ground of selfhood. The phrase is powerful because it contains many meanings. Most immediately, in the context of the story, it may be taken to refer to the specific moment in time when the spirit acts from outside the person to create her, using the elements of another being to effect the transformation. This reading emphasizes the distinction between the person and her maker, whose transcendent power rules, and who can generate human life as much as it can toy with it – as we see when the boy steals the man's hook. But the person's relative powerlessness and her dependence on *the forces that make her* do not mean she has no choice or ability to act in the face those forces.

Indeed, the other layer of meaning in Milo's phrase is that the spirit not only outwardly crafts but also enters the person when it gives her shape, and continues to make her what she is and becomes *throughout her existence*. In his interaction with the spirit-boy, the man displays sadness when his hook is lost, as well as gratitude, kindness, care, and a need for companionship, when he suggests that the boy stay with him. He does not react vindictively when the boy throws his wooden "wife" in the fire, but only explains to him that this was not a mere piece

⁴³⁵ The piece of wood is referred to as a "knot-hole." The woman is depicted as a sexual object, or at least, as a piece of wood, a manipulable being. The spirit makes her into a full subject here, not someone to be used by the man.

⁴³⁶ In one of the versions published by Wells (*The Chilliwacks*, *supra* note 240 at 90), Milo draws a parallel between this story and that of the creation of Eve. While the *xwélmexw* woman does not actually originate from a body part of the man, "Indians" too, says Milo, "had a man created in the first, like they do Adam and Eve."

of wood. The spirit-boy rewards the man's kind and caring relationship to him with the tools he needs to provide for himself, and most importantly to the story, with a relationship to another subject sharing his form of subjectivity – creating a companionship between two people *infused with spirit*.

Dan Milo's version of this Xexá:ls story thus supports a view of Stó:lō and Coast Salish subjectivity as fundamentally relational. The story displays a practical and philosophical dialogue with the spirit, as well as the qualities needed to maintain a positive relationship with it. It also features relationality as the ground of selfhood in the relation between the spirit and the woman, and in the creation of a companionship between two people infused with spirit.

Syúwél is one of the ways in which those relationships are taken care of and infused with contemporary meanings. The set of spiritual-ethical practices that it presents allow people (both dancers and non-dancers, each in different, complementary ways) to relate to each other, and to the spirit – that is, to shape themselves *relationally* as subjects of power. These activities, which are framed in terms of a *responsibility* to take care of the spirit and of one's interaction with the spirit, connect the above reading of Dan Milo's story with current longhouse practice.⁴³⁷ An event that happens from time to time during *syúwél* gatherings highlights how this responsibility is conceived and approached.

VI. *Responsibility in the context of the dance*

When Eric Johnny speaks of his initiation as having *saved his life*, one of the things I think he is talking about is that this is when he began to learn how to perform activities of self-care, how to take responsibility for his relationship to the spirit. What he is referring to goes mostly beyond the initiation itself – the intimate realizations it precipitated and the transformative outcomes of those few days, with their tangible manifestation in his song and dance. The learning settled in

⁴³⁷ This language also keeps a deep resonance with Foucault, who refers to the set of spiritual-ethical practices of self-transformation as practices of self-care. Nichols, *supra* note 421 at 163–64.

over time, through the re-enactment of this transformation at *syúwél* gatherings every week during the winter. As mentioned before, being introduced to the spirit only “opens the door” – as experienced practitioners say. It is up to the dancers to keep coming back to the longhouse regularly through the winter, and year after year, to take further steps to grow in their spiritual life. This repetition speaks to an understanding of healing – and beyond, of the process of subjectivation itself – as an ongoing process. In other words, connection to the spirit-self is not a “state” to be attained at once, nor once and for all. Moreover, the spiritual identity revealed through the initiation process is itself not static. It makes room for change.⁴³⁸

It is also understood that people will keep being challenged throughout their lives, that they will encounter obstacles and face loss. Symbolizing this is something that happens from time to time during *syúwél*. As a dancer goes around the floor, a piece of his sewn regalia, such as a little carved paddle or an eagle feather, may come loose and fall to the floor. For the dancer, this is a serious event that amounts to losing a piece of one’s spirit-self. As soon as someone notices, the ceremony is suspended for this to be properly addressed. The piece is picked up, returned to the dancer, and the longhouse group to which he or she belongs proceeds to call some of the experienced dancers in attendance to formally witness the event. Each of those witnesses, in turn, addresses the dancer and the crowd to explain the significance of what just happened. On the night when I saw such work being performed, two themes emerged: on the one hand, the dancer was scolded; there was a sense in which this had happened through his own negligence. He was not careful enough with his regalia – he may not be taking good enough care of his spirit. On the other hand, he was also comforted: this was happening to him because he was strong enough to recover from it. The fall of the piece of regalia

⁴³⁸ Another song may come to the dancer, adding facets to his spiritual identity. They may also receive other gifts like poles, or new features of regalia, as part of their interaction with the spirit, to help them with what they are going through in their lives.

was thus both constructed as an accident, something unexpected and unintentional; a warning from the spirit to be more vigilant; and something to which the dancer must respond, from which he cannot carelessly walk away. What happens to him as he goes around the longhouse floor is something he needs to own – as much as his thoughts, behaviour and decisions, to echo Bernhard Schlink, are his own.

There are, then, at least three different ways in which *syúwél* practice weaves layers of reliance and responsibility into the practitioners' spiritual lives – and in the process, contributes to shaping Coast Salish subjectivities as deeply relational. At the most intimate level, one protected by secrecy rules preventing the dancer from revealing too much about his spirit, and preventing others from peering and preying into the nature and quality of anyone's relation to their spirit, are practices of self-care, such as fasting and bathing, that one can undertake on one's own to cultivate presence, awareness, and alertness to one's own spirit. A dimension of the initiation as I understand it is to reveal to each person a kind of inner duality, and the tools for enacting a reciprocal caring relationship between her physical and spiritual selves. Based on this understanding, a form of attentive, active witnessing lies at the very heart of a person's proper relationship to herself.

This inner witnessing is supported and strengthened by the spiritual practices that bind people into relations of mutual reliance. To me, the best example of such practices is in the potent one-on-one relationship that often develops during the initiation between a baby and the longhouse worker who helps her give shape to her song. Such strong relation between a dancer and her drummer continues to develop beyond the initiation, can expand to a small group of drummers, and becomes a crucial aspect of the mutually transformative, healing spiritual event that singing one's song at *syúwél* gatherings consists in. Drumming and singing for the dancers is a responsibility that dancers and non-dancers alike can take on – it is one of the ways in which the non-dancers are engaged in the heart of *syúwél*

practice, in a supportive but non-peripheral role. Eric Johnny spoke precisely to this kind of relationship during our exchange, emphasizing the closeness and heartfelt reliance that flows from the essential support that those who drum and sing for the dancers provide, as a spiritual-ethical practice of care:

“A lot of the non-dancers that hung around with us when we were new, were very important, because they took care of us when we needed to sing, they were the ones that sang for us. My grandfather, Willie Johnny, William Johnny, was never dancer, and he travelled [to different longhouses for *syúwél* gatherings] right from when he was young til when he passed away. And he was one of them that knew all the songs in Kuper Island and they were very important to that smokehouse community. And there's a lot, here, a lot of – like Ralph Leon for instance, he's not a dancer and a lot of people don't, they know when he's not there because he helps them sing. You probably know Phil [...]?”
– Big Phil

[Andrée: Big Phil, yeah]

He's not a dancer and he helps me a lot, I look for him when I go to the longhouse. They're very instrumental in my life, the non-dancers, I never forget about them.”⁴³⁹

Finally, there is the gathering itself, where each dancer relates to her spirit in front of her *syúwél* community and sees the power of that relationship magnified by the support of the witnessing crowd. This support consists in the kind of caring watchfulness described above, where her relationship to her spirit is celebrated as well as held to a form of gentle account if something goes astray, reminding her of her duties of care toward her spirit – not only for herself, but for everyone else too – and helping to generate the preventive support she needs from her community. It is never more striking than during the dance that each of the participants in *syúwél* is being seen for who she is, received in her greatest vulnerability, and stood by as she finds the power at the core of this vulnerability. When everyone joins in singing for a dancer, and the roof of the longhouse seems about to lift off

⁴³⁹ Interview with Eric Johnny, *supra* note 422. Ralph Leon became a dancer one of the winters following this interview.

from the drummers' pounding, her unique place in the intricate mystical and material weave of her society literally vibrates all around her, and she is cradled in the healing vibration.

For dancers, the unique spiritual identity shaped and recognized through *syúwél* practices comes with its own form of kinship network. The babies born (ie new dancers initiated) on a given winter are spoken of as a siblinghood. Each of them is born to a family, under the parenthood of their own longhouse authorities, with older brothers and sisters in that longhouse modelling as many different paths forward in their spiritual lives – and an extended kinship network of dancers across *syúwél* territory. People's interdependence within that network extends beyond spiritual guidance and support, into material reliance – superimposing on the network of biological and genealogical kinship, a kinship of spiritual practice increasing the demands placed on its members, at the same time as it expands their horizons of choice. In addition to everything discussed so far, this is also how I understand the singular change of perspective expressed by Eric Johnny as he looked back on his initiation. Having a sense of the heavy spiritual and material responsibilities that his membership in the siblinghood of the dance would burden him with led him to cry out, "I don't want this life"! Twenty-six years in, having a much clearer sense of those burdens, but also of the expansion of his world provided by the dance, having relied on the web of support that *syúwél* cast underneath him, and drawn upon spiritual practice to shape his identity and to keep exploring possibilities of self-transformation, he has deployed his *xwélmexw* personhood, *found his people and his place among them* – and what he says captures the full force of this journey: *they saved my life that day*.

VII. Conclusion

In the two chapters composing this Section of the dissertation, I have juxtaposed the two great forms of Coast Salish gathering – family governance work and *syúwél* ceremony – to explore how they inform each other, layering and interweaving to

produce the quality and texture of the normative fabric of Coast Salish societies. Each forum ritualizes the shaping of individual subjectivities by relying on a particular performance of intersubjectivity, enacting the relation between a person and the assembled collective, with the support of an intermediate kin group or longhouse group. At the highest level of generality, each kind of gathering focuses on giving shape and definition to a person's unique identity and place within her society. In both cases, this is done by accompanying her through a vital transformation. It is by exploring the *mode of this accompaniment* – from Willie Charlie's training as a speaker, to the content of his role, all the way to the "birthing" of a *syúwél* baby by helping it give voice to its song – that the key ethical stance of witnessing comes into view, at the heart of Coast Salish legal and political, philosophical and spiritual sensibility.

The traditional governance roles of the speaker and of the witnesses mirror the mutual recognition of each kin group's jurisdiction over intellectual and territorial resources, and allow their respective authorities to voice jurisdictional checks as needed. At a more implicit level, I read them as displaying an ethos of care and restraint in the subtle balancing act of maintaining the shared societal significance of different groups' responsibilities and entitlements, while never centralizing the authorization processes, preserving each group's autonomous authority to interpret and direct its social power as it sees fit. Paying close attention to the speaker and witnesses' roles, I have argued, reveals the crucial role of a form of spiritual attunement at the root of this self-restraint and mutual respect between individuals, as well as between their various *xwélmexw* communities of belonging.

Turning to the spiritual practices surrounding *syúwél* allows one to start discerning the contours of a conception of the self and of a subjectivation process underlying the specific kind of order that prevails within the Coast Salish world. For *xwélmexw* selves as much as *xwélmexw* orders, the center of gravity where law and spirituality meet is the notion of *power*, not *control*. The Coast Salish approach

to socializing the members of its interlocking legal orders is grounded in a spirituality that recognizes a responsibility for one's interaction with the forces beyond one's control. This applies individually as well as communally. From my vantage point, the decision to intervene and claim a person to *syúwél* is, among other things, a way for the community to bring its members "in line" in certain circumstances, which involves demanding that they take responsibility for their actions, *at the same time as* giving them new tools to do so, and accompanying them in reconnecting with and meaningfully expressing their spiritual identity. It is a way of holding people to standards of good behavior, *at the same time as* showing a deep respect for who they are and further defining their place in the community. In some cases, "putting people in the longhouse" strongly communicates to them that their recent behavior is judged worrisome or unacceptable – *but also*, in all cases, that members of their community value them so highly as to personally attend to their intimate re-empowerment. It shows people a path to acknowledging their own suffering and to relate to it as such, but also how to tap into it and channel it toward empowerment and supportive connection with the people around them, rather than toward aggression and destruction. This complex set of interrelated stances, modelled in a wide range of interactions but never fully articulated, gives rise to the witnessing ethos that pervades Coast Salish legal sensibility.

Within the Coast Salish tradition as I understand it, the language of healing and medicine used in the context of *syúwél* does not detract from governance – for example by being presented as its precondition – but can be the very form it takes in certain contexts. Healing does not have to be complete before you become able to govern yourself. Coast Salish *syúwél* practice is based on the knowledge that you are never in complete control nor completely free from suffering, yet that you always have the power to act on that suffering, to interact with it responsibly. The tradition turns this double acknowledgement into a collective practice where each person's unique being and their suffering are seen and held – and their medicine,

channelled and amplified through sharing. Both individual regulation of one's own conduct, and collective self-governance, happen through those very channels designed for responsible interaction with suffering – and with any other potential effects of forces beyond one's control.

In sync with understandings drawn from specific strands of Western political philosophy – illuminated here through the respective work of Nedelsky, Nichols and Foucault – the discussion unfolding over Chapters Four and Five has sought to demonstrate and to illustrate how, within the forms shaping Coast Salish subjectivities, one perceives and gives effect to one's ability to choose and to act – in other words, to one's very freedom – by learning to take responsibility for such interaction. Tuning into one's power is a form of active witnessing, an attentive attunement performed through practices of self-care allowing each person to see her unique role and gifts, and to develop her capacity to steer her course through the many sorts of currents flowing through Téméxw.

Section Four

Kin

Chapter Six

“Now that you’re working for your people, you need to be somebody”

The meaning-making resource of *xwélmexw* names

I. Introduction

In the previous two Sections of this study, I examined speech, stories, roles and practices disclosing *xwélmexw* modes of relating to land and spirit respectively, seeking to train our attention not only on the norms and principles that are the object of discourse and practice, but also on those *implicitly followed in* discourse and *through* practice. I have argued that these two dimensions of normativity, the explicit or referential – the *what* of discourse and conduct, what they are *about* – and the implicit or pragmatic – the *how* of discourse and conduct, what they *model* – should be explored together in forming a sense of what makes a legal tradition *what it is*.

The two chapters composing this final substantive Section of the dissertation are about *xwélmexw* names – adding to the human-to-land relation, and to the human-to-spirit discussion, an ostensibly human-to-human theme for normative investigation. Tracing the connection between past and present name carriers, and examining the processes followed in the attribution of *xwélmexw* names and in the way people understand the status and responsibilities that attach to names, will shed light on the explicit and implicit norms underlying Coast Salish constructions of kinship and citizenship, as well as political identity and status. Clustered around the sister themes of belonging and political participation, those constructs intertwine with those governing the relationship to the natural world and to the spirit-world to form what I think of as the elemental understandings of Coast Salish political philosophy – inflected differently within each of the tradition’s legal

orders rooted in a distinct landscape on Coast Salish territory.⁴⁴⁰ *Xwélmexw* names provide a key to the contemporary inflection of what it means to be, at the most basic level, a member of the polity – but also, of what it means to *become* a meaningful political actor, to acquire a respected and influential voice in the polyphony. Indeed, names do not simply mark who one “is” by birth, but the choices made to strengthen, align with, and respond to particular ties among one’s web of relations. Alongside those choices, names signal what one is seen to have *done* and *become*, and what one is being set up to accomplish and live up to. As such, the normative inquiry into traditional names extends well beyond the norms structuring belonging conceived as a birthright. It flows into the expectations surrounding the actual exercise of political agency.

At this particular juncture in the unfolding story of the Coast Salish legal tradition’s recovery – the story of the contested decolonization of the context within which it operates – the inquiry into *xwélmexw* names and the arguments it allows one to make regarding the contemporary construal of voice and belonging in the tradition, bring up another set of concerns and a closely related line of argument. Indeed, through the recovery of traditional names as markers of political identity and status within the Stó:lō polity, what comes into view is the way in which Stó:lō law – in particular through the bilateral reckoning of kinship in the tradition – serves to re-empower women and to decolonize gender relations within the polity.

In this chapter and the next one, I will follow those two parallel lines of argument: on the one hand, unpacking the meaning of kinship and political agency, and on the other hand, revealing how Stó:lō women are drawing on *xwélmexw* names to recover and actualize a part of their rightful levers within their legal order – retrieving their own voice and authority in the process of re-threading, from a spool of ancient wool, both their own and their *kinsmen’s* place in the fabric of

⁴⁴⁰ See *supra* notes 21 to 23 and the text they accompany.

their society. In a nutshell, what I will argue here, drawing in turn on a man and a woman's storied perspectives on their own lives, is that the colonial legal apparatus, which acted on the boundaries of both the *xwélmexw* political community and of its land base to disempower, silence and remove women from their communities, finds a powerful antidote in the bilateral reckoning of kinship and names in *xwélmexw* law. I contend that names, the responsibilities that attach to them, and the very process of their recovery since the 1960's are effectively counteracting patriarchal exclusions and rebalancing gendered power dynamics – in a word, decolonizing gender relations – within *xwélmexw* society.

II. A gendered equilibrium, interrupted

The historical dynamic yielding the particular “identity sensibility” shared by *xwélmexw* polities across the Coast Salish world is complex and has been much studied and debated. Keith Carlson’s “thick description” of the history of Coast Salish collective identity centers on the dynamic character of this identity, that is, on the way in which *xwélmexw* societies are characterized by their very approach to change and adaptive responses to disruptive events. Among the stepping stones toward his inquiry, Carlson surmises that until the 18th century, *xwélmexw* “collective identity and regional political authority” had been principally shaped by “the need to secure access to regionally dispersed food resources and food-processing technology opportunities.”⁴⁴¹ In the particular social and geographical landscape of the Coast Salish world, establishing such access gave rise to “one of the most striking features of Coast Salish society”, namely “the effort the people put into maintaining a host of identity options; options that can be deployed or operationalized at a moment’s notice to serve a range of personal or collective objectives.”⁴⁴² Whether it be emphasizing one’s extended family connections, maternal or paternal genealogy, membership in a historic tribal cluster, or even band membership according to the criteria used by the federal department

⁴⁴¹ *The Power of Place*, *supra* note 1 at 50.

⁴⁴² *Ibid* at 9-10.

administering the *Indian Act*, the very ability “to shift and apply the relevant identity when the circumstances warrant and demand,”⁴⁴³ writes Carlson, is to this day a distinctive feature of *xwélmexw* political life. Understanding shifts in affiliations within the Coast Salish world, and the principles, goals, and language legitimizing those shifts, requires tuning in to an important normative dimension of *xwélmexw* self-understanding.

One of the sedimented references contributing to the definition of meaningful *xwélmexw* identity options in contemporary contexts is the “fundamental tension,” alluded to at various points in the previous chapters, between “geographically nested identities and more regionally dispersed affiliations – the latter being for the most part products of human movements over the geography.”⁴⁴⁴ While this observation is trite among those familiar with *xwélmexw* social organization, Carlson notes that the gender and class dimensions of this dynamic interplay within *xwélmexw* families – between their local rootedness in villages and tribal clusters, on the one hand, and their regional connectedness to extended kin networks, on the other hand – have been largely overlooked.⁴⁴⁵ Stepping into this gap, Carlson draws on his extensive research into written and oral sources of *xwélmexw* history to advance the following explanation.

In the immediate pre-contact period, flowing through to the creation of reserves and band membership lists, he writes,

“the upper class of one village community had much more in common with the nobles of neighbouring tribes than they did with the propertyless commoners and slaves within their own settlement and tribe. Moreover, while elite women inevitably felt greater affiliation with the men of their own station than with the female slaves who relieved them of having to perform manual labour, nonetheless, the effects of elite polygamy and patrilocal residence patterns resulted in both high-

⁴⁴³ *Ibid* at 10.

⁴⁴⁴ *Ibid* at 29-30.

⁴⁴⁵ *Ibid* at 30.

class women and lower-class free men often being more interested in the affairs of people outside their winter village than would have been the case of either elite males or slave women.

The historical reasons for these cross-gender / cross-class alliances, while generally overlooked, are relatively straightforward. To this day, high-status men typically derive much of their authority and status by publicizing genealogical ties to heroic ancestors who, near the beginning of time, were transformed into large stones or other objects located near their ancestral settlements. Those stones serve as identity anchors around which prominent men build settlement- and tribally based affiliations among their followers. High-status women, on the other hand, typically relocated to live in their husbands' settlements after entering an arranged marriage. Important signifiers of a woman's status and identity therefore remain located in the immediate vicinity of her parents' homes or, as inevitably occurred, travelled with her sisters to their husbands' locales."⁴⁴⁶

Within the elite, then, there would have been historically a productive tension between the emphasis placed by men on their local, village and tribal polity, and on their leadership, status and authority at that level, deeply anchored in the landscape – and the emphasis placed by women on a pan-tribal *xwélmexw* identity, based on their ties to their parents and brothers in the village where they were raised, and on their ties to their sisters, married and raising families of their own throughout Coast Salish territory. These ties did not only yield regular, seasonal access to a variety of resources, but also actual identity options. If individuals or families needed to relocate temporarily or permanently for any reason, the pan-tribal ties nurtured by women provided a range of possible homes for them, making movement and even migration across Stó:lō Téméxw and Coast Salish territory a regular occurrence in the face of danger or disruption.⁴⁴⁷

Within the lower class, women's kin network would have been equally as valuable as men's, with perhaps even more fluidity insofar as men likely joined their wives'

⁴⁴⁶ *Ibid.*

⁴⁴⁷ Carlson's study amply demonstrates this. A visual representation of these movements across the territory is provided in the *Stó:lō Atlas*, *supra* note 1 at 30-31 (plate 9).

villages as much as the reverse, and more often than the elite did, depending on need, space and resources.⁴⁴⁸

It is therefore fair to think of the fluid affiliations across kin networks – which are so characteristic of *xwélmexw* identity, and tie people throughout the Coast Salish world in webs of mutual reliance of enormous social, economic and political significance – as predominantly *women’s levers* within Coast Salish social organization. This is important in order to understand that, in the context of Coast Salish society, some of the colonial laws and policies that were not overtly, self-consciously sexist, nor directly geared at assimilating Indigenous people by excluding and disempowering women – as some clearly *were* – constituted an attack on *xwélmexw* social organization that particularly impacted women’s political and economic levers within their society.

The most obvious set of policies with such an effect, within the broader colonially wrought “process of identity fracture and contraction”⁴⁴⁹ that Carlson and other prominent ethnohistorians and socio-legal scholars have investigated, are those surrounding reserve creation. Those policies set out to drastically reduce Indigenous access to their lands and fisheries,⁴⁵⁰ to fragment, reduce and immobilize their polity⁴⁵¹ – and inside those constricted geographical and political boundaries, to render Indigenous jurisdiction itself anecdotal.⁴⁵² As Carlson points out, erecting those boundaries and giving them legal effect within the colonial

⁴⁴⁸ *The Power of Place*, *supra* note 1 at 158: “the supratribal concept of collective identity,” Carlson writes, “was intimately associated with elite women (and likely, lower-status men and women) who, as adults, often lived away from their childhood homes and as such, retained special personal affinities with people and places farther afield.”

⁴⁴⁹ *Ibid* at 32.

⁴⁵⁰ Douglas Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925* (Vancouver: UBC Press, 2008).

⁴⁵¹ *The Power of Place*, *supra* note 1 at chapters 6-7. Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002). Jean-Jacques Simard, *La Réduction : L’autochtone inventé et les Amérindiens d’aujourd’hui* (Sillery, QC: Septentrion, 2003).

⁴⁵² The powers of band councils to make by-laws are enumerated at section 81(1) of the *Indian Act*, R.S.C. 1985, c. I-5. They include matters of the order of “the regulation of traffic,” “the destruction of noxious weeds,” and “the residence of band members and other persons on the reserve.”

government's apparatus "acted to reinforce settlement and tribally based identities at the expense of more regional expressions"⁴⁵³ – a segmentation that, in the Coast Salish context, happened to emphasize male-dominant expressions of collective identity and to undercut women's roles and levers within their communities.

The major impetus behind this reduction and enclosure was to facilitate taking over the land. In the particular context of colonial British Columbia, Carlson shows that the concern of colonial policy with "racial boundary maintenance,"⁴⁵⁴ followed by assimilation, arose in the aftermath of the 1858 gold rush at the junction of Stó:lō and Nlaka'pamux territories. There, clashes between non-Indigenous miners and Indigenous people flared so violently that the settlers realized they would not be able to take over the land and its resources unimpeded, and began to view Indigenous people "as anachronistic impediments to non-Native industrial, pastoral, agricultural and urban development schemes."⁴⁵⁵ Colonial authorities conceived the "problem" as flowing from Indigenous identity, which they saw "as a product of an unanchored relationship with geography, an outgrowth of an errant migratory existence."⁴⁵⁶ Reviewing the correspondence between Edward Lytton, Secretary of State for the Colonies, and Governor Douglas, Carlson explains their reasoning as aiming to "recast [Indigenous] identity on a more European-style agriculturalist model."⁴⁵⁷ This, they thought, could be achieved by curtailing Indigenous movement on the land. The creation of little chiefdoms – geographical enclosures, fixed bands and band lists – would serve the dual purpose of rendering Indigenous governance structures cognizable and amenable to colonial management and surveillance, and of opening up the rest of the land to settlement and exploitation. Emphasizing individual bands as the sole legitimate Indigenous governments allowed colonial actors to work toward dismantling the pan-tribal

⁴⁵³ *The Power of Place*, *supra* note 1 at 33.

⁴⁵⁴ *Ibid* at 168.

⁴⁵⁵ *Ibid*.

⁴⁵⁶ *Ibid* at 169.

⁴⁵⁷ *Ibid* at 168.

ties and networks that made for the richness, balance, and safety (as much against external aggressors⁴⁵⁸ as in terms of food security) of the *xwélmexw* universe.⁴⁵⁹

Carlson's scholarly enterprise in *The Power of Place, The Problem of Time* is to track the way in which historical forces and events, such as the agentic interaction between settler and *xwélmexw* people, and their respective authorities, have influenced the underlying patterns of *xwélmexw* identity and its transformation over time. By highlighting the historically gendered dynamics of *xwélmexw* identity and tracing the persistence of its fluid character through the interplay of historical events, policies, actions and reactions on both the colonial and the Indigenous sides, his study elucidates the mechanism of the dynamism of Stó:lō and Coast Salish identity, suggesting that the fluidity and flexibility of local and regional affiliations did not undermine but rather produced the very character of *xwélmexw* identity over the centuries. The long view provided by his work also illuminates the findings I present in this fourth and final Section of the dissertation. The stories analyzed in this Section provide a window into the revitalization of Stó:lō law over the last fifty years with regard to the twin processes of citizenization and of the construction of political voice and status. In addition to discussing the normative resources of the *xwélmexw* legal tradition that characterize such processes, I will demonstrate that their operation over the last fifty years tends toward rebalancing gendered roles within the Stó:lō polity.

The new emerging equilibrium, as I see it, is the expression of a tradition at work: it draws on some of the gendered, sedimented patterns of belonging and legitimacy exposed by Carlson, yet is reinterpreted by contemporary actors to respond to present challenges and to push back against current constraints. In

⁴⁵⁸ Bill Angelbeck & Eric McLay, "The battle at Maple Bay: The Dynamics of Coast Salish Political Organization through Oral Histories" (2011) 58:3 *Ethnohistory* 359.

⁴⁵⁹ Given the complexity of that universe, the effects of different colonial policies were varied and sometimes at odds with each other. Alongside reserve creation and the purposes it served, Carlson also shows that other countervailing colonial initiatives inadvertently reinforced regional connections or allowed their mobilization and expression in the late 19th and early 20th century: *The Power of Place*, *supra* note 1 at 211 and ff.

particular, I will highlight how ancestral *xwélmexw* names allow the interplay of local rootedness and regional interconnectedness to find a contemporary expression in *xwélmexw* extended kin networks. The construction of aspects of these traditional political identities, whether it be through the mother's or the father's line, is usually accomplished today through the careful consultation with and active participation of women as authorities in the process, establishing women as crucial players in shaping the *xwélmexw* political and legal order. In addition, while *xwélmexw* names may not provide one with more than a tenuous and informal voice in the affairs of bands to which one is *not* a member, they do have a clear and tangible role in the revitalization of networks of mutual responsibility and reliance across the expanse of Coast Salish territory. The access to distant resources of old – the salmon drying camps, cranberry patches, elk and deer hunting grounds – is being supplemented today along the lines described by John Lutz's moditional economy⁴⁶⁰: *xwélmexw* names firm up lines of reciprocity within extended kin groups, constituting the interpersonal *xwélmexw* system of mutual care that combines welfare, personal and life insurance, job search and training, child and family services, and so on.

To gain a better sense of how norms of belonging and political voice are being re-established and reinterpreted through “Indian” names today, and how this contributes to the decolonization of *xwélmexw* gendered dynamics (and vice versa), it is useful to trace the gendered impact of the colonial assimilative project beyond the one that reserve and band creation had on the mobilization of pan-tribal ties. Indeed, throughout the 20th century, the *Indian Act* has worked to reify

⁴⁶⁰ As previously mentioned (at *supra* note 57 and the corresponding text), John Lutz has traced the emergence of an economy among Indigenous peoples in British Columbia whereby the modern, capitalistic economy would not replace, but rather be used by Indigenous people on their own terms, to meet to their own ends and achieve the aims of their ongoing traditional economies. The term he coined to describe this particular outcome of purposive Indigenous agency is that of the “moditional” economy, a blend of modern and traditional. *Xwélmexw* names, I suggest, play a role in this blend. They are a unique resource of their own, valuable on every level, from the intimately personal and spiritual, to the political, legal, and economic. In that last realm, I see them playing a role in accessing and sharing valuable resources such as salaries, government services and benefits, and their non-state counterparts in the traditional economy.

norms of Indigenous belonging and to facilitate assimilation, significantly through the direct exclusion and de-legitimization of women within their polities.

Imposing patriarchy: the *Indian Act* and its legacy

In Canada, the term “Indian” has been the object of legal definition since the introduction of legislation governing so-called Indians in 1850. Among Indigenous people, only those fitting the category of “status Indian” are officially recognized as members of the polities that may benefit from the continuation of the historic nation-to-nation relationship with Canada. The earliest settler definition was broad, including “any person of Indian birth or blood, any person reputed to belong to a particular group of Indians, and any person married to an Indian or adopted into an Indian family.”⁴⁶¹ It allowed the settler State to ignore, in its relationship with Indigenous peoples, the huge variety of their societies in terms of languages, knowledge categories, forms of order, subsuming them into a common racialized identity facilitating their treatment as a generic “other”. Drawing a clear boundary between who was Indian and who was not was essential for the newborn State to assert control over the colony’s population and territory. As part of that control, status-Indians were initially denied the right to vote. Those who achieved positions of power – as doctors, lawyers, Christian ministers, or holders of any other university degree – automatically lost Indian status.

As of 1869 – two years before British Columbia joined the Dominion and the *Indian Act* began to apply to Indigenous peoples there too – assimilation became an even clearer goal of the Act: first, it specified a minimum blood quantum of 25% to qualify for status;⁴⁶² and second, it deprived Indigenous women of status when they married non-Indian men. From the State’s point of view, in line with the

⁴⁶¹ Megan Furi & Jill Wherrett, *Indian Status and Band Membership Issues: Research Report* (Ottawa: Government of Canada, Parliamentary Information and Research Service, 1996).

⁴⁶² Bonita Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview” (2003) 18:2 *Hypatia* 3 at 9. Lawrence relies on Olive Patricia Dickason, *Canada’s First Nations: A History of Founding Peoples from Earliest Times* (Toronto: Oxford University Press, 1992) at 251.

patriarchal assumptions of settler society, children of such unions had to be characterized as white, because they might inherit property from their white fathers outside the lands reserved for Indigenous peoples.⁴⁶³ Legally enforced incorporation into white society trumped Indigenous claims to land and wealth outside the clearly delineated reserve boundaries. Women who “married out” and their descendants were alienated from their communities because at the time, the *Indian Act* tied band membership to Indian status. Women stripped of their status thus not only lost the benefits of federal health, education and social assistance programs destined to Indians, but also the right to live on reserve with their families. The profoundly discriminatory legal framework of the Act was only finally altered in 1985 as a result of Indigenous women’s longstanding struggle for equality, pursued (among other ways) through proceedings under the *International Covenant on Civil and Political Rights*, and buttressed by the perceived impact of the newly adopted *Canadian Charter of Rights and Freedoms*.⁴⁶⁴ Provision was made for the reinstatement of women who had lost status through marriage – and after further litigation, of some of their descendants. But legally enforced assimilation cannot be easily undone. As Mi’kmaq scholar Bonita Lawrence puts it, “the damage caused, demographically and culturally, by the loss of status of so many Native women for a century prior to 1985, whose grandchildren and great-grandchildren are now no longer recognized – and in many cases no longer identify – as Indian, remains incalculable.”⁴⁶⁵

Thus the 1985 status criteria of the *Indian Act*, which are still in force today, have a more egalitarian impact on men and women who form families with non-

⁴⁶³ *Ibid* at 8, citing Ann Stoler, “Carnal Knowledge and Imperial Power: Gender, Race and Morality in colonial Asia” in Micaela di Leonardo, ed, *Gender at the Crossroads: Feminist Anthropology in the Post-Modern Era* (Berkeley: University of California Press, 1991) at 53.

⁴⁶⁴ The legal battles of Jeannette Corbiere Lavell (before Canadian Courts) and of Sandra Lovelace (in the international forum, using the provisions of the ICCPR), and their aftermath, are chronicled in Peter Kirby, “Marrying Out and Loss of Status: The Charter and New Indian Act Legislation” (1985) 1 J Law Soc Policy 77.

⁴⁶⁵ Lawrence, *supra* note 462 at 9.

Indigenous partners.⁴⁶⁶ The assimilative character of the *Indian Act* however, has not changed. In keeping with its historical goals and premises, the Act continues to draw a clear, objectively ascertainable boundary around Indigenous identity by treating it as fixed and measurable genealogical relationship – at odds with Stó:lō (and many other Indigenous peoples’) more complex approach to genealogy and relationship, as I will demonstrate below – and as such, remains one of the foremost mechanisms of colonization and assimilation of Canadian law. By virtue of section 6 of the Act, known as the “second generation cut-off rule,” Indian status is terminated after two successive generations of intermarriage between status holders and non-status people. Taking into account the rate of intermarriage, which varies according to the proximity of Indigenous communities to urban centres and non-Indigenous communities, different projections have been made of the legally engineered extinction of Indigenous peoples in Canada – or to put it more accurately, of anyone to whom Canada recognizes owing constitutional obligations. In 1999, one such projection commissioned by the United Anishnaabeg Council forecast the last status-Indian birth to take place within a hundred years.⁴⁶⁷

Aside from reformulating Indian status to bring it in line with the equality provisions of the *Canadian Charter of Rights and Freedoms*, the changes brought to the *Indian Act* in 1985 gave bands the power to determine their own membership, independently from status as defined in the Act. Since membership determines who can live on reserve, participate in band elections, own property on reserve, and share in band assets, this measure had the potential of putting a hold on assimilation *de facto* – if not in the eyes of the state. Bands were free to get rid of the state’s definition of Indian status and to open up their membership criteria as they saw fit to allow previously excluded individuals and their descendants to

⁴⁶⁶ With important caveats, discussed below: see *infra* note 476.

⁴⁶⁷ Jo-Anne Fiske & Evelyn George, *Seeking alternatives to Bill C-31: from cultural trauma to cultural revitalization through customary law* (Ottawa: Status of Women Canada, 2006) at 22.

return to their families and communities.

However, notwithstanding interesting recent developments whereby many Indigenous communities indeed do bypass state criteria of Indigenous status and identity in crafting their own membership criteria,⁴⁶⁸ many bands in Canada did not facilitate the reinsertion of their excluded members and of their offspring, and maintained restrictive definitions of who counts as a member, adopting either racial criteria – replicating the “blood quantum” model of the United States – or genealogical criteria that require members to have one or both of their parents as members of the band.⁴⁶⁹

Both racial and genealogical membership criteria approach Indigenous identity and belonging as a bureaucratically ascertainable quantity or relationship. Below the objectively measurable threshold, the identity “switch” turns off. The notion that identity can be rule-bound and bureaucratically measured has been profoundly damaging to Indigenous communities, where the rapport to external authorities and their criteria for determining Indigeneity has been, to a degree, internalized.⁴⁷⁰ It encourages attitude according to which, if a person’s characteristics go over and beyond the State’s threshold – for example, if both her parents are band members when only one is deemed “sufficient”, or in the American context, if she can somehow show more “Indian blood” than her

⁴⁶⁸ Kirsty Gover’s study of tribal membership codes and constitutions in settler democracies shows that many Indigenous communities are open to ascribing membership to individuals who are not initially members of their own communities, but can show membership in another Indigenous polity. This inter-Indigenous recognition, marking a turn away from State criteria in tribal legislation, is an interesting development, but one that does not speak to the other decolonization issue I am discussing here – that of remedying gender-based discrimination by reinstating the membership of those (and their descendants) who have lost it as a result of past exclusionary colonial criteria. See Kirsty Gover, *Tribal Constitutionalism: States, Tribes, and the Governance of Membership* (Oxford: Oxford University Press, 2011). And: Kirsty Gover, “Inter-Indigenous Recognition and the Cultural Production of Indigeneity in the Western Settler States” in Avigail I Eisenberg et al, eds, *Recognition versus Self-Determination: Dilemmas of Emancipatory Politics*, Ethnicity and democratic governance series (Vancouver, British Columbia: UBC Press, 2014) 201.

⁴⁶⁹ Lawrence, *supra* note 462 at 13-15, and Fiske & George, *supra* note 467 at 9-12, document this resistance by Indigenous communities in the wake of Bill C-31.

⁴⁷⁰ See Lawrence’s point to that effect, which runs through her text, *ibid*.

neighbour – she may be seen as more authentic, inherently more entitled to the resources of the community, or having a voice that should carry more weight in decision-making. Such identity criteria perpetuate the pattern of assimilation into settler society, insofar as partnering with an “outsider” renders the descendants’ belonging more precarious in most scenarios – in some, even immediately forcing the “insider” himself or herself to choose between living with their partner and living with their community.

Why would Indigenous communities choose to maintain such restrictive lines around their own polities? As Lawrence explains, they still operate in a colonial context.⁴⁷¹ On the practical side, this means that they did not automatically gain greater access to their lands and natural resources, nor jurisdiction over their traditional territories, to go along with the power to recognize a wider membership base. The federal government may have dissociated membership from status with the stroke of a pen, but it still only provides funding and social programs on reserve to those possessing Indian status.⁴⁷²

In addition to this, one hundred and fifty years – in the case of British Columbia, more in the majority of the rest of the country – of colonial policies have produced deep social suffering. The onslaught on Indigenous families and on Indigenous communities’ laws and mechanisms of socialization manifests in what some call “lateral violence” inside communities, with particular resonance for Indigenous citizenship and the boundaries that communities draw around themselves. Two connected, but distinct, aspects of how this violence manifests should be highlighted in order to understand how Coast Salish law operates to decolonize *xwélmexw* relations.

⁴⁷¹ Lawrence, *ibid.*

⁴⁷² This may change given the Supreme Court’s recent recognition, in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, that non-status Indians and Métis are under the responsibility of the federal government at section 91(24) of the *Constitution Act, 1867* (U.K., 30 & 31 Victoria, c. 3).

The first concerns membership in general, and the wariness of many bands to create membership rules operating to welcome the descendants of members who were excluded through the imposition of the *Indian Act's* status and membership criteria. It is difficult to see how the social issue of reintegrating people raised outside their communities could seriously be addressed through an abstract genealogical rule. In other words, my perception is that *xwélmexw* (and other Indigenous) communities are keenly aware that reconnecting estranged families is painstaking work that can only be engaged in on a case-by-case basis. It rests on community members' willingness and ability to strike real, interpersonal relationships with individuals who seek to reconnect meaningfully with their ancestral social homes, the latter's politics and decision-making processes. The idea of translating a "birthright" into an abstract, impersonal band regulation setting out the genealogical pedigree that might *automatically* entitle previously excluded folk to play a role in the community's governance, and to receive a share of its resources, is at odds with the incremental, interpersonal process of reconnection. Communities seeking to reintegrate their estranged descendants may choose a route relying on their own norms, pedagogies, and methods of individual assessment – rather than on the kind of propositional, impersonal norms that have currency within state orders.

The above explanations are not meant to detract from some the critiques of ongoing exclusion following the changes to the law in 1985. Depending on the circumstances of each case, and on the rules of membership at issue, exclusionary outcomes may still be seen and felt as a perpetuation of bureaucratic violence by First Nation governments. The pernicious effects of approaching belonging and Indigeneity through impersonal rules are also commonly felt in a diffuse and elusive way, when interactions among members fall along the lines sketched out above, calling up certain genealogical and experiential pedigrees as hallmarks of what it means to belong to a given community. While Indigenous societies have always had, as much as any, conceptions of who they were that defined them by

opposition to others,⁴⁷³ the authenticity ideology absorbed by communities as a result of colonial reduction and mechanistic boundary-setting produces forms of lateral violence.

The second kind of lateral violence, more physical and direct, is gendered. While here too, gendered conflict, discrimination and aggression are not new to Indigenous societies,⁴⁷⁴ what is new are the ways in which colonial policies and institutionally protected authorities have sowed familial and societal dysfunction, compounded women's vulnerability, silenced Indigenous women and normalized violence against them.⁴⁷⁵ The *Indian Act's* role in actualizing and linking the two kinds of violence / disempowerment – the gendered and the exclusionary – is undeniable: as summarized above, the Act's contribution to the fragmentation of Indigenous communities was effected through the very disempowerment and exclusion of women during the greater part of the 20th century. And despite the work accomplished by women in having the discriminatory operation of the Act's status provisions struck down, and the strides made toward reinstating some women and their descendants into their communities, the Act and its attendant policies continue to produce sexist outcomes at the hands of the federal administration, which the latter does not acknowledge nor remedy unless forced to do so by the judiciary.⁴⁷⁶ It also continues to be assimilative. Its status

⁴⁷³ In the Coast Salish context, Carlson writes: "among the Indigenous population of the lower Fraser River watershed there has long existed a concept of 'otherness'." *The Power of Place, supra* note 1 at 159 and ff. The term *Xwélmexw* historically stood in opposition to *Lats'umexw* – the generic term for others, sometimes replaced by another one when a specific group of "others" called for specific designation, such as the *Yukletaw* (unkillable things) for Coastal raiders (Kwakwakawak and Haida), or the *Xwelítem* (the starving ones), for the British settlers, now extending to all non-Indigenous people.

⁴⁷⁴ See Snyder et al., *supra* note 34.

⁴⁷⁵ See, for example: Amnesty International Canada, *Out of Sight, Out of Mind: Gender, Indigenous rights, and energy development in northeast British Columbia* (2016). Hadley Friedland, "Different Stories: Aboriginal People, Order, and the Failure of the Criminal Justice System" (2009) 72 *Sask Law Rev* 105. And Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls: <http://www.mmiwg-ffada.ca/en/start-the-healing/information-documents/>.

⁴⁷⁶ Recent cases show that the legacy of past discriminatory provisions, and current policies guiding the interpretation of the Act's status provisions, continues to exclude and disadvantage women: see *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555 and *Gehl v. Canada (Attorney*

provisions – which give effect to a legislative goal seemingly justifiable in the eyes of the Canadian legal and judicial system, and severable from its past overt sexism – still stand, and continue to have generally deleterious effects on the composition of Indigenous polities, as well as discriminatory impacts on the basis of gender.⁴⁷⁷

The resurgence of *xwélmexw* names

In this chapter and the following one, I will bring this thesis to a close by laying out stories and experiences that speak to an area of Coast Salish law – the norms and processes surrounding the attribution of *xwélmexw* names – that the Stó:lō have increasingly drawn on and reinterpreted over the past fifty years.⁴⁷⁸ As I will show, this area of traditional Coast Salish law has grown over this period to effectively push back against both the attritional and the sexist dimensions of colonial boundary-setting around Indigenous polities. To be clear, I do not pretend that the retrieval of names presents a form of collective resistance either intentionally or specifically directed at mitigating the ongoing impacts of those two intertwined strands of colonial policy. Rather than to membership per se, or to gender roles and equality, the normative complex surrounding ancestral names attaches to the construction of political identity, status and voice in the *xwélmexw*

General), 2017 ONCA 319. Following the *Descheneaux* decision, the Government identified three sex-based inequities yet to be remedied in the *Indian Act*: the “cousins issue” (the differential treatment of first cousins whose grandmother lost status due to marriage with a non-Indian, when that marriage occurred before April 17, 1985); the “siblings issue” (the differential treatment of women who were born out of wedlock of Indian fathers between September 4, 1951 and April 17, 1985); and the “issue of omitted minors” (the differential treatment of minor children, compared to their adult or married siblings, who were born of Indian parents or of an Indian mother, but lost entitlement to Indian status because their mother married a non-Indian after their birth, and between September 4, 1951 and April 17, 1985). In response, Bill S-3, *An Act to amend the Indian Act (elimination of sex-based inequities in registration)*, 1st Sess, 42nd Parl (3rd Reading, Passed by the Senate on June 1, 2017) was introduced. In her Observations to the Sixth Report of the Standing Senate Committee on Aboriginal Peoples Chair Lillian Dyck comments: “Bill S-3, even with the proposed government amendments, continues a piecemeal approach in dealing with sex discrimination, whereby amendments to the *Indian Act* are introduced on a case-by-case basis in response to court decisions.” (<https://www.sencanada.ca/en/committees/report/41074>).

⁴⁷⁷ *Gehl, ibid.*

⁴⁷⁸ The retrieval of *xwélmexw* names occurred in the context of the recovery of ceremonies and traditional governance gatherings since the potlatch ban was lifted in 1951, as previously discussed in Chapters Four and Five.

world – in other words, to the public personae that act as vehicles of meaningful participation in a fundamental dimension of the Stó:lō legal and political order.

A wide range of interactions, choices, and practices form part of that complex: from the decision-making processes of relation-building, consultation and deference to appropriate authorities, to the formal name-attribution process, which includes hiring and gathering people who will play various roles at the ceremony, amassing resources for gift-giving, and hosting the public gathering to ensure dissemination, verification, spiritual connection and teaching, and through to the subsequent ongoing responsibilities and accountability of the name carriers. This cluster of authorities, responsibilities, practices and processes are governed by, stem from and reactivate fundamental normative commitments and assumptions that play out in the tensions between inclusion/exclusion, voice/silence, participation/marginalization. Partly due to the colonial laws and policies sketched out above, this series of tensions and the normative forces that give them meaning have important consequences for the very composition of the *xwélmexw* polity and for the state of its gender relations.

To unpack these dimensions of *xwélmexw* legal sensibility, and their resurgence and transformation over the past half-century, I will delve into the stories of two cousins, Herb Joe and Patricia Charlie, whose lives were shaped by the ancestral roles placed on them through names and kinship. Chapter Seven will rely centrally on the story of Patricia and Tunney Charlie, a couple who married in 1960 at age fifteen and whose life journey strikingly mirrors their society's transformation over their lifetime. An important part of their story is about how Tunney found his way to his *xwélmexw* name. This narrative reveals many important norms and principles concerning the construction and exercise of political agency in the Coast Salish tradition. But equally significant is the fact that it is told by Patricia. Listening not only for the content of the story she tells, but also listening to her as its narrator, and interpreting her narrative perspective in the larger context of her

own life and of her relationship with her husband, illuminates how Stó:lō legal practitioners have turned to names as a central device in the ongoing normative reconstruction and decolonization of their society.

But before turning to Patricia's story, and in order to understand some of the references informing the exercise of her own agency to shape her life and to support her husband, her family, and her community, the remainder of this chapter will focus on her powerful cousin, Herb Joe. In tracing the transformative recovery of the norms and resources attaching to *xwélmexw* names within Stó:lō society, the story of Herb Joe and of the high-status name he received, T'xwelátse, holds symbolic significance. Herb's naming ceremony in the early 1970's was the first large-scale traditional gathering to be hosted in the Fraser valley after the lifting of the potlatch ban.⁴⁷⁹ Not only does Herb's naming disclose important principles regarding the close entwinement of belonging and participation in *xwélmexw* political life and philosophy, but his namesake, T'xwelátse, also reveals names as an important marker for keeping ancient stories and teachings close to mind, and open to use and interpretation. What is more, the T'xwelátse stories (old and new) happen to provide important precedents and tropes for thinking through issues of gender and inclusion in *xwélmexw* society.

⁴⁷⁹ The authorities and responsibilities surrounding the high-status name of T'xwelátse and the remarkable story of how those responsibilities were discharged in a challenging situation are the subject of Emmy-Lou Campbell, *The transformative power of T'xwelátse: a collaborative case study in search of new approaches to Indigenous cultural repatriation processes* (MA Thesis, University of Victoria, 2010) [unpublished]. As noted below, I draw on Campbell's extensive research to establish some of the connections supporting part of my argument in this chapter.

III. *Powerful symbols: stories of T'xwelátse*

Gender in stories of old

*You can make connections to the old laws, traditions and customs [...],
whichever way you want to describe
the legacy that was left by our ancestors.*

*And that's the way I see it, it's a legacy that was left
and that means to me that I need to understand that legacy
so that I can make it relevant and applicable to my life today [...]
– like learning to live together in a good way.*

Herb Joe, T'xwelátse

In 1890, when Franz Boas travelled through the Fraser Valley researching Indigenous mythology, he met a knowledgeable couple from Sts'ailes who related the *sxwōxwiyám* extending from the northern reaches of the Harrison Lake to the mouth of the Fraser River. Unlike some of his own best students – who intuited that the manner in which Indigenous people constructed and told stories was central to approaching their worldview and mode of reasoning, and therefore took painstaking care in writing down the storytellers' narratives word for word, in their own languages⁴⁸⁰ – Boas merely passed through, barely jotting down the characters' names and the stories' plotlines. Yet the result of his encounter with George Sts'ailes and his wife still produced a substantial chapter of the book of “Indian myths and legends” he published in 1895.⁴⁸¹

The primordial place given, in those stories, to the all-male cast of mythical ancestors who were turned into stone, came down from the sky, or became an animal prevalent in the location of a village – effectively rooting the existence of that village or tribe in the landscape since mythical time – is among the evidence sustaining Professor Carlson's understanding of the gendered balance of *xwélmexw* historical identity. One of those legendary ancestors, whom George Sts'ailes

⁴⁸⁰ A prominent example is John Reed Swanton, who recorded every word spoken by the Haida storyteller Ghandl during the winter 1900: Bringhurst, *supra* note 117.

⁴⁸¹ Franz Boas, *Indian Myths & Legends from the North Pacific Coast of America: A Translation*, annotated ed, translated by Dietrich Bertz, Randy Bouchard & Dorothy Kennedy, eds. (Vancouver: Talonbooks, 2002) at 89–132.

brought to Boas' attention, is T'xwelátse. The story of his transformation into stone involves a domestic dispute, a quarrel between him and his wife. The current carrier of the high-status name, Herb Joe, recounts the myth⁴⁸² as follows:

“T'xwelátse and his wife were on the riverbank arguing when Xáls happens upon them. Xáls, the great Transformer being given the responsibility by Chichelh Si:yà:m for making things right as he travelled through our lands, asked this man and woman if they would consider not arguing and that there were better ways of resolving conflict and resolving problems. As a result of his intervention Xáls and T'xwelátse, who was a shaman, decided to have a contest. They tried to transform each other into various things – a salmon, a mink, a twig. Finally, Xáls was successful in transforming T'xwelátse into stone.

Xáls then gave the responsibility of caring for Stone T'xwelátse to T'xwelátse's wife. Stone T'xwelátse was to be brought home and placed in front of their house as a reminder to all of the family that we have to learn to live together in a good way. And the family's responsibility from that point in time was caring for Stone T'xwelátse – given to one of the women in the family. They were to be the caretaker of the Stone T'xwelátse throughout their lifetime and would pass it on to one of the daughters or granddaughters, who would then be responsible for caring for Stone T'xwelátse for that generation.”⁴⁸³

Xáls intervenes because of the manner of T'xwelátse and his wife's interaction, which seems to feed their conflict – and not because of the fact itself that they are experiencing disagreement. They are dealing with disagreement by arguing – likely meaning that some aggression is going on, perhaps a shouting match, with little if any attempt at listening to each other and truly understanding each other's perspective. This is not a dispute where the husband and wife are communicating

⁴⁸² See the discussion about the meaning of *sxwōxwiyám*, *supra* notes 260 to 262 (and the corresponding text). The sense in which I use the notion of myth in this chapter remains the same: “Myth is not about what never happened, but about what happens over and over again” (*supra* note 262).

⁴⁸³ The meeting between Xexá:ls and T'xwelátse is alluded to by Boas, *supra* note 481 at 104 – but the altercation is mentioned by Hill-Tout, *supra* note 265 at 55-56. This version is narrated by Herb Joe in 2003. It figures in David Schaepe et al, *Man Turned to Stone: T'xwelátse* (Abbotsford: Stó:lō Nation & The Reach Gallery Museum, 2012) at 22. Note that this catalogue of the exhibition is supplemented by a website: <http://www.srrmcentre.com/StoneTxwelatse/1Home.html>

well, opening their hearts to each other or even reasoning, in the sense of providing each other with “arguments”. Moreover, the power differential between the husband and wife is tilted in his favour – he is not only likely to be physically stronger, but he is also a shaman. In his notes to the interactive exhibit surrounding T’xwelátse himself and the myth – a collaborative initiative developed by Stó:lō leaders, elders and employees in collaboration with “The Reach” Museum Gallery in Abbotsford in the spring 2011 – the curator, Scott Marsden, goes one step further and suggests that Xexá:ls walked in on T’xwelátse “mistreating his wife.”⁴⁸⁴ Indeed, to address the dispute, Xexá:ls begins by neutralizing T’xwelátse – turning him into stone. As soon as the shaman is incapacitated, however, Xexá:ls turns to his wife, acknowledging her role in the dynamics of the couple and in the transformation of her husband. She has a responsibility, not only to herself in finding a way out of the violence, but to him too, to play her part in establishing a different dynamic once violence has been dealt with. In the process, both T’xwelátse and his wife are transformed, and they both – as well as their lineage – bear the responsibility to remain iconic reminders that “living together in a good way” is a constant learning process, which needs attending to. The story binds them in a duty of care to their people as a whole, so that they may assist and guide others who are struggling through conflict, domestic and otherwise.

In addition to providing food for thought regarding conflict itself, foregrounding its gendered context within a couple and the idea that domestic violence shall not be tolerated, the way in which the story presents the ongoing relationship between the transformed T’xwelátse and his family – particularly the women in his family – is also striking. Once durably pacified, T’xwelátse is not abandoned or cast away. He is to be “brought home and placed in front of their house.” Xexá:ls requires T’xwelátse’s family to tell his story and to allow him to regain responsibility, status, and a form of grounded humility. His life is not understood as tainted by punishment, but illuminated by transformation.

⁴⁸⁴ *Man Turned to Stone, ibid* at 66.

Elements of a closely related *sxwōxwiyám*, that of T'xwelátse's own birth, can be read in a very similar way, insofar as it weaves together the theme of gendered violence and that of reclaiming and nurturing the good that may come out of any situation. The *sxwōxwiyám* involves Mink – the Salish trickster K*ā'iq – in one of his typical moments of sexually charged misconduct, resulting here in unwanted intercourse and pregnancy. The story, also lifted from Boas' rendering of George Sts'ailes narration, is reprinted in the T'xwelátse exhibition catalogue:

“In Th'ewá:li, on the lower Chilliwack River, there lived a chief who had a very beautiful daughter. K*ā'iq [Mink] wished to have her for himself. So he assumed the form of a handsome young man and walked upriver on the shore opposite the village. He carried a harpoon in his hand and fish on his back so that it appeared as if he had just caught them. At just this moment an old man had sent all the young girls to bathe, among them the chief's daughter. The girls saw the young man, who kept calling “Ps! Ps!” and when they noticed the fish that he was carrying, they asked him to throw one over to them. He fulfilled their wish; the fish fell into the water, swam into the chief's daughter and made her ill. Her father searched for a shaman to heal her. So Mink assumed the shape of a shaman. In the evening he went to the village and when he was seen by an old woman, she said, “Surely he will be able to heal the girl.” They called him into the house and he promised to heal her. First, he sent all the people out of the house, leaving only an old woman sitting outside the door to accompany his song with the rhythmic beats of the dancing stick. To begin with, he sang, but then he slept with the girl and she gave birth to a child right away. So Mink leaped at once out of the house. The old woman heard the child's crying and called the people back. They became very angry, took the child and threw him out of the house. But Mink was standing outside with his mountain goat cape spread wide; he caught the child in it and went away with him. After a while the girl's father became sad that he lost his grandson. So he went to K*ā'iq and begged him to send him back. Mink granted his wish and sent the boy back. He was named T'xwelátse (from the lower reaches of the river). He became the ancestor of the Ts'elxwéyeqw.”⁴⁸⁵

⁴⁸⁵ Boas, *supra* note 481 at 103-04; *Man Turned to Stone*, *ibid* at 22.

The women in this story appear to have very little agency, if any. They are fooled and used by K*ā'iq in a two-step trick: the girl succumbs to Mink in the guise of a young man, followed by the old woman who believes in Mink in the guise of a shaman, enables him to be alone with the girl, and even goes as far as to sing his song. Moreover, if the girl has any choice regarding either her pregnancy or whether to keep and raise her child, this is certainly not apparent from the version told by George Sts'ailes. Her family – the people of her house – and more specifically, her father are depicted as having the decision-making power both to expel and to reintegrate the little boy into their fold.

But this is a trickster story. It invites us to transcend binaries and either/or logic. Drawing on Gerald Vizenor, Bruce Dadey has read the trickster as a figure who “wavers between opposites, and in that wavering, shows opposition itself to be a construction, a trap he escapes not by rejecting one element of the antithesis, which only reinforces the opposition, but by performing the difference so that its constructed nature is manifested.”⁴⁸⁶ K*ā'iq plays, seduces and deceives to have what he wants, but does not simply laugh and scurry away when discovered. When his child is rejected, bearing the brunt of his own deception and predation, he catches him in his blanket and takes him under his care. He is also willing to share “custody” – letting the little boy go back to his mother’s family when they are ready to care for him too. No party has the moral high ground in the story, and no one is depicted as a tragic victim. In the end, it is love for the little boy T'xwelátse that prevails, and he grows up to become an important founding figure for his people.

The inherently destabilizing features of the trickster narratives also include the fact that, like the Xexá:ls storycycle, and sometimes as a part of that cycle, they do not form a finite canon, but rather provide a set of characters and narrative devices that unfold over a series of encounters across Stó:lō Téméxw. They train the listener to think of both time and space in dynamic terms, as entities across which

⁴⁸⁶ Dadey, *supra* note 305 at 169-70.

one can travel, back and forth. One such K*ā'iq story takes us from Ts'elxwéyeqw, back to Sts'ailes. Here, K*ā'iq's sexually driven mischief, by contrast with the encounter at Soowhalie that yielded T'xwelátse, serves to underscore and to permanently enshrine in the landscape the power of women over their own bodies and sexuality:

“When Xáls went up the Harrison River, he came to the place where there lived an old woman called Leqyi'les. Her vagina was set with teeth and with them she bit off the penis of any man who wanted to sleep with her. Xáls camped not too far from her house. When it was dark, K*ā'iq [Mink] sneaked down to the old woman's house. He found her in bed. So he groped about with his right hand under her blanket, in order to feel her genitals. He put his hand into her vagina and she bit it off. So he ran back to Xáls. Even today his footprints can still be seen where he leaped out of the house. He was ashamed and made a fire by himself away from the three brothers' camp. He kept his right arm hidden behind his back. The following morning Xáls continued up the river, with K*ā'iq steering, as always. But because his right hand had been bitten off, he used the left one, and consequently steered so badly that the canoe veered from right to left. Not before they camped again at night did Xáls notice what had happened to K*ā'iq's hand. Then he transformed Leqyi'les into a rock. It still stands beside the Harrison River today. If water is sprinkled on it during nice weather, it will start raining immediately.”⁴⁸⁷

Of all the K*ā'iq stories, this is the one I have heard most often. Perhaps because the “toothed vagina” is a feature set in stone on Sts'ailes territory very close to the reserve – and perhaps simply because of the striking image it offers, along with an alternative sexual narrative to the stories where Mink has his way – the story is alive and well in Sts'ailes. There, adult men and teenagers seen as particularly flirtatious are sometimes nicknamed after K*ā'iq. But going far back into the mythical-historical time of Leqyi'les is only one source of inspirational precedents. As Patricia Charlie's narrative will show in Chapter Seven, Sts'ailes was also

⁴⁸⁷ Boas, *supra* note 481 at 100-01.

decisively shaped by the actions of women who fought back against the violence and abuse to which they were subjected within their households. The above stories of K*ā'iq and T'xwelátse find resonance within their lives. The bestowal of T'xwelátse's name on Herb Joe in the early 1970s, inaugurating the contemporary revitalization of the Stó:lō legal order and the return of many more ancestral names, foreshadowed yet another cycle of re-enactment and re-signification of the old stories.

T'xwelátse's contemporary journey

*That name put me on a journey for the rest of my life
and it made me the man whom I am today.
Herb Joe, T'xwelátse*

1. A fateful choice

When Herb Joe sat with me for a chat in 2009, it had been almost forty years since his elder, Richard Malloway, had sat him down to teach him about his family – yet his experience of those nights was as vivid as ever. Ritchie Malloway, Thelachiyatel, was not only an old man by then, but a living treasure for his people: a runaway from residential school, he had remained hidden from the authorities and been raised at home in the ways of the Ts'elxwéyeqw tribe. With the ban on the potlatch finally lifted, he and a handful of other elders were determined to pass on what they knew to the new generation. Herb was twenty-five, freshly elected as chief in Tzeachtel. That year, Richard and his wife invited Herb and his wife Helen to their home for dinner several times. On one of those evenings, Thelachiyatel pulled out the journal where he had been recording familial ties and other things he knew of Stó:lō history. He laid it open in front of Herb, and pointing to a short list of ancestral names in their strange transliterations from Halq'eméylem, asked Herb to pick one. “Now that you are working for your people, you need to be somebody,” he said. And with that, he got up and walked out, leaving a somewhat startled Herb and Helen to stare at the

names. “If I showed you a name written in Chinese, what would it mean to you?” Herb asks. “That’s exactly what these meant to me. They had no meaning for me at all. I didn’t know how to pronounce them, nor to understand them.” When his elder returned, Herb pointed randomly on the page. T’xwelátse. Thelachiyatel smiled. “I knew you would choose that one. That’s your great-great-great-grandfather on your mother’s side.”⁴⁸⁸

If I am recounting this story of how the first name to be ceremonially bestowed in about eighty years among the Stó:lō was decided on, it is not because the normal selection process for *xwélmexw* namesakes is characterized by randomness. Kinship, and thus names, are reckoned bilaterally within *xwélmexw* society, but within that large pool of possibilities, the match made between a person and a name is typically the result of a thoughtful collective reflection on a person’s traits and personality, the family names’ history and status, and the desire to both signal and firm up affiliations within the intricate network of Coast Salish kin.

What the story does convey, though, aside from Herb’s exceptional candour and humility in sharing it, is how the knowledge of names and genealogies (among other things) and thus the responsibility for passing on that knowledge, came to rest, in the 1960s and 1970s, on the shoulders of very few people. A whole universe, not of connections themselves, but of *knowledge* of those connections, what they meant, and how to reinscribe them with meaning, hung by a thread. Herb’s generation, which came of age in the 1970s, had to work hard to recover not only its intellectual and practical heritage, but even “basic” knowledge of who was related to whom.⁴⁸⁹ This work was infused at the time with a sense of urgency. To learn about who they were and where they came from, many of the young people like Herb, guided by luminaries such as Thelachiyatel, had to find their older

⁴⁸⁸ Andrée Boisselle, *Interview with Herb Joe (T’xwelátse) - June 13, 2009* (Chilliwack).

⁴⁸⁹ I put “basic” in quotation marks because this actually does get extraordinarily complex. People who acquire the knowledge of *xwélmexw* family trees possess much more than basic knowledge, but are actually able to visualize and draw upon the literal *constitution* of Coast Salish societies.

relatives in different parts of the territory, and try to establish a meaningful relationship with them before they passed away. Because of the level of disconnection brought upon families by residential schools – and the operation of other mechanisms of exclusion and displacement such as those mentioned earlier – this sometimes meant having to find people one had never met or even heard of.

Alongside conveying the general sense that features of *xwélmexw* heritage with a key role in political and legal ordering made it back from the brink thanks to the work of a handful of elders scattered through Stó:lō and Coast Salish territory, Herb Joe's story also carries deep normative resonance in another respect. It is articulated by Thelachiyatel in the connection he draws between being somebody – referring both to belonging and status, to one's place and prominence in the Stó:lō legal order – and being of service, or as he put it, *working for your people*. Given the context of Herb's narrative – consisting in the urgent recovery of meaningful kinship ties and of the self-understanding and political goods flowing from them, following the brutal interruption of relationships and knowledge transmission – his naming as a young adult, once elected to a position of public service inside his community, could be thought to be as exceptional as the fact that his elder allowed him to pick his own name from a selection of unattributed possibilities. But while the exceptional historical circumstances at play in the story of Herb's naming are undeniable, Thelachiyatel's statement actually reflects a profound two-pronged principle of *xwélmexw* citizenship and political participation / voice / status – one that is inflected in different ways depending on the circumstances, and that is anchored in numerous places within Coast Salish legal sensibility. Names are achieved, not simply ascribed. And they make their carriers accountable to their extended family, a key unit of the broader *xwélmexw* polity.

a. *Names are achieved*

Perhaps the most direct understanding of the principle voiced by Richard

Malloway is the notion that people are often only covered with a name once they are seen to perform a form of service to the community. This connotes a claiming and a granting of identity that amounts to recognizing people and their work. This form of identity bestowal, intertwined with service recognition, covers a vast range of circumstances beyond those that led to Herb Joe's naming in his early adulthood.

For example, people may receive a name at any point in their adulthood as a mode of recognition even when they already carry a name. This sometimes happens when a person takes on a high-stakes mandate – as a treaty negotiator, or as the director of child and family services within a community. But it may also happen in the regular course of someone's life and personal development, as Herb Joe explains:

“Historically, it was not uncommon for men and women to carry three names during their lifetime, or four names during their lifetime... The first name you get generally speaking is just sort of a nickname. It's the name you're given by your parents, your grandparents or someone like that. So you carry your child's name through your childhood. Then when you become a man or you become a woman, usually around puberty, by that time the elders of your family would have seen you exhibit certain gifts and skills – you know, maybe a young man, you may say, 'Gosh he's going to be a really good hunter!' So we will look in our family and see if there is a renowned hunter in our family that is now gone on to the other world. Well, we'll take that name and will put it on that young man because it fits him, it fits the gifts and skills that he has. And then he carries that name through his adulthood until he becomes an elder in his community and people find, you know, he's a very wise man, and he teaches and he helps and heals. Well, there's another name in our family that goes back a long long way, and no one has carried the name for a long time, it carries a lot of responsibility with it. But this man has earned the right to carry that name, so they have a big special ceremony [...] and they change his name from what it was, the name he carried on his adult life, to another name that he carries through his elder years, that is more significant and describes more accurately the

man that he has become today. So that's not, that wasn't uncommon."⁴⁹⁰

Someone may also come to carry more than one name if, at some point in her life, an additional branch of her extended family sees a reason to highlight the fact that she belongs to them. This underscoring of existing ties firms up connections and the nexus of expectations and responsibilities between a person and that branch of her family. As an extension of this logic, names are sometimes given across strict bloodlines to affines.⁴⁹¹ In some cases they even become a way to officialise a form of Stó:lō citizenship, when a name is given to a non-Stó:lō person who has formed strong ties of loyalty, mutual reliance and support through close friendship with Stó:lō families. The word for friendship, *siyá:ye*, common to the different strands of the Halkomelem language, is still broadly used by English-speaking Stó:lō today because it connotes a distinctive understanding of friendship as “someone to whom I feel very close, and yet with whom I am unable to demonstrate any direct blood or marriage tie.”⁴⁹² The outsiders who, over years of working with, for, and alongside Stó:lō, become *siyá:ye* – that is, intimately familiar with the members of an extended family and community, reliant and reliable *as though they were family* – are more likely to be claimed, recognized, and to see their place and status in the *xwélmexw* world clarified and publicized by receiving a name than by being formally “adopted”.⁴⁹³ In other words, the fluidity and complexity of the family relations in the Coast Salish world has yielded names as the marker of belonging and identity that fits the need for clarity as much as fluidity and multiplicity.⁴⁹⁴

⁴⁹⁰ Interview with Herb Joe, *supra* note 488.

⁴⁹¹ Some of the examples in my research are found in my interviews with Virginia Peters and Eric Johnny respectively (discussed below).

⁴⁹² Elder Rosaleen George, quoted by Carlson in *The Power of Place*, *supra* note 1 at 85. McHalsie also quotes Rosaleen George about the same word in his preface to *The Power of Place*, *ibid* at x, “as meaning friends who are so close they are considered family.”

⁴⁹³ Name bestowals to outsiders remain extremely rare. Yet I have encountered two during my research (to non-Indigenous people who married into a Stó:lō family), and Anastasia Tataryn mentions one in her study of *xwélmexw* names (to a Tsimshian man who married a Stó:lō woman): Anastasia Tataryn, “What is in a Name? Identity, Politics and Stó:lō Ancestral Names” (2005) 2:2 *Univ Fraser Val Res Rev* 54 at 66–67.

⁴⁹⁴ While I stopped counting the naming ceremonies I attended in over 18 months on Stó:lō Téméxw, I have only seen one adoption ceremony over the same period. Moreover, this particular

The type of work or public service justifying the attribution of a name – or as Telachiyatel suggests, actually *requiring* it – encompasses spiritual work. Becoming a dancer is the most obvious such work and commitment. It involves service to one’s particular longhouse group, as well as a lifetime of sharing one’s medicine and attending to other people’s individual song and dance within the *syúwél* community as a whole. A related, but distinct point is that Telachiyatel’s phrase, *you have to be somebody*, connotes more than political recognition, in the sense of acquiring or bolstering status and voice in the governance of the human *xwélmexw* community. It also speaks to the obligations one has to the spirit world, starting with making oneself cognizable to the ancestors.

All those situations speak to the fact that within Coast Salish legal sensibility, names *flow from* and *connote* more than birthright. They are always the result of a choice among a wide range of possibilities. The criteria and process that govern this choice reveal the full significance of kinship in *xwélmexw* society: usually based on genealogy, kinship is ultimately much more than a synonym for genealogical connection. It is a metaphor for meaningful relationships.

b. *Names make you accountable*

More than half a century into the open revitalization of the Stó:lō legal order, following the decriminalization of the potlatch, names are now sometimes put on people much younger than Herb Joe and his generation were, when they were named – as attested by the recent naming of Ryan and Jeremy Charlie, El-toos and Ol-toos, as little boys.⁴⁹⁵ But even when ascribed at a relatively young age,

adoption was clearly an exceptional and creative response to a situation that Stó:lō communities strive to avoid: it resulted from the inability to find either a Stó:lō or even a non-Stó:lō Indigenous family to take care of two little girls (Ray Silver’s great-grandchildren) whose parents were admittedly unable to care for them. But the time had come to firm up their membership in a nuclear family, according to British Columbia laws. At a ceremony carried out in Sts’ailes, the girls were named, and the non-Indigenous family adopting them was itself adopted into Sts’ailes. I do not know if this translated into band membership, but what was announced at the ceremony was that they were to be always welcome in the community, attended to and cared for as family.

⁴⁹⁵ I describe the naming ceremony of El-Toos and Ol-Toos *supra* in Chapter Four (subsection II, “Context”). Giving names to young children does not achieve unanimity in the community, as

ancestral names are still earned – and not only in the sense that they match the character and gifts that a young person has so far displayed, as described above by Herb Joe. Names make people accountable.

Such accountability encompasses more than their actions or behaviour at any particular juncture. It is of a sort that orients what they do, but also reaches into who they strive to be, how they understand the purpose of their actions and live their lives. It is a high-level responsibility, one meant to shape their outlook on life. It includes learning about their relation with previous (and other current) carriers, thinking about their place in the community and the world in connection with the name, and generally carrying themselves so as to add to the good reputation and honour of an identity that does not *belong to them* as much as they *belong to it*.⁴⁹⁶ In other words, even if a name is given so early that it is, at the time, more ascribed than achieved, the overall responsibility it places on a young person is such that the name will eventually end up either being achieved... or removed. The stories told by Herb Joe and the men and women of his generation, regarding how they “grew into their names”, are therefore not only relevant to understanding the circumstances that led to the early return of ancestral names after the easing of repressive state laws. They have more widespread significance from a normative standpoint, as precedents in the contemporary exercise of Stó:lō and Coast Salish governance.⁴⁹⁷

noted by Tataryn, *supra* note 493 at 66. According to some of her Stó:lō interlocutors, “[t]o assign ancestral names to babies before seeing what kind of people they will become is believed to be too great of a risk. Thus, some contend names should only be given once individuals have demonstrated they are responsible enough or have accomplished something special – ancestral names must be earned. Others, however, believe names and carrying an ancestral name is a ‘matter of fate’. With the proper guidance and support, children will grow into the name and its requisite responsibilities and obligations.”

⁴⁹⁶ This point is also noted by Tataryn, *ibid* at 68.

⁴⁹⁷ What I mean to acknowledge here is that the main stories I rely on in this chapter, to tease out some of the normative sensibility underlying *xwélmexw* names, have exceptional dimensions. The fact that Herb selected his name seemingly at random within a list provided by his elder, and without a real *relationship* to the name carriers to whom he was *related*; or the fact, as we will see shortly, that Pat and Tunney Charlie had to go on a quest for Tunney’s estranged relatives; are features of the profound disruption of their society wrought by colonial assimilative policies. These

The story of how Herb's name altered and oriented his life trajectory is seminal in part because his mythical ancestor *himself* actually irrupted in his life – asserting his presence so as to require Herb to think through his namesake's legacy and bring it to bear on his own life. Herb grew into his name by interpreting the teachings contained in the T'xwelátse transformation story – in particular the notion that *living together in a good way* is an ongoing achievement, something that constantly needs to be learned, attended to and interrogated contextually. Thinking through T'xwelátse's mythical transformation story allowed Herb to enact a new chapter in that story – as well as in his own life as T'xwelátse – in keeping with its main themes and principles, ie weaving together the aspects of the *sxwōxwiyám* that have to do with dispute resolution, home and belonging, and women's agency and authority as connectors within their kin networks across Coast Salish territory.

2. *Stone T'xwelátse returns home*

Most of the stories composing the *Xexá:ls* storycycle can be told while pointing to a significant feature on the landscape of Stó:lō Téméxw. Examples include the massive boulder binding together the three *si:yà:m* who did not teach others how to write; Mount Cheam and its surrounding peaks; or the jagged fissure in the cliff on Harrison River, Leqyi'les' toothed vagina. But around 1971, when Herb Joe was covered with the name of T'xwelátse, no one could point to the stone trapping the ancestor's *shxwelí*, his life force, and *smestíyexw*, his soul.⁴⁹⁸ People remembered that T'xwelátse was ensconced in a movable stone, one that had indeed travelled from Chilliwack to Sumas under the care of a young woman from the family, who was married to a Sumas warrior to put an end to the war between the two tribes. By the late 19th century, however, the stone had disappeared and not been seen

features are particular to Stó:lō law's early revitalization era (which I would tentatively pinpoint as ranging from the late 1950s to the early 1990s). But what I also contend in this chapter is that the actual principles I draw out of those stories retain validity today. They apply to the naming of the younger generations. With a careful parsing and discussion of their respective exceptional features, they remain a source of valid precedents on the criteria and process underlying *xwélmexw* names.

⁴⁹⁸ Campbell, *supra* note 479 at 126.

again. Then one day in 1991, at a gathering in Yeqwyeqwi:ws, after he had been called as a witness by his *xwélmexw* name, Herb Joe was approached by Gordon Mohs, one of the archaeologists then working for the Stó:lō.⁴⁹⁹ While reviewing the collection of the Burke Museum in Seattle, Mohs had come across a granite figure in the shape of a condensed human being – a four feet tall, seven hundred pounds petrified body with a smooth head, sharply defined facial features, and a spine. It had been found in 1892 in a farmer’s field on the Sumas prairie and by 1899, had been acquired and transferred to the University of Washington Museum – which would later become the Burke Museum.⁵⁰⁰ Gordon Mohs told Herb that there was every reason to think this was Stone T’xwelátse.

Something needed to be done about this, but what? There was now an international border between the sacred stone and its Chilliwack tribe. Herb realized he needed to turn to his cousins, aunts and grandmothers, the line of women entrusted with T’xwelátse’s care in the *sxwōxwiyám*, for direction. In the early 1990’s, the eldest among those women were the remaining siblings of seven sisters of the Hall family from Tzeachtel, married through the Valley and further away, into Coast Salish communities on Vancouver Island and Washington state: Nancy (Phillips – Sts’ailes), Minnie, Lena, Flora (Julian – Matsqui), Rosie (Roberts – Nooksack).⁵⁰¹ Nancy, Quetósiya, had married into the old Phillips family in Sts’ailes, where she raised a large family.⁵⁰²

Shortly before Mohs spoke to Herb about the stone in the Burke Museum, Quetósiya’s family had finished building its own ceremonial longhouse in Sts’ailes, under Pat and Tunney’s care, in their backyard. This is where Herb found Nancy and her sisters visiting with each other, at a gathering held not long after his chat

⁴⁹⁹ *Ibid* at 72.

⁵⁰⁰ *Ibid* at 68.

⁵⁰¹ The portrait of some of those sisters, along with other of their female relatives, hung in a powerful symbolic circle around Stone T’xwelátse during the interactive Exhibit celebrating his patriation: see *Man Turned to Stone*, *supra* note 483 at 58-64 (and the companion website).

⁵⁰² Patricia Charlie, Virginia Peters, and Millie Silver are among her children.

with Gordon Mohs. In an interview with Emmy-Lou Campbell, Herb described the stunningly concise, seemingly self-evident directions he received that day from the women, speaking through Nancy, then about 84 years-old:

“[...] they were all sitting together in a little group facing each other, facing away from the uh... the smokehouse fires and everything else that was going on, and they were just having a little chat like they had, they didn’t get together that often, I guess. But they were speaking our language, talking to each other, and they were laughing and joking. I sort of stood sort of behind them and waited until I had a chance to sort of get their attention, and then finally one of them noticed me standing there, and they said, “Yes, honey, do you want something.” And I said, “Yes, I’d like to have a talk with you. I’ve got some information that I need to give to you.” They said, “Okay.” So they just sort of turned their heads and listened. I told them that Gordon Mohs had found our ancestor. And they just sort of looked at each other, didn’t say a word to each other, then one of them – I think it was Auntie Nancy – turning around like this, and she had her back and she just turned around like that, and she said, “Sonny, you carry the name, you bring him home,” and she turned around and started talking to her sisters again. And they all started talking to each other. It was like, okay, you’ve got your direction... You’re dismissed now. And that was it. That was it.”⁵⁰³

“That was it,” not in the sense that Herb would be left to his own devices to fulfill the mandate of repatriating Stone T’xwelátse, but simply in that there “was just an expectation that I follow through with a task that was given to me – whatever that takes.”⁵⁰⁴ What it took was sustained work between 1991 and 2006 with David Schaepe, the successor of Gordon Mohs as the Stó:lō Nation’s archaeologist and eventually as the co-director of the Stó:lō Research and Resource Management Center; with the Burke Museum staff; and with Herb’s relatives on both sides of the border – to make a case for the Burke to relinquish the Stone under the applicable American federal law’s criteria. While Herb was to be the main figurehead of this process – the one carrying the name, and thus the responsibility

⁵⁰³ Campbell, *supra* note 479 at 73-74.

⁵⁰⁴ *Ibid* at 133.

to push the process forward, as a main interlocutor for everyone involved – the actual *conduits* for the Stone’s repatriation would turn out to be the women entrusted with his care. Under the *Native American Graves Protection and Repatriation Act*⁵⁰⁵ (NAGPRA), only American tribes are eligible to apply for the return of one of their “objects” in the possession of a museum. Fortunately, this criterion could be fulfilled through the operation of *xwélmexw* law: one of T’xwelátse’s kin and formal caretakers, Rosie Roberts, was married into Nooksack, and she now shared this responsibility south of the border with her daughter, Sandra Joseph.⁵⁰⁶ In Anglo-American legal terms, this could easily translate into the notion that the Stone “belonged to” Rosie, Sandra, and their community. The claim was made in Nooksack’s name. When it finally succeeded in 2006,⁵⁰⁷ what ensued, from a *xwélmexw* perspective, was the passing of Stone T’xwelátse from the hands of one group of female caretakers to the next: from Nooksack to Sumas – where his return was celebrated in the community from which he had gone missing – and finally, back to the heart of his home in Chilliwack. From this perspective, the legal and narrative engine of T’xwelátse’s repatriation consisted in a very old interplay between movement and rootedness, where the women’s change of hands is the current leading T’xwelátse back to his place of origin.⁵⁰⁸

⁵⁰⁵ 25 U.S.C. ch. 32, § 3005.

⁵⁰⁶ *Man Turned to Stone*, *supra* note 483, identifies three other caretakers from Nooksack: Jan Cooper, Char Roberts and Rosalda Roberts. See also Campbell, *supra* note 479 at 105 and 142.

⁵⁰⁷ The claim succeeded following the presentation of historical evidence showing a high probability that the stone was not abandoned, but temporarily left behind as Stó:lō people fled their Sumas homes in fear of vigilante mobs coming from the United States. Those mobs captured and hanged a young Stó:lō boy, Louie Sam, in 1884: *The Power of Place*, *supra* note 1 at 255-61. Although it was impossible to produce irrefutable evidence to the effect that the stone in possession of the Burke Museum was indeed the stone of the mythical *xwélmexw* storycycle, the fact that it was ascertained as being from the Marpole period; that it fit the description of oral history as recorded by Boas and Hill-Tout; that it was known to have been picked up on the Sumas prairie; combined with the vigilante criminal activity (which U.S. authorities knew of, but left unprosecuted and unpunished in the state of Washington) as the likely cause of the break in the chain of possession of the stone – coalesced into a case meeting NAGPRA’s criteria for repatriation, in the Burke Museum’s assessment. To succeed, the Stó:lō/Nooksack claimants had to accept a characterization of Stone T’xwelátse that fit the NAGPRA’s settler view of it as “cultural patrimony” rather than “human remains.” Campbell, *ibid*.

⁵⁰⁸ The metaphor of the river played a central role in the staging and ceremonial representation of the stone’s repatriation. A small canoe was created to fit the proportions of Stone T’xwelátse, and

Stone T'xwelátse belongs in Chilliwack and more specifically, in the Ts'elxwéyeqw River Valley, but he can navigate in and out of his home through the fluid flow provided by his female kin: this makes the story of his repatriation a contemporary reenactment of the characteristic dynamic of *xwélmexw* identity and belonging.⁵⁰⁹ While his name and stature may be symbolically weighed into place by seven hundred pounds of granite, the *sxwōxwiyám* put his wife and the sisterhood of her daughters and grand-daughters in charge of his care, ensuring that multiple *pathways in and out of home* remain open depending on the time and need.

Thus, though T'xwelátse's original story was not about home or belonging, an explicit element of the *sxwōxwiyám* – entrusting T'xwelátse's wife's line with his care – allowed a new chapter of the story to be written regarding how to return to the fold of people and place. This chapter added a layer to what *learning to live together in a good way* entails, teasing out the thread of *xwélmexw* women's traditional political and legal levers, and weaving it in a familiar way with the thread of Stó:lō citizenship. It shows the principles of *xwélmexw* belonging and care operating across borders, and cutting through the fog of uncertainty and disconnectedness brought about by the colonial assimilative process – one which, over a hundred years, had begun to turn T'xwelátse into an object. In a moment, a flash in history when the women were prevented from taking care of him, T'xwelátse was lost. Reactivating the reliance on a mythic-historic matrilineal responsibility allowed him, the lost relative, to reclaim his identity and come home.

There is another, perhaps more obvious way in which the *sxwōxwiyám* was relived and reinterpreted during the Stone's repatriation process. Fifteen years of discussions and negotiations with the Burke Museum staff provided Herb Joe with

formed his new base as of the time he left the museum. Although Campbell does not investigate the specific role of kinship in the repatriation process in her thesis, she draws beautifully on the river metaphor to represent the process of the Stó:lō (the Halq'eméylem word for river) stone's journey home.

⁵⁰⁹ See subsection II above, "A gendered equilibrium."

the occasion to inscribe his own personality, experience and understanding into the storied continuity of his ancestral persona by applying the *sxwōxwiyám* main teaching to his own conduct. Herb tapped into a mode of relating to others – and to the delays, refusals, and multiple other hurdles that had to be overcome during that process – that translated into an attitude of extraordinary openness and equanimity. As Emmy-Lou Campbell notes, this was sustained by Herb’s deep sense of being in it for the long haul. Herb was not there as himself – an individual fighting for his “rights” – nor as a representative for either his family or his people. At the table with his Burke interlocutors, he was a steward, a link in a chain, part of a story unfolding over a time superceding any single human life. Embodying his *xwélmexw* persona, Herb literally *spoke through* the political “mask” of his name, bringing generations with him into the political, legal and spiritual arena of *xwélmexw* discourse and ceremony.⁵¹⁰ In that space, there is no deadline, no rush, no frustration. As Herb told Emmy-Lou Campbell:

“It never ever occurred to me in a very conscious way anyway that it might take the rest of my life, or what would I do if we had a downright refusal. I never ever thought of that. I don’t remember ever thinking about being refused. I never thought about not staying the course. It was just an expectation, a benign expectation, if you will. It was something that was there. It was always there.⁵¹¹ [...]

It’s sort of akin to, well, we’ve been here since the beginning of time, our ancestor was turned into stone thousands of years ago, he’s not going to change. It was that kind of an approach to it. I don’t remember anybody ever from my family ever talking about a timeframe. It was just, that’s the direction we’re going.

It’s something like when I was given this name, all of the Elders that got up and spoke to me that evening... We were in the longhouse and they

⁵¹⁰ The connection between ancestral names and the notions of personhood, voice and mask, are also drawn by Christopher Roth in his study of Tsimshian names. He writes: “when a name holder speaks at a feast, and most powerfully when he or she speaks immediately after being named, that speech is interpreted as the name speaking through a living body”: supra note 52 at 132. In the note accompanying this explanation, he references “Mauss’s invocation of the etymology of *persona* as a speaker: *per* “through” + *son* “voice” – for example, a mask through which one speaks.” The Oxford English Dictionary entry for *persona* mentions its Latin etymology as “mask, character, role”).

⁵¹¹ Campbell, supra note 479 at 130.

put me in the middle of the floor and Th'eláchíyatel, Chief Richard Malloway, shook hands with all of the Elders in the building, the ones that were there, that he wanted to have come out and speak to me. It was one of the overriding messages that they gave to me, each one, was that you now have been given a destiny. You have a path that has been laid down for you. All you have to do is follow it. And again, there were no timeframes attached to it. It was just, this is who you are, this is the path that's been laid down for you, so that's where you've got to go. And if you fall off, well that's okay. All you got to do is pick yourself up, get back on the path and then continue. You can't change directions. The path is there. It's very clear. And I think this process was... The direction was given to me in that very same way that the Elders earlier had given me when I was given the name."⁵¹²

Herb's culturally grounded relation to time, fostered in part by the consciousness of his name, manifested in an open, patient, positive attitude that the Burke staff themselves credited as a powerful factor in the success of the repatriation process. As one of them, Meagan Noble, told Campbell:

"I would say that Herb was always very great to work with. I felt like he always understood... He always believed that we had an understanding of the importance of this piece, and he always believed that we had the intentions of doing the right thing as opposed to him saying nasty museum, you've had this thing, shame on you. It was always, how can we work together, this is how important this is to me and my community, and let me educate you about why this is important and let's talk about how to solve that problem. And it was an incredibly long period of time that he worked on this process, and he could have in that ten years, fifteen years, gotten very impatient and frustrated and angry, and expressed that, and I never felt he did."⁵¹³

In sum, two decades into becoming T'xwelátse, being asked by Quetósiya to play a leading role in the effort to bring his ancestor home allowed Herb to truly step into

⁵¹² *Ibid* at 132-33.

⁵¹³ *Ibid* at 132. In this sense, Herb shared the attitude displayed by his elder, Nancy Phillips, Quetósiya, when she articulated his mandate without any worry about time and the ultimate success of the endeavour – also, without any direction. Bringing T'xwelátse home was the obvious thing to do, how to proceed would be figured out in the doing.

his identity. By the time of the Stone's homecoming celebration in Sumas in 2006, the name Herb seemed to have picked at random in Thelachiyatel's journal in 1971 had oriented his life so thoroughly that he now believed, as he put it, that "the passing on of that name to me from our elders of our family was part of my destiny, it was part of the journey that I started when I took the first breath of air as a human being."⁵¹⁴

After consultation with the family, it was decided that Stone T'xwelátse's ultimate residence should be the Stó:lō family healing facility to be inaugurated along the Chilliwack River within a few years of his return, thereby acknowledging T'xwelátse's storied role in the resolution of family conflict.⁵¹⁵ Long before then, Herb himself had become a social worker and family counsellor. His name revealed to him, over his lifetime, the place that was uniquely his to occupy, speak from, and contribute to, within the Stó:lō polity and the constellation of the *xwélmexw* universe.

IV. Conclusion

In this chapter, I began to sketch out the normative commitments underlying *xwélmexw* names by focusing on the discourse and conduct of Herb Joe and his kin in relation to the T'xwelátse identity.

In particular, the patriation of Stone T'xwelátse shows how Herb and the women of the relevant branch of his family, dispersed through Stó:lō Téméxw and the greater Coast Salish territory, made sense of and abided by their respective roles and responsibilities in relation to T'xwelátse. Their respect for these roles and responsibilities motivated them to undertake negotiations for their ancestor's return and to stay the course through various hurdles until they achieved success. The case they made for the Stone's patriation under American law rested on their underlying commitment to their roles and responsibilities under *xwélmexw* law –

⁵¹⁴ Interview with Herb Joe, *supra* note 488.

⁵¹⁵ Campbell, *supra* note 479 at 111.

at the same time as it required two momentary compromises with their *xwélmexw* legal perspective.

First, under NAGPRA's criteria, the claim to an "artefact" in the possession of a museum had to be made by an American tribe. Nooksack thus entered the claim. But the tribal council's ability to state that the Stone "belonged" to Nooksack depended, from a *xwélmexw* perspective, on the norm binding Stone T'xwelátse in a formal caretaking relationship (with legal, philosophical, historical and spiritual ramifications) to particular female relatives who happened to be Nooksack tribal members. In other words, under *xwélmexw* law, it is those female relatives, part of a larger group spread out across the Coast Salish world, who had "standing" – not Nooksack. Herb sought out and interacted with the members of this sisterhood as the main *xwélmexw* authorities capable of providing direction with respect to the T'xwelátse namesake, including at the negotiating table; they could do so, not in their capacity as Nooksack members, leadership or staff (when they were), but as T'xwelátse's wife's female descendants. Indeed, the women who accompanied Herb to the negotiations were sometimes from Stsailes, from Tzeachtel, from Nooksack, etc., taking turns as their availability allowed.⁵¹⁶

Furthermore, the *xwélmexw* legal actors in this story regarded themselves as holding a responsibility to the Stone rather than a right to him. Accepting to use language referring to the Stone as an object – as the tribe's property rather than its relative – was another temporary compromise with the concepts and categories of Anglo-American law. The decision to go forward and enter a claim under terms alien to the *xwélmexw* perspective allowed Stone T'xwelátse to return to the care of his family and to be treated once more as a person whose life-force, inside the rock, beckons all to practice good communication and respectful relationships.

⁵¹⁶ Here, the women's "caretaking" role in the vocabulary of the ancient T'xwelátse narrative discloses its deep normative significance within the *xwélmexw* world. The next chapter will illustrate how the normative significance of this gendered role extends beyond the kinship of T'xwelátse.

By disclosing part of Herb's transformative learning journey in connection to his namesake – and some of his kin's attitudes, commitments and teachings in relation to his naming, and to the figure of T'xwelátse – the stories discussed in this chapter also offer broader insights into *xwélmexw* legal sensibility. By comparison to the various offices occupied by individuals in the context of state governance, and to the responsibilities they may be called upon to discharge in those capacities, the responsibilities that attach to *xwélmexw* names are very open-ended, in the sense that they are not prescribed nor predefined. What they may concretely entail is as varied as the circumstances that people will face in their lifetime, and will be figured out in the doing. Herb's story indeed shows that they emerge and become clear in the context of particular needs and events – and that they may turn out to be heavily demanding of a person and her kin's time and resources. It also shows that there is a range of ways in which they may be legitimately discharged. Finally, Herb's story exemplifies how living up to one's name ultimately rests on the name-holder's personality and skills, and in particular on his and his kin's reflective *interpretive* capacities. For the source of the normativity transmitted through names remains stories. A *xwélmexw* name is a storied identity, a repository of narrated experience and tropes handed down as a resource in signification. The primary responsibility it entails is that of engaging with its narratives.

Herb Joe's reflections, quoted in this chapter, on how his name oriented his life provide a powerful illustration of names acting as a meaning-making resource, equipping people to articulate their role within the polity through a range of action, authority and responsibility. The authority displayed by Herb's kin regarding the fulfilment of his responsibilities – as well as the fact that Gordon Mohs walked up to Herb at the mention of his *xwélmexw* name, to discuss the Stone – also show how names act as a signal and provide an opening for others to articulate their own interpretations of one's role in various circumstances. Names thus extend and enrich one's identity through time and space by linking it to

previous namesake carriers'. To be inserted in a particular storied lineage, and to trace one's trajectory in resonance with the inheritance of an identity larger than oneself – this is what it means to “become somebody” in the *xwélmexw* world. The profoundly relational ground of *xwélmexw* legal sensibility here again comes into view.

Chapter Seven

“I have to get to know you”

Ancestral identities and the gendered recovery of *xwélmexw* voice

I. Introduction

In the previous chapter, I presented the repatriation of Stone T’xwelátse as both re-enacting and adding to his *sxwōxwiyám*, in keeping with its themes and teachings – that is, showing its tropes to remain relevant and eloquent in contemporary contexts and circumstances. More specifically, it lay a new sediment of *xwélmexw* thought and precedent regarding the dynamics, criteria, and workings of belonging, and brought fresh insight and experience into what it means to *work with* rather than *argue against* people who think differently – such as the Burke Museum representatives. The meaning ascribed by *xwélmexw* people to the process of T’xwelátse’s repatriation, in a narrative disseminated orally, in writing, and through a memorable interactive exhibit, drawing both expressly and implicitly on the content of the old T’xwelátse story – and resulting in an outcome celebrated in Indigenous and non-Indigenous communities on both sides of the border (at the Burke, in longhouses in Nooksack and Sumas, and at the Reach Gallery in Abbotsford, among other places) – illustrates how status and prestige accrue in a name. Such episodes, consisting in the adventures and feats of a name carrier (and the people he relied on), interpreted by the community as congruent with the teachings of past name carriers’ lives, build the name in continuity with itself.

I have also highlighted how, in this story, women’s relationships and duties of care, maintained across Coast Salish territory, were the conduit and condition of possibility of the repatriation’s success – and thus a key contribution to building the status and prestige of a famous male figure’s name. This kind of pattern, whereby a man’s female kin network across Salish territory claims him, affirms his

belonging and enhances his voice and political identity (which has positive effects on their own voice and political authority), is codified and elevated to legendary proportions in T'xwelátse's story – but it is not unique to it.

The story at the heart of this final chapter will illustrate this multifaceted claim. It forms a diptych of sorts with Herb's story, juxtaposing the role of T'xwelátse with that of his female counterpart in the *sxwōxwiyám*. Indeed, just like Herb's life offers a perspective on how he grew into his responsibility to reflect, expand on, and model the T'xwelátse teachings, the life story of his cousin Patricia Charlie, one of Stone T'xwelátse's formal caretakers, reveals what those caretaking duties mean to her – and how she has lived up to them within her family, beyond the scope of her relationship with Stone T'xwelátse himself. After looking at how Herb has thought through and lived up to *his* role in the T'xwelátse story, listening to how Pat makes sense of her life allows one to tease out some of her normative commitments in connection with *her* own stance as a descendant of T'xwelátse's wife – someone with a role in her husband's transformation and with a responsibility to care for him and for his spirit, status and identity. Pat's story and that of her marriage to Tunney, delving into the circumstances in which both she and her husband received their *xwélmexw* names, have a strong resonance with the T'xwelátse *sxwōxwiyám*. Pat's narrative shows them coming into their own by supporting each other's emancipation from violence and addiction, actively building each other's voice, status and authority, and helping each other shoulder the responsibilities flowing from their respective *xwélmexw* identities.

Before I start, a quick note on terminology. Despite the fact that many people, such as Herb and Pat themselves, often draw on the notion of “matriarchy” as a shorthand to point to the matrilineal transmission of both authority and duties of care associated with some high-status material and spiritual objects and wealth, the stories they tell do not reveal Stó:lō political organization to be strictly

speaking matriarchal.⁵¹⁷ They rather speak to a set of subtler, but equally powerful social norms governing the functioning and balancing of gender roles in *xwélmexw* contemporary thought and practice. The part of Pat and Tunney’s story focusing on the provenance of Tunney’s name and on the process of its bequest also powerfully illustrates the scope of genealogical connection and the meaning of kinship in the tradition, both deeply informing the structure of the *xwélmexw* polity and the expectations placed on its citizens.

II. *Becoming somebody: How Tunney got his name*

While the particularities of Herb Joe’s naming, and the circumstances that allowed him to grow into his name are certainly exceptional,⁵¹⁸ I have also highlighted that the reception of an ancestral name as a status achievement, a recognition of the quality of one’s public service, engagement and reliability, is not the exception but the norm within the Coast Salish tradition. This being said, some of the features of Herb’s story that result from the fact that this is an exceptional time in *xwélmexw* history and tradition – characterized by the *return* of names, the need to *research* one’s own genealogy and to *reconnect* with one’s own family – are features that defined not only Herb’s story, but a whole generation’s. One such story is that of Pat’s husband, William (Tunney) Charlie’s. In contrast with Herb, Tunney’s naming required a long quest on his part – not so much for a name as for his relatives themselves. The search for his *xwélmexw* identity turned out to be, in the most literal sense, the occasion for him and his immediate family to seek out and form relationships with their extended family members in different parts of Coast Salish territory – people who had been estranged or disconnected through the

⁵¹⁷ I am grateful to Bruce Miller for pointing out the importance of this distinction to me at a conference in Cowichan where I had also adopted the language of matriarchy to gesture toward the complex, diffuse, but oft-reiterated authority of *xwélmexw* women in a variety of stories and political and ceremonial contexts. The T’xwelátse *sxwōxwiyám* is one example. Another is the stewardship and care of the *sxwó:yxwey* mask, its song, and the right to dance it. Pat Charlie is part of the sisterhood that shares both sets of authorities and responsibilities.

⁵¹⁸ As mentioned before, Herb “picking” his name, being related to a high-status ancestor transformed into stone, and being called upon to preside to the Stone’s repatriation process, are exceptional circumstances each in their own right.

combined operation of residential schools and of the *Indian Act* rules discussed earlier. The story of this search discloses both explicit principles and more implicit normative assumptions of the Coast Salish legal tradition governing boundary-drawing around *xwélmexw* polities. It also invites a reflection on the re-inscription of meaning within the tradition in the face of dislocation and disconnection, especially regarding the revitalization and reinterpretation of gendered roles.

A crucial element of my own learning and reflection about those gendered roles flows from the fact that it is actually Tunney's wife, Patricia, who told me (and, I believe, is the usual narrator of) the story of Tunney's naming journey. On every one of the three or four occasions we discussed it, including those when I recorded Pat, Tunney was sitting by her side, listening, nodding, sometimes chuckling, sharing laughs or smiling glances with Pat and I. The story is indissociable from the context of their life together, in the sense that their relationship plays a substantive role in it. This, in itself, provides plenty of food for thought on gendered roles in relation to names, belonging, and status in contemporary *xwélmexw* society. But in addition to this, the fact that Pat is the storyteller here, the story told in her voice and from her perspective, makes it speak as much to who she is, to how she carries herself and thinks of her own identity, actions and responsibilities in the world, as it does about him and the meaningful cluster of social goods and expectations surrounding his *xwélmexw* name and identity.

*Once Were Warriors*⁵¹⁹ on the Harrison River (the background to Tunney's story: 1960-1982)

In the previous chapters on witnessing and spirituality in Coast Salish legal

⁵¹⁹ This 1994 movie was directed by Lee Tamahori (New York, NY: New Line Home Entertainment, 2002) based on the novel by Alan Duff, *Once were warriors* (Queensland: University of Queensland Press, 1994). It depicts the ravages of colonial dispossession wreaking alcoholism, poverty, and domestic violence in a Maōri urban family. As Pat shared stories about her and Tunney's life, their son Darren mentioned that this movie provided a sense of what things were really like in Sts'ailes and the Fraser Valley between the fifties and the eighties – and we watched it together. The movie's suggestion that for Indigenous peoples, empowerment lies in renewing ancestral practices and modes of relating to self and others, strongly resonates with Pat and Tunney's life experience.

sensibility, I alluded to Stó:lō people’s reference to the fifty years stretching from about 1960 to 2010 as a social and cultural *renaissance*: a re-empowerment, following the decriminalization of the potlatch, that flowed from people’s ability to re-engage in their own modes of governing, healing, teaching and relating, by drawing on their own protocols for conducting gatherings and ceremony. I think, though, that I only began to really understand the sheer magnitude of *xwélmexw* society’s transformation over that period when I began to grasp the suffering that people I now loved, and felt close to, had endured in their own lives. It is one thing to educate oneself, at a high level of generality, about systemic racism, its effects, and its mutating manifestations over time – and another to realize what the attempted wreckage of Indigenous societies has meant in friends’ lives. The microhistory of Tunney and Pat’s relationship, and of the resources they drew on, and keep drawing on to this day, to heal their own suffering and that of their community, reflects this transformation of *xwélmexw* society over their lifetime.



Tunney and Pat in 2007. Photo taken by AB in Chilliwack.

Sitting across from them at breakfast, I take in the strength and sweetness of their fifty year-old partnership, which I have been witnessing over the last decade as loving, close, and filled with humour. Even in his supposedly “gruffer” moments, I have only ever seen Tunney with a kind, playful expression on his face, and always

felt an especially warm connection to him and to Pat – whose fierceness is deeply braided with tenderness. It is still jarring and profoundly humbling to me to juxtapose the quiet supportiveness I have watched them exude for each other throughout the years I have known them, and the story of addiction, breeding violence, that threatened to engulf them and their children during the early years of their marriage. The damage done by residential schools, rupturing their parents and grandparents' lives, ran its course through their own childhoods, and was then compounded by the infamous “sixties’ scoop”⁵²⁰. Pat recalls that she was about eleven years old when her father became what she calls a “full-blown” alcoholic. At nine, she was learning how to drive a car to help her mother pick him up at the bar. When I asked her what had caused him to start drinking, she said she thought it was the hurt of having been taken away from Sts’ailes to Kuper Island as a child. The separation from his own family and the abuse he suffered in residential school were coming back to haunt him as he struggled to raise his own family:

“It seems like they missed the love and nurturing from their mom, because they were put into residential school, and then granny became alcoholic, and so, they never really had that peace [...]. I only heard about it after he got drunk, and then all of us as a family heard about a lot of the gory stories [...] and the sexual abuse that happened was from the priests and the brothers while they were in school. So I’ seen a lot of that pain was still there.”⁵²¹

Pat was fourteen when she got pregnant. Supported by their families on both sides, she and Tunney sought a special authorization from the courts to get married so young. Pat vividly remembers what it was like for them to come of age through the sixties, starting out as teenage parents in a house with twenty-one other people,

⁵²⁰ The expression refers to the forced removal of thousands of Indigenous children from their homes by provincial child welfare workers acting under a federal policy – and their placement with non-Indigenous families between the mid-1960’s and the 1980’s. See Suzanne Fournier & Ernie Crey, *Stolen from Our Embrace: The Abduction of First Nations Children and the Restoration of Aboriginal Communities* (Vancouver: Douglas & McIntyre, 1997). Class actions were filed in 2009 to obtain some form of compensation for the suffering imposed under this policy.

⁵²¹ Andrée Boisselle, *Interview with Patricia Charlie (Selyó:l) - April 1st, 2010* (Victoria).

and soon having five little boys of their own, followed by a girl in the 1970s. This was before electricity and running water came to the reserve, and the basic daily work was numbing:

“[...] we lived with [Tunney’s] Dad, there was five – we were the sixth family in there – in a house, and then we all had to live in that place, to feed everybody, to look after our babies, to wash out our clothes. And we had to get up early: we had to fight to put water on the stove, pack and put tubs on the stove, you had to work hard, [...] because they had cloth diapers and you had to look after everything, so it was hard work. [...] Just work, work, work, work.”⁵²²

But numbness of a darker kind was also settling into the community then, with addiction and domestic violence spreading through Pat and Tunney’s own generation from their teenage years through young adulthood:

“I just heard that fellow speaking at a ceremony last Monday, and he was saying [talking about the sixties]: ‘You can go anywhere in Chehalis, you’re gonna find a party.’ Everybody was drinking, that was the norm. [Inaudible]... and it was the norm too for battering... [There was] abuse: there was a lot of that.”⁵²³

Pat remembers that her mom, Nancy (Quetósiya), was “somewhat like a counsellor” to many of the women in the community back then: “A lot of women went to her because they were getting assaulted, [and there was] sexual abuse going on.”⁵²⁴ With the victims, Nancy “was able to have a voice, to learn how to make a stand and talk about that.”⁵²⁵ She would also approach some of the relatives of young women experiencing abuse in their own homes and talk to them: “something’s happening here, that’s why your daughters are running away, they don’t wanna stay home.”⁵²⁶ Many of those young women would find refuge for a time in Nancy’s house – and at some point, Pat took refuge there too, her little

⁵²² *Ibid.*

⁵²³ *Ibid.*

⁵²⁴ *Ibid.*

⁵²⁵ *Ibid.*

⁵²⁶ *Ibid.*

boys in tow: “We didn’t escape that,” she says. “I was really battered too.” She adds:

“[T]he other generation that was there to talk to the guys [was saying:] well, you leave your wife home. Don’t let them do this – you – only men went to soccer games, only men did this [and that]... And then they’d drink, and then they’d come home angry – I don’t know, whatever, I never pried about that – some things I don’t like to pry, just let it go, it’s better left unknown [Pat chuckles].

But that was the way it was, it was almost the norm back then, that all of the drinking and all of the infidelity, and all of the battering, and all of the women getting physically abused. There was a lot of that, you know.”⁵²⁷

At some point over those years in the sixties, Pat’s life became a somewhat split experience. On the one hand, there was the struggle – just trying to survive every day through the daily grind of basic chores, and the violent cycle repeating itself at home with Tunney. But soon, something else emerged, something that made her feel different – clearer, quieter, hopeful. In a few places, such as Musqueam and Lummi, longhouses were being rebuilt and small groups were gathering for *syúwél*:

“I used to go with my good friend, she used to pick me up and she’d ask me, do you want to go to the smokehouse, and I’d go and I’d come back and I’d tell Ginnie [her sister Virginia], oh, if you only could come, hear the beautiful songs and see them singing and dancing – but the *feeling*, I told her, you know...”⁵²⁸

Pat’s resolve firmed up to exit the destructive cycle within which she and Tunney were stuck. That night is still vivid, when she stood up to Tunney and fought him back in self-defence. It was summertime. They were not home, but in a camp on one of the farms on the Fraser River, around Agassiz, where many Sts’ailes families made a living picking fruit, vegetables or hops, and escaped the heavy mosquito season. “I always remember the last time, when we were in a berry camp and I made a stand for my own self,” she says, “that it was never gonna be that way

⁵²⁷ *Ibid.*

⁵²⁸ *Ibid.*

again. I was never gonna be banged around again.”⁵²⁹ Things got rough that night – enough for Pat’s sisters and sisters-in-law to hear the violent argument raging in her and Tunney’s tent. When she emerged the next morning to wash up, they came up to her quietly to tend her wounds. But that morning, Pat was fine. It was K*ā’iq, back in the tent, who had to recover. Pat had made her point: she was done with this. The path forward was to heal together, or to grow apart. Tunney loved Pat and their kids. Deep down, he wanted to get well as much as she did.

The next few years would still be hard. When Pat’s relatives in Chilliwack decided it was time to build their own longhouses for ceremony, Tunney and Pat went down to Tzeachtel and Yeqyeq’wioose to help out. The first of those houses burned down. Everyone, living well below the poverty line, had to find the energy and resources to rebuild it. As Pat and Tunney approached their thirties, the demands of their young family, the setbacks on the way to getting sober (Pat’s father would also stop drinking around 1970, but only after a stroke left him partly paralyzed and unable to speak), and the lingering sense of spiritual disconnectedness made it difficult to see how things were getting better. Pat was worn out and in her exhaustion, slipping down a dangerous slope of hopelessness and depression. Her sister Ginnie, and Ginnie’s husband Dave, had had a similar experience, prompting the family to reach out to a relative from Musqueam, Vincent Stogan – an elder who carried teachings, much like Richard Malloway. Stogan had diagnosed spirit-sickness in both Ginnie and Dave and gotten involved in directing their respective initiations. As the winter of 1976 drew close, Tunney and Ginnie worked together and organized so that Pat would be able to take time off from both work and family, and “go in”. She became a dancer that year, and received her *xwélmexw* name, Selyó:l, highlighting her connection to her Chilliwack family on the side of her mother, Qwetósiya.

Becoming a dancer meant that Pat would spend most, if not all of her “free” time

⁵²⁹ *Ibid.*

for the following many winters, from November to February, travelling to ceremony and contributing to host gatherings in the newly built Sts'ailes community smokehouse. This could have drawn her and Tunney apart – for Tunney was not part of the siblinghood of the dance. On the contrary, it drew them closer. Tunney was not a dancer, but he threw all of his available energy into supporting his wife in her longhouse practice. At the end of his shift at the log boom, he would be found cooking, cleaning, or chopping wood for gatherings at the Big House. His dedication in supporting the budding longhouse community in Sts'ailes was remarkable – and indeed, it was noticed. After six or seven such winters, Frank Malloway – Richard's son, Siyamches – took Pat aside and told her, “You know, this man should have a traditional name, because everybody sees all the good work that he does.”⁵³⁰ By then, Frank was a longhouse authority in his own right. He was weighing his words; his recognition was both a reference and a request. Tunney had been working for his people, it was now time for him and his work to be claimed, for his ties and responsibilities to be firmed up and delineated – in other words, for his ancestral identity to be determined. In Richard Malloway's words, he needed to “be somebody.”

Recovering names: the decolonizing work of reconnecting (Tunney's process, 1982-1985)

Although Frank Malloway advised that it was time for Tunney to receive a *xwélmexw* name, it was not immediately obvious who would be able to help select and confer a name on him. Tunney's mother, Bernadette Mack, had passed away in 1958 when he was twelve years old. Her family on her mother's side came from Skookumchuck, beyond the northern tip of Harrison Lake. There is now a forestry road leading directly from Sts'ailes to Skookumchuck – a distance of 115 kilometers which, given the state of that road, can be covered in about three and half hours – but in the eighties, let alone the previous decades, Skookumchuck was effectively much further away, which meant that Tunney's mother's relatives were not well

⁵³⁰ Andrée Boisselle, *Interview with Patricia Charlie (Selyó:l)* - March 20, 2010 (Sts'ailes).

known in Sts'ailes.⁵³¹ On her father's side, Bernadette's roots in Sts'ailes were also difficult to probe, for her relatives were either dispersed or deceased.⁵³²

Tunney's father, however, was still alive. Born in 1904, Jimmy Charlie was vital, witty and warm – and a revered source of knowledge and history about basically everything he had seen, learned and experienced during his lifetime, spanning the 20th century. His mother belonged to a *Stlatmexw* family from the Lillooet community at Mount Currie. As a young woman, she had gone south to find work in Vancouver, and there, met a young Italian man, Angelo, who worked on road construction as a powder monkey. According to Pat, there is a sense that Bernadette may have been “disowned” by her immediate family, although it is unclear why. What is known is that another daughter born to her parents in Mount Currie was also named Bernadette. Born to Bernadette and to her Italian partner, Jimmy was orphaned by the time he was a toddler. After being taken to the New Westminster orphanage, he was adopted by Squamish Charlie and raised in the village of Q'qait in South New Westminster. As a young man, he met Tunney's mother, Bernadette Mack, while both worked in the cannery in New Westminster. As mechanization replaced human labour in the canneries, the couple relocated permanently to Sts'ailes, and it was not long before Jimmy was fully integrated into his wife's community.⁵³³

All of this accounts for the fact that when Tunney and Pat asked Jimmy about the family *xwélmexw* names, the old man did not know how to help them. Over many decades spent in Sts'ailes and deepening his ties, knowledge and experience in this

⁵³¹ There may be other reasons for this, of which I am not aware.

⁵³² There may be other reasons here too – I have much to learn yet about Tunney's maternal family circumstances in Sts'ailes.

⁵³³ This reconstruction of events is based on the respective accounts of Patricia Charlie and Keith Carlson (personal communication, 2017). The way I understand what Pat conveyed about this story, flowing from Jimmy Charlie's understanding, was that the first Bernadette was practically “erased” or “replaced” by the second one. This being said, the first Bernadette died quite young (circa 1910, from influenza, according to Carlson). Depending on when the second naming occurred (before or after the first Bernadette's death), it is conceivable that it was intended to memorialize rather than “replace” the lost daughter.

part of the *xwélmexw* world, he had remained severed from his mother's family in Mount Currie. All he could do was to send Tunney and Pat up there, and wish them luck on finding any of his relatives, let alone finding them well-disposed and open to reconnection. Pat picks up the narrative from here:

“So when we went to Mount Currie and we got up there, we went around the reserve talking to people, and people were very hesitant because they don't know us. But that one man we met, his last name was Dick and he, Harold Dick, [...] he said, ‘You know you can go and see old Baptist Ritchie’, he said, [...] ‘he was married to, must be one of your grand-aunts’ – that's what he told Tunney. So we went over to look and find, we found him, he was sitting on his porch – I always remember the day, it was a nice sunny day – and we were talking to him, and we told him who Tunney was, and talked to him about Dad [ie Jimmy Charlie], and what we knew that Dad told us, that his mother was from up there, and that she was Paul Dick's oldest daughter.

And he just kept smoking and looking at us, and [...] when we mentioned the names of Amy and Beatrice and Bernadette – and actually that old man was married to Beatrice – and he said, ‘OK’ he said, ‘well I really don't know you, you know, *I have to get to know you*, I wish your dad had come’ with us, so that he could talk to Tunney's dad. So we said ‘OK, well, we'll see if we can get Dad to come up with us and we'll come back for a visit’.”⁵³⁴ [the emphasis is mine]

Within weeks of that encounter, before Pat and Tunney had a chance to return, old Baptist Ritchie passed away. Their search and various interactions in Mount Currie suggested that he had been the closest remaining relative to Tunney's mother – someone with knowledge of the ancestral names belonging to his wife's family, and perhaps, the authority to judge whether Tunney could be covered with one. He also had been the only one to clearly signal some openness toward getting to know them and developing an actual relationship – the baseline for exercising judgment about names.

⁵³⁴ March 2010 interview with Patricia Charlie, *supra* note 530.

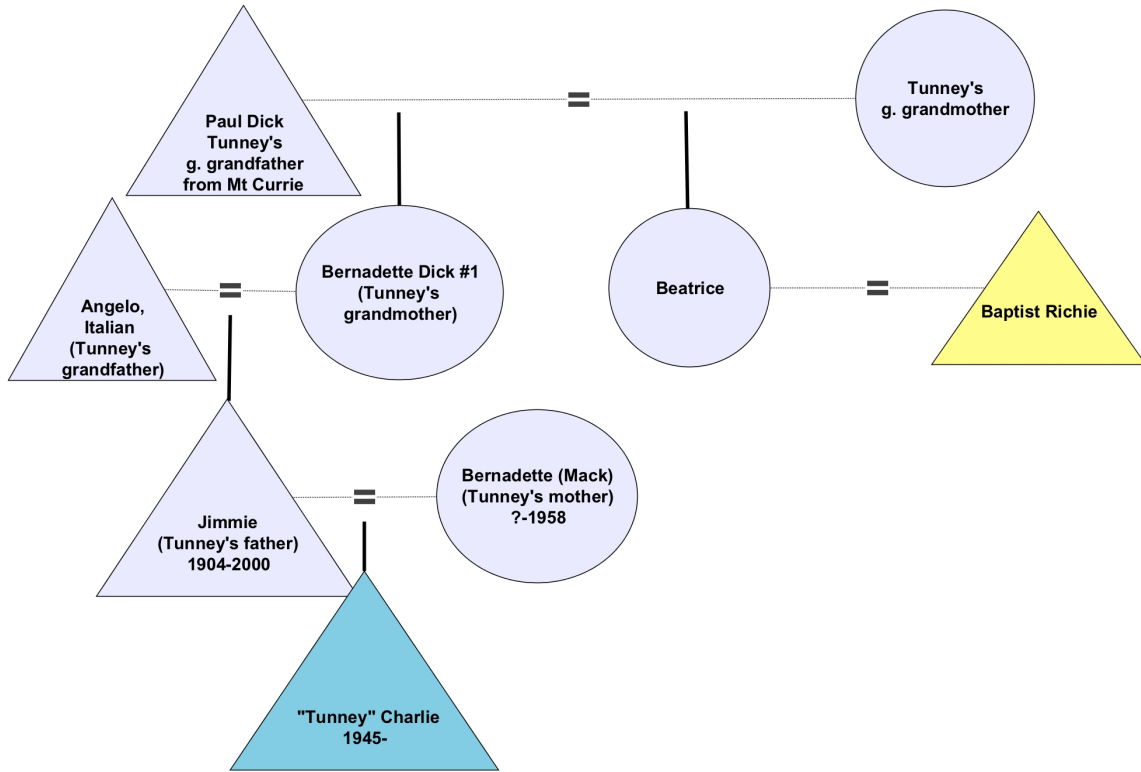


Figure 2: Tunney's fatherline showing how Tunney and Baptist Ritchie are related

Not only did another trip to Mount Currie appear pointless, but the way forward now seemed even more obscure than before: “So we thought OK, well now, we’re stuck again, cause I don’t know who we should talk to, you know, about getting a name from Tunney’s ancestors,”⁵³⁵ says Pat. Still, she adds, “we kept looking and talking to different people.”⁵³⁶ After two years of questions and chats, another avenue finally opened up.

It was November 1984. Pat and Tunney were at an elder’s funeral in Mission, accompanying Pat’s mother Nancy. As they walked around and socialized, they came upon Clarence Morgan, an elder they had not seen in a long time:

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

“[...] and we were talking to him and I was telling Clarence, ‘You know’, I said, hmm, I said, ‘People have recommended that Tunney should get a traditional name, and – but we’re kind of stuck now because the old man passed away up there, and it seems that people were reluctant to talk to us [in Mount Currie].’ So he said, ‘Don’t you know Granny over there?’ he said to Tunney. He said, ‘She’s sitting over there.’ And I said, ‘Well, who is that?’ and he said, ‘Oh, that’s Dorothy Jim’ he said, ‘Come on’, he said, ‘let’s go over and I’ll introduce you to her.’

So he introduced us, Tunney and Tunney’s grand-aunt, and she was talking to – talking in the language again, and then she turned around and she looked at him and she said, ‘oh yeah’, she said, ‘your mom was my cousin, you know, your grandmother was my aunt, your great-grandmother was my auntie Susanne.’

So I sat with her, and I was telling her, you know, we’re at the smokehouse now and we’ve been doing a lot of work since the revival of the smokehouse, and people have indicated to us that, you know, Tunney should have a *xwélmexw swkixw* [name] from his people. So she was looking at us, and old grandma Tawa was there too [...] – and she turned around there, talking in the language. I knew right away they were talking about, well, they felt like they don’t know him too. But anyways, I was, I sat there, and then I said, ‘You know Granny’ I said, ‘if you would like,’ I said, we could take you to our home so you can get to know us and we can visit you, and you could spend the night with us,’ you know, ‘I know it’s a big thing that we are here to talk to you about.’ So she agreed, she said, ‘Yeah, I’ll go up there.’ For some reason, she kept looking at Tunney. And so we asked her, ‘Well, when would you like to come?’ so she said, ‘Maybe next Friday, come pick me up.’ So we went down, we picked her up and we brought her here [along with her friend, grandma Tawa].”⁵³⁷

Pat and Tunney hosted the two elders at their house for the weekend. They took them to meet their parents and show them around the community:

“[T]hey came, and they talked with us, and we visited. [...] We took her to the smokehouse, and we took her down to visit my father-in-law [Jimmy], and then we took her down to visit my mom [Nancy], and she was sharing a lot of things with us about the old days and how things

⁵³⁷ *Ibid.*

were, 'cause her husband was Joe Jim, and Joe Jim was her second husband – her first husband, his name was [...] Paul Williams. So – and she said, 'Well, you need to take me home again,' and she said, 'but I'll come back again.' ”⁵³⁸

Soon, a second visit was organized. Talking to Pat and Tunney's parents and to other elders from Sts'ailes triggered Dorothy's memory, and unexpectedly brought back a name on Pat's side that had been searched for in vain:

“[About] a month and a half later, and she said, 'Oh, I can come up again, you kids come pick me up.' So we went back and picked her up again – again we visited and I invited elders here to eat with her and talk, remembering, doing a lot of things. And that second evening she was here, on that second visit, [...] we had supper with my mom, we went down to my mom's house, and we were sitting down there, and she said, she asked my mom, 'Did you ever find out about your mother-in-law's Indian name?' and my mom said no, she said we looked for, we looked to try to find her name, and she said, 'Well, her name was Shenót'qwe.' And mom said – told her that we'd been looking for it. And she said, 'Well, just me coming here, it kind of connected me to that name', because that's my dad's mother's name [Minnie Watson: Dorothy knew her, she was also from Skookumchuk]. [...] She's the one who brought it out, so we were really happy about that.

And when we were at the smokehouse, and went to come home, she talked about a lot of the names that she hears in the smokehouse, and she recognized all the names, so, that and she always gave stories about that, you know, and it was – but then again, she said she couldn't think of a name for Tunney. So she wanted to, she said, 'I can come back again,' so she, we told her, 'Oh that would be good, Granny,' you know, 'and just let us know' and she said, 'Well, maybe I'll come back in two weeks.’”⁵³⁹

Dorothy's third visit took place about three months after the chance meeting at the elder's funeral in Mission. It coincided with an important celebration:

⁵³⁸ *Ibid* at 189-90.

⁵³⁹ *Ibid* at 190.

So that's what happened, and then when she came it happened to be on our 25th anniversary, [...] and we were having supper [...] and then she brought it out, she said, 'Well, the name I decided that I should put on Sonny here' (she called him A'p'a cause [she] really looked [up] to him and respected him), she said, 'I'm gonna put my Dad's name on him, Choqwó:qwet.' So she said, 'I see you're a good man, I see a lot of good things in you, and I wanna put that name on him, so I'm gonna tell my family.' So we had Clarence was here, Rose and Peter, there's a few other elders that we had here, and she talked about it, they put her on tape, her saying that she was gonna do that, so that was really something, you know, that she was able to do that, but, like the way the old people are, they always really wanna make sure you know something that – how important those names are, that represents that other person. And during that time, she told us all the stories about that old man, that he was one of the greatest builders in Skookumchuk, they built houses, they build a church, they built anything that happened, that was going on, so, and it was really fitting because Tunney has really become a builder to do a lot of those things, even though he was learning all the time from his dad and his older brothers, they always helped the people and the community here to help build whatever they had, to have it done, they gotta change a roof, they would change a roof, they needed done other things like that done. He was already doing a lot of that. So on that evening of our 25th anniversary, that's when she announced it after dinner, that this is the name that she was putting on Tunney, so that was in 1985 [... and] there was a few people from her family that were there to witness that: Florence Thomas and her daughter, a couple of her daughters, a couple other people that came. And so that's how that came about."⁵⁴⁰

⁵⁴⁰ *Ibid.* Note that the above presentation of Pat's narrative is a transcription of the story in its entirety, as Pat told it, in the chronological order of the search for Tunney's relatives, first on his father's side (given the lack of easy access to his mother's relatives), then on his mother's. My decision to break down the text into paragraphs and to emphasize jumps in space or time with brief re-introductions inserted in the narrative flow are meant to make the oral narrative easier to read. During our interviews, Pat recounted additional events that flowed from Tunney's naming process. Those will be introduced in the course of the analysis.

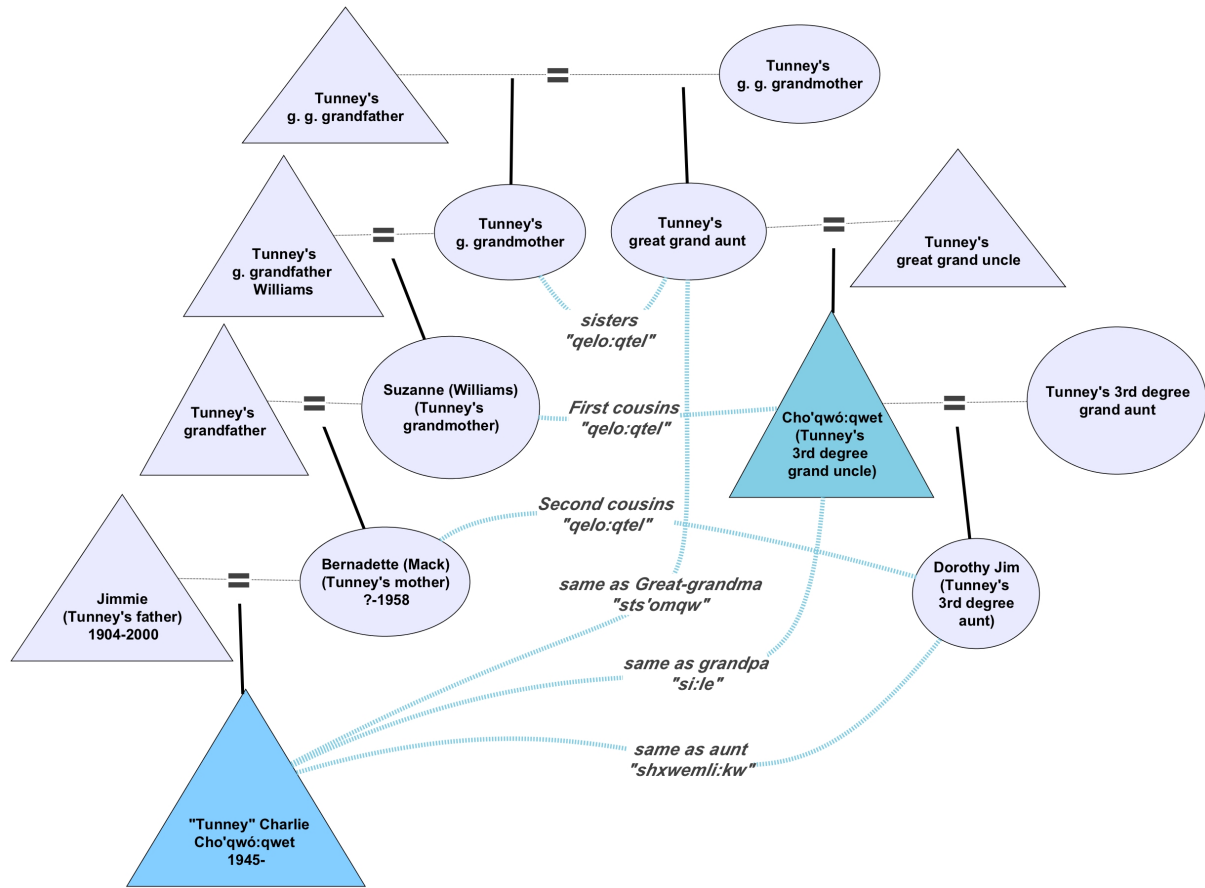


Figure 3. How Tunney, Dorothy and Tunney's namesake are related

III. Discussion

On names: Relatedness and Relationship

To tease out the normative threads of Pat's narrative on naming, I will here again, as in the previous chapters, pay attention as much to *what* she says as to *how* she says it. Here, this entails paying attention both to the structure and detours of her narrative and to how she herself acted, *inside* the story: What does the story disclose of the norms she abides by (among other characters in the story), and of the assumptions underlying her conduct? As Pat speaks, those threads interlace, forming patterns of reasoning and relating based on shared assumptions that are part of the background of legitimacy within *xwélmexw* society. By unraveling these patterns to examine and discuss their threads, I continue to weave my own discursive blanket around Coast Salish legal sensibility.

One of the most striking normative themes of Pat's narrative consists in the connection between *relatedness* and *relationship*, the two main criteria underlying the name-giving process. Their construal and the weight they are respectively given in the attribution of names speak to the norms informing what it *means* to belong to *xwélmexw* society. Furthermore, they disclose the general bend or orientation of Salish legal thought and practice toward the process of integrating outsiders into *xwélmexw* society – what I think of as the Coast Salish process of citizenization.

1. The “bloodline”: a watershed

The above figure (no 3) traces the genealogical connection between Tunney, his namesake, and his name-giver Dorothy Jim. It also displays some of the Halq'eméylem terms describing the connection between relatives, centering on Tunney's perspective. Those terms powerfully illustrate a perspective on genealogical connections that corresponds to a key element of the *xwélmexw* worldview: they basically erase the distance between family members. They do so in a couple of ways.

Firstly, Halq'eméylem has distinctive terms to designate who people are to each other across seven generations. In other words, there is a specific term to describe one's ancestors six generations beyond oneself (the same term describes oneself from the perspective of each of those ancestors).⁵⁴¹ This is to say that seven generations are relevant in the common discourse of Halq'eméylem speakers, and are easy to refer to with specificity and immediacy – which is especially striking when contrasted with the distance and confusion that arise by referring to one's great-great-great-great-great-grand-parent.

Secondly, the brothers and sisters of one's direct ancestors / descendants on that seven-generation line carry the same respective designation as their counterparts

⁵⁴¹ See the *Stó:lō Atlas*, *supra* note 1 at 27 (plate 8B).

on the more direct line.⁵⁴² One instance of this is that cousins are referred to as siblings up to and including the fourth degree of separation.⁵⁴³ In other words, Halq'eméylem effectively makes a sea of extended relatives conceive of each other as close. Tunney thus received the name of a man he would have referred to as his grandfather, rather than as his “grandmother’s cousin”, or 3rd degree granduncle.

Having a biological connection with the previous (and other current⁵⁴⁴) name carriers is a basic condition for holding a name, but for the following two reasons, I see it operating as a *thin* condition. First, there is great flexibility with respect to both the *source* and *degree* of such connection: as already noted, it can be either patrilineal or matrilineal, and it can also reach far in the family tree through the erasure of distance discussed above. Second, and more importantly, this great flexibility with regard to the “blood” connection still does not dispense with the existence of a meaningful *relationship* with the name carrier or his immediate relatives. This was encapsulated in Baptist Ritchie’s pithy statement to Pat and Tunney, “I have to get to know you” – and manifested in the relationship-building process between Tunney and Pat, their families, and Dorothy. Moreover, I believe an even stronger statement of the relative weight of relationship and relatedness to be true, which is that while relatedness cannot supersede relationship, the reverse is not only possible, but actually occurs with some regularity in the naming process.

2. Kinship as a metaphor for meaningful relationships

The archetype for the kind of meaningful relationship warranting the conferral of a name beyond strict biological connection is that between affines. People who marry into a *xwélmexw* family and do not have access to an ancestral *xwélmexw* name of their own – either because their own *xwélmexw* family has lost the

⁵⁴² *Ibid* at 29 (plate 8C).

⁵⁴³ *Ibid* at 27 (plate 8B).

⁵⁴⁴ A name – not to speak of its variants – can usually be shared among up to four people at any given time.

memory of its names, or because they are not *xwélmexw* – may eventually be claimed by their in-laws, in the same way that Tunney was claimed by his elder: not automatically, but on a case-by-case basis, based on personal particularity and on the strength of the actual relationship that develops between the individuals involved.

One example of this is at hand within the small circle of the protagonists introduced above. Pat's older sister, Ginnie, became a dancer a few years prior to Pat. She had to take on a *xwélmexw* name on that occasion. But these were the early 1970's, before most of the ancestral names had been retrieved on either side of her family. Like Pat, who went to live at her father-in-law's when she married Tunney, Ginnie also left her parents' home when she got married and settled in with her in-laws, Mike and Ada Peters. She too was still a teenager when that happened, which means that she continued to grow up under their care. "I was really grateful to them," she says. "I know quite a bit about them because, when we first got married, we had to live with them for a while, so I got to really know them and see all those things happening in their house"⁵⁴⁵:

[T]hey had thirteen children, and she [Ada] was having children from 1913 to 1939, and she was a woman who really worked hard to make sure that all her children were taken care of, and her house was always full [...], they were always preparing large meals, and they had a really big table. She was really good with her hands, she was very gifted in making things, she made cedar baskets and she knitted and made clothes by hand, you know, she didn't have a sewing machine, and she made really, really beautiful things [...], and the design that she put on the baskets, you know, were ones that she made up herself, she didn't follow any designs [...]."⁵⁴⁶

When Ginnie later became a dancer, Ada stepped into the momentary gap in knowledge within Ginnie's family and bestowed her own name, *Siyamex*, on

⁵⁴⁵ Andrée Boisselle, *Interview with Virginia Peters (Siyamex) - March 17, 2010* (Sts'ailes).

⁵⁴⁶ *Ibid.*

Ginnie. “And I really am proud to have carried this name,” says Ginnie, “and I always think about her when I get up to speak or anything, you know, how grateful I am that she was able to pass the name onto me. When I speak I know that it’s – that she’s there with me.”⁵⁴⁷

The value given to the actual human connection between the giver and the receiver of a name is evident from Pat’s narrative: as we have seen, it is the first thing that both Baptist and Dorothy, the elders on both sides of Tunney’s family, sought to attend to, upon encountering Tunney and learning that he was looking for a name. But the paramountcy of this connection, the sense that it is the real treasure that a name reveals and builds upon – more important than blood, more important than the name itself – emerges with more strength and clarity by taking seriously the very structure of Pat’s narrative, and by paying attention to the coda she provides on both sides of Tunney’s lineage.

One important sign that the connective process leading up to Tunney’s name is more significant to Pat than its particular outcome is that it never occurs to her to fold the story of that process into a mere tracing of genealogy. When I asked her where Tunney’s name came from, she could have simply pointed to its source in Tunney’s *síle* (grandfather), the cousin of his grandmother on his mother’s side. Instead, she disclosed what is most meaningful to her – within her sensibility – about the name, which is that it resulted from a process of reconnection and relationship building. By carefully conveying a sense of the time the process took and of the character of the interactions with Baptist and Dorothy, Pat’s narrative displays reverence for the fact that *xwélmexw* names stand for relationships: something one has a responsibility to put their best intentions and energies into, yet have no *control* over, nor *entitlement* to. Thus, Tunney and Pat never directly “ask” their elders “for” a name. They introduce themselves, tell the story of Frank Malloway’s recognition Tunney’s work and his advice that he should receive an

⁵⁴⁷ *Ibid.*

ancestral identity (a sort of reference letter) – and they ask whether the elder might be able to help them in any way. In the same vein, it is worth noting that Pat is not only the narrator of this story, but also the elders’ main interlocutor within the story. The fact that her sociability allows Tunney himself to make no requests certainly has something to do, in this case, with Tunney’s quiet personality. But I also think it owes something to the normative sensibility guiding Tunney and Pat’s interactions with the elders. The ground they tread in those encounters is delicate: they are effectively looking for a gift-giver, someone who will freely claim Tunney, take responsibility for him, enhancing both his standing and his accountability within the extended family. By accompanying and supporting her husband, Pat is the first corroborator of this claiming process. By speaking for him and to his recognition by others, she allows him to remain humble and his request, implicit.

Furthermore, her choice to recount the events in their meandering chronological order is significant. It conveys her and Tunney’s respect for the integrity of naming as a relational process with a strong spiritual dimension: that of relating to forces beyond their control.⁵⁴⁸ Pat’s story displays the subtle relationality of gift-giving that weaves the Salish world in webs of interdependence: here, it entailed showing up, being fully present and open to connecting with others, while signalling to them a respectful absence of expectation or entitlement to their recognition. More specifically, Tunney and Pat’s mode of relating to potential naming elders discloses some of the assumptions underlying Salish kinship – to engage wholeheartedly with human and spiritual forces while accepting that they will move on their own time,⁵⁴⁹ embracing the uncertainty and unpredictability of their exercise of agency. As such, the sudden passing of Baptist Ritchie shortly after they met, and the

⁵⁴⁸ Here, I take up again the language of Jennifer Nedelsky’s insights about human agency and responsibility as disconnected from the notion of control, as discussed in Chapters Four and Five, because I see the naming process as another site where the relevance of those insights within the Coast Salish tradition is on display. The importance of acting and taking responsibility for one’s actions despite, in tandem with, and respecting forces one does not control has wide-ranging ramifications within *xwélmexw* legal sensibility.

⁵⁴⁹ This mode of relating applies broadly, as shown in Herb Joe’s attitude toward his non-Indigenous interlocutors at the Burke Museum: see Chapter Six.

chance encounter with Dorothy Jim two years later are both integral to the story. They convey Pat and Tunney's trusting persistence in the face of a process they did not control, and the manner in which spiritual forces acted up along the way. Neither predetermined nor arbitrary, the result of those interactions was positive at least in part because of the way they were entered into – with a combination of initiative, trust and genuine humility.

Tunney's ancestral name was only one of those tangible results. The recovery of knowledge (for example, of Pat's paternal grandmother's *xwélmexw* name) was another. But by far the most important and far-reaching outcome of Pat and Tunney's quest was the recovery of actual, vital relationships across Tunney's kinship network. Having received the answer to my question on the genealogical "source" of Tunney's name, I gestured toward finishing our interview. But Pat was not finished. The bond developed with Dorothy Jim was only the beginning of a broader story of re-empowerment through the deepening and widening of a whole web of connectedness.

Tunney and Pat's attempt to reconnect with Tunney's relatives on his father's side would ultimately not be in vain. Their trip to Mount Currie may have been the only way for them to learn that Tunney was related to Baptist Ritchie, and eventually to realize that somebody they knew in the Fraser Valley, Arnold Ritchie, was a cousin of Tunney's. Arnold, Baptist Ritchie's grandson, was married into Skowkale, one of the bands/villages part of the Chilliwack tribe. It took a decade for the knowledge of their *relatedness* to unfold into a *relationship*. This yielded a formal re-introduction into the Mount Currie community for both Tunney... and his orphaned father, Jimmy. Pat's description of this event highlights its spiritual dimension, and hints at both its political and affective consequences:

“In 1992, when they [Tunney and Jimmy] got to really know Arnold Ritchie, and they came up here and Gilbert Joe [and Arnold Ritchie], they came up, and Dad [Jimmy] claimed them, and they claimed Dad,

and then so Arnold Ritchie said, well, well I'm gonna take you home, he said, to Mount Currie. And that was in February that year. And when we got up there they just had an election of chief and council, and they were having a ceremony of the going out chief and council and the coming in of the new chief and council.

So they did that work, and right after that, Arnold stood on the floor and he announced to the people that he wanted to introduce Jimmy Charlie and Tunney, and he said: 'This is my cousin that's been lost, but he's Chehalis. Everybody always knew he was in Chehalis. But we're here now to claim him and we want all you people to know...' That was in the big gymnasium. So they brought Dad out, and Tunney out, and they sang Paul Dick's song [his *syúwél* song], then they brought him around the floor like a spiritual introduction and a reclaiming by the spirits of the family to have people recognize him, so then the people knew. But it took time before that happened, you know... [...]

Yeah, it was a very powerful ceremony when we were there, when they took Dad and Tunney around the floor, and it was a feeling, you know, that everybody respected and recognized that, you know: here is a man that never really grew up in our community, but this is where his mother is from, and there was that. So all of the people now there, they, they really – when we go up there, they know who we are because of that. Before that there was always name calling, they didn't – there was no respect for us up there before that. [...]

We know a lot of the family up there now, and we can go around and find them now, and people are really open to that. [...] Some of them travel down this way and they'll come and look for us, and you know, it's always him [Tunney] that they look for [...] and only because he honours his name and carries it in a good way – people know that, you know. ⁵⁵⁰

On Tunney's mother's side, the connection with Dorothy Jim also deepened over time, and would eventually yield another ancestral name for the Charlie family. This bestowal is all the more remarkable because it seems altogether to cross genealogical lines. Indeed, as the bond between the Charlies and Dorothy Jim grew stronger, more of her family members were brought into it and formed close relationships of their own with Pat and Tunney and their family in Sts'ailes.

⁵⁵⁰ March 2010 interview with Patricia Charlie, *supra* note 530.

Eventually, a name was sought for one of Pat and Tunney's sons, Kevin, who was becoming a dancer. Dorothy, now a widow, had been the second wife of Joe Jim, a man with whom Kevin seemed to have a lot in common. In particular, both had a gift for spiritual healing. Through Dorothy, her step-daughter Tina – Joe Jim's daughter of a previous marriage – had drawn closer to the Charlies, whom she already knew. Tina stepped forward to put her father's name on Kevin. Pat explains:

“Kevin's name, his name comes from way up there too, from Dorothy Jim, her – she was married to Joe Jim and that's the name that Kevin carries.

[Andrée: the name of Joe Jim?]

Yeah, now Kevin's got a song like his, that red paint song. That old man was an Indian doctor, you know, that Granny Jim was still here when they put that name on Kevin and she said, I have no say-so over that name, [...] but it was Tina, Joe Jim's daughter, that wanted, said I want him to have that name, and Tina's mother, she was Susan Jim and she claimed Tunney when he was a baby, and she always looked for him, always came to see him, and always had something for him til the day she died, [...] cause she always had a special feeling for Tunney, she claimed him.”⁵⁵¹

Here, the connection decisively crosses beyond genealogy, into a bond of multigenerational care and friendship. Moving across an ever-expanding web, Pat's story touches on relations like strings and suddenly reveals a chord. Kevin's name, *Télexen*, is bestowed by Tina, daughter of the previous name-carrier Joe Jim. She is moved to affirm the spiritual connection she sees between the two men across time – manifest in their sharing a gift for healing, a spirit vision in song and paint. Years ago, Tina's mother, Susan, had claimed Kevin's father Tunney, when he lost his mother too young. That connection, borne not out of genealogy but of a protective motherly instinct, remained throughout her life – and perhaps beyond, considering that after Susan's death, Joe Jim remarried to Dorothy. She is related

⁵⁵¹ *Ibid.*

to Tunney, but does not know him until they meet by chance in Mission. Dorothy ends up conferring her own father's name on Tunney. With the rekindling of that connection, the story of Joe Jim's first wife's affection for Tunney resurfaces. Tina shares her father – his ancestral identity, a form of being that transcends time and space – with Tunney's son.

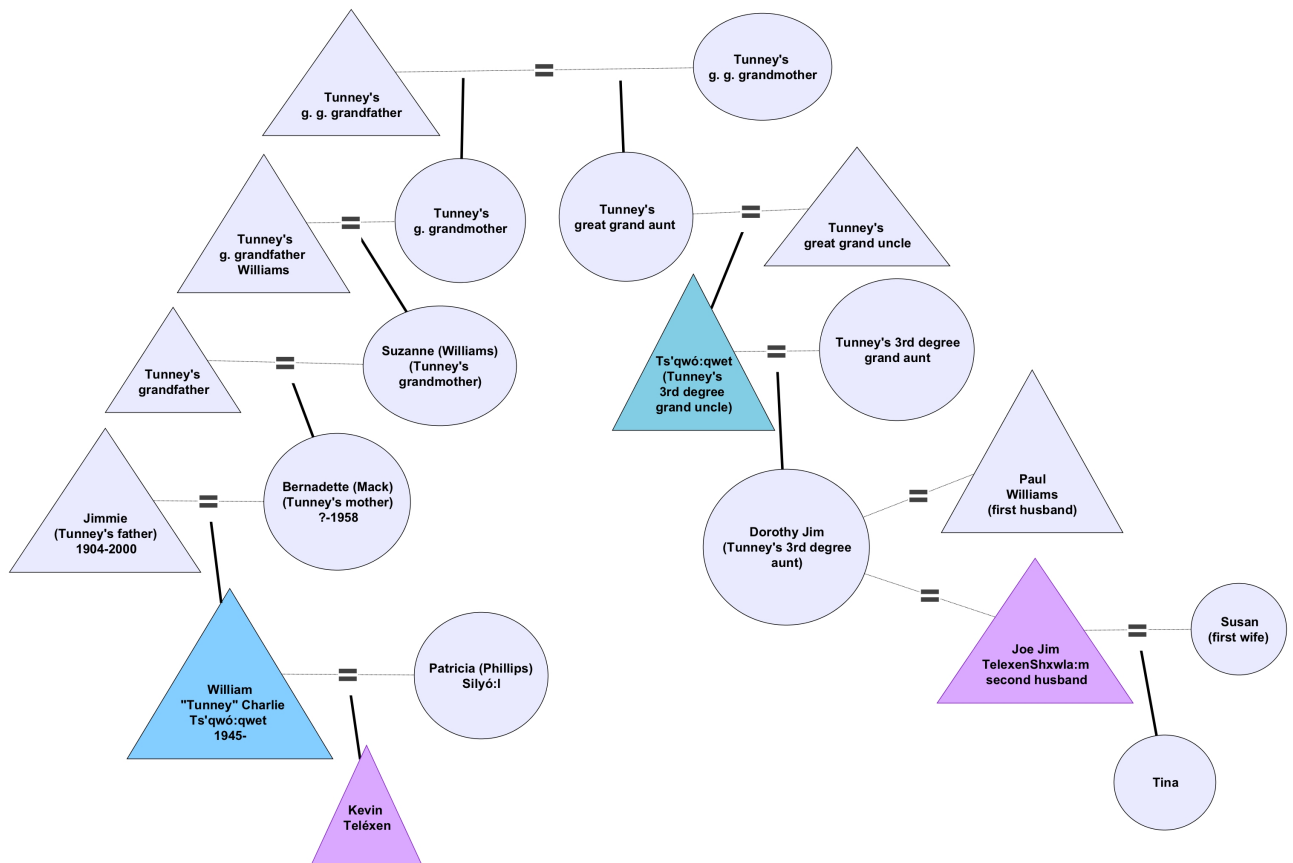


Figure 4. The name coming to Kevin Charlie through his father's side: relationship, not relatedness

Joe Jim's name, Télexen, thus came to Tunney's son Kevin, through the actualization of close, trusting relationships with Joe Jim's wives and daughter, across an intricate web transcending strict genealogical ties. I did not understand this right away. It was only after transcribing and studying Pat's narrative, and drawing the family trees, that I realized that Kevin's naming seemed to affirm kinship beyond genealogy. I verified this with Pat: did I understand correctly? This

is when she pointed to a final string within the chord: it is true, she said, Kevin and Joe Jim do not share blood, however distantly, through Tunney's genealogy. But Kevin *is* indeed related to Joe Jim – through *Pat's* family. This detail makes the bestowal of Joe Jim's name to Kevin ultimately more conventional. But it does not change the fact that the name came from a set of meaningful relationships developed through Tunney's branch of the family, rather than from relatedness. To Pat, explaining where Kevin's name "comes from" involves recounting the organic development of relationships around Tunney, rather than tracing how Kevin is related to Joe Jim on her side.

In the *xwélmexw* tradition, the biological connection that matters most may be the one between previous name carriers and the name-giver, rather than the name-receiver. In the above quotation, Pat recalls Dorothy acknowledging her lack of authority to bestow her husband's name ("I have no say-so over that name"). This being said, the affines' stake in their spouse's name is usually recognized – something I take as a sign of respect as much for their own feelings as for the fact that their descendants' own names, status, and authority over the name may be impacted by the bestowal (if they were the spouse's children too). One example within the Charlie family is that the widow of Uncle Buster was consulted when her nephew Willie began to contemplate putting Buster's *xwélmexw* name on one of his grandchildren. Willie had legitimate access (if not a "right") to that name, for his uncle was not only a relative but also a close, beloved mentor.⁵⁵² However, I believe that Willie would not have proceeded without his aunt's blessing. The idea that the authority to affirm kinship through the bestowal of a particular ancestral identity requires some biological connection to that identity – even if the kinship itself being recognized turns more on relationship than on relatedness – is also supported by cases where names have been bestowed to individuals beyond the

⁵⁵² See Chapter Four.

bloodline, but explicitly stripped of the ability to pass on the name any further.⁵⁵³

In the face of the highly fluid Salish approach to genealogy, characterized by the relevance of a vast family network and by the flexible, bilateral reckoning of one's access to intellectual, spiritual and social resources (as well as to productive harvesting spots on the land), the norm tying *xwélmexw* names to meaningful relationships takes on an anchor-like quality. It allows names to highlight, within the broad range of overlapping interpersonal, political and socio-economic contexts informing each person's actions and interactions, those where her presence, influence and contributions may not only be called upon but counted on. Herb Joe's and Pat Charlie's understanding of naming as the *claiming* of a person by a subsection of her kin harkens back to the implicit, fundamental norm underlying Stó:lō legal discourse and practice, refracted through each of the previous chapters: that one must remain attentive to and keep working through one's own role and place *in relation* to others within the various layers of the *xwélmexw* polity. "Being claimed" with a name both clarifies and adds complexity to one's identity by refracting it through space and time. By providing stories to interpret and models against which to juxtapose one's own life, it supplies intellectual and spiritual resources to think through one's role in the polity, and to reflect on how to properly enact its multiple dimensions, in different situations. More concretely, it also formalizes a system of mutual reliance and responsibility at a *material* level, in addition to the intellectual, spiritual and emotional. In short, while the story of where a name "comes from" is likely to reveal meaningful interpersonal ties unfolding up to the point of the naming, the bestowal itself does not represent the *culmination* of a relational process. Rather, it marks the protagonists' commitment to maintaining and deepening their relationships into the future, with real consequences for the mutual claiming of their energies and

⁵⁵³ Eric Johnny made a mention of such cases during our interview: he explained that his mother had bestowed some of her family's ancestral names on her stepchildren, hence beyond the bloodline. He indicated his understanding that this was fine, as long as the authority over future bestowals remained within the circle of those with a genealogical connection to those names.

resources. This is amply supported by the time and energy that Herb Joe poured into the recovery of his stone ancestor T'xwelátse – but it also applies to names, such as Tunney's, that do not have the same visibility.

3. *Names and the ongoing achievement of relationship*

Indeed, following Tunney's story beyond his naming shows that the process of reconnection and relation-building that started with his quest for a name did not end nor even culminate with Dorothy's decision to honour him with her father's ancestral identity. The relationships involved in this process certainly shifted, but only to gain in focus and become better fleshed out, as the character and responsibilities of the name came into view. Up to the naming, Tunney's relationships with Dorothy, her close relatives and her kin network in Skookumchuk were open-ended and comparatively light – their purpose being to allow the elder to assess Tunney's personality and qualities, form a sense of the role he and his work played (and could play) in his community, and potentially analogize these to a relative's and decide on a good “fit”. Once Tunney became Chqwó:qwet, one of his first responsibilities was to learn more about Dorothy's father. Pat explains the importance of forming a sense of the character of a name, presenting it as a form of vessel accruing the qualities of real, beloved (and fallible) people, and meant to carry one's own. The old people, she says, “they really want to make sure, you know, that – how important those names are. That represents that other person.”⁵⁵⁴ On the evening of the naming and during subsequent visits, Dorothy would tell Pat and Tunney's family “all the stories about that old man, [her father,] that he was one of the greatest builders in Skookumchuk – they built houses, they built a church, they built anything that happened, that was going on.”⁵⁵⁵ Pat construes such craftsmanship both as a good fit and as a model for Tunney:

⁵⁵⁴ March 2010 interview with Patricia Charlie, *supra* note 530.

⁵⁵⁵ *Ibid.*

“[...] it was really fitting because Tunney *has really become a builder* to do a lot of those things, even though he was learning all the time from his dad and his older brothers, they always helped the people and the community here to help build whatever they had, to have it done [...]. *He was already doing a lot of that.*”⁵⁵⁶

Most significantly, Pat attributes the family’s ability to take on the heavy responsibility of building their own longhouse, on Pat and Tunney’s property, and therefore, to gather the material and spiritual resources to support the practice of *syúwél*, to carry teachings in their own way, and to play an authoritative role in the lives of their longhouse workers and dancers – in no small part to Chqwó:qwet’s qualities as a builder and craftsman. Among “the things that have come back with that [name]”⁵⁵⁷, Pat reflects, are not only material building skills, but “other things that he’s gonna need to help him to fulfill that name, and that was part of it, you know, and after that of course we built, in 1994 we built the smokehouse here. [...] I really believe that’s part of that, you know.”⁵⁵⁸ Tunney’s namesake, the builder’s name, was a form of blessing, enabling the undertaking that became a central transformative feature of Pat and Tunney’s lives – almost a full decade before that project was conceived. It provided reassurance, a spiritually-grounded reason to believe that it was meant to be, and thus the courage to take it on, to fundraise, to gather the extended family’s energies.

Pat also addresses the more down-to-earth responsibilities flowing from the name, which include being a resource for the Skookumchuk family. To explain what those consist in, she provides the following examples:

“when she [Dorothy] passed on, we went down and we really helped them to cover – cover her, and help them with doing all the arrangements, you know. And the family there turned around, and they all have looked to Tunney now to carry Chqwó:qwet because, you know,

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*

⁵⁵⁸ *Ibid.*

he let it be known that, you know, 'I'll honour this name, and I'll carry it to the best as I can'. So anytime anything happens up there in Skookumchuk with Granny's family, and she's got a huge family, we always help them – if it's to help to give them gas money to take the corpse home if somebody dies in Mission, or we give them food, or if they just need help, they phone us, there's always somebody that phones us now when anything happens up there with any of that family. They all know that connection, and they're very honoured that he carries name in a good way. [...] even today, we filled up two boxes of food and a cooler of meat to send up for a funeral today up there, give them a hundred dollars for gas cause they're going journeying up there for a funeral. So it's just part of it, you know, and honouring who, where he comes from..."⁵⁵⁹

Finally, as she reflects on the ties created by Tunney's name in the third decade following its bestowal, Pat also hints at a set of responsibilities that flow from having been claimed in this way, and provided with the gift of stories to situate oneself, of a role to grow into: doing the same for young people, today.

"I was telling him [Tunney] one day, you know, I said, 'you know, a lot of people claimed you to help you to who you are today,' I said. 'You have to start doing that when there's certain ones – I don't know, sometimes – [who] are strong by the spirit or something like that'. I said, 'Don't be afraid to go on and honour them, and give them something, or talk to them, or have special words for them, or something, you know.' He's starting to do that now – yeah, cause that was just the old way of the old people, claiming them and help[ing] them *to grow into who they're supposed to be...*"⁵⁶⁰

In other words, the riches that Tunney carries – consisting in all that he has received, but also in all that he has *given*, accruing in his name – lead him to the elder's status-responsibility to encourage others by recognizing their gifts and by helping them decipher the role they are best equipped to play within the polity. As you give yourself, the recognition you receive and the knowledge and experience

⁵⁵⁹ *Ibid.*

⁵⁶⁰ *Ibid* at 197-98.

you accumulate keep building your agency, your ability to act wisely and to serve others – as by guiding younger folk in their path. This type of service – to claim in turn, as one was claimed – highlights the circular dynamic of *xwélmexw* names, hinted at by Thelachiyatel in the connection he made between “working for your people” and “being somebody”. Names *recognize* work as much as they require further work to be performed. The kind of identity they point to is indissociable from one’s responsibilities to the particular branch of one’s vaster kinship network, to whom the name belongs. I would also argue that the nexus between *status* and the thoughtfulness with which one engages with one’s storied identity, upholding one’s relationships and fulfilling the responsibilities to one’s name as they come up, is so tight as to make status practically synonymous with the way in which one carries their responsibilities in the *xwélmexw* world. The source of one’s voice within that world, of one’s ability to shape social life and society itself – such as by bringing young people to infuse old identities with their lives – is located deep into this nexus. Thus, within the normative complex of *xwélmexw* names, identity, role, responsibility, status and voice move in spirals through a lifetime, reinforcing and transforming each other – all within the spacious context of *xwélmexw* thought and practice, which not only recognizes that a person will change and inflect her ancestral identity over time, but also allows her, as needed, to carry more than one name, more than one song.

4. Citizenship from the ground up

Taking a few steps back to embrace the panorama disclosed by this chapter’s stories, and allow their normative teachings to sink in – I would like to suggest that one of the languages capable of expanding the view of the significance of *xwélmexw* names, by analogy with other normative traditions, is that of citizenship. To explore how that language may help illuminate the distinctiveness of *xwélmexw* legal sensibility regarding voice, standing, and belonging, I draw inspiration from the two “modes” of citizenship provocatively contrasted by James

Tully at the end of *Public Philosophy in a New Key*.⁵⁶¹ The first, which he labels “modern” or “civil” citizenship, emphasizes the institutional dimension of citizenship as a *status* with attendant rights and duties. The second, designated as “civic”, focuses on the dimensions of citizenship that unfold through a range of imaginative ways of *participating* in practices and activities of governance. It is by engaging in those activities that citizens not only grasp the rules of the relations of governance in which they are embedded, but develop the ability to transform the terms of those relations – thus becoming “who they are” and “can be” within them.

In his essay, Tully takes aim at the hegemonic tendency of a conception of citizenship and normative ordering overly focused on institutionalization and rationalization – an approach he associates with the first mode of citizenship, developed over centuries within the Eurocentric state. Such an approach overstates the systemic qualities of the institutions that serve to maintain the state’s legal order, and in particular, those institutions’ formality and *independence from* the actual members of that legal order.⁵⁶² This understanding of institutions – and more generally of legality itself – presents citizens as subjects rather than full participants in their own governance, and rules and procedures as “rails’ that the office-holders follow.”⁵⁶³ In its most caricatural version, it sees law as a science – with predictability and reproducibility at its core.

To expose this tendency within Western law’s self-understanding, Tully construes it mostly in opposition to the second, participatory mode of citizenship. As a result, the general dynamic of his argument is dichotomic – presenting the first mode of citizenship as almost mechanistic procedure, while the second is all organic, unscripted practice, by definition rule-bending and defying circumscription. However, throughout his exposition, Tully also suggests that the field of citizenship in the Western, state-based legal traditions, may best be

⁵⁶¹ Tully, *supra* note 24 at Chapter 9, “On local *and* global citizenship: an apprenticeship manual”.

⁵⁶² *Ibid* at 285-87.

⁵⁶³ *Ibid* at 286.

understood as the interplay between those two modes and their tendencies. This more nuanced suggestion starts with his definition of “mode of citizenship” as “the ensemble composed of a distinctive language of citizenship and its traditions of interpretation on the one hand, and the corresponding practices *and* institutions to which it refers and in which it is used on the other.”⁵⁶⁴ Neither of the modes he presents should thus be construed as *either* (rigid) institution *or* (spontaneous) practice. The two modes co-exist – indeed, as Tully points out, it is the negotiated practices within the rules and procedures binding institutions that give those rules and procedures their very meaning, and allow such meaning to shift over time. This comes out most clearly in Tully’s articulation of law as “a craft or practical art rather than a science.”⁵⁶⁵ Under this understanding, office-holders negotiate the law’s significance in particular cases “by acting in accord with the rules and procedures that govern the relationships of their office.”⁵⁶⁶ Grasping the purpose and intent of procedural rules, and deciding whether to construe their meaning narrowly or expansively, to subvert their meaning or altogether to deny the rules’ relevance or applicability in a given context, are interpretive activities – “negotiated practices” performed *under the rules’ helm*.

In other words, there is a constant interaction and a relationship of mutual transformation between the two modes of citizenship that Tully describes. As such, rather than seeing them as co-existing in parallel or in opposition, I read them as two inflections of belonging and participation that coalesce into the field of citizenship, explaining the ideas and practices through which belonging and acquiring a voice within the Western state are framed, constrained or expanded over time, and generally given meaning to. On this reading, the following passage highlights how the two “modes” interact within the field they constitute:

“The practical know-how attitude underlies the institutional know-that

⁵⁶⁴ *Ibid* at 246.

⁵⁶⁵ *Ibid* at 286.

⁵⁶⁶ *Ibid*.

orientation and is ineliminable. From this rule-maker, rule-enforcer, rule-follower, rule-challenger and rule-interpreter perspective, an institutionalised rule is neither a rail nor a calculus. It is more like a signpost. It points us to the complex network of negotiation practices going on under its sign. Both our understanding of the rule and the actual rule itself are immanent in the negotiated practices that cannot be circumscribed. The living rule of law is the pattern of interplay and interaction of the negotiated practices. [...] The unfolding of the rule of law, no matter how institutionalised and rationalised, is internally related to the indeterminate negotiated practices of the law.”⁵⁶⁷

By highlighting this interplay in the Western state’s legal context, and inviting us to see that the field of citizenship extends beyond the formal rules of belonging, into the range of ways in which a polity either hinders or encourages individuals’ ability to participate meaningfully in its political and social life, Tully’s work provides a framework for engaging in the nuanced exploration of a society’s legal sensibility on the issue of the boundary it draws around itself. Under this framework, membership and participation should be examined both along their formal normative axis and along the axis of indeterminate negotiated practices, toward characterizing their interplay.

In light of the above, the norms and practices surrounding *xwélmexw* names presented so far in chapters five and six can be recapitulated along those two axes, illuminating the dynamics of the field of citizenship in the Coast Salish legal tradition. In doing so, other examples emerge, finding a place along the capacious axis of unscripted events and activities at once conditioned by the ordering apparatus of names, and serving to interpret, contextualize, extend, or subvert its norms.

We have seen that *xwélmexw* names are attributed on the basis of both relatedness (biological affiliation) and relationship (affinity). As we have also seen, both of those criteria are conceived very broadly within the tradition: first, kinship is

⁵⁶⁷ *Ibid* at 286-87.

reckoned bilaterally (names have a male and a female version), and Halq'eméylem encourages the perception of closeness among relatives that other traditions would construe as distant. Second, the realm of relationships that can play a role in the transmission of a name is also vast and flexibly construed: such meaningful relationships can be between the would-be recipient and the kin of a previous carrier, if not the carrier herself. This reflects the norm according to which the name *carrier* is just that: a steward, not an owner. The name belongs to the family, broadly conceived – although the decision-making authority regarding its conferral (and in rare cases, its withdrawal) does increase with the closeness of one's ties to a previous bearer (again, assessed both in terms of relatedness, and to some extent, of relationship, since spouses are generally consulted in those decisions). Gender also plays a role in this decision-making authority, as I will discuss in the next section.

In the sedimented interpretations I just sketched out, the two main signposts of *xwélmexw* citizenship – relatedness and relationship – do not only leave a lot of room for the indeterminate negotiated practices that Tully draws attention to as an essential part of law, but actively *invite* them. While relatedness may first appear as a “hard”, non-negotiable condition, under Coast Salish legal practice and interpretation, it opens up into a broad range of ties that effectively present people with flexibility and choice – a sea of affiliative options to invest with meaning, service and affect. The relationships developed therein allow people to navigate that sea, to make themselves known and appreciated within their kin network. Names anchor people within this open, fluid space – not setting them definitively in one place, but stabilizing them by making a formal claim to their talents and resources, and by clarifying who can *count* on them, keep them *accountable*, formalizing the significance of certain relationships within one's extended family. Names thus play a role in transforming a quintessentially indeterminate and negotiated relational practice into a signpost of its own – a set of guiding norms, processes and precedential stories that add weight and meaning to a person's life.

The productive tension composing the field of Salish citizenship – a tension between the fluidity of affiliative options and their anchoring into affinity, story, responsibility, voice and place; between relations born into, and relations mutually chosen – thus appears in its complexity when we explore the normative apparatus of names as an interplay between the signposts of sedimented norms and the spontaneous reinscription of their meaning in practice. There is no neat overlap between the fluid/anchoring elements of the tension on the one hand, and the scripted/unscripted events in the life of names, on the other. Rather, the norms surrounding names, which underpin one’s role and place in *xwélmexw* society, are the site of an ongoing, dynamic interchange.

Unpacking the role of affinity within the normative complex of *xwélmexw* names provides a further example of this interplay. Affinity, in this context, does not only refer to the unscripted conditions that foster a relationship, such as those provided by compatible sensibilities that draw people together and facilitate relations of interdependence, reliance or mentorship between name-givers and receivers. This is definitely one of the ways in which affinity plays out in relation to names, as in the case of Ada Peters passing on her own name to her daughter-in-law, Ginnie; of the warm and trusting relationship that developed between Dorothy Jim and the Charlie family, leading up to Tunney’s naming; or of what Pat Charlie means when she encourages Tunney to recognize young people’s abilities, as she does in the last portion of our quoted conversation.

But affinity also figures in the assessment of the “fit” between the accumulated stories, standards and connotations of a name, and the character and traits of a potential carrier. There are norms and patterns underlying such an assessment. Examples of this include what Dorothy did before deciding that her father’s name fit Tunney’s skills and personality and the depth of spiritual connectedness and healing capacities that moved Joe Jim’s daughter, Tanya, to cover Kevin Charlie with his name. It is also found in the care that the Charlies put into conferring the

traditional names of El-Toos and Ol-Toos, which signaled an intimate bond between brothers, onto little boys who shared such closeness. Observing those symmetries is the extent to which affinities are “scripted”: part of the norm that Baptist Ritchie expressed when he told Pat and Tunney, “I have to get to know you.” The practice of gauging and interpreting of those symmetries, and the people who may take part in it with different degrees of authority for any given name, are indeterminate negotiated aspects of the naming process – aspects that occur *under the helm of the norm* and that shape the social body and the sense of order, repetition, and available guidance within it.

This negotiated, interpretive practice does not end at the naming ceremony. In fact, it can intensify as events and responsibilities emerge in the life of the name-carrier, as demonstrated in the last chapter with the story of Herb Joe, T’xwelátse. Once covered with a name, every person becomes a central interpreter of the stories that compose her traditional identity and orient the course and meaning of her life. The teachings and narrative tellings of her own challenges and accomplishments will eventually also enter the substance of her name. This is not to say that one is left alone in grappling with the rich resource in signification that is one’s traditional identity: since names are a collective resource, a range of authoritative and influential voices will, from time to time, bring their knowledge of the name, their understanding of its intellectual, spiritual and material heritage, and their perspective on the responsibilities it entails, to bear on the name-carrier’s reflection. But the ways of thinking about one’s life in relation to the name and of carrying it honourably are open-ended, the affinities between the name and its carrier left to reveal themselves, to be determined and negotiated as life unfolds.

Closely related to the meaning-making work taking place under the normative “signpost” of affinity, a broad range of negotiated interactions flow from the principle according to which names are achieved, and not simply ascribed. As we

have seen, names often recognize a form of “coming into one’s own” (through service, the commitment to a spiritual life, etc.) – when someone demonstrates the willingness and the ability to take care of herself and to be responsive to her community’s needs. This is when she needs “to be somebody”, to be properly identified and situated within the larger timeless polity that includes past, present and future generations. The name signals this achievement, but it is an identity, not a badge of honour. Further responsibilities will attach to it, unfolding in time, tied to the capacities of the carrier, and taken up accordingly.⁵⁶⁸

This is the normative dimension of *xwélmexw* names that roots it most squarely in civic action as described in Tully’s work. Names as an achievement mean that within Stó:lō society, the attributes of citizenship are tied not only to criteria one cannot *do* anything about, such as being born to particular people, on a particular territory, but also to *doing something* – effectively growing one’s voice and practicing belonging through *informal*, everyday actions, corresponding to one’s unique abilities – that eventually translates into the *formal* delineation of one’s place, the amplification and legitimization of one’s political status and voice. And while it is true that these attributes of citizenship are usually granted to individuals who already belong to the polity through relatedness, some cases prove that this boundary can stretch in interesting ways to include non-*xwélmexw* people.

One such case is the story of the achievement of wealth and status by a man known as Wileliq – now an honoured, high-status name within the Stó:lō polity. Born around the 1780’s, this man was a member of the Chilliwack tribe. His people had been forced to leave their traditional territory on the upper Chilliwack River by a landslide that buried one of their villages and prevented the salmon from reaching their breeding grounds on the shores of Chilliwack Lake. Seeking to re-

⁵⁶⁸ Tunney and his son Willie both carry the name of Chqwó:qwet – but their responsibilities to honour this traditional identity are tied to their unique skills.

establish themselves in a location where they could sustain the whole tribe, they had progressively migrated downriver toward Cultus Lake and the Fraser River. Wileliq (the fifth of that name among the Chilliwack) was born before this re-establishment had been consolidated, at a time when animosity and even violence characterized the relations with their new immediate neighbours.⁵⁶⁹ As Carlson explains, while the Chilliwack were a Coast Salish people, they were outsiders in relation to the Stó:lō, that is, “‘Different People’ (*Lats’umexw*), who lacked sacred histories linking them to the region” of the Fraser River, “or who had not developed sufficient or appropriate economic and political relationships to allow them access to the same [...]”⁵⁷⁰ At the time, the Chilliwack did not even speak Halq’eméylem, but “a dialect of the Nooksack language called ‘*Kluh Ch ihl ihs ehm*’.”⁵⁷¹

Wileliq the Fifth set out to establish his people more peaceably on *xwélmexw* territory, which involved integrating *xwélmexw* society. Relying on the oral narratives recounted by the Stó:lō tribal historian Bob Joe, on Wayne Suttles’ work, and on the corroborating archive of early settlers’ observations, Keith Carlson describes the series of efforts and alliances sustained by Wileliq, from marrying into a prominent Katzie family, which positioned him to become recognized as the owner of valuable resource sites on the other side of the Fraser, to building an enormous longhouse on the site where his tribe had settled, which became a centre of the ceremonial life in the area.⁵⁷² Throughout his life, Wileliq was so successful at developing relationships with the Stó:lō elite that they grew to accept not only his own presence and that of his immediate family, but that of his tribe as a whole on the Fraser floodplain.

The Stó:lō did not give a name to this newcomer to their territory. Rather, his

⁵⁶⁹ *The Power of Place*, *supra* note 1 at 120-22.

⁵⁷⁰ *Ibid* at 127.

⁵⁷¹ *Ibid* at 120.

⁵⁷² *Ibid* at 122-26.

name and the stature accumulated within it became a high-status identity within Stó:lō society. What Wileliq achieved was for the Chilliwack to become part of the Stó:lō :

“Fortunately for groups like the Chilliwack, being *Xwélmexw* was somewhat fluidly defined. In the eyes of the Fraser River-oriented Stó:lō tribes, the Chilliwack had not been *Xwélmexw* prior to their migration, but they did become so subsequently. Previously, their lives had centred around the upriver transitional zone between the Chilliwack and the Skagit watersheds. Their movement down to the Fraser Valley and into core *Xwélmexw*, or Stó:lō, space required an adjustment and clarification of their place in the *Xwélmexw* universe. In practical terms, the migration meant the establishment of formal alliances with the older Fraser River elite as well as the adoption of the Halq’eméylem language.”⁵⁷³

So many aspects of Stó:lō life have dramatically changed in the more than two hundred years since Wileliq’s tribe came down from the mountain to integrate into Stó:lō society that a long list of caveats must accompany the raising of this example as a precedent for the porousness or inclusivity of the field of *xwélmexw* citizenship. The Chilliwacks were a Salish people; they learned the language of their hosts, married into their families, shared spiritual and ceremonial practices with them; they adopted some of the Stó:lō rules, as well as imposed some of their own ways to protect their newly settled space.⁵⁷⁴ And the particular historical context of their arrival seemed uniquely favourable to their integration on the land and in their new society: while a landslide displaced the Chilliwack, the Stó:lō had just lost an enormous population to a smallpox epidemic.⁵⁷⁵

Yet, I bring it forth because it is historical evidence reinforcing what I perceive to remain an important aspect of the ethos underlying the field of *xwélmexw* citizenship, even in today’s very different context. Within this field, its traditional

⁵⁷³ *Ibid* at 127-28.

⁵⁷⁴ *Ibid* at 126-27.

⁵⁷⁵ *Ibid* at 118 (landslide) and 99 (smallpox).

norms and the sedimented modes of relating it tacitly promotes, you *start where you are*. Apart from being willing to learn by doing, incrementally, and to be corrected as one goes, there is no formal precondition to people's participation. People learn and grow into *xwélmexw* citizenship through practice, apprenticing with the more experienced people willing to take them on.

In the polyphonic Stó:lō society, those with the authority to guide others into the growth of their abilities as full participants in the polity are all around, spread through every one of the branches of extended families. This does not entail that seeing one's place and role formally delineated and amplified through an ancestral identity will come as a matter of course. In the current state of recovery of this legal order from the damage done to it by colonial laws and policies, and the drain on its resources from the ongoing assertion of jurisdiction both on itself and on its lands by settler authorities, the recognition and reconnection process exemplified earlier in this chapter through Pat and Tunney's quest does not necessarily end as it did for them – by finding someone with the knowledge and authority to grant access to a timeless *xwélmexw* identity.

Still, *xwélmexw* citizenship remains – as Tully would put it – a praxis, all the way down.⁵⁷⁶ Names are one of the central formal features of the tradition that

⁵⁷⁶ The Coast Salish field of citizenship thus adds its own intellectual insights and practical illustrations to what Tully theorises under the capacious label of the “diverse tradition” of citizenship. Some of Tully's elucidation of what is common to the normative commitments underlying the diversity of civic citizenships resonates particularly well with my understanding of the relation between *xwélmexw* names and the shape given to citizenship within the Coast Salish tradition: “Rather than looking on citizenship as a status within an institutional framework backed up by world-historical processes and universal norms, the diverse tradition looks on citizenship as negotiated practices, as praxis – as actors and activities in contexts. Civic activities – what citizens do and the ways they do them – can be more or less institutionalised and rationalised (in countless forms), but this is secondary. The primary thing is the concrete games of citizenship and the ways they are played.” Tully, *supra* note 24 at 269. “[C]ivic citizenship consists of negotiated practices all the way down. It comprises civic activities and the on-going contestation and negotiation of these practices by the participants and by those subject to and affected by yet excluded from them, and so on in turn. There is never a last voice or word. The form of a civic practice is never closed by a frontier but always open to negotiation.” *Ibid* at 270.

Tully's synthesis, showing how these diverse citizenship praxes, in different locales, interact with and transform the state laws, processes and institutions that police belonging and political

structures and amplifies this praxis. They provide further personal and communal resources for it; and they deepen people's relations to place, to one another, and to time, as they grow in character and competence to play their roles within the community – roles that may morph imperceptibly or change radically, as people themselves do throughout their lives. Names do not constitute nor exhaust this praxis. Thelachiyatel's phrase – now that you work for your people, you need to be somebody – stands as a reminder that the work comes first.⁵⁷⁷

More broadly, his phrase also sums up an approach to citizenship where *being* and *doing* are intertwined. In the tradition he speaks from, political identity, status and citizenship are active stances, and relations evoke the multifaceted *act* of relating as much as something *given* – the family into which one is born. Certainly, you can just “be” and “belong” passively to Stó:lō society. But “being” *xwélmexw* is deeply tied to action, to transformative practices grounded in service, responsibility and connectedness, to anchoring oneself in the sea of one's relatives through mutual claiming – aspects of a *process of becoming* that names celebrate and magnify. Stó:lō citizens build themselves, and each other, from the ground up.

participation, helps one see how the Salish field of citizenship overlaps with those of the two Anglo-American states with which it shares jurisdiction. For even in those states, as Tully demonstrates, “[c]itizenship is not a status given by the institutions of the modern constitutional state and international law, but negotiated practices in which one becomes a citizen through participation.” *Ibid* at 248. For an illustration of this point in the American context, even under the Trump administration's crackdown on “illegal immigration”, see Monica Davey, “He's a Local Pillar in a Trump Town. Now He Could Be Deported,” *NY Times* (27 February 2017), online: <<https://www.nytimes.com/2017/02/27/us/immigration-trump-illinois-juan-pacheco.html>>; or listen to Michael Barbaro, “‘The Daily’: Carlos's Secret”, *NY Times* (27 February 2017), online: <<https://www.nytimes.com/2017/02/27/podcasts/the-daily/the-daily-carloss-secret.html>>.

⁵⁷⁷ Thelachiyatel's phrase also resonates with the statement by the Honorable Steven Point: “The ancestor of everything is an action” (already quoted, *supra* note 275).

On gender: names, women's authority – and T'xwelátse's caretakers

*Our men are gaining their rightful place in our society.
For a while hardly any man spoke.
None of our men knew how to speak.⁵⁷⁸
Patricia Charlie, Selyó:l*

Throughout the two chapters composing this Section, I have explored the recovery of Stó:lō forms of political identity and governance over the last six decades through the recovery of *xwélmexw* names, focusing on the figures of Herb Joe and Patricia Charlie. While the first focus was obvious, the second is less so: the story at the heart of the current chapter is about Pat's *husband's* name, not her own. Thus, the above discussion of the notions of belonging and participation, and of the modes of reasoning and relating that constitute the praxis of citizenship in *xwélmexw* society, has foregrounded Herb and Tunney's respective ancestral identities. But while my interlocutor in Chapter Six was Herb himself, the narrator of Tunney's story is Pat. The voice we hear is *hers*, not only literally, but in the broader sense of *voice*, which encompasses her experience and her agency. The story is shaped by her perspective and her preoccupations, it is based on her recollection and accomplishes work she deems relevant – crystallizing and disseminating the character of her children and grandchildren's kinship and mutual reliance network.⁵⁷⁹ As such, the story she tells, which is ostensibly about

⁵⁷⁸ April 2010 interview with Patricia Charlie, *supra* note 521.

⁵⁷⁹ There are surely as many reasons for Pat to share Tunney's story as there are different contexts for her telling. Here are some of those I can think of. The first time I formed part of the small audience listening to her tell this story was informally, at breakfast, during a period when her son Darren and I formed a couple. I do not remember what other topics of conversation that morning might have prompted Pat to share the story with us. But I do remember her noting that Darren needed to know and remember the people and events she was talking about. When I asked her, a few months later, whether she would tell me the story again and allow me to record it for the purposes of my research, we discussed the elements of my research ethics consent form and I made explicit the framework within which I was listening to the story, thought about it, and asked her permission to retell it. Beyond the reasons I supplied for her narration when I interviewed and recorded her (on two occasions, within a few days of each other), the initial motivation she had articulated remained present: there was at least one younger family member there – one of her children or grandchildren, in addition to Tunney by her side – listening to the story. A final reason Pat may have had was to make me feel welcome and included in the family – which she always did.

Tunney's empowerment, is also a manifestation of her own. Moreover, the roles that she and other women play within her narrative – and those I have seen them play, or listened to them discuss at the periphery of this narrative – cast Pat's work, her marriage, and the role she has grown to play in her family as exemplars of the social power incrementally reclaimed by women within *xwélmexw* society over the last half-century, as they have mobilized what might be called the “connectivity currency” of names within their legal order. The reflection that follows draws together the elements of this argument scattered through Chapters Six and Seven – starting with, and centering on Pat.

Pat's narrative agency with regard to Tunney's naming story maps onto her role as a storyteller and interlocutor *during* the events and interactions she recounts. Throughout the period that her story recalls, *she* was the one who took on the task of explaining Tunney's good work, of relaying Frank Malloway's words of recognition, and of raising their search for a name within various circles. Speaking for him in this way was the appropriate thing to do: after all, she herself was the first witness and corroborator of her husband's character and effort, and of the transformation that was happening in their lives. By mediating the request for connection and identity, she made it clear that Tunney's search was undertaken in the right spirit: without expectation or sense of entitlement, only a genuine desire to learn where he came from and to rekindle vital familial ties. Conveying this appropriately allowed the name to come to him freely.

The qualities that Pat exhibited as a careful but effective initiator of key interactions during those searching years, actually also convey her ownership of the quest that she and Tunney were on. Something existential was taking place through that quest, not only for him but also for her, and for the future of their family. They had decided to stay together and to tackle the addiction that

Some of the family events that she recounted were possibly shared in that spirit, infused by the warmth and trust that developed between us.

distorted their relationship and plagued their community. He had become the “backbone” of her *syúwél* practice and one of the quiet but essential pillars of a nascent longhouse community in Sts’ailes, serving the dance without attracting the reverence and celebration greeting each dancer on the floor. Now, she supported *him* in achieving recognition for this quiet spiritual work. Through the seventies and early eighties, Pat and Tunney were coming into their own, each of them channeling the power of a different aspect of their spiritual and political tradition to attend to their sobriety and self-possession – developing together their capacity for the kind of interdependence and mutual reliance upon which rested their community’s order as a whole. Their quest for Tunney’s ancestral identity was one to consolidate his abilities as a constructive force within their couple as much as to restore the web of their family and society.

I imagine that each of those elements of Pat and Tunney’s personal, familial and social context in the early 1980’s – including: what was at stake for them at the time; their respect for their elders’ authority and for the naming process, manifest in the manner of their request; and their respective personalities: her social buoyancy, his relative introversion – had a role in Pat’s initiative and drive throughout the process that led to Tunney’s naming. But I also think that something larger was at play, which I suspect became clearer to Pat herself during the search and the interactions it yielded. With those interactions, the knowledge and the decision-making authorities that emerged from them, the connective role that Pat herself knew how to play throughout the search, started to disclose itself as a pattern within *xwélmexw* society. Pat’s own conduct reflected the connective role she had seen her mother, her aunties, and other leading female figures, such as her sister Ginnie’s mother-in-law, Ada Peters, play both inside Sts’ailes and between the communities where their families were located. Toward the end of Tunney’s naming quest, the political ramifications of this traditionally gendered role, and its vehicle in *xwélmexw* names were becoming clearer. At a time when *xwélmexw* society was tapping into its own spiritual practice and mechanisms of

governance to push back against colonial intrusion, women were channeling their crucial connective role through the recovery of and authority over ancestral names.

It might have been a man – if someone of Thelachiyatel’s stature and generation had been trained as a genealogist and historian on Tunney’s side of the family – but it turned out to be Dorothy Jim who came to visit, and in an ordinary, unassuming way, illuminated the pervasiveness of women’s upbringing toward this role, highlighting the web of kinship as she chatted with Pat’s mother, remembering people. As noted in rendering Pat’s narrative above, Pat marvelled at how her grandmother’s name on her father’s side was handed back to her family through one of those conversations. Then, after Dorothy put her father’s name on Tunney, another woman – her step-daughter Tina – would also bestow her own father’s name on Kevin, the first of Pat and Tunney’s sons to become a dancer. Since their mother passed away in the nineties, Pat and her sisters Ginnie and Millie, along with some of their female cousins, have taken on the stewardship of their extended family’s ancestral identities.⁵⁸⁰ They also started to train their daughters, nieces, and the following generation of young women in that stewardship quite explicitly. As a result, this collective female body, now a self-conscious repository of knowledge and authority regarding the family names, holds power, through naming, to give birth politically – that is, to incorporate relatives into the body politic by discerning and honouring who they are showing themselves to be, and by holding them to carry themselves honourably.

⁵⁸⁰ In 2010, a few years before her sudden, untimely passing, Millie Silver organized an important naming ceremony for her children and grandchildren. Because her first husband (and father to her children) was not Indigenous, Millie had lost her *Indian Act* status as an Indigenous woman, left Sts’ailes, and raised her family mostly away from Stó:lō territory. She eventually returned to Stó:lō Témexw, recovered Indian status, married Ray Silver (Xéytelég) and lived with him in Sumas. At the naming ceremony, which I had the privilege to attend, I met some of her children and grandchildren who, as young adults then, experienced their naming as welcoming them back into a part of their heritage that the operation of state laws and policies had prevented them from accessing: Andrée Boisselle, *Interview with Anita Gagnon (née Schmidbauer) - April 9, 2010* (Sts’ailes).

This gendered power does not manifest as a hard and fast “rule”. Moreover, it confers and consults with men, and includes their insights and perspectives in the decision-making about names. Once names have been conferred, it not only *allows* but *relies* on the varied expression of individual agency in both women and men to breathe life into their ancestral identities in accordance with their own character and personality – as demonstrated in this chapter and the previous one. While community members sometimes invoke the notion of “matriarchy” to refer globally to the social power wielded by women, something more amorphous, yet meaningful and tangible, seems to me to be at play when it comes to women’s emerging authority over *xwélmexw* names⁵⁸¹. As I see it, this stewardship and authority give expression to the resurgence of a gendered connective role, in keeping with the historic gendered dynamics of Stó:lō society intuited by Carlson.

As mentioned earlier, Carlson’s work has contributed to a deeper understanding of the sophisticated historical dynamics of Stó:lō identity.⁵⁸² Those are characterized by a useful tension between, on the one hand, people’s strong local affiliation and rootedness in villages, the pre-eminence of those villages’ founding stories in local oral tradition, and a series of partially overlapping local jurisdictions centering in

⁵⁸¹ The strict definition of matriarchy – a form of social organization “ruled by women”, or where kinship is reckoned through the female line – does not reflect the political and legal order of Stó:lō society, a class-based society where patrilineal rules applied to the governing elites of the past, and where kinship was and continues to be reckoned bilaterally. The looser, more metaphorical designation of some women as “matriarchs” probably applies in some Stó:lō families, as it does in any group where “an older, powerful woman” inflects the course of relationships, or dominates decision-making processes. While what I have observed, in terms of gendered roles and female power surrounding *xwélmexw* names, cannot be described as matriarchy in the first, totalizing sense, it is also more than a mere function of personality, whereby one woman acquires an authoritative voice within a particular cluster of relationships. Rather, I am pointing to a normative pattern with extensive ramifications and implications within *xwélmexw* society.

Alongside what I describe above about women’s “connective role” expressing itself in the realm of *xwélmexw* names, there are other areas of specifically female power in Stó:lō life, such as the ceremonial power surrounding stewardship of the sacred *sxwó:yxwey* mask. While I have not learned enough about the mask and the significance of the gendered norms associated with it to include it in this discussion, those norms likely have a direct and indirect bearing on the roles and powers I draw attention to here. Pat and Ginnie, for instance, are part of the lineage of women entrusted with ownership and caretaking of the mask, and with the songs that accompany *sxwó:yxwey* dancing.

⁵⁸² See *supra* Chapter 6, subsection II (“A gendered equilibrium”).

those villages; and on the other hand, people's fluid access to other communities and parts of Stó:lō territory to benefit seasonally from a variety of resources, to access shelter and protection, and even to peaceably relocate, if that need arose. Carlson's explanation of this dynamic shows it resting to a considerable degree on a complementary relation between elite men and elite women's power. The first manifested through patrilocal rule, requiring women to leave their family homes and relocate to their husbands' communities; but this did not extinguish women's power, which lay in the choices and flexibility they provided to their nuclear family through the connection maintained to their home, and the one developed with their sisters and aunts' respective homes across Stó:lō Témexw.

While the contemporary political, legal and economic context within which Stó:lō society operates has changed profoundly since then, I see *xwélmexw* names as an important vehicle for women to continue to exercise their connective role in response to today's needs for support and safety. Although Stó:lō and Coast Salish people continue to feed their families country foods – the access to which they fight to maintain – nowadays they tend both to variety and stability in their diet as do most North Americans: by taking a trip to the grocery store. They sometimes need help from their relatives when the Fraser / Stó:lō floods, but although they have experienced relocations and the ongoing invasion of their -territory since “contact”, they generally do not share their forebears' preoccupation with having to pack up in an instant and flee an incoming warrior party. Yet, Pat's children's and grandchildren's ancestral names connect them, beyond their local home in Sts'ailes, to a vast expanse of territory ranging from Skookumchuck, beyond the upper reaches of Harrison Lake, to Tzeachtel, on the Fraser floodplain. Those names connect them even further, throughout the Coast Salish world – sometimes in a direct way, when they share their name with one of their relatives. One example is provided by Qwetóseltel, the male version of Pat's mother's name, Qwetósiya, which Darren (Pat and Tunney's oldest son) shares with his cousin Roy

Bailey, from Nooksack.⁵⁸³ Sharing the same ancestral name is evidently not the condition for a close relationship, but in Darren and Roy's case, it is part of what draws them together and into each other's support network. Years ago, Darren shared with his cousin what he had learned from one of his Sts'ailes elders about drum-making, providing Roy with a way to serve his longhouse community in the United States and with a source of supplementary income. The cousins frequently cross the border to visit, often bringing elk or deer hide to support each other's craft.

It is this same family connection, nurtured and embodied by Darren and Roy's mothers and grandmothers – and tying both men to Qwetóseltel, a name rooted in the Chilliwack tribe – that was activated to bring home Stone T'xwelátse. Remember that the female descendants of T'xwelátse's wife were entrusted with taking care of their ancestor, turned into stone by Xexá:ls following a domestic dispute that had taken an ugly turn. The T'xwelátse family women's central role in their Stone ancestor's repatriation, from the Burke Museum in Washington State, to Chilliwack, was exposed in Chapter Six as one of the most spectacular examples of the ongoing relevance of the social dynamic of Stó:lō identity elucidated by Carlson – that is, of women's connective role across the Coast Salish world.

Pat Charlie belongs to the sisterhood entrusted with T'xwelátse's care. Having listened to her narrative of her husband Tunney's naming journey and paid closer attention to her own role in that journey, another layer of meaning reveals itself, connecting the ancient story to the contemporary Stó:lō reality, this time from a female perspective. Just like Herb, who lived his life as T'xwelátse thinking through the teachings of the story and seeking to embody its message of working through conflict patiently, trustingly, in an even-handed way – so has Pat lived up to her role as T'xwelátse's partner, and in the process, shown the political ramifications of her caretaking duties. In light of the consolidation of her authority in her

⁵⁸³ Darren and Roy's grandmothers were sisters.

connective role since the early 1980's – something quietly disclosed in the narrative confidence with which she tells the story of Tunney's naming process, thirty years later – I read her drive and perseverance in putting her interpersonal skills to work in that search as manifesting a deep awareness of the path toward strength and balance in her marriage and more broadly, in her society. Just as her husband had supported her self-centering in *syúwél*, she tapped into her power to assist him in *becoming somebody*. Over the past thirty years, she has led other women in understanding their role and power. In relation to *xwélmexw* names in particular, the impact, actual and potential, of the imaginative, knowledgeable and wise exercise of this power should be understood in the context of the whole body of stories offered in this dissertation. Properly understood, the use of Stó:lō governance and citizenization practices, steeped in spiritual meaning, involves an exercise of female leadership as much as the recovery of male leadership – which Pat might express, to paraphrase her statement quoted at the outset of this section, as *learning how to speak*.

The story of her marriage, as I hear her tell it, is a microcosm of that larger societal renaissance: that of her and her husband's mutual support into a politically resonant voice within their family, their community of Sts'ailes, and the larger *xwélmexw* polity. As such, Pat's work and path of self-realization, in keeping with the historic political and legal sensibility that provided the context of her thought and action, resonates with that of some non-Indigenous feminists – such as Rebecca Solnit, who writes in 2017: “The longest and newest essay in this book is about silence, and I began it thinking I was writing about the many ways women are silenced. I soon realized that the ways men are silenced were an inseparable part of my subject [...].”⁵⁸⁴

Another of Solnit's reflections also resonates: “Violence against women is often against our voices and our stories. It is a refusal of our voices, and of what a voice

⁵⁸⁴ Rebecca Solnit, *The Mother of All Questions* (Chicago: Haymarket Books, 2017) at 1.

means: the right to self-determination, to consent or dissent, to live and participate, to interpret and narrate.”⁵⁸⁵ Moving out of violence, into the strong voice with which she tells her story, Pat’s life, like Tunney’s, and Herb Joe’s, mirrors the ancient T’xwelátse story, reinscribes its meaning in the present – and shows the vitality of the *xwélmexw* legal tradition, remaining itself through perpetual transformation.

⁵⁸⁵ *Ibid* at 19.

Section Five
Conclusion

Chapter Eight

Gathering the threads

The ongoing intellectual and relational journey of which this thesis marks a moment began with the realization that decolonizing Canada entails a dialogical engagement with Indigenous societies and their legal orders on their own terms. This means ceasing to impose norms on Indigenous societies, or to demand that they reshape themselves in the image of the state and its institutions. But it also requires the deeper constructive work of broadening Canada's legal imagination: to become able, through education and relationships, to engage meaningfully with Indigenous modes of reasoning, relating, and ordering their own societies; and to interrogate Euro-Canadian legal traditions' norms and normative commitments in light of this learning.

One of the fundamental questions that poses itself in the context of the resurgence and revitalization of Indigenous legal traditions, and of any work done to learn from and respectfully engage with their legal resources, is that of understanding what makes a legal tradition what it is. This is the question that drives my inquiry into the *xwélmexw* normative universe. The concept of *legal sensibility* captures the object of this inquiry.

In the process of deconstructing my assumptions about law in light of the type of roles, discourse and governance practices to which I was exposed during my research, I drew two important theoretical insights from legal anthropology and sociolinguistics: the first is that most of human communication acquires its meaning through context rather than by a direct correspondence between the words we use and a physical reality in the world. Becoming fluent in the language and ways of a given community, able to understand and convey meaning as well as to navigate everyday social interactions fluidly, is much more complex than acquiring a certain lexicon – the knowledge of a list of words and of their

dictionary definitions. Rather, it is about acquiring a deep-seated instinct regarding how unspoken norms of interaction apply in any given situation.

Within any community, most of this knowledge remains implicit, in the sense that it is transmitted by modelling appropriate responses to social cues, rather than by articulating every norm of speech or behaviour and reasoning through their application. Yet this subtle and extensive body of tacit norms and the unspoken knowledge of how to interpret them manifests in how people speak and act, and informs how they make sense of their interactions on a daily basis within their society. It is the kind of knowledge that forms the backbone of a legal order and of its explicit *corpus juris*, norms and mechanisms of governance. This connects to the second theoretical insight supporting my inquiry, which consists in the observation that many of the discursive and ritual forms that prevail within a society tend to structurally mirror the model of society they seek to reinforce.

Those key insights informed my approach to discerning *xwélmexw* legal sensibility. They allowed me to become attentive to the correspondence between the individual narratives and interactions that formed part of my research, and some of the structural features of the *xwélmexw* legal order I could also observe. The small-scale discourse and actions did not just reveal their large-scale ramifications once regularities could be observed among a sufficient quantity of them. They had qualitative significance too, in that they both reflected and shaped aspects of the larger order of which they were a part. In other words, many of the narratives I had heard and events I had witnessed were microcosms of the *xwélmexw* normative universe. Furthermore, the sociolinguistic insight regarding the important distinction between contextual and referential meanings allowed me to turn my attention from the explicit to the implicit normative content of *xwélmexw* legal stories and contexts. The approach I took to discerning and articulating those tacit norms was to pay attention not only to what my interlocutors were doing or talking *about*, but to *how* they were acting and speaking. This shift highlights how

much of the key substantive content of our normative understandings is conveyed through form.

This does not mean that the analysis of *xwélmexw* stories, interactions, and governance events offered in this thesis neglected or ignored the teachings they explicitly seek to convey. It is by paying attention to them that many important precepts that run through the *xwélmexw* normative tradition come to light. Among the explicit norms and teachings illuminated by the narratives and practices explored in the previous chapters, we have learned in Section Two about the breadth and depth of *xwélmexw* people's connectedness to their land, and how this connectedness translates into mutual obligations between humans, the land and all the life it supports, as well as the spiritual world – such as principles of respect, reciprocity, and sharing; taking only what one needs; and maintaining sustenance practices that require everyone's cooperation and ensure that everyone is provided for.

This ethos of interconnectedness and embeddedness in the social, natural and spiritual worlds shows itself to permeate the tradition by being explicitly at work in the two kinds of gathering attended to throughout Section Three: the traditional governance gathering – the form of potlatch particular to the Coast Salish – and the winterdance. Responding to each other through the formal roles fulfilled by the speaker and the witnesses, the host and guest families re-enact their connections, validate each other's authority over intellectual resources and territorial areas, and attend to the transformation of their members' lives and responsibilities. Again, in this context, some of the most important precepts formally articulated in *xwélmexw* stories and practice have to do with inclusivity – respecting each person's gifts and valuing the work that she contributes to the success of a gathering; and with an attentiveness to spiritual forces that act through people and alongside them, powers which can be carefully channelled and responded to, even though they cannot be *controlled*.

The exploration of the meaning-making resource of *xwélmexw* names, in their most explicit dimensions, in Section Four, continued to illustrate the profoundly relational ground of *xwélmexw* legal sensibility. The story of how Herb Joe's life has been shaped by his name exemplifies how traditional names insert individuals in storied lineages, providing them with repositories of narrated experience and tropes with which to engage. The exploration of the *xwélmexw* laws at play in the story of T'xwelátse's repatriation highlighted the role of women as connectors of families throughout the larger Coast Salish world, and hinted at the rebalancing of gendered levers of authority through the revitalization and renaissance of *xwélmexw* law over the last fifty years. Finally, the story of how Tunney Charlie got his name, studied purely to understand precisely how he is connected to his namesake, highlighted a key principle of citizenship within the capacious understanding of kinship and the flexible webs of affiliation cultivated in the *xwélmexw* legal tradition: to be claimed and receive the gift of an ancestral identity within a branch of one's kinship network, relatedness is key, but relationship may be even more important. This has important implications for *xwélmexw* belonging and voice, which depend as much on who one is as on what one does. In this tradition, citizenship and voice are not construed as a fixed status, but as agentic capacities to be nurtured.

This is already a rich picture, yet it is made even richer by turning the attention from the norms that are the object of discourse and practice, to the realm of those that implicitly shape discourse and practice. Within this realm, the significance of *xwélmexw* modes of reasoning and storytelling is illuminated as the tacit norms governing them come to light. As he speaks of significant places jutting Stó:lō Téméxw in Chapter Three, Sonny McHalsie addresses his society as a concrete entity, composed of individuals who are all unique, and whose perspectives and experiences are valued as such. The care and humility he puts in speaking from experience, and in giving voice to his teachers, display at once the source and the limits of each person's authority, including his own. He does not create hierarchies

of stories or storytellers, but accumulates perspectives, cultivating the connections between the people and the stories tying the Stó:lō together. Authority, on the model he discloses, accumulates toward strengthening bonds, rather than making final pronouncements or achieving closure.

The decision to inform the witnessing stance, as performed in the traditional governance forum, with an exploration of the witnessing ethos present through the spiritual practice of the winterdance, also participates of the shift toward implicit normativity as a central locus of legal sensibility. This exploration of this elusive, sacred ground of *xwélmexw* legal ordering reveals that for *xwélmexw* selves as much as the *xwélmexw* order as a whole, the center of gravity where law meets spirituality is the notion of power, not control. Through this exploration, Chapter Five goes deeper than Chapter Four had understanding how the Coast Salish approach to socializing the members of its interlocking legal orders is grounded in a spirituality that recognizes a responsibility for one's interactions with the forces that one does not control. The profound respect for individuality within the tradition, and the source of *xwélmexw* relationality within its very subjectivation process, are illuminated by the different kinds of witnessing animating *syúwél* practice.

Finally, it is by paying attention, throughout Chapter Seven, not only to what Patricia Charlie talks *about* when she tells the story of how her husband Tunney received his *xwélmexw* name, but to *how* she tells that story, that its insights about the importance of relationship to *xwélmexw* forms of belonging, at least on par with relatedness, emerge. Training our sights on the tacit dimension of the normativity at play also allows her own role in the story of that naming to come into view, and to cast it in the historical relief provided both by the ancient story of T'xwelátse, and by the historically gendered dynamics of Stó:lō identity.

In sum, what I hope to have shown is that making visible some of the tacit norms underlying *xwélmexw* modes of relating and reasoning – law's hidden canvas –

elucidates the intimate workings of a tradition where law is deployed so as to allow a plurality of normative interpretations to coexist, while still ordering society through shared modes of meaning-making. One can learn to hear this cohabitation of voices – a harmony in polyphonic mode – as one can learn, too, to relate to the majestic figures set in stone across *xwélmexw* territory.

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